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MVSA Review Team
Department of Infrastructure and Transport
Via email: MVSAreview@infrastructure.gov.au
Canberra ACT 2600

Re: Public consultation on the *Motor Vehicle Standards Act 1989* and regulations

Thank you for the opportunity to comment of the *Motor Vehicle Standards Act 1989* and regulations. The Australian Motorcycle Council Inc. (AMC) acknowledges the Department of Infrastructure and Transport's application of COAG principles of best practice regulation adopted for this public comment process.

The AMC can contribute to Government and its agencies:

- By providing considered input from current motorcycle riders who can bring real world experience with present issues to any forum;
- As the peak rider advocacy group acting as the link between Government, its agencies and end users (i.e. riders and their advocacy groups);
- Bringing to the table information gained from AMC's National affiliates and International associations with peak advocacy bodies; and
- Being accessible to Governments regarding the practicality of proposed initiatives through utilisation of experienced and professional riders who have the ability to represent the many sectors of motorcycling.

Motorcycling is complex due to its market and user segmentation, which includes on-road, off-road, sports, touring, motocross, endure and mini bikes. A contribution from motorcyclists is crucial for achievement of viable and sustainable transport in Australia. Motorcycle community engagement is a key component. Riders with motorcycling and transport expertise have always demonstrated their interest and willingness to contribute. The AMC with substantial direct links into Australia's motorcycle community can, and is willing to be a valuable contributor towards transport and its infrastructure in Australia.

Kind regards

John Meara
AMC Secretary

AMC submission: Consultation Paper on the *Motor Vehicle Standards Act 1989* and regulations. Issued: May 2013.

Overview response:

National accountability versus state/territories accountability

Vehicle users and stakeholders in the Act suffer greatly due to the involvement of states and territories in determining their own regulatory frameworks. The National Road Safety Strategy 2011-2020 (NRSS) outlined accountability for a system-wide perspective on road safety, which can be applied equally to all aspects of Motor Vehicle Standards:

The Australian Government is responsible for allocating agreed infrastructure resources, including safety, across the national highway and the local road networks, and for regulating safety standards for new vehicles.

State and territory governments are responsible for the funding, planning, design and operation of the road network, managing vehicle registration and driver licensing systems, and enforcing road user responsibilities.

NRSS p.102

Regulation of new vehicles sits with the Commonwealth, whilst registration and in-service vehicle regulation sits with the jurisdictions. The Commonwealth Motor Vehicles Standards Act (MVSA) cannot be considered in isolation from related State legislation, as the two levels work together to frame industry and user requirements. Inconsistencies, non-adoption, faulty adoption and lack of timely adoption of Australian Vehicle Standards Rules (AVSRs) produce duplication of costs and end-user burdens.

For example, it is clear from the Victorian government requirement¹ for Electronic Stability Control for all new vehicles registered in Victoria from 1 January 2011, that Victoria does not willingly participate in national agreements and is seeking to inappropriately expand its influence over other jurisdictions. Victoria chose to usurp the nationally agreed role of the Commonwealth in regulation of new vehicle supply and set its own requirements.

This example indicates that the MVSA may be of limited utility. A process of “de-federalism” is evident, increasing trade and free movement barriers between the States and Territories of Australia. These may be to satisfy pride, impatience, or reluctance to address internal administrative processes of some authorities that give only lip-service to national agreements.

There are too many authorities in this area, leading to competition for influence and prestige, confusion as to actual authority, yet no ultimate “owner” of the processes involved and a poor outcome for end-users.

We may observe the burgeoning proportion of 4WDs in the vehicle fleet and ponder how many solutions have had to be implemented to correct consequential road safety issues, such as Australasian New Car Assessment Program (ANCAP) crashworthiness or pedestrian aggressivity measures or ESC to reduce rollover. Similarly, we must question the expansion of in-car technology in relation to increased driver distraction.

¹ <http://www.vicroads.vic.gov.au/Home/Registration/NewToVictoria/ESCNewToVictoria.htm>

In a similar manner, we may observe that occupant safety has driven vehicle design to the point that the large blind spots are likely to cause a danger to other road users. Visually small Vulnerable Road Users (motorcyclists, scooter riders, bicyclists and pedestrians) may be completely obscured to a driver due their vehicle's blind spots^{2,3}, particularly at roundabouts and reversing.

Whist the MVSA can establish specific Standards for various components, it gives little guidance as to desirability or otherwise of innovations.

In effect, the MVSA regulates the market supply of vehicles presented for initial registration, but has almost no relevance in relation to their use on roads, where local jurisdiction definitions create confusion, e.g. in Victoria, it is possible to purchase a vehicle without ESC, but VicRoads will not grant registration, although other jurisdictions will do so.

We may observe a similar parallel between sale or use of child restraints, where the ACCC regulates supply to the market through a mandatory, declared product safety standard and sales of these are enforced in each jurisdiction through the *Australian Consumer Law*. However, use of child restraints in vehicles is regulated through Road Rules. European ISOFIX child seat system of UNECE Regulation 44, is adopted in ADR 34. Road Rules for “use” require AS/NZS 1754, forcing ISOFIX to be inserted into an Australian Standard and demanding only local Certification in order to gain access to the restricted Australian marketplace.

To the ordinary end-user, this artificially restricts the market for both child restraints and Certification services. AS/NZS 1754 demands slavish adherence to a test laboratory equipment method in an Australian Standard that would appear to be out of date, despite having once been an initial pioneer. Hence, ISOFIX child restraints must be re-tested and re-certified in Australia prior to supply to the market.

While the supply of Australian Standards or ISOFIX child restraints is capable of enforcement for supply to the market, the use of one is arbitrarily restricted by road authorities in the jurisdictions, inhibiting competition. Hence we have two forms of “national standard”, one through UNECE Regulation embedded in ADR 34/02 and that administered via Road Rules, an ACCC administered declared product safety standard and a rudderless Standards Conformance and Technical Infrastructure.

In a related manner, motorcycle helmets in compliance with UNECE Regulation 22 are not permitted for sale or use in Australia, despite there being no evidence for superiority of helmets in compliance with the patchwork Australian Standard. Over 50 countries worldwide have adopted ECE 22-05.

It is impossible to purchase a motorcycle helmet that is legal to use in all jurisdictions.

In a “tail-wagging-the-dog” scenario, we have seen the continuing proposal from some state police and transport departments, reluctant to change their enforcement practices, to require motorcycles to be fitted with front number plates, despite there being no provision for this in motorcycle design or in ADRs or UNECE Regulations.

² <http://www.caradvice.com.au/123303/racv-slams-forward-visibility-blind-spots-of-new-cars/>

³

<http://www.racv.com.au/wps/wcm/connect/racv/Internet/Primary/my+car/car+safety/new+car+safety/forward+visibility+ratings>

Such a measure was specifically publicly ruled out by the Australian Government's representative at the OECD's Workshop on Motorcycling Safety in Lillehammer, Norway, in June 2008. Even the road authorities collectively through Austroads then agreed this was "off the table", yet this seems to remain as a "pet project" of a handful of individuals, prepared to ignore proper government analysis and potentially cause international embarrassment to Australia in the process.

It is important that the MVSA does not implement rules or regulations that are at odds with major world markets. Motorcycle and scooter sales volumes in the Australian market are less than one percent of the world's production. Changes required to meet local, but internationally obscure rules or regulations are prohibitive, as is the case with front number plates where design criteria has not made provision for the fitting of front plates.

We arrive at the point of questioning whether the MVSA will achieve uniform regulation and whether the agreements as stated in the NRSS are valid at all. The present system of multiple agencies involved in sale and use of products (vehicles and accessories used with vehicles) on roads denies a Seamless National Economy⁴. It would appear that further regulatory reforms are necessary and modifying the MVSA in isolation will achieve little.

This is despite Clause 15 of the *National Transport Commission (Road Transport Legislation — Vehicle Standards) Regulations 2006*

15 What is a national standard

A ***national standard*** is a national standard under the *Motor Vehicle Standards Act 1989* of the Commonwealth.

A significant problem remains in the nature and source of "national standards". We may observe two regulatory environments, one for "supply to the market" and one for "use on roads" in a series of unique jurisdictional modifications or administrative interpretations.

We note that ADR 34/02 collides with AS/NZS 1754 in Sec 106 of the ACL referenced through Section 41 of the MVSA. Unique Australian Standards may be anachronisms. It would appear that Australia seeks unique Standards that inhibit competition and that create market confusion at all levels of government. This provides no net benefit to the community.

We note that Chapter 15 "Regulation making and review" of the 2011 COAG Reform Council Seamless National Economy Report states:-

*In the absence of any commitment by governments to take concrete steps to develop and enhance existing processes for regulation making and review, we will not have any evidence to assess whether governments have achieved the stated output of this reform. As a result, once again we assess there is a risk that governments may not achieve the intended output.*⁵

Expanding the scope of the MVSA may be premature until such time as inconsistencies between supply and use on roads are resolved. For example, we may consider the approach used for the Australian Consumer Law through an Inter-Governmental Agreement between the jurisdictions to ensure a consistent regulatory environment.

⁴ <http://www.coagreformcouncil.gov.au/reports/competition-and-regulation/seamless-national-economy-report-performance-2011-2012>

⁵ http://www.coagreformcouncil.gov.au/sites/default/files/files/reports/competition/sne-performance-11-12/chapter_15_regulation_making_review.pdf

Recommendation: That clear accountability be defined in respect of the MVS Act and regulations to provide a single national framework that:

- ensures consistent state and territory regulation on the same matters,
- prevents inconsistent jurisdictional measures,
- ensures timely and accurate adoption of Commonwealth measures and
- Is in harmony with world major markets.

Powered Two Wheelers: Motorcycles, scooters and mopeds

Motorcycle and scooter transport is a sustainable alternative to car use. It is disappointingly inappropriate and unrealistic to compare the per-capita carbon footprint of large European cities, like Rome and Paris where Powered Two Wheelers are an integral part of their transport solutions, to our Australian major cities where in general Powered Two Wheelers appear to be frowned upon. There is a need to overcome barriers and reap the benefits of including motorcycles and scooters in all transport-related strategies - for smart growth.

While car dependency is increasing, the use of motorcycles and scooters in Australia has increased at a greater rate. There should be a greater emphasis in the MVS Act and other legislation managed by the Department of Infrastructure and Transport on elements that *support* motorcycles and scooters. The decision to use motorcycles for transport contributes to sustainability through reduced consumption of fossil fuels, reduced emissions and reduced congestion.

In releasing the report on the *State of Australian Cities 2012*, Federal Minister for Transport Anthony Albanese highlighted the benefits of what he described as the “often-forgotten transport mode, motorcycles and scooters” in referring to information from the 2011 Census and drawing on personal observations from Australia and overseas.

“As I can attest from my recent trip to Italy, many of the world's cities are thronged with motorbikes and scooters as people take advantage of this low-cost, low-energy and space-efficient form of transport,” Minister Albanese said.

“However in the Australian policy context, they tend only to be mentioned in discussions about safety. This can obscure the fact that they are an important and growing component of the urban transport mix at a time when congestion drags like an anchor on our time and productivity,” he continued.

Data collection and evidence

Any review of the MVS Act and regulations must be based on comprehensive, valid, accurate and up-to-date data. There has been little mention in the consultation process of data collection and research. A coordinated approach to data collection and research is needed nationally. The first of the key recommendations from the 2008 Motorcycle and Scooter Safety Summit⁶ highlighted critical needs in this area.

The AMC supports inclusion in the ABS’s National census, an expansion of specific questions on motor vehicle use, in particular the use of Powered Two Wheelers and other non-car forms of transport.

⁶ Department of Infrastructure, Transport, Regional Development and Local Government, and MSCC, 2008, *Motorcycle and Scooter Safety Summit*, Canberra

Data must differentiate between the various types of Powered Two Wheelers, e.g. on-road, off-road, sports, touring, motocross, enduro, scooters, mopeds and mini bikes. Of particular concern is that off-road motorcycle and All Terrain Vehicle (ATV) statistics are being combined with on-road motorcycling and used inappropriately by state transport and police departments, particularly to misrepresent the risks associated with motorcycling.

With ATVs being statistically lumped in with Powered Two Wheelers, it is problematic that in NSW and other states, an ATV operated on roads under conditional registration requires the operator to hold a Class C licence⁷. That is a car licence; not a motorcycle licence. It is clearly the view of NSW, that ATV's are not motorcycles. The situation is similar in Victoria, where they are called "special work vehicles"⁸. A person driving a special work vehicle on a road in Victoria must be at least 18 years of age and be the holder of an appropriate car licence.

Without data collection, analysis and evidence improvements, decisions priorities and actions will be based on inadequate data, resulting in ineffective programs, inappropriate strategies and poor results (objectives will not be achieved).

Off-road activity

The off-road community is not currently catered for adequately, particularly motorcyclists. Off-road motorcyclists are the most under-represented entity in the off-road environment, despite the fact that off-road motorcycles are a significant volume sector in Australia's market. The off-road market is very diverse, incorporating trail, enduro, agricultural, motocross and mini bike riders. Half of the motorcycles sold annually in Australia are of these types.

Safety and amenity issues for off-road groups is at variance to 'on-road' motorcycle riders. However road safety data tends not to separate these groups in fatality and accident reporting which compromises the validity or accuracy of assumptions made. Significant numbers of off-road riders are licensed and their motorcycles registered because, under Australia's road rules, bush tracks are designated as a road.

The Department of Infrastructure and Transport should make clear where off-road vehicular activities are covered (particularly regarding safety and how to deal with related crash trauma). The off-road categories should include recreational four-wheel driving and trail bike riding, farm vehicle uses (e.g. 4-wheelers/ATVs) and vehicle use on reserves and private property.

Vehicles with built-in driver distraction and poor visibility

Vehicle design, while incorporating more safety technology on one hand, is detracting from it with more 'gadgets' in the vehicle for drivers to play with, creating driver distraction and increasing the risk of crashing.

Driver distraction is of major concern to motorcyclists and is impacting all Powered Two Wheeler users. Mobile phone and entertainment technologies installed or carried in vehicles does or has the potential to distract drivers, impacting on all vulnerable road users.

⁷ http://www.rta.nsw.gov.au/licensing/licence_classes.html

⁸

<http://www.vicroads.vic.gov.au/Home/Registration/WhatHasToBeRegistered/OtherVehiclesvesselsAndRegistrationIssues/Specialworkvehicles.htm>

Improvements to vehicle standards must include a review of the causal factors in vehicle collisions, which may only result in panel damage of a minor nature for the vehicle but has the potential to kill or injure a vulnerable road user.

A large European study (MAIDS) showed that of the 50% of crashes involving motorcycles where the primary cause was an error by another driver, 70% of those errors involved a failure to detect the motorcycle (ETSC 2008⁹).

Mobile phones are only part of the problem. Other in-car distractions include personal digital assistants, two-way radios, GPS units, changing in-car CDs, DVDs and tracks on portable music devices and plugging in USB devices. These are all becoming more common and considered as dangerous (or more dangerous by some) than the use of simple hands-free mobile phones.

The AMC's position is that the most distractive influences must be heavily dealt with as a matter of urgency, with further investigation and research into limiting driver distractive influences. Of highest priority is preventing use of distractive devices whilst the vehicle is in motion, e.g. dialling phone numbers, emailing and texting by drivers, followed by all other hand-held operations requiring the driver's attention. Drivers should pull over and stop to conduct the more complex communication and cabin functional activities. Vehicle standards addressing this area by adding complexity may exacerbate the problem.

Visually small Vulnerable Road Users may be completely obscured to a driver due to the vehicle blind spots, particularly at roundabouts and during reversing. The role of wide "A" pillars has come to attention as causing significant visual obscuration.

The AMC supports action in these areas, highlighted by the National Road Safety Strategy 2011-2020 – First steps:

Investigate technology-based options to minimise driver distraction from in-vehicle devices.

NRSS p.77

Australian Design Rules (ADRs)

In-Service Regulations conflict with ADR requirements

A significant problem is non-adoption or modified adoption of nationally agreed in-service regulations. This appears as a failure of the Standing Council on Transport and Infrastructure (SCOTI), or of non-adherence to COAG principles, or the desire of jurisdictional bureaucrats to assert authority in their sphere, rather than any specific defect in the nationally agreed AVSRs.

Example 1: Motorcycle Exhausts

ADR 83/00 provides for lower total "Drive-By" noise emissions and allows variable muffler output in accordance with lower noise emissions from other components, such as engine, driveline or inlet tract.

In-service requirements in Victoria are regulated under the Victorian *Road Safety (Vehicles) Regulations 2009*, the Vehicle Standards Schedule of which references the Motor Vehicle Standards Act 1989 of the Commonwealth.

⁹ ETSC 2008, *Vulnerable riders: Safety implications of motorcycling in the European Union*, European Transport Safety Council, Brussels

150 Stationary noise levels—car-type vehicles and motor cycles and trikes

(3) The stationary noise level of a motor cycle or trike must not exceed the relevant noise levels set out in regulation 10(4) of the Environment Protection (Vehicle Emissions) Regulations 2003.

Environment Protection (Vehicle Emissions) Regulations 2003**10 Noise emissions from motor vehicles**

(4) For the purposes of sections 48B and 48D(3A) of the Act, a vehicle described in the following table must not emit noise exceeding the relevant level in the table—

<i>Vehicle Type</i>	<i>Date of Manufacture</i>	<i>Noise Level [dB(A)]</i>
Motor cycle or motor tricycle, other than a new recreational motor cycle	Before 1 March 1985	100
Motor cycle or motor tricycle, other than a new recreational motor cycle	On or after 1 March 1985	94
New recreational motor cycle	On or after 1 January 1994	94

As a direct consequence, new motorcycles in compliance with ADR 83/00 are subject to enforcement activity for non-compliance with Victorian in-service regulations, despite approval for registration in Victoria. Vehicles with aftermarket exhausts are defined as “modified” and hence required to meet more stringent requirements than brand-new vehicles.

Similar circumstances apply in NSW and other jurisdictions.

An array of stationary noise measurement methods also exists, which are at variance to the National method.

Example 2: Motorcycle Direction Indicators

In several states, Police enforcement practice is to issue Defect or Infringement Notices in respect of direction indicators (blinkers) on motorcycles that are separated by less than 300mm at front or rear. This practice has been supported by the NSW Roads and Maritime Service (RMS).

The NSW policy of enforcement results in hardship for vehicle owners by rendering illegal for use on roads in NSW registered vehicles that comply with the Australian Design Rules necessary to gain registration in NSW or any other State (ADR 19).

Motorcycles registered in other States are subject to NSW enforcement practices while using roads in NSW, providing no mutual recognition of vehicle qualifications. Lack of consistency in application of vehicle standards amongst the jurisdictions results in hardship for interstate vehicle owners travelling in NSW. When vehicle owners move to live interstate, they must conform to the inconsistent laws in the new location.

Both of the NSW Police and the RMS have based their policy upon Clause 112 of Schedule 2 of the *NSW Road Transport (Vehicle Registration) Regulation 2007*, which is the NSW version of

Schedule 2 of the *National Transport Commission (Road Transport Legislation – Vehicle Standards) Regulations 2006*.

We refer you to Rules 12 and 103 of the Australian Vehicle Standards Rules (AVSRs) and Para 6.3 of the UNECE Regulations within Australian Design Rules 19/00, 19/01 & 19/02.

While the Commonwealth AVSRs that depend from the *Motor Vehicle Standards Act* remain quite clear that compliance with an ADR “supersedes” a requirement to comply with pre-ADR in-service requirements, this practice does not flow on to in-service regulation practices. This problem is not limited to NSW alone.

This illustrates a problem with downstream administration of the Commonwealth *Motor Vehicle Standards Act 1989* by the various jurisdictions. This appears to arise from a desire of jurisdictions to assert authority in their sphere, introducing their own interpretations or modifications of nationally agreed AVSRs effectively bypassing COAG regulatory principles.

Relevant ADR’s for direction indicators:

- ADR 19/00 1 Oct 1991, minimum distance 300mm between reflecting surfaces
- ADR 19/02 1 January 1997, front minimum 240mm, rear 180mm
- ADR 19/02 13 December 2005, front 240mm, rear 180mm
- ADR 6/00 19 December 2006, Photometric measurements of blinkers
- ADR 53/00 21 July 2006, Photometric measurements of blinkers (alternate to ADR 6/00).

This particular issue illustrates the need to ensure that Powered Two Wheeler ADRs remain in harmony with major developed world markets and that consistency of application at all levels of government be established.

A note on safer vehicles

We should be cautious not to have unrealistically high expectations for safety outcomes through improvements in vehicle technology. The safer vehicles become, the more risks drivers choose to take. The same applies to roads. The “Peltzman effect” describes how drivers trade a perceived decrease in accident risk with an increase in “driving intensity”. Vanderbilt cites Sam Peltzman to make this important point:

Even when the occupants of cars themselves were safer, he maintained, the increase in car safety is being “offset” by an increase in the fatality rate of people who do not benefit from the safety features – pedestrians, bicyclists and motorcyclists. As drivers feel safer, everyone else has reason to feel less safe.

Vanderbilt 2008, p.27

This highlights the serious concerns of these three (vulnerable) road user groups and underpins the very necessary focus on car (and truck) drivers required to improve fatality and injury rates of non-car and non-truck drivers, i.e. pedestrians, bicyclists and motorcyclists.

Response to specific questions:

2a Objectives of the Act

- ***Have the Act and its Regulations effectively reduced this burden?***

Response: No. A significant problem of regulatory burden remains with the confused manner of administration by jurisdictions.

- ***Considering the range of concessions to the ADRs available through the low volume scheme and other discretionary arrangements for new vehicles (e.g. over length vehicles, special purpose vehicles), is this object still appropriate?***

Response: Yes, but only if it can be realised in the jurisdictions.

- ***Has the Act achieved the desired balance and are appropriate categories of used imported vehicles covered?***

Response: It remains overly restrictive.

- ***Given the global environment for the automotive industry, should there be no or fewer restrictions on the importation of used vehicles?***

Response: There needs to be recognition of equivalent qualifications of used vehicles, e.g. emissions requirements of country of origin, such as those from Japan, while the Australian system has variously required US or European requirements. While varying at the detail level, the differences in outcomes are minimal.

2b The public policy objectives

- ***Do the objects of the legislation still positively contribute to the identified broad policy objectives?***

Response: Yes, but it clearly remains impossible to achieve the policy objectives due to significant inconsistencies at the jurisdictional level.

- ***Should the objects of the Act be amended to increase the legislation's contribution to the broad policy objectives or should the objects be amended to focus on fewer policy objectives?***

Response: Focus is needed on administrative consistency before amending objectives that cannot be achieved without consistency.

- ***Are there non-regulatory ways of achieving the same policy objectives of road safety, environment, security and consumer choice?***

Response: None apparent.

- ***What key principles should underpin any changes to the Act?***

Response: The key principle of consistency from the MVSA down to administrative interpretations and enforcement in the jurisdictions. States and Territory governments would do well to adopt COAG Principles of Best Practice Regulation¹⁰.

3a National Standards, Certification and Approval of Road Vehicles

- ***In the context of a growing supply market, is the Act sufficiently rigorous to ensure the integrity of the ADRs and compliance of vehicles with the ADRs, including through testing?***

Response: Uniform application of regulations in each jurisdiction needs to be supported with both engineering and independent audit expertise that is interchangeable between jurisdictions.

- ***What are the arguments for retaining separate ADRs over simply adopting UNECE international standards?***

Response: None at all, for those UNECE GTRs that can be unequivocally identified as not being restrictive for Australian conditions.

- ***Does the Act create any barriers to the export of vehicles and automotive parts?***

Response: No manufacturing of Powered Two Wheelers conducted in Australia.

3b Administration, Court Proceedings and Miscellaneous

- ***Are the links with other legislation clear and effective?***

Response: No. Consumer law, etc: This is a “sale” or “use” law problem – aftermarket blinkers are a stand-out item for discussion here – Some have poor luminosity and poor geometric projection. The problem is that there is no regulation to define the item on sale and the ADR’s do not provide for component compliance. Hence compliance with state-level in-service regulations is difficult to enforce. It really becomes an ACCC issue of allowing sale of not-fit-for-purpose aftermarket blinkers. However, if the Act applied to components, then UNECE Regulations on components could be applied and enforced.

- ***Are there any jurisdictional gaps that need to be addressed in the Act?***

Response: Yes (see examples provided). Significant inconsistencies exist between jurisdictions, let alone with Commonwealth and jurisdictional requirements.

- ***Any other comments on the effectiveness of the administrative provisions of the Act in supporting the road safety policy objective of the Act?***

Response: The road safety policy objective of the Act is in the establishing and administrative application of vehicle standards. Not all standards are ideal (e.g. “A” pillars) and confused application in the jurisdictions leads to disregard of the safety reasons for the standards.

¹⁰ <http://www.finance.gov.au/obpr/proposal/coag-requirements.html>

4 Object - regulate first supply to market of imported vehicles

- ***Is there a case for extension of the coverage of the Act to include safety of non-road vehicles or those that cross over between on-road and off road?***

Response: No.

- ***Any other comments on the effectiveness of the administrative provisions of the Act in supporting the two objects of the Act?***

Response: The two objects of achieving uniform standards and regulating first supply are both directed to the USE of vehicles on roads.

We have noted jurisdictional inconsistencies in application or interpretation that create confusion around what is permitted for use on roads.

The examples provided of use of helmets or child restraints arises from separate administrative systems for supply and for use, with the result that for helmets, what is legal to use is illegal to supply. No helmet available is certified as complying with the Australian national standard.

The examples of motorcycle direction indicators and exhausts float along in the meandering downstream administrative provisions of the MVSA.

We have to conclude that the administrative provisions of the MVSA are in several areas, inefficient and confused in practice. It is preferred that uniformity with international vehicle standards be sought and applied for both supply and use and that exceptions to this be very clear and transparent.

4a Registered Automotive Workshops

- ***Do the RAWS provisions undermine, support or enhance the main policy objective of road safety and in what way?***

Response: They undermine the policy objective. One only needs to look at imported vehicles offered for sale on the Internet to see that they do not comply with ADRs (e.g. many have “side reflectors” missing from front forks). Whilst one could argue the need for reflectors, the RAWS system is meant to ensure ALL ADRs are complied with and clearly they are not. If this most simple of requirements is not being met one must question whether the more substantive and costly modifications are being complied with. While the above comment is directed to large volume imports under the RAWS scheme, it can be argued that RAWS inhibits individual imports of unusual vehicles despite such being within safe criteria.

- ***Has the RAWS effectively contributed to the appropriate balance between segments of the automotive industry, that is, brought the low volume focus back onto specialist and enthusiast vehicles and if not, why?***

Response: There is a probability that it is being used to circumvent ADRs for large volume importation rather than as intended.

- ***Is the RAWS appropriately designed for the current context of specialist and enthusiast vehicles and if not, what elements need improving to better deliver the second object of the Act (to regulate the first supply of used imported vehicles)?***
 - ***What are its strengths?***
 - ***What are the weaknesses?***

Response: RAWS may be being abused by “grey” importers unwilling to meet the costs of complying with ADRs or after sales technical and parts support. A majority of vehicles being imported are neither specialist nor enthusiast. There are no mechanisms in place to ensure compliance (or awareness) of safety related recalls which official importers are subject to.

There is some evidence to show that where safety recalls on vehicles are conducted in the country of origin for vehicles provided to consumers through the RAWS scheme, that there are no regulations or even mechanisms in many cases to ensure these vehicles are rectified in Australia. This means there are currently persons unknowingly riding motorcycles subject to safety recalls, for which a safety recall notice has never been issued in Australia.

- ***How successful have the legislated controls been in preventing undermining of the RAWS objectives?***

Response: It is ineffective in meeting its objectives as there are insufficient mechanisms (including enforcement) in place to ensure compliance with ADRs or appropriate follow-up of safety recalls and the like.

4b Other concessional options

- ***Should the Act continue to provide regulation of used vehicle through concessional schemes? If no, what other mechanisms should be considered to control the importation and supply to the market of used vehicles?***

Response: The Act should continue to support concessional schemes.

End of submission