BMW GROUP Australia

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Submission prepared for
The Department of Infrastructure and Regional Development

Subject: Options Discussion Paper – *2014 Review of the Motor Vehicle Standards Act 1989*

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INTRODUCTION

BMW Australia Finance Ltd and BMW Australia Ltd welcome the opportunity to make this submission to the Department of Infrastructure and Regional Development on the 2014 Review of the Motor Vehicle Standards Act 1989.

We acknowledge that the review is timely given recent industry developments and provides the potential for enhancements to the Act, consumer choice and protection and the overall efficiency of the automotive industry.

The review and the key policy areas under consideration do highlight a number of issues that will have flow-on consequences to all Australians, as well as the industry, and we would encourage these being the subject of future discussion with the industry before the government reaches its final position. We welcome any opportunity that this presents to be part of the discussion as government considers its conclusions.

We have highlighted in this paper areas of general agreement with some of the options, areas for significant consideration by the reviewers, and a potential framework for the government to achieve its objectives for the industry and the community in transitioning to a new regulatory regime.

In so doing, we have offered suggestions as to how the Australian automotive market could be allowed to adjust through a range of measures and restrictions (accepting that a totally unrestricted market is not a desired outcome given the underlying need to ensure safety and consumer protection). These include:

- A suitable phase-out period for current parallel import restrictions.
- Limitations on age of vehicles imported and the volume imported over a given period of time by one person or entity.
- Strengthened consumer protections and vehicle compliance and verification measures for parallel imports to ensure whole-of-market conformity.

Overall, we have also sought to address the government's desire to reduce red-tape. However, consideration of the necessary consumer protections in a multiple import channel environment does indicate that there may be a necessity for even more regulatory and compliance measures in relation to vehicle imports than currently are in place. Further industry consultation with these measures is encouraged.

As highlighted above, we wish to continue to be part of the process to contribute to bringing about satisfactory regulatory changes. We are willing, and will be available, to meet with relevant Ministerial and Departmental advisers and officers to discuss our submission and any subsequent issues that may emerge.

BACKGROUND

The current Motor Vehicle Standards Regulations have been in operation for 25 years and were last reviewed 14 years ago.

The Motor Vehicles Standards Act 1989 and its associated regulations provide the regulatory framework that controls the importation and first supply of road vehicles in Australia.

The effect is that new vehicles imported into Australia for commercial sale must meet the Australian Design Rules. Achieving that requires considerable investment from importers and means that private or substantial commercial importation of vehicles sold in other markets is not viable as generally those vehicles are built to different regulatory standards.

In early 2014 the Assistant Minister for Infrastructure and Regional Development, the Hon. Jamie Briggs MP, issued terms of reference for a review of the Motor Vehicle Standards Act 1989.

The resulting discussion paper was issued in September of this year.

In addition The Productivity Commission Review of the Australian automotive industry has been published and recommended removal of a number of current barriers to the importation of both new and used vehicles as well as harmonising Australian vehicle standards with relevant international standards.

Against the backdrop of the imminent cessation of local passenger car manufacture, the review has sought discussion and consideration for a broad reaching reform of both unique Australian motor vehicle standards and of the tariffs, taxes and regulations related to the import of new and used vehicles into Australia. This is the most comprehensive review in two decades.

The Federal Government has a policy objective to ‘remove red tape’ and has stated that it seeks an increase in market competition by reducing new car import barriers, subject to safety considerations. None-the-less both the Industry Minister and the Assistant Minister have indicated that the Government has no interest in a blanket removal of all restrictions on the importation of used cars.

This submission seeks to address the impact of a largely deregulated environment on the local motor vehicle sales, service and support industry. It considers transitional measures that may assist in allowing the industry to effectively adjust to a sustainable ‘light touch’ regulatory environment and to also mitigate consumer risk.

COMPARATIVE PRICES OF NEW CARS IN AUSTRALIA TO SIMILAR DEVELOPED MARKETS

In any comparison of new car prices with other developed markets, it must be noted that two major factors have played a role in the final retail price Australian consumers have paid for new motor vehicles, particularly in the premium/luxury segments. Those factors are embedded in long-term protection barriers that have been in place to support local manufacture (including Luxury Car Tax) and the relative size of the Australian market, at roughly half that of the UK market.

It should also be noted that the Australian market has more brands represented and a greater number of models offered than any comparative developed market, as illustrated by the following table:

Competitiveness of Global Markets				
	Australia	Canada	UK	USA
No brands in market	67	49	53	51
Sales	1,112,032	1,620,221	2,249,483	13,040,632
Market size per brand	16,597	33,066	42,443	255,699

This has an obvious effect on potential sales per brand and on the intensity of competition for the consumer dollar.

Analysis of comparative listed prices of like-for-like specification vehicles across the BMW range suggests that, exclusive of Luxury Car Tax and other State and Federal government charges (but inclusive of GST), Australian motorists pay prices analogous to, and in numerous cases less than, those of UK consumers. As examples, the below table outlines the Australian and UK manufacturers listed price for a vehicle at the entry level of the BMW range and one of the most popular models further up the model line up.

Model	Australian MLP	UK MLP	Notes
BMW X1 (sdrive 18d)	AUD $46,300	AUD $51,938	
BMW X5 (xdrive 30d)	AUD $94,625	AUD $98,648	AU price listed excludes a LCT payment of $5,775, which brings the total MLP of the motor vehicle to $100,400

It should be noted that the Australian market has developed in a manner that sees average specification of vehicles at a considerably higher standard than in markets such as the UK. Consequently, Australian motorists have benefited from having some of the highest standard specification imported premium vehicles in the world.

It is accepted that at the very upper end of the luxury market (comprising around 1% of total annual new car sales and less than 5% of total BMW annual new car sales), Australian prices can be higher than those of other developed country markets. However, it needs to be considered that in the upper luxury segment the volumes sold in Australia are both significantly less than in larger markets and low in absolute terms, yet the expectations of customer support and investment in specialist equipment remain the same or even higher. Consequently, the cost of that support and service needs to be amortised over a far smaller volume of vehicles sold. The Luxury Car Tax (LCT) also impacts with greater significance on such vehicles.

Any removal of LCT and the remaining import tariff is likely to result in even greater accessibility and choice for Australian consumers.

AREAS OF GENERAL AGREEMENT

BMW Australia Finance (BMWAF) and BMW Australia (BMWA) submit that the profound changes to the Australian and international automotive markets over the last 20 years support a review of the regulatory framework around the Australian automotive industry and market.

The various regulations, taxes and tariffs that have evolved over the decades have the potential to be streamlined and assessed on the basis of need versus compliance, cost burden and consumer value delivered.

In that context, BMWAF and BMWA support:

- The review and modernising of existing legislation in view of current market conditions.
- The opportunity to harmonise vehicle standards with relevant and applicable international standards within a suitable time period that permits importers to allow for necessary design and production adjustments.
- The review and potential consolidation of existing concession schemes for the private or limited import of specialist, enthusiast and unique vehicles and supporting certification and compliance regimes.

None-the-less, it is worth noting that, depending on the adoption of a revision of existing regulations, there could well be additional regulatory and compliance measures requirements to ensure market consistency, particularly in terms of vehicle safety standards and consumer protection.

In addition (although outside the scope of the Discussion Paper on the MVSA), in relation to the recommendations of The Productivity Commission, BMWAF and BMWA also support the following measures:

- the removal of the five percent tariff on imported passenger and light commercial vehicles; and
- the removal of the luxury car tax.

AREAS OF CONCERN AND RISK

BMWAF and BMWA accept that the above measures can be undertaken within a relatively short period of time and that they may lead to a cost saving and improved competition impact on the market. However, there are considerable concerns in relation to any rapid move to a deregulated environment that would effectively allow the establishment of grey and/or parallel import channels for used, new or near new vehicles.

Those concerns are founded on the following key risks:

- Significant consumer risk of unsupported, non-Australian conditions appropriate imported vehicles.
- Clear consumer risk to existing and future residual values of a major private and fleet asset, many of which are acquired under finance contracts now extending into five years.
- Risk to market competition in vehicle financing from the undermining of asset values.
- Jobs, training and commercial investment risk from a resulting stagnation and potential reduction in the number of authorised franchise new car sales and service networks.
- Regulatory and compliance risk even under a simplified and/or internationally aligned MVS regime.

THE RISKS PRESENTED BY A FULLY UNREGULATED NEW AND USED IMPORT ENVIRONMENT

Consumer Risk

Grey Imports

It is acknowledged by the Federal Government that the blanket removal of restrictions on grey used imports is not a desirable outcome.

The New Zealand experience has provided plentiful support for the contention that such a fully open grey market in Australia presents far too many consumer risks.

These include:

- Lack of appropriate safety and environmental standards.
- Poor residual/resale values.
- Unknown provenance (rebirthing, damaged, odometer tampering).
- Lack of parts and service support for models not sold in Australia.
- Unsuitability for Australian conditions and incompatibility with in-vehicle and other support technologies used in Australia.
- Very limited consumer redress in the event of product failure.
- Higher insurance costs due to lack of availability of parts.
- Undermining of asset values of existing leased fleet resulting in direct consumer losses and reduced car finance market competition.

The New Zealand experience also indicates that used grey imports have had a long-term fleet ageing effect through substitution for new car sales. This also presents an obvious consumer risk in terms of older, polluting, poorly maintained and less safe cars.

It should be noted that since the opening of the New Zealand market to grey imports in 1988 the new car market size has actually reduced despite a 35% population increase. Over the same period, the Australian new car market has almost tripled in size.

Parallel Imports

The harmonisation of MVSA and supporting Standards to those of analogous developed markets could create an environment conducive to parallel imports of new or near new cars. Whilst private import of such vehicles is likely to be limited due to the effort required to affect the import, it is entirely likely that parallel import brokers and importers for sale will quickly seek to enter the market creating a range of additional consumer risks. Such risks include:

- Lower specification and 'orphan' import vehicles with a consequent impact on retained/resale value of both the parallel imports and the officially imported vehicles.
- Vehicles with specifications and key features that are either unsuited to Australia or non-compliant with even streamlined Australian standards (such as local navigation/entertainment systems, telematics and child seat anchorages).
- Unseen import and compliance costs, including local registration, insurance and modifications.
- Limited parts and service support due to varying standards, model variants and specifications from officially imported vehicles.
- Potentially different warranty provisions depending on where the vehicle is sourced from. Local Australian warranty, which is generally longer than warranties offered in other markets, will not apply to parallel imports.
- Lack of vehicle traceability for technical and recall campaigns.
- Lack of clarity around ACL/ACCC protections afforded purchasers of parallel imported vehicles.
- Undermining of asset values of existing leased fleet resulting in direct consumer losses and reduced car finance market competition.

REGULATORY AND COMPLIANCE RISK

Under a simplified and internationally aligned set of Australian motor vehicle standards the uncontrolled opening of the Australian market to grey or parallel imports creates a significant risk of insufficient basic safety and legal compliance management of such vehicles.

An explosion of these imports would require a major increase in resources focussed on ensuring that imported vehicles (often imported by small and transient operators) meet such internationally aligned safety standards as are applied and are not improperly dealt with either at the point of origin or subsequent to importation.

Principal risks to compliance with any relevant vehicle of consumer protection standards include:

- Vehicles with varying levels of standard specification and of an age that do not have appropriate safety, environmental and other Australian condition relevant equipment.
- Vehicles (even new & near new) that have been modified at the point of origin and are not within manufacturer specifications and Australian standards.
- Vehicles that have been salvaged and/or repaired but now do not meet required safety and other standards.
- Identification of stolen vehicles.
- Improper modification/adjustment of vehicles following importation.
- Identification and penalising of improper market behaviour by transient parallel importers and dealers.
- Requirement for further regulation and compliance measures focussed on ensuring fit-for-purpose and safety of parallel imports.

Market, Commercial and Jobs Risk

An immediate deregulation allowing either or both grey and parallel imports will have an immediate impact on the structure of the new car market and the sales, service and support network.

The automotive sales, service and support network is a significant employer and economic contributor.

Modern retail car dealerships are multi-million dollar investments, in prime locations, with state-of-the-art facilities, made on a long-term business model. The sector employs over 66,000 people and generates an economic turnover in excess of $30 billion in the annual sale of new cars alone.

BMW Group new car sales account for only 2.2% of the total Australian new car market, yet the 41 BMW dealer group locations employ 2,185 staff directly and represent an investment in dealer facilities of over $500 million.

Many of those facilities and staff are in regional locations where the technical and sales jobs and training, offer valuable local career opportunities, including apprenticeships and other young employee development programs. Many hundreds of families in small regional centres around Australia rely on these dealerships for their very existence.

An analysis of existing BMW dealer network viability, based on three potential market outcomes should an open parallel importing system be contemplated, highlights sobering possibilities.

Were there to be any or a combination of a 20% reduction in overall volume due to losses to parallel imports, a collapse of the upper end of the luxury market and/or no growth in the total size of the genuine new car market over 10 years, (as per the New Zealand example) financial projections suggest that a material proportion of BMW dealerships could be exposed to financial stress that may prejudice their long-term viability.

BMW's main competitors in the premium/luxury segments have comparable dealer networks with equally high levels of investment and employment. The above outcomes would most likely be similar in their networks. That is not to say that there would not be significant negative impact on more mainstream dealerships also.

Any of the possible outcomes outlined above, or indeed any combination, would have considerable negative effect on existing employment and future job opportunities, both in direct dealer employment and in jobs provided by the many businesses that support and service the dealership network.

In addition, the Australian automotive retail sector has grown significantly through the introduction of increased competition in asset backed lending. Should a flood of grey or parallel imports enter the market, the anticipated impact on residual values will see numerous finance providers exit the market resulting in a consolidation of lending power in the four major banks. The natural outcome is likely to be significantly reduced vehicle finance competition, increasing borrowing costs, rising consumer residual risk and a consequent inevitable contraction of the new car market.

BMW Australia Finance alone holds a portfolio of vehicle loans in excess of $5.6 billion with 45,000 contracts written per year (including non-BMW Group vehicles financed through multi-franchise dealers) on finance terms with a peak of five years. These numbers would be mirrored also by major segment specific competitors.

Additionally, there are technical finance and asset security issues related to both linked credit provider legislation and verification of vehicle details through the Personal Property Security Register (PPRS) that would raise considerable risk to vehicle finance providers, potentially resulting in a fewer finance organisations choosing to operate in the sector.

The commercial risk of a rapidly deregulated environment is, therefore, not limited to dealer and brand investments, but holds significant risk to direct and indirect employment and broader market competition and economic activity. The primary risks include:

- Undermining the viability of existing dealer and dealer support businesses, particularly in regional and remote areas where turnover and profitability is lower whilst still requiring significant levels of investment
- Significant damage to the social fabric of local communities through job and employment dislocation.
- The potential for a significant reduction in dealer employment and future career training opportunities.
- Loss of customer support network provided by franchised dealers.
- Significant damage to dealer investment in customer sales and service facilities.
- The degradation of retained values of the existing car parc, with consequent impact on lease residual payments and creation of negative equity.
- Stagnation of the genuine new car market and halting of future sales, service and support network investments.
- Loss of value of a key consumer asset for existing owners.
- Financial unviability for existing owners to purchase a replacement new car due to residual losses at end of current finance term.
- Significant possibility of commercial losses and excessive risk for a broad range of vehicle finance providers.
- Reduction in vehicle finance market competition with consequent increased costs to consumers.
- Brand and reputation damage including additional potential warranty risk resulting from parallel imported vehicles not supported by owner-importers or importing entities.

Possible Transitional Path to Lighter Regulation

It is the view of BMWAF and BMWA that a wholesale deregulation of grey and parallel imports would present excessive risk to consumers, industry investment and employment. In addition, based on the New Zealand experience, it is reasonable to expect that the total vehicle fleet age and quality would suffer with the associated safety and environmental performance implications.

In view of the above risks, yet cognisant of the government's desire for a risk mitigation based 'light touch' regulatory environment, BMWAF and BMWA submit that it may be possible to move to a less regulated market, providing even more choice for consumers, through a transitional path that allows the industry to adjust over an appropriate period of time.

Such a period of adjustment would allow for the best possible outcome in terms of job and investment retention, the preservation of current consumer value and the protection of future consumers.

A less regulated environment will still require some appropriate restrictions on parallel imports if the high industry and product standards that Australian consumers have become accustomed to are to be preserved.

The period of transition would need to take into account the increasing length of finance terms for new vehicles so as to minimise the impact on residual/resale values and allow for vehicle finance industry adjustment. Thus minimising the risk of reduced market competition.

Official importers will also require a suitable transitional period to adjust vehicle specification to conform to new standards.

Transitional measures would also need to protect against the significant undermining of the existing vehicles sales, service and support network and the potential for loss of current investment value, future investment, economic activity and jobs.

Key transitional measures could include:

- A six-year phase out period for the reduction of personal import restrictions and the used car import tariff.
- A six-month age limitation on new vehicles that are allowed to be privately imported.
- A two-year minimum period of ownership limitation on the resale of privately imported vehicles.
- A maximum number of vehicles per person, or entity that are allowed to be privately imported over a given period (e.g. 2 over 36 months).
- The streamlining of the individual concessional arrangements for the importation of specialist, collector and enthusiast vehicles.
- A phase-out/phase-in period for the move from ADRs to an internationally aligned set of vehicle standards over a five-year period.
- Strengthening the mandatory consumer protections and support to be provided by any importer of used or new vehicles sourced from overseas markets, possibly through licencing, mandatory codes of conduct and other prudential measures (these measures need to be administered by regulatory authorities).
- Implementing a more robust compliance policing of grey and parallel vehicle importing.
- A review of relevant supporting and companion regulations relating to linked credit provider legislation to ensure the viability of finance arrangements for parallel imported vehicles.
- A regulatory adjustment to place onus of responsibility for merchantable quality on the importer of parallel imports.

Benefits to Government

The above approach allows for the achievement of a core red-tape reduction objective and recognises that the Australian automotive market has changed profoundly in the past two decades. It also recognises that an industry that is a vital economic driver and that has developed under a strong regulatory environment cannot be subjected to an immediate deregulation without significant industry and consumer negative impact.

The New Zealand experience suggests that the unintended consequences of rapid and complete deregulation will present negative outcomes that are sometimes directly the opposite of the desired market improvements; witness the stagnation of the New Zealand new car market and the increase of average vehicle age.

The key benefits to government by the adoption of an appropriate transitional path to a less regulated environment are:

- Streamlined vehicle standards and private import regulations.
- Increased consumer choice, where private import presents as a viable or desirable option.
- Preservation of the highest safety, environmental, quality and consumer protection standards for vehicles imported into Australia, irrespective of source.
- Retention of consumer value in existing vehicles, either owned outright or under finance contract.
- Retention of a competitive vehicle finance market.
- Preservation of the business viability and facilities investment value of the authorised sales, service and support network.
- Stability of current and future employment and training opportunities delivered by the vehicle sales, service and support sector, particularly in regional and remote areas.

Conclusion

The policy objective of a less regulated Australian motor vehicle market is timely given the fundamental industry changes that have occurred recently.

That objective needs to be balanced against the need to retain appropriate standards for vehicle safety and consumer protection, plus the ongoing viability of the vehicle sales, service, support and broader industry that has been built up over decades and which employs significant numbers of Australians, contributing to the general economic life of the nation.

A completely open grey and parallel import environment would have a catastrophic impact on the local industry and would result in similar consumer protection challenges as have been experienced in the New Zealand example.

This document seeks to offer a transitional path to a regulatory framework where unnecessary restriction is removed, additional consumer choice is offered, appropriate consumer protections are retained, high vehicle standards are maintained, market competition is promoted and the automotive sales, service and support industry remains viable and robust.

It is hoped that through such a balanced approach the future regulatory framework will remove unnecessary red-tape, preserve and encourage the growth of new jobs in the industry and retain a vibrant and highly competitive Australian automotive market.

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