



Australian Automotive Aftermarket Association

Review Submission
MOTOR VEHICLE STANDARDS ACT 1989

AAAA is the national industry association representing manufacturers, distributors, wholesalers, importers and retailers of automotive parts and accessories, tools and equipment in Australia. The Association has over 1700 member companies in all categories of the Australian automotive aftermarket including 350 manufacturers and includes major national and multi-national corporations as well as a large number of small and medium size businesses.

The Australian automotive aftermarket turns over \$11 billion per annum, exports \$800 million worth of product and employs over 30 000 Australians. Member companies are located in metropolitan, regional and rural Australia.

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Introduction

The Australian Automotive Aftermarket Association Ltd (AAAA) welcomes the opportunity to comment on the Options Discussion Paper: 2014 Review of the Motor Vehicle Standards Act 1989 and to contribute to the discussion for the benefit of the community and the Australian economy. It is timely that there should be a review of this Act, considering the time that has passed since its initial enactment and subsequent amendments, and the major structural changes that have occurred and are continuing to occur in Australia's automotive industry.

This is a discussion about the government's role in regulating the standards of vehicles supplied into the Australian market, to safeguard community wellbeing, consumer protection and competition (price and choice). As such, the Options Discussion Paper is primarily concerned with uniform vehicle standards for new vehicles at the point at which these cars *'begin to be used'* in Australia and the *first supply of used vehicles*. Whilst it is clear that this is the primary intent, it is our view that this Review is an opportunity to address the wider issues that affect the efficacy vehicle standards beyond *'first use'*. If the intent is to protect consumers and the community, the issue of how these standards apply after first use is relevant.

Failure to maintain the mandated vehicle standards is affected by two issues: lack of national harmonisation on vehicle standards and modification rules and the failure to share repair and service data and information.

States and territories continue to draft and implement a range of inconsistent and conflicting vehicle in-service modification standards that are detrimental to both consumers and industry. It is important to establish at the outset that the purpose of the vast majority of vehicle modifications is to ensure that the vehicle is fit for purpose: fit for use in rough terrain, towing, carrying heavy loads or specific purposes. The majority of these modifications are performed for personal and occupational safety and are required because our market is increasingly dominated by the importation of high volume global platform vehicles. However, despite our increasingly global car parc and the decline of Australian designed vehicles, our state and territory governments are unable to agree on common standards for these modifications.

The servicing of vehicles after these cars *'begin to be used'* is conducted by the service and repair industry: "authorised" dealerships and the independent repair industry. The independent repair industry performs the vast majority of repairs for vehicles over 4 years of age. However, the vehicle importers and manufacturers are increasingly restricting the flow of vehicle repair and service data to their dealerships, for the life of the vehicle, reducing competition and consumer choice and most importantly, risking the safety of drivers and passengers. This issue was the subject of a Commonwealth Government inquiry and the government has formally expressed the view that restricting the availability of vehicle repair and service data has the potential for consumer detriment (in relation to safety and competition).

Our view is that if the intent of the current exercise is to ensure community safety, consumer protection and competition (price and choice), how is that we can have a national discussion about vehicle standards that pays so little attention to what happens after *'first supply'*? If we truly care about the safety of human beings and communities, we should not continue to draw an artificial boundary between point of sale and in-service regulations and standards. The lack of attention to in-service standards and choice of repairer in maintaining these standards does

diminish the government's intended outcomes for safer road transport and a cleaner environment. What is required is a shared national view about how that car continues to protect individuals, families, communities and competition. The 'point of sale' versus the 'in-service operation' appears to be based on a legislative artificial boundary that exists through historical anomaly rather than common sense.

In regard to national harmonisation, it could be argued that the Commonwealth Government has promoted national harmonisation for decades and that it remains a government priority. Our view is that there has been highly unsatisfactory progress and the current process of working with the states and territories to produce consistent regulations is clearly failing.

We continue to talk about national harmonisation and yet, as an industry association we are still working with every individual state and territory on noise emissions, suspension height, air pollution and vehicle frontal protection. We are in favour of government-established national standards – we have cooperated with every state and territory on every vehicle standard, but the process is often irrational and repetitive and the national harmonisation effort appears to be rhetoric with little real progress.

We note that there are options in the Paper to improve price and consumer choice in the discussion of reforms to the regulations that govern the importation of specialist and second hand vehicles. This option does give consideration to the consumer whilst attending to the community benefit of safety and reduced emissions. There will be a push back on this issue from vehicle importers and dealerships; they will assert that the "floodgates will open" and there will be numerous comments about an inability to source parts and service these vehicles.

Our view is that this outcry will be vastly overstated and driven by commercial self-interest. We doubt that there will be an avalanche of imports of new vehicles, indeed, if the mainstream vehicle importers price their vehicles and value-add, the consumer will continue to buy cars through authorised dealerships. There will simply be no market for large scale private importation of new vehicles.

There would appear to be a great deal of unnecessary and ill-informed noise on this issue. If the volumes are likely to be low, it could be asked 'why is reform necessary'? Our view is that we do need this reform because it keeps the industry competitive. At a particular price point, it will be beneficial for consumers to directly import vehicles and the challenge for our current vehicle importers is to maintain their competitive edge, just as it is for every other producer or retailer of goods in Australia. Reform of the importation of specialist, enthusiast and second hand vehicles will produce competitive pressure to the benefit of consumers.

As we discuss in this response to the Options Discussion Paper, if you bring the vehicles in, the independent aftermarket can provide parts and service for them. It may take a little longer than the high volume imports, but the market will find a way.

Summary

We broadly agree with the basics within the Options Discussion Paper:

1. There is (and will continue to be) a requirement for government to regulate vehicle standards.
2. We support the view that this process should seek to modernise and strengthen the legislation. We would seek an outcome that updates the Act to improve administrative complexities, improve definitional clarity, improve the linkages with relevant legislation and remove any duplication in information collection.
3. We support harmonisation with international standards and streamlined certification. We agree that aligning the ADRs with the United Nations automotive standards regulations should be supported. We agree that Australia should continue to move to towards harmonisation, progressively removing the ADRs and substituting with UN Regulations – we support the adoption of the UN Regulations as the primary standard while maintaining the capacity to permit variations for Australian conditions.

However, the variation process should be clearly defined and the principle that variation for Australian conditions is appropriate should be overtly stated and enshrined in the Act. The principle that a variation for Australian conditions is an acceptable action should be stated, including the rationale that variations are required because global standards do not take account of our unique driving conditions.

This is a very important issue for the Australian aftermarket. Our export success is based upon the development of innovative products to markets that have conditions similar to the Australian environment. We excel in difficult conditions: heat, rough terrain and animal strikes. If government does not permit variations for Australian conditions, we will be unable to develop products for this environment and therefore, will be unable to export these products because we will not be operating from a base of solid and sound domestic demand.

This may seem self evident – but every single year, some area of government seeks to outlaw an Australian innovative products that have been developed for our unique conditions and invariably this proposed regulation seeks to outlaw products in which we have sound and impressive export penetration. Every three to four years we have an irrational and disappointing conversation about vehicle frontal protection when the research is very clear: bull bars save lives both directly and by reducing ‘swerve to miss’ accidents and we are exporting these products all over the world. If variation for Australian conditions is made difficult – if the dominant paradigm is that we support international standards and only vary in extreme circumstances or not at all, we will diminish our local aftermarket innovation and exports, but most importantly we will risk lives on Australian roads.

4. We support reducing the barriers to the importation of quality second hand vehicles and personally imported new vehicles (aligned to the Australian Standards and under 5 years old). We also support the consolidation of concession scheme arrangements. The irrational and self-interested assertion that cars will be imported without the means for repair or spare parts is not correct. A wide range of consumer goods including

technology and white goods are directly imported into this country and repair, spare parts and servicing occurs. If cars are imported into this country, provided we have access to OEM controlled technical and diagnostic information, the market for repair, service and spare parts will respond. We already have one of the most diverse car parcs in the world (relative to our population) and we have found a way to commercially repair and maintain these vehicles.

It would appear that the Australian market has anti-competitive characteristics that are actively leveraged by mainstream importers. These importers leverage our distance from world markets and in many of our industries sectors it is clear that we pay over the odds for goods and services that are cheaper in overseas markets. If we can introduce measures that provide the motor vehicle market with 'safety net' parity opportunities, we should do so.

Major Issues

National Harmonisation

The current Act has achieved a great deal in imposing nationally consistent design rules. AAAA fully supports a uniform system whereby suppliers do not have to comply with a range of differing state-based requirements.

Clearly any change to the current arrangements should reinforce uniformity and consistency, and eliminate unnecessary bureaucracy and duplication of regulation. However, vehicle standard inconsistencies still exist, particularly in relation to the modification of vehicles. The current system of differentiation between states is both confusing and inefficient. Standards are regulated and changed on a state-by-state basis, causing confusion amongst both industry and consumers who operate across state lines. Unnecessary time delays occur as States wait for and are hampered by the actions or inactions of others, and ultimately the safety of Australian road users is jeopardised. Many in our industry have advocated for harmonisation of national standards and numerous Government inquiries have recommended harmonisation for more than a decade, yet to no avail.

One of the greatest inefficiencies in and subsequent frustrations of the current system is the delay in implementation. Often, after an extensive period assessing, discussing, developing and reviewing changes to vehicle standards a decision on a set of standards will be reached; and yet, due to deliberations between the states, actually seeing the regulations implemented can take a much longer, unspecified period of time.

It is our preference that VSI (Vehicle Standard Information) regulations regarding vehicle modifications be implemented on a national level. Modifications to all facets of a vehicle, be it engine based, structural or cosmetic, affect the integrity and operation of the vehicle – for this to vary across state boundaries is nonsensical.

AAAA has a commitment to ensuring safer roads and safer vehicles and as such participates in, and contributes to numerous regulatory committees overseeing changes in standards and regulations. We have worked in consultation with State Transport Ministers, Government department committees and working parties in developing appropriate vehicle standards.

As a particular example, AAAA was involved in the 2009 review of VSI 50 in New South Wales, which examined the raising and lowering of vehicles. Despite 18 months of meetings, analysis and drafting of a new agreed-upon regulation of vehicle height restrictions, the new VSI was then referred to the Federal Standing Committee on Transport with the intent of achieving an agreed national position on raising and lowering vehicles. As of today this issue remains unresolved and the NSW requirements for vehicle height modifications currently remain as they were, before the announcement of VSI 50 in July 2009.

It is this disharmony between jurisdictions that causes the delays in implementation, imposes unnecessary costs and undermines the integrity of the ADR system. In commenting on the efficacy of the current system, it is appropriate to remark that it is fractured and functioning well below capacity. Unnecessary bureaucracy is hampering the efforts of those committed to implementing necessary reforms; meaning vehicle safety standards are continually lagging behind advances in technology.

Choice of Repairer

We note and support the emphasis on the importance of protecting the consumer, supporting consumer choice and the reduction of the regulatory burden on business and enhancing productivity. AAAA strongly submits that these objectives will only be achieved through a greater emphasis on fair competition in the industry, reduction of the protection of vested interests, and full disclosure of information to the consumer's nominated repairer.

This is not at present the case in relation to the consumer's ability to choose who they want to maintain or repair their vehicle. At present vehicle importers restrict access to much of the information required to repair or maintain complex modern vehicles to authorised dealerships. This means that it can be difficult and challenging for independent repairers to repair these vehicles, limiting competition and increasing costs for consumers.

AAAA suggests that the development and implementation of a Mandatory Code of Conduct for the Vehicle Data Sharing is the most effective way to introduce an industry-wide solution to address the data/tool access requirements of the independent aftermarket. Many other global jurisdictions including the European Union and USA have introduced requirements for OEMs to provide full disclosure of information to the car owner's nominated repairer.

To complement a mandatory industry code it is suggested that mandated access to repair and service information be incorporated into the Motor Vehicle Standards. A revised Act is an opportunity to mandate data and information sharing. While the ADRs do not provide a pricing mechanism or a dispute resolution mechanism, cross referencing them with a mandatory code of conduct would strengthen the new competition framework by linking vehicle type approval with the provision of the vital data and tools required to repair and maintain the vehicle on an ongoing basis.

For further information and a full explanation of why data sharing is relevant and important in vehicle standards please refer to Consumer Rights: Sharing of Repair Information in the Automotive Industry, AAAA's submission to the Commonwealth Consumer Affairs Advisory Council, at

<http://www.aaaa.com.au/files/issues/AAAA%20CCAAC%20Repair%20Information%20Submission%20Final.pdf>

Motor vehicle pollution levels are reduced through the introduction of emission standards, but tighter standards are only one aspect of the solution – once in-service, vehicles can deteriorate and can be subject to abuse and tampering. Ensuring vehicles are well maintained is as important as introducing tighter vehicle standards.

Why is this relevant to the discussion on vehicle standards? Vehicle standards are a means to an end. There is a reason for Australian vehicle standards; as a community we want a safer and cleaner community environment. This is therefore an excellent example of the reduced benefit of ADRs if these occur without the necessary data sharing regulations. In Europe emissions standards were adopted with right to repair regulations i.e. vehicle manufacturers are required by law to share the data to enable all repairers to service vehicles. This linking of data sharing with the emissions regulation ensures that the vehicles are compliant both at point of sale and in-service – vehicles are therefore, sold and maintained at the appropriate standard.

Importation of Second Hand Vehicles

Under the mantra of consumer protection, community safety and environmental performance, the large-scale importation of second hand vehicles into Australia has been restricted through the Motor Vehicle Standards Act 1989. However, due to a recent recommendation from the Productivity Commission, consideration is now being given to the relaxation of these rules and for Australia to follow New Zealand in allowing grey vehicle imports.

While currently there exists a general 5% tariff applying to all automotive imports (and an additional \$12,000 customs duty on second hand vehicles), this duty is rendered redundant via the ability of importers to claim exemption from the \$12,000 duty if prior approval is granted. Approximately 98% of imports are granted some form of concessional treatment.

Appropriately, the Productivity Commission's request for reconsideration is due to the inability to import a large number of under 5 year old second hand vehicles that would meet Australian Design Rule standards. Applications for import 'can only be made in respect of a single used imported vehicle' (sections 13C (2), 16(3)) while automotive workshops are prohibited from importing more than 100 used vehicles in each vehicle category in a 12-month period (Part 3 (6a)).

These restrictions cause distortions in the market by raising the price of used vehicles and reducing consumer choice. The recommendation would not see a total deregulation of the import market; instead consumer protection, community safety, and environmental performance standards would be maintained through regulatory standards applicable to all vehicles sold in Australia.

Parallel Vehicle Imports in New Zealand

New Zealand began easing import restrictions in the 1980s as part of a comprehensive program of economic reforms. The widespread availability of used imports prompted official importers to reduce the price of brand new cars, and in 1998, New Zealand became one of the few countries in the world to remove all import tariffs on motor vehicles.

Used-vehicle import totals are now higher than those of vehicles first registered in New Zealand. In 2006, 123,390 ex-overseas vehicles were registered, compared to 76,804 brand new vehicles. 94.6 per cent of these imports come from Japan.

Used vehicles must, with some exceptions, be right-hand drive, and they must comply with recognised European, Australian, Japanese, or American emission and safety standards, or they are ineligible for import to New Zealand. Certification is undertaken by NZ Transport Agency approved certifiers, and the applicable standards depend on vehicle type and date of manufacture or first registration. The certification process includes a physical vehicle inspection as well as the sighting of documentary evidence provided by the importer, showing compliance with New Zealand legal requirements.

Under Vehicle Standards Compliance Amendment Rule 2013, all vehicles (including grey imports) must pass a 'Warranty of Fitness' inspection prior to use on the road and then again at the three year anniversary of the cars first registration. Light vehicles over three years old must undergo annual WoF inspections, while vehicles registered prior to 1 January 2000 must attain a WoF every six months.

2005 research from the Monash University Accident Research Centre found that the used imports were as safe as those sold new when compared on a year of manufacture basis, and that the difference in crashworthiness performance between used imported vehicles and new vehicles was attributable to the date of manufacture rather than its previous use in its country of origin. A second hand Toyota Corolla (2006 automatic hatchback model) of similar mileage is on average almost 20 per cent cheaper in New Zealand than in Australia.

While initially odometer fraud was a noted problem following removal of second hand vehicle import barriers (estimated at between 10% and 30%), the New Zealand Government responded in 2010 with the introduction of the Motor Vehicle Sales Amendment Act 2010 to increase consumer protection and promote 'informed purchasing decisions' in relation to motor vehicle sales.

Deregulating Imports: The Benefits

The importation of second hand cars puts downward pressure on vehicle prices and increases consumer choice.

As experienced in New Zealand, deregulation of grey imports will allow more cars into the Australian second hand vehicle market, enabling better price competitiveness. Such regulatory changes could also make new cars cheaper, particularly sports and luxury models which often cost twice or three times as much in Australia as they do overseas - a brand-new Porsche 911 Carrera coupe costs from \$206,500 in Australia, but as little as US\$84,300 (\$96,400) in the US.

Any safety concern can effectively be addressed through the robust safety standards already in place in Australia, with importers subject to the exact same conditions and design rules as new vehicles. Grey imports would be required to undergo the same certification procedures that any new vehicle is required to undergo in Australia.

While currently, imported previously-owned vehicles often cost more to run than regular used cars, due to the need to specially import body parts and many mechanical components, this can be overcome on a larger scale by requiring anyone bringing in used cars at high volume to be able to supply the parts for an appropriate period.

The increase in second hand vehicles in the automotive market will see a dire need for the sharing of diagnostic information within the industry. The increased independence of the consumer and their vehicle purchasing options will see a diminishing reliance on dealerships and require appropriate legislation to support the expansion of consumer choice in the automotive market.

New policies would have to be phased in, partially to protect resale values of cars already in the market but also to protect other businesses and industries that would be affected.

Concluding Remarks

We consider that the 1989 Act is broadly achieving the objective of a nationally consistent regulatory regime of road safety and environmental quality. However, we also agree that much has changed in consumer demand and in the design and manufacture of vehicles. In our view we do need this review of the Act and we do require an ongoing role for government to intervene in the market to set standards for supply into the Australian market.

It is obvious that the Australian automotive market is becoming more fragmented, with a large number of vehicle importers serving a relatively small market. The Australian consumer market is now integrated into the global automotive industry. The result is that vehicles, designed for a global market, are not specifically tailored for Australian conditions. Consequently, in 2017 and beyond, vehicles will be modified for Australian conditions, and the Australian automotive aftermarket will provide these modifications. As a result, motor vehicle standards must reflect modern economic and industry conditions and accommodate aftermarket modifications in a nationally consistent and efficient manner.

The intended outcome of this process should be an improved regulatory regime that provides improved competition on price and choice that results in safer vehicles and lower vehicle emissions. The review should therefore address the greatest weakness in our system: a lack of national harmonisation for vehicle modification and the delay in implementation. Investment in the aftermarket stalls when there is inconsistency and uncertainty.

It is time to review the Act. The paper does address many of the issues but there is some oversimplification of the regulatory environment. The diagram provided on page 31 that seeks to illustrate the Act and key legislation is oversimplified. There are other Government entities that regulate this industry – as an example the Australian Communications and Media Authority: Electromagnetic compatibility (EMC) requirements – for suppliers of electrical and electronic devices, vehicles and devices with internal combustion engines in Australia.

The definition of terms within the current Act requires constant clarification of what these terms mean and generally this translates into delays to product development and time to market. In addition to the 'cleaning' of the Act to modernise and provide clear definitions, the Act should establish the MVS Act as the primary regulatory tool and other agencies (such as ACMA) should have subordinate legislation to ensure that there is clarity in roles and responsibilities and there is less conflicting advice and direction.

The conduct of technical service bulletins (TSB's) and the rectification of manufacturing faults on vehicles is of real concern. If a revised MVS Act were to be drafted, this would appear to be the best opportunity that we will have to establish mandatory standards that protect consumers, particularly beyond the traditional three-year consumer relationship with the dealership. The Australian Consumer Law is not sufficient in this regard and our preference is that TSBs are notified to the independent aftermarket as a condition of supply of vehicles into the Australian market. It should be mandated that all vehicle importers be required to notify both the vehicle owner, the point of sale outlet (dealership) and the independent repair industry as a condition of supply into this market.

The importers and dealers would argue that full recall notices are provided to the consumer and the dealer network. This is not sufficient. Consumers change home addresses and the

clear majority do not think to notify the seller of their vehicle and there is overwhelming evidence that after the three-year window, the car will be serviced by an independent (non-dealer) repairer. If the consumer doesn't know there is a recall and nor does the independent repairer that is servicing their vehicle, how is it possible to ensure consumer and community safety? How else can we provide for full transparency, except as a mandatory requirement that selling into the Australian market also requires the provision of safety, repair data and service bulletins to the entire repair industry as a condition of supply?

We noted that at the Melbourne MVS Act briefing a representative from Ford Australia used lack of access to technical service bulletins as an argument against allowing the private importation of vehicles on safety grounds. It is critical that the debate on this matter is well informed: TSBs are not circulated widely under the current regime, the vehicle manufacturers and importers do not share technical service bulletins with all repairers and argue stridently that these bulletins are not safety related. It is time for reform of TSBs and safety recalls regardless of whether the importation of second hand vehicles regulations are to change.

We urge Government to deal with this now – it is a wasted opportunity if we continue to rely on the Australian Consumer Law and a voluntary industry code that does not, and will not, regulate the behaviour of every supplier of vehicles into our domestic market.

Adopting modern vehicle standards is not the full solution to ensuring safe and environmentally responsible vehicles on Australian roads. We must have common standards for modifying the vehicle for Australian conditions. We must be able to maintain the vehicle at this standard and we must have full access to repair and safety information.

AAAA members collectively improve, service and modify a significant proportion of the Australia's 14 million passenger cars. It is our desire that Australia has modern harmonised vehicle standards and we support a regime of adopting, implementing and enforcing these standards.