

Responses to the *Options Discussion Paper—2014 Review of the Motor Vehicle Standards Act 1989*

| Question No. | Question | Comments |
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| 5. Is there a problem? | | |
| 5.1 | Have the problems with the current situation been reflected accurately and are there other problems that should be addressed? | <p>In some cases, the Specialist and Enthusiast Vehicle Scheme (SEVS) is used to import vehicles that would otherwise be excluded from the import scheme. This risks the integrity of the vehicle import scheme.</p> <p>To ensure SEVS operates only to allow the import of the types of vehicle it originally intended to, the Department of Transport and Main Roads (TMR) is of the opinion that changes should be made to:</p> <ul style="list-style-type: none"> • clearly and concisely define the SEVS eligibility criteria. • include the criteria that made the vehicle eligible for SEVS as a condition on the vehicle import approval and apply that condition to the vehicle for its in-service life. • require export or destruction of a vehicle that fails to meet the condition. <p>Where these issues extend past the responsibility of the Commonwealth, they should be referred to the National Transport Commission (NTC) for consideration for inclusion in the <i>Australian Vehicle Standards Rules (AVSRs)</i> and the <i>Heavy Vehicle National Law Act 2012</i>.</p> |
| 7. What policy options could be considered? | | |
| 7-1 | What are the benefits or costs of refining the risk based approach to the regulation of vehicles entering the Australia market? | An obvious benefit is that the regulation will remain closely aligned with the object of the <i>Motor Vehicle Standards Act 1989 (Cwlth)</i> [the Act]. However, this approach may also result in a disproportionate amount of regulatory resources being assigned to the management of risks associated with only a relatively small number of vehicles. |
| 7-2 | What arguments support little or no change to the legislation? | Given that 98% of the vehicles entering the Australian market are new and standard (that is, complying) vehicles, there is some argument in support of little or no change to the legislation from a risk management point of view. However considering the upcoming changes that will see all new light vehicles being imported vehicles manufactured in other markets, there is also an argument in favour of changing the regulation to ensure efficiency in this new environment. |

| Question No. | Question | Comments |
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| 7-3 | Does a case still exist for Australian Government intervention in vehicle standards? | In the interest of safety, environmental and consumer protection, there is still a need for regulatory intervention. |
| 7-4 | Could the Australian Vehicle Standards Rules be used as an alternative to the national standards? If so, what would be the necessary approach to minimise the regulatory burden, industry compliance costs and inconsistent application across states and territories? | <p>The AVSRs were designed as the national model in-service standards that are primarily intended to cater to pre-ADR vehicles in the in-service fleet.</p> <p>Given that the primary intent of the Act when introduced was to formalise a national system of vehicle design and performance standards, reverting to a system that utilises a model law to influence jurisdictional law would undo the wide ranging benefits that the Act has delivered.</p> <p>Furthermore, reverting to a system based on jurisdictional law could result in an increase in red tape and regulation for vehicle manufacturers as any variations between jurisdictions may result in the need to negotiate with each state and territory before supplying new vehicles to the market. Such a change would likely see an increase in the certification cost for vehicles, which could flow to either increase the cost of vehicles or result in a reduced range of vehicles being offered to the market.</p> |
| 7-5 | Are there non-regulatory ways of achieving the same policy objectives of road safety, environment, security, and adequate consumer choice? | <p>While consideration should be given to non-regulatory approaches to enhancing vehicle safety and environmental and theft protection, these should be used in conjunction with regulated minimum standards. By taking this approach, community expectations are met through minimum standards that must be met, but manufacturers are encouraged to exceed these standards without limiting choice for the consumer.</p> <p>An excellent example of this approach is the regulation of minimum crash standards for light vehicles, combined with the advocacy based Australasian New Car Assessment Program (ANCAP) rating system. Through this hybrid approach, over 75% of new vehicles offered in the Australian market achieve safety levels far exceeding the minimum standards required by the Australian Design Rules (ADRs).</p> |

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| 7-6 | What other legislative 'fixes' to the Act do you consider necessary? | <p>TMR is of the opinion that the following issues should be considered:</p> <ul style="list-style-type: none"> • Amend trailer certification processes to require all TC category trailers (Gross Trailer Mass exceeding 3.5 tonnes but not exceeding 10 tonnes) to obtain a full identification approval. • Vehicle standards should be developed and imposed, through a Federal certification system, for all rigid special purpose vehicles such as mobile cranes, drilling rigs and concrete pumps. • Formal processes should be established in legislation that require increased 'Conformity of Production' audit, compliance and enforcement activity, in close collaboration with all jurisdictions. • Given that more than 75% of all new vehicles are now produced with a 5-star ANCAP safety rating, TMR is of the opinion that the occupant crash protection requirements in the ADRs, which would equate to less than a 2-star rating, must be reviewed. As part of this review, the relationship between United Nation Economic Commission for Europe (UN ECE) regulations and EuroNCAP standards should be examined. • Resolution of outstanding policy issues that cause complications for in-service vehicle use and registration. For example, clarification of the door requirements for caravans; clarification of when a vehicle is supplied to the market; and clarification of when jurisdictional modification laws apply to new vehicles. |
| 7-7 | What examples of duplication between the Act and other key pieces of legislation could potentially be removed? | No comments. |

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| 7-8 | In what areas do you consider the Act's compliance processes and enforcement powers could be better targeted to the risks? And what additional or alternative enforcement or compliance activities would you consider as effective and efficient? | <p>To ensure the integrity of the vehicle import scheme:</p> <ul style="list-style-type: none"> • a stricter stance should be taken on unauthorised imports, including vehicles that land before the vehicle import application has been decided or where a vehicle import approval has not been obtained. This may also involve more co-ordination with the Australian Customs and Border Protective Service. • a stricter stance should be taken against persons who contravene the conditions of an import approval. • a framework should be developed and introduced that supports greater involvement by jurisdictional registration authorities in Federal inspection and enforcement activities. |
| 7-9 | Are the provisions in the <i>Regulatory Powers (Standard Provisions) Act 2014</i> a suitable alternative? Or are there issues that are unique to the industry that will not be addressed through the use of provisions contained in this Act? | No comments. |
| 7-10 | What regulatory services under the Act could be delivered through private sector or other organisations? | <p>Based on current certification processes, the following activities may be appropriate to include in a contestability review:</p> <ul style="list-style-type: none"> • Test facility inspections. • Audit inspections. • Accreditation to Quality Assurance Systems. • Information Workshops and Stakeholder Consultations. • Background Research into new and emerging safety issues and standards. • Single Uniform Type Inspections (SUTI) |

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| 7-11 | What regulatory mechanisms should be in place to ensure that motor vehicles are effectively recalled when safety concerns arise? | <p>To ensure the vehicle recall system operates efficiently and does not compromise the safety, environmental and theft protection objectives of the Act, TMR is of the opinion that amendments are needed to the Act and/or the Australian Consumer Law (ACL) that:</p> <ul style="list-style-type: none"> • Provide a statutory role for technical experts from the Department of Infrastructure and Regional Development (DIRD) in the vehicle recall process. This could be either by providing joint responsibility to both DIRD and the Australian Competition and Consumer Commission (ACCC) or by a complete transfer of responsibility to DIRD. • Ensure that all vehicles which are covered by the Act are covered by vehicle safety recall requirements, including heavy vehicles. |
| 7-12 | What costs and benefits do you see from providing a legislated role for the vehicle safety standards regulator in vehicle safety recalls? | <p>Given that DIRD already has resources allocated to vehicle recall related activities, any costs arising from a decision to partially or fully transfer responsibility for vehicle recalls to DIRD would be at least partially offset. The costs may also be partially offset by savings from the ACCC if responsibility for vehicle recalls were transferred to DIRD.</p> |

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| 7-13 | Are there any specific local requirements for light vehicles that would prevent full harmonisation with UN regulations for light vehicles? | <p>The following are some situations that may prevent full harmonisation with UN ECE Regulations:</p> <ul style="list-style-type: none"> • Where ADR requirements make reference to Australian Standards. • Where the operating and environmental conditions in Australia are substantially different than what UN ECE regulations have catered for. • Where the existing Australian requirements are considered more stringent than UN ECE requirements and full harmonisation may mean dilution of the standard (for example, child restraint upper tether anchor requirements) • Instances where commercial/political adjustments are required (for example, side facing seats). <p>Additionally, in the interest of red tape reduction, TMR would suggest that in situations where current ADR requirements are more stringent than an equivalent UN ECE requirement, the ADR requirement should be reviewed to determine if the higher standard can be justified, based on a cost and road safety benefit. Removal or reduction of these types of unique Australian standards requirements will make a significant contribution to reducing the hurdles and costs of supplying a vehicle based on a global platform to the Australian market.</p> |
| 7-14 | How much business compliance cost savings could be made through the above options to harmonise Australian standards with the UN Regulations and the acceptance of evidence of compliance with those standards? | No comments. |

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| 7-15 | Would there be any increased cost to consumers for a vehicle that complies with UN Regulations not required for Australian conditions (such as cold start) as opposed to the current hybrid compliance arrangement? | While it is possible, it would be unlikely. While there is an additional cost for a feature that is not required in Australia, the cost per unit for such a feature is minimised as it is spread across a large volume of vehicles manufactured for multiple markets. This is likely to be the lower cost option when compared to the cost of removing such a feature. |
| 7-16 | Is there benefit in providing for the approval of modules of design/assembly of a vehicle? How could this be done to ensure the certification is valid for a range of later added componentry and bodies? | No comments. |
| 7-17 | What risks would a regulatory framework need to address if barriers were reduced on vehicle imports? | <p>The following risks would need to be addressed for both new and used imported vehicles:</p> <ul style="list-style-type: none"> • Consideration would need to be given to how these vehicles would be handled under the ACL to ensure at least the same level of protection is provided when compared to a new vehicle supplied by a manufacturer. • Currently, the vehicle industry is not solely comprised of new vehicle sales, but also of aftermarket support functions such as warranty, service and parts. Given the relatively small size of the Australian market, consideration must be given to whether increased competition will have negative impacts on availability and price. Additionally, should the cost of parts increase, this may also increase the cost of, or limit the range of insurers who offer, comprehensive insurance for particular vehicles. • Consideration will also be needed about how the public will be educated about genuine manufacturer supported vehicles versus those imposed by a competing entity. For example, it would not be likely that a manufacturer's authorised dealer would offer the same level of support to a vehicle supplied to the market by another entity. This could cause in-service issues for the owners of vehicles who are unaware of the difference. |

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| | | <p>In relation to used vehicles, the following additional risks have been identified:</p> <ul style="list-style-type: none"> • Unlike new vehicles, there is no ability to guarantee or standardise the physical condition of used vehicles that are imported. This creates the risk of vehicles entering the fleet with structural issues or with safety related defects, negatively impacting safety outcomes. • Given that the average age of the Australian light vehicle fleet already exceeds that of comparable countries, close consideration needs to be given to the safety impacts that allowing older vehicles to be imported will have on the average fleet age. • Imposition of vehicle emission standards have had a very positive role in protecting the environment from the impact of vehicle emissions and it is generally recognised that the introduction of more stringent emission standards over time has had a notable beneficial impact on air quality in Australia. This is recognised as one of the most cost effective ways to reduce harmful road transport emissions. Should a greater number of used imported vehicles be allowed to enter the vehicle fleet, the potential negative impact on air quality and the environment must be managed. |
| 7-18 | What impact would second-hand vehicle imports and personal imports of new vehicles have on the automotive sector in the short, medium and long term? | No comments. |

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| 7-19 | <p>Could constraints around a vehicle's age and country of origin effectively manage the safety, environmental and theft risk to the community?</p> | <p>Such constraints may help manage the identified risks, however their effectiveness will need to be closely monitored. Should this proposal progress, a certain degree of flexibility should be included in any policy or regulation to ensure DIRD has the ability to make prompt changes to the policy and procedures to address any unacceptable safety, environmental or theft risk that is identified.</p> <p>Also the regulator should expect considerable pressure from commercial and vested interest groups to relax the risk management constraints.</p> <p>Should this proposal progress, DIRD must recognise the temptation for a person to misrepresent the age or country of origin in order to gain a commercial benefit. To prevent this, DIRD must:</p> <ul style="list-style-type: none"> • introduce significant penalties for providing false or misleading information. • ensure any evidence required as part of an application is from a trusted source and can be easily and independently verified by DIRD. • ensure processes are in place for rigorous and regular audit. |
| 7-20 | <p>How can standards be used to affect the average age of the vehicle fleet and the distribution of the age profile?</p> | <p>TMR is of the opinion that a carefully developed approach to removing import barriers could have a positive effect on reducing the average fleet age, and subsequently increasing the overall safety of the fleet. A possible way of doing this may be to allow importation of new and near new (for example, no older than 3 years when imported) used vehicles by individuals and businesses.</p> <p>However, this approach may need to be examined for its effect on other objectives of the Act, for example, consumer protection and the integrity of the safety recall system, access to parts and service facilities and impacts on insurance costs.</p> |

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| 7-21 | Could consumer protection for personally imported new vehicles be left to consumer laws, and why/why not? | <p>For a vehicle that is personally imported, it would be incredibly difficult to provide protections under the ACL.</p> <p>TMR is of the opinion that for these vehicles, the purchaser would only have recourse under the consumer protection law in the country where the vehicle was purchased. In these cases, it may be necessary to make a person who applies for an import approval for this type of vehicle aware of the lack of consumer law protection in Australia, as well as the lack of after sale service they may receive from Australian service agents.</p> <p>Furthermore, this may also pose issues for second and subsequent owners of these vehicles who may not be able to easily determine that the vehicle will not receive the same level of in-service support, namely in relation to recalls and warranty.</p> |
| 7-22 | What impact would an increase in second hand imports and personally imported new cars have on the insurance industry? | <p>From the experience gained from the Low Volume and Registered Automotive Workshop Schemes, it is likely that insurance costs for imported vehicles will be higher compared to equivalent vehicles sold domestically by the same manufacturers. There may also be cases where insurance may not be offered for particular makes of vehicles. TMR believes that this is a result of limited access to parts and service facilities.</p> |
| 7-23 | How could the Government facilitate vehicle safety recalls for vehicles not imported by manufacturers? | No comments. |
| 7-24 | Do you agree that the concessional options could be grouped into risk categories to allow the possible consolidation of the scheme? If so, do you agree with the model proposed in this review? | <p>TMR supports the concept of grouping types of imports based on risk and the proposed model suggested in the paper.</p> <p>TMR would also suggest that for special purpose vehicles included in scheme 3, vehicle standards should be developed and imposed through a Federal certification system.</p> |

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| 7-25 | In the event that barriers to the importation of quality second-hand vehicles are reduced, would there still be a need for the Register of Specialist and Enthusiast Vehicles? | Currently, SEVS is in place to reflect the government's policy to only allow commercial import of used vehicles that are not available domestically. Should a revised policy be adopted that instead focuses on vehicle age and standards rather than variant availability, then the SEVS Register would no longer be needed. |
| 7-26 | If the Register is still required, how could it be improved to increase standards and reduce regulatory burden? | |
| 7-27 | Could the regulation of the Registered Automotive Workshops and the New Low Volume Manufacturers be combined under a new legislative framework (as illustrated in Figure 3)? | No comments. |
| 7-28 | What are the advantages and disadvantages of such a consolidation approach? | No comments. |
| 8. Costs and benefits | | |
| 8-1 | Do you have any comment on the compliance cost assumptions? | No comments. |
| 8-2 | Are the costs of compliance reasonable when considered alongside the safety and environmental outcomes being delivered? | The costs of compliance do not appear to be an excessive burden on businesses when considering the safety and environmental outcomes being delivered. |

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| 9. Implementation | | |
| 9-1 | What transitional arrangements, including length of notice period, should be put in place to assist businesses to adjust to potential changes in the regulatory framework? | No comments. |

Proposed Options

| Option | Description | Comments |
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| 1 | Do nothing | TMR considers that the current review of the Act presents an opportunity to keep the regulatory environment up to date, especially given the looming changes to the automotive industry landscape in Australia. |
| 2 | Repeal the legislation | TMR is of the opinion that regulation of motor vehicle standards is necessary to ensure that the vehicles that consumers have access to do not adversely affect safety, environmental or consumer protection objectives. Repealing the Act and vacating the standards space is not supported. |
| 3 4 | Modernise the legislation Strengthen the legislation | TMR strongly supports these options, particularly the need to improve the clarity of definitions. In the past, ineffective legislation has negatively impacted the vehicle import scheme, allowing vehicles to be imported that were intended to be excluded. This review is an opportunity to provide clarity to the vehicle import scheme and close loopholes previously used by some for commercial gain. |

| Option | Description | Comments |
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| 5 | Harmonisation of Australian vehicle standards with international standards | Of the three approaches canvassed, TMR is of the opinion that the second approach (adopting the UN Regulations as the primary standards with capacity to permit variations for Australian conditions) would be the best approach for both harmonising standards and streamlining the certification process. |
| 6 | Streamline new vehicle certification processes | <p>As a suggestion, it may be possible under such a model to have as few as 4 ADRs:</p> <ul style="list-style-type: none"> • ADR 0 - A 'Super ADR' that prescribes all UN ECE Regulations that apply in Australia • ADR 1 – An ADR that prescribes all local variations from UN ECE Regulations • ADR 2 - A compilation of all UN ECE Regulations that apply in Australia • ADR 3 - A compilation of all other international standards (other than UN ECE Regulations) accepted in Australia. <p>Furthermore, given the move towards more advanced and interactive features in vehicles, for example vehicle to vehicle (V2V) and vehicle to infrastructure (V2I) communication, harmonisation with international standards is critical. Additional comments about V2V and V2I technology are included in Appendix A.</p> |
| 7 | Reduce the barriers to the importation of second-hand quality vehicles and personally imported new vehicles | <p>Before this option is considered, TMR is of the opinion that further consideration is needed to determine the potential risks to safety and how the vehicles will be dealt with under the ACL. The primary concerns that should be addressed before considering this issue are:</p> <ul style="list-style-type: none"> • Analysis of the impact increased used vehicle imports will have on the average age of the Australian light vehicle fleet. • Analysis of the reduction in community safety and theft protection caused by an increased number of used vehicles entering the light vehicle fleet. • Analysis of the impact on the environment of introducing vehicles to the fleet that meet |

| Option | Description | Comments |
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| | | <p>less stringent emission requirements.</p> <ul style="list-style-type: none"> • Consideration would also need to be given to how these vehicles would be handled under the ACL to ensure at least the same level of protection is provided when compared to a new vehicle supplied by a manufacturer. <p>If any element of this option is adopted, TMR recommends that the scheme be subject to the following two conditions:</p> <ul style="list-style-type: none"> • Annual report to be published to highlight impact of the scheme on safety as well as environmental and consumer protection. • Legislated requirement for routine review. This would ensure the scheme is regularly reviewed to ensure it is delivering on the intended policy objective, and, if necessary, changes can be made to either increase any benefits realised (for example, reduction in the average fleet age) or address any unforeseen issues negatively impacting safety or environmental or theft protection objectives. <p>Furthermore, given the move towards more advanced and interactive features in vehicles, for example vehicle to vehicle (V2V) and vehicle to infrastructure (V2I) communication, introduction of vehicles to the fleet with incompatible technologies risk the benefits this technology offers. Additional comments about V2V and V2I technology are included in Appendix B.</p> |
| 8 | Reduce/consolidate concessional arrangements | TMR supports this option in principle, however more details are required before further consideration can be given. |

Appendix A

Option 5: Harmonisation of Australian vehicle standards with international standards

Additional comments about V2V Technology

The benefits from V2V are maximised when all vehicles are fitted with V2V equipment. This should be the long term goal. Future autonomous driving systems plus V2V have the potential to dramatically improve safety and congestion. It will be difficult to separate these initiatives in the future.

Both the National Transport Commission (NTC) and AustRoads have indicated the need for the ADRs to regulate the V2V and V2I broadcast systems. The United States (US) is starting the work to mandate the fitment of V2V (Docket No. NHTSA-2014-0022. Federal Motor Vehicle Safety Standards: Vehicle-to-Vehicle (V2V) Communications). Initially the mandate will cover small vehicles. The US document is going through the consulting process now and we don't have an example of the rulemaking content. V2V is a new global initiative and is still in its development phase. The results of the US process will help inform our regulation needs.

V2V requires radio frequency (RF) communications. US, European Union (EU) and Korea are developing their platform around 5.9 GHz WiFi. The 5.9 GHz band allows for 7 WiFi channels and to ensure safety messages receive the highest priority, the rules for the use of these channels need to be prescribed. There are several differences between EU and US systems, some caused by the existing RF allocation/regulation in a country or region. Some of the differences caused by country specific RF regulation are:

- use allocated to a channel; and
- RF power allowed in the channel; and
- the number of available channels (5 or 7).

Japan uses the 5.9 GHz band for a different use and it is not available for V2V or V2I at this point. The Japanese platform uses a single channel in the 700 MHz band and in the 5.8 GHz band. In Australia, this channel has been allocated to Telstra for mobile phone use. It is illegal for any other equipment to use this channel. Because of many of the issues with these bands, Australia will not be adopting the Japanese platform.

The different standards have been developed for the US and EU platforms. The platforms are not compatible. Australia will need to decide on one of the variants. There is work on global harmonisation where possible but we are still looking at two distinct products. Hopefully, the only difference will be firmware, not hardware. AustRoads is in the process of selecting a single platform for Australia and the associated standards.

The work in this area will be published soon by Austroads, which was given the role to enable and facilitate the introduction of V2V in Australia by SCOTI (now TIC, the Transport and Infrastructure Council).

The term V2V is used to mean a transceiver that repetitively broadcasts a vehicle's location, motion and other information, 10 times per second while moving and once a second while stationary. The unit is always ON until the battery is removed. A faulty or non-conforming unit has the potential to severely disrupt/stop safety messages, or in the case of a 5.8GHz platform and disrupt the Telstra network.

The V2V initiative is still being developed but is very close to rollout. First systems should be in the EU by end 2015, followed by the US. We are not able to point to examples of regulation at this point but most experts are saying we will need them. The Act needs to be able to account for Australian specific conditions and selected global standards.

Appendix B

Option 7: Reduce the barriers to the importation of second-hand quality vehicles and personally imported new vehicles

Additional comments about V2V Technology

This option may raise issues in relation to the goal for all vehicles to be fitted with a compliant V2V transceiver. Noncompliant equipment resulting from a liberalised import policy will compromise Cooperative Intelligent Transport Systems if the equipment is left active/operational. For example, equipment from Japan will interfere with the Telstra network if operational. C-ITS systems are generally built to operate continuously if power is applied and are likely to be active/operating unless they are removed or disabled. Owners or importers may not be aware they are causing a problem or the equipment is operating without test equipment.

A fully integrated V2V system uses vehicle generated information in its message. While V2V systems can be retrofitted, retrofitted systems are unlikely to deliver the optimum results. For example, it is difficult for a retrofitted V2V vehicle to deliver the same level of cooperative safety as a vehicle fitted with fully integrated V2V equipment that is built to be compliant with local standards. Therefore Option 7, if adopted, may need to address the need to remove noncompliant equipment and retrofit compliant equipment.

A V2V system relies on software applications to inform the driver to take action or the vehicle to take some action. Safety functions delivered by an integrated V2V system will be supplied and managed by the original vehicle manufacturer (OEM). It is likely that safety software systems and applications will follow similar software cycles that operating systems and applications follow in current computers, tablets and phones. These essential upgrades are likely to be managed by OEMs and their Australian agents. If liberalised imports do not have access to the OEM, then maintenance of the vehicle system could suffer.

TMR notes that discussions are now taking place between AustRoads and DIRD, and these should continue to resolve the issues identified.