

21 June 2013

**RESPONSE TO THE
DEPARTMENT OF INFRASTRUCTURE AND TRANSPORT
CONSULTATION PAPER ON THE MOTOR VEHICLE STANDARDS ACT 1989**

2a. The Objects of the Act

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

The pursuit of uniform vehicle standards is very important. More work should be done to ensure that uniform standards do in fact become uniform across the country and that they align with appropriate international 'best practice' standards. In recent years this has not always been the case. For example, Victoria mandated ESC for passenger vehicles prior to this standard being adopted by the rest of the country.

Increasingly, the lines between different classes of vehicles are blurred. This is particularly the case for the NA class light commercial vehicles (LCV). With these vehicles commonly now used as family transport, there is no reason why they should have lower standards applied to them. For example, some of these vehicles have no top tether child restraint anchor points and yet families use them. Further, there is no requirement (yet) for these vehicles to have electronic stability control (ESC) (ANCAP will also be commenting separately on the Regulation Impact Statement for ESC for LCV).

As a non-regulatory program, ANCAP can set higher standards for all (light) vehicles including LCV. Since 2008 ESC has been required in order to achieve a 5 star ANCAP safety rating. Since 2012, this requirement has also applied to 4 star ANCAP safety ratings. It has become extremely difficult to sell any vehicle in Australia without a 4 or 5 star ANCAP safety rating.

- *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?*

The issue here is not the object itself, which still has merit; it is more the range of concessions that are available for vehicles using the low volume scheme. While the scheme is intended to allow the importation of specialist and enthusiast vehicles and personal vehicles brought back to Australia from overseas, it seems also to extend to the importation, admittedly in small numbers, of vehicles that would otherwise be considered as 'regular' vehicles. For example, the Nissan Elgrand or Toyota Estima, which are readily available from used car dealers, are regular family vehicles. The concern here is that these vehicles, commonly 5-10 years old are built to older safety standards and may well be less safe than other vehicles (ie full volume manufacture/imports) available in the Australian market. For example early models of these two vehicles lacked head protecting side curtain airbags and electronic stability control – both life-saving technology.

Perhaps concessions for these types of vehicles should be reduced or removed.

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

Overall the balance is reasonable as the total number of used imported vehicles is still a very small proportion of total vehicles sold into the market. There are still issues of the relative safety of these vehicles and new vehicles sold in the market (see comments above).

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

Technology plays an important role in vehicle safety, particularly today. Newer vehicles, in the main, are safer than older vehicles. New vehicles also include advanced life saving technology and the development of this technology

is moving very quickly. In addition, the more new cars in the market the greater likelihood that the average age of the vehicle fleet will be lowered and more people will have access to the safest cars. At the very least current restrictions should remain on the importation of used vehicles.

2b. The public policy objectives

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

These objects work reasonable well for new vehicles but less so for used imported vehicles. ANCAP would like to see safety afforded greater prominence and minimum standards raised, for all vehicles.

Balancing competing policy objectives can be difficult. At some point a decision on which objective takes priority needs to be made. Given the diversity and range of the new car market in Australia, when it comes to imported used vehicles, consumer choice should be a lower priority than safety and the environment.

- *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?*

See previous comment.

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

Yes. ANCAP is an example of achieving vehicle safety objectives without regulation. ANCAP 5 star safety ratings now cover more than 70% of all new vehicles sold each year and when 4 star ratings are added this coverage extends to about 90%. As a nimble and efficient organisation ANCAP has demonstrated that it can encourage rapid increase in the safety of vehicles through its crash test program. For example, while ESC for an ANCAP 5 star safety rating has been required since 2008, in 2012 this requirement was extended to a 4 star rating, and this year it extended to a 3 star rating. From this year, a vehicle without ESC can only score a maximum ANCAP 2 star rating.

ANCAP is not in a position to comment on environmental objectives.

In terms of security of vehicles, new cars do contain increasing levels of sophisticated technology to prevent theft or to enable the tracing of stolen vehicles (eg. through GPS etc).

In terms of choice, Australian consumers have a very large range from which to choose. In broad terms there are around 60 marques, perhaps 300-400 models, and up to 1000-1200 variants of models. For a country that has a relatively small new car sales market there is clearly plenty of choice.

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

As with any regulatory system it can take a long time to secure changes. With vehicle technology moving very rapidly it is likely that the Act will quickly become outdated or perhaps irrelevant. Changes to the Act should therefore consider non-regulatory approaches (eg ANCAP) and also be flexible enough to deal with emerging technology. With technology so vital to vehicle safety it is critical that the Act does not hinder fast introduction of this technology. Alignment with international standards is also important.

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?*

ANCAP's crash test program to some degree assists the integrity of and compliance with the ADRs. On occasion ANCAP crash test results will lead to ANCAP notifying the Department of Infrastructure and Transport about concerns relating to the ADRs. ANCAP's main concerns about the ADRs is that they set a level which is quite low when it comes to vehicle safety and it is often a long and slow process to achievement amendments or introduce new ADRs. (also see previous comments on changes to the Act)

It is important that the process for development of ADRs is not hampered by obstacles or barriers that would unnecessarily delay the timely uptake of 'best practice' standards in Australia.

There is some confusion among consumers about the purpose of legislation covering new vehicles. It is common for consumers to ask ANCAP why the Government permits relatively unsafe vehicles to be sold new into the Australian market. Further, there is a common expectation in the community that if the Government has allowed a new vehicle to be sold, then it must/should be safe.

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

Looking at this question from a very broad perspective it would be quite legitimate to argue, given the small size (in world terms) of the Australian new car market, that Australia does not need its own set of design rules. As the global market grows and more 'world' cars are developed then the need for individual country standards diminishes even further.

As set out above, with rapid increases in technology a more responsive system may be required to deal with this technology and that system should not hinder the uptake of technology. Perhaps a mix of international standards (eg UNECE) and local non-regulatory systems could be considered.

- *While the Act facilitates the first supply to the Australian market of road vehicles and automotive parts complying with ADRs, are there any gaps in the legislation with regard to testing and evidence requirements?*

ANCAP is not in a position to comment directly on this question. However it is clear that at a minimum level an ADR approved car might only score an ANCAP 1 or 2 star rating. While low rated vehicles are now only a very small part of the market it is clear that the ADRs are quite a low hurdle.

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

ANCAP is not in a position to comment directly on this question.

3a. Administration, Court Proceedings and Miscellaneous

- *For these Parts of the Act, is there sufficient transparency and clarity so that the reasons for decisions are understandable? What improvements could be made, if any?*

ANCAP is not in a position to comment directly on this question.

- *Do these Parts of the Act effectively support the primary objective of road safety through the compliance and audit process, legislated powers and penalties or could they be enhanced? Should legislative powers for the recall of vehicles be vested in the Act or remain with Australian Consumer Law?*

Recall provisions should remain with Australian Consumer Law with technical advice from the Department of Infrastructure and Transport.

- *Are the links with other legislation clear and effective? Are there any jurisdictional gaps that need to be addressed in the Act?*

ANCAP is not in a position to comment directly on this question.

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

ANCAP is not in a position to comment directly on this question.

4. Object – regulate first supply to market of used 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?*

ANCAP is not in a position to comment directly on this question.

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

ANCAP is not in a position to comment directly on this question.

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

ANCAP is not in a position to comment directly on this question.

- *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?*

ANCAP is not in a position to comment directly on this question.

- *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?*

ANCAP is not in a position to comment directly on this question.

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

ANCAP is not in a position to comment directly on this question.

- *Any other comments on the purpose and effectiveness of the RAWS?*

ANCAP is not in a position to comment directly on this question.

- *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?*

See earlier comments.

- *In retaining the concessional schemes, are each of the current options still warranted or can they be rationalised?*

See earlier comments.

- *Are there changes to the concessional options which might improve access to a broader range of vehicles for consumers without compromising road safety, environment and security outcomes?*

See earlier comments.

- *Are there undesirable competitive or equity impacts that should be addressed by changes to the Act or these options?*

See earlier comments.