

**Motor Trade Association of Western Australia
Submission to the Department of Infrastructure and Regional Development**

**Review of the *Motor Vehicle Standards Act 1989*
October 2014**

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Background

The Motor Trade Association of Western Australia (MTA WA) is the peak industry body for the Western Australian motor industry and represents over 1,800 businesses. Its membership incorporates all aspects of the motor industry from automotive franchise dealers, used motor vehicle dealers, imported motor vehicle dealers, body repairers and mechanics to heavy transport operators.

A key role of the MTA WA is to advocate on behalf of its members in relation to issues that affect the Western Australian motor industry with government and policy makers at all levels.

Overview

There is little argument that the Australian motor vehicle marketplace is one of the most competitive markets in the world with a representation of 67 manufacturers and over 360 model variants. That said there are areas within the current regulatory system that require review in order to remove some of the regulatory burden that currently exists.

The MTA WA acknowledges that the current regulatory regime is complex and does add significant costs to businesses operating in this area, however the MTA WA would urge that the focus of this review must be on consumer protection and minimising consumer detriment. The MTA WA would further stress that the industry would not support any developments, harmonisation or promulgation of motor vehicle standards that dilute safety aspects, environmental standards or consumer protection.

The MTA WA would also argue that the Australian motor vehicle dealing industry is a complex, multi-faceted industry and that greater time must be provided in addition to this Review to allow for a comprehensive assessment of the risks associated, potential consumer detriment, business viability and the full impact of any reduction, both intended and unintended, to motor vehicle standards.

MTA WA Response to the Motor Vehicle Standards Act 1989 (MVSA) Review

In developing its response to the *Motor Vehicle Standards Act 1989* (MVSA) Review (the Review), the MTA WA has sought input from its members including franchise motor vehicle dealers through the Australian Automotive Dealers Association WA (AADA) and the Imported Vehicle Division (IVD). The MTA WA has also been consulted and provided input to the following submissions to the Review:

- The joint submission by the Western Australian Department of Transport, Main Roads WA and the Office of Road Safety WA (the DoTWA submission).
- The submission from the Commercial Vehicle Industry Association of Australia (the CVIAA submission).
- The submission from the Australian Motor Industry Federation.

The DoTWA submission covers the scope of the review in a broad administrative sense as well as encompassing feedback from the wider MTAWA membership, while the CVIAA submission is solely covering heavy vehicle (over 4.5 tonne GVM) aspects.

The aim of this submission from the MTA WA is to address specific aspects identified by the AADA and IVD members as key concerns. As such the comments are restricted to references to light vehicles only and should not be construed as inherently applying to heavy vehicles.

These key areas as identified by the MTAWA members are:

1. Freeing up restrictions to the low volume import sector;
2. Consolidation of the concessional schemes;
3. Simplification of standards and reduction in costs of compliance via a move towards adopting international standards; and
4. Incorporation of off road vehicles into the Act.

1. Freeing up restrictions to the low volume import sector

Arguably the key issue in relation to the freeing up of importation levels, particularly in relation to new vehicles will be the issue of warranties. The existing Australian Consumer Law (ACL) provides extensive remedies to consumers whose vehicle suffers from a malfunction or fault. The question of what warranties will have application and who will be responsible for addressing issues for owners of imported vehicles needs to be a key area of consideration.

The MTA WA is strongly of the view that Australian based Franchise Dealers should not be liable to rectifying vehicle faults, as they would for Australian sourced vehicles which have a manufacturers' warranty, for privately imported vehicles. Similarly, dealers should not be compelled to hold a range of spare parts to assist in the repair of these vehicles as the costs imposed would be too high.

Additionally, the feedback contained within the DoTWA submission covering the in-service requirements of the local jurisdiction in essence reinforces these concerns from a registration and operation standpoint.

Multiple barriers have been either outlined in the Review document or highlighted in the forum and submission process in regard to importing of vehicles by entities other than via vehicle manufacturers and Australian based Franchise Dealers:

- Consumer risks such as:
 - Provision of a local accessible warranty and facilitation of the consumer guarantee as per the ACL.
 - Resourcing Addressing vehicle recalls.
 - Provision of parts and service support.
 - Ensuring the vehicle meets the in-service and licensing requirements in its local jurisdiction.
 - Provision to the market of numbers or older vehicles which are equipped with a lower number of safety features.
- Business viability impacts such as:
 - Restrictions to the number and models/variants being imported.
 - Cost of compliance.

Consumer Risk

When addressing the consumer risk aspects, the succinct approach to alleviate such concerns is to require that any vehicle supplied onto the Australian market that comes under the auspices of the MVSA would need to be supplied (either directly by a business or on behalf of a consumer) by a motor vehicle dealer that was licensed in the jurisdiction(s) in which it was operating.

Further, the requirement should be in place to require that all vehicles imported that would fall under Scheme 4 – Non-standard Vehicle Approval as noted under option 8 of the Review Discussion Paper are directly complied, or the vehicles compliance is assessed and approved, by an appropriately registered business.

Additionally such a business would be responsible for ensuring the vehicle meets the in-service and licensing requirements and legislation in its local jurisdiction.

One such example where such a framework could be of further benefit in regard to personal imports would be to incorporate personal imports as a direct subset of such a structure. This will be of benefit directly in terms of the MVSA as well as in regard to local licensing and in service requirements - in the scenario that Federal and State / Territory jurisdictions agreed on an overarching set of dimensions, safety and emission requirements, as has been noted in the WA DoT submission. This would largely eliminate issues that have arisen where imported vehicles have been manifestly unsuitable for licensing.

The low volume import sector of the industry has a considerable investment in a level of equipment, intellectual capital and technical resources that are required to produce technologically advanced, well equipped and safe vehicles that offer the car buying public a wider choice.

The existing Registered Automotive Workshops (RAWs) framework provides a solid, established basis for the structure of the registration of such businesses, and would allow established and experienced businesses under RAWs the opportunity to take up the opportunities that could be created without excessive cost overheads and restructuring.

It is proposed that the compliance process be streamlined and costs reduced for new vehicles and used vehicles up to a *determined age* (suggested to be 5 years) to promote the importation of vehicles that meet expectations in regards to inbuilt passive and active safety features and does not adversely impact on the average age of the Australian vehicle fleet.

The streamlining of such processes is contingent on the outcomes of the reform to the harmonisation of design rules as noted under option 5 and consolidation of concessional schemes as noted under option 8 of the Discussion Paper; both of these aspects are expanded in the relevant sections of this submission.

For vehicles outside of the *determined age* bracket, then the current RAWs requirements, (modified to encompass any changes to the harmonisation practices as required) potentially with a lowered volume ceiling, would be an effective way of providing market access while imposing sufficient compliance and business costs onto the supply of such vehicles that would constrain volume via market forces.

Such constraints imposed on the supply of vehicles over a determined age would allow consumer access to a range of such vehicles, without overly impacting on safety standards and vehicle age from a fleet wide perspective.

Business Viability

Any review must consider the impact on domestic businesses as a priority. Motor Vehicle Dealers (particularly Franchise dealers) are required to invest substantial amounts of money to establish and operate their businesses in line with Franchising Agreements with manufacturers.

Restrictions to the number and models/variants being imported.

One of the primary issues relating to the MVSA is the modulating of the available models via the Specialist and Enthusiast Vehicle Scheme (SEVS) register. While SEVS met the need of stabilising the industry when it was introduced, the artificial ceiling established by the MVSA in regard to the numbers of a model or variant, coupled with the effectively narrow vehicle choice provided by SEVS has the net effect of constraining or simply preventing a viable supply volume.

At the date of the 2013 Public Consultation on the MVSA there were 153 RAWs operations in Australia, a considerable drop from over 200 at the peak of participation in the scheme. Many of the vehicles that have historically served as staples for many of the workshops in the scheme (Such as Skyline variants, Supras, and RX7s) can no longer be relied upon due to age and constraint in the supply of quality vehicles.

As such, many RAWs and New Low Volume (NLV) workshops are faced with their businesses becoming unviable (if they are not already) unless there are more flexible options covering the sourcing of vehicles

A more flexible approach to the breadth and volume of vehicles allowed, will result in a better choice of vehicle being available for the buying public, and allow the range of vehicles (that cannot or will not be supplied via full volume) that is available for import to be more reflective of what is desired by the market.

When considering the pool of vehicle models and variants listed on the SEVS register, a significant number have never been viable to import under RAWs/NLV. The number of viable “volume” models has diminished and will continue to shrink as the currently considered staple models become unavailable or less attractive to most potential car buyers due to age.

The preferred outcome to any reform of SEVS is for a focus on revised parameters for eligibility so and a shift away from a set register or list of vehicles that should avoid blanket banning of any vehicle types and allow a particular model or variant to be assessed on its merits.

It is suggested that there be open eligibility for any vehicle that is not currently imported under a full volume arrangement.

It is acknowledged that the definition of what differences are regarded as being sufficiently distinct to allow access to a vehicle model already being imported under a full volume arrangement has been the source of much debate.

However, it is important that parameters under such a structure should be flexible enough to cater for alternate model specifications or variants of full volume models if such availability is in the public interest.

As previously submitted, an allowance of models that have been “Badge Engineered” should also be considered, regardless of whether another brand has provided the equivalent model vehicle to the Australian market.

As the sector has matured, it has become increasingly unlikely that an established importing business would consider importing any vehicle that was impractical to comply or not commercially viable.

Costs of compliance

Upon discussing compliance costs with members, it is plausible to suggest that the average cost per car for RAWs currently would be considerably higher than the figures suggested in the review.

When determining average compliance costs, care needs to be taken to ensure that all such figures are fair, balanced and valid. This requires that all compliance costs for the model/variant be fully factored in, as well as all expecting that items and aspects of compliance are conducted correctly and as per the legislation.

As an illustration, on some models exhaust and catalytic system modifications to comply with Australian Design Rules (ADR) would cost \$2000 (plus) of itself.

It has been calculated that, based on various models and category types including NA/MA/MB, that a more accurate estimation of average cost would be in the vicinity of \$3500.

Reducing the costs of compliance (and therefore providing competitively priced vehicles to the market) is very much contingent on reform outcomes relating to the following areas highlighted within the review document:

- Reform to the harmonisation of ADR/international design rules as noted under option 5;
- Consolidation of concessional schemes as noted under option 8;

Both of these aspects are expanded in the relevant sections of this submission.

2. Consolidation of the concessional schemes

The MTA WA supports the recommendation under option 8 to merge the low volume new and RAWs schemes. This support is on the proviso that the compliance requirements and processes are essentially identical for both new vehicles and used vehicles up to a set age, as per the previously referenced *determined age* as per the Consumer Risk and Business Viability sections of this submission.

MTA WA members have raised various issues that arise relating to different treatment of RAWs/NLV.

A useful example is the location requirement (where the modification must be done) of a left hand drive conversion.

For a used vehicle as per RAWs the conversion must be done locally, with NLV this is not required and the conversion can often be done offshore to cut costs.

The definition of what is regarded as new or used has been another aspect that has been the topic of much debate. It is suggested that (where existing) that Australia recognise standards in other countries where standards/rules are accepted, i.e. US title.

Elsewhere then a simple arrangement for a cutoff for what constitutes a used vehicle should be implemented, as if a merged scheme catered for all vehicles up to a certain age the same way then declaring whether a vehicle is new or used becomes an record keeping requirement rather than a baseline for compliance requirements.

Linking in with the ADR harmonisation, consumer risk and business viability sections of the submission, it is suggested that vehicles up to the *determined age* in terms of evidence simply require a certificate of compliance from the vehicles point of origin relating to the standards - when being imported from a location that utilises a recognised standard, such as UN ECE or FMVSS.

Additionally, as previously noted it would be the responsibility of the business to ensure that the vehicle also complied with the local in-service requirements.

As previously noted in this submission, there is great potential to better utilise the robust RAWs framework and administration in regard to some of the other concessional categories as noted under option 8 in the Review. An effective extension of RAWs along such lines could serve to make the scheme more attractive, viable and better able maintain the number of workshops in the scheme.

3. Harmonisation of ADRs with international standards

The MTA WA agrees that the recommendation D noted in the section 5 feedback to the DoTWA submission would be preferable; essentially recognise ECE, AMVSS and Japanese standards as well as ADRs. There is a need to preserve ADRs for Australian heavy vehicle manufacturing and as an engineering benchmark for Vehicle Standards Bulletins, the design and fitment of aftermarket installations such as Bull Bars as well as in-service vehicle standards, modification and licensing requirements.

Under this scenario it becomes more viable for the compliance process for light vehicles up to an agreed age limit to require a *certificate of compliance or conformance* as the evidence that a vehicle complies with the requisite standards.

This option is agreed as per the DoTWA submission to be a superior option to any noted in the review document.

Of the options actually listed in the review document, when the noted exemptions process is removed from the consideration, then Option B would be the most preferred option.

However, there is a concern that under option B the suggested RIS Process and the time lag that would inevitably result due to this process each time exceptions are required would cause huge difficulties for industry.

The end result would likely be that operators involved in the local manufacturing, modification and aftermarket sectors would become unviable and leave the market with significant gaps in both skills and expertise once the exceptions were approved and in operation.

Based on that example, if the proposed process in the review document is taken into account an enhanced harmonisation process (best fit as per the review document would be option C) is regarded as the best option.

4. Licensing of off-road vehicles

In relation to the regulation of off-road vehicles, the MTAWA supports the recommendation put forward by the DoTWA submission to allow scope for the inclusion of these vehicles in the MVSA licensing regime.

In accordance with the DoTWA submission, the MTAWA emphasises that the development of this proposal must be subject to a separate consultation and regulatory impact process.

Summary

The current regulatory system has areas that urgently require review in order to remove some of the regulatory burden that currently exists. The current regulatory regime is complex and does add significant costs to businesses operating in this area,

That noted, it is imperative that the focus of this review must be on consumer protection and minimising consumer detriment. There is agreement over the wider automotive industry that any developments, harmonisation or promulgation of motor vehicle standards that dilute safety aspects, environmental standards or consumer protection would not be supported.

The Australian motor vehicle dealing industry is a complex, multi-faceted industry and that greater time and a considered process must be provided in addition to this Review to allow for a comprehensive assessment of the risks associated, potential consumer detriment, business viability and the full impact of any reduction, both intended and unintended, to motor vehicle standards.