Submission 64 – MVSA Review 2014

SUBMISSION TO THE MVS Act REVIEW

INTRODUCTION

This submission seeks to highlight a small number of issues for the panel in its review of the Motor Vehicle Standards Act (MVS Act), and to support these as far as possible with evidence or observation.

The main issues mentioned are:

1 That the current arrangements for low volume compliance preclude certain manufacturers being subject to competition in the market,

2 That unnecessary costs are incurred in present low volume arrangements, in the name of safety, but which are probably better explained as a form of manufacturing industry protection,

3 That excessive costs and consequences have arisen out of difficulties in the interpretation the present MVS Act, the roots of which probably lay in jurisdictional creep by administrators,

4 That increasing complexity and legalisation at State level in relation to modified vehicles are increasing the need for the federal government to encourage a uniform approach in that area

BACKGROUND

The State authorities used to have sole carriage of all motor vehicle regulation, and from about 1950 a model code for in-service standards was used to encourage uniformity of regulation across the States - its working title was the, ”Consolidated Draft Regulations”.

In the 70s, with increasing standards for safety, Australia moved with the rest of the world to adopt newer more complex rules on a national basis - hence the arrival of Australian Design Rules (ADRs). In time, the “Consolidated Draft Regulations” document was re packaged and incorporated into the third edition of the ADRs - this was in the mid eighties. The concept of a Single Uniform Type Inspection was then adopted and this allowed one inspection of one each new vehicle type to satisfy all the States. This was a very good example of a rational efficient approach to regulation.

But times have changed. Australia makes less of its own vehicles, the motor vehicle industry now acts globally and the world regulatory system has matured. There is now a UN ECE system that is widely recognised.

The review of the MVS Act is timely with the changes that have taken place since the current Act was first drafted in 1989, and reworked a decade later with changes to the Low Volume Scheme.

The Options Discussion Paper (ODP) is comprehensive and touches on most of the issues, but a lot is said and some of the discussion is quite general and ought not be taken at face value.

For example the ODP reports that:

> *Over the past decade, fatalities from road accidents in Australia have fallen by 25 per cent due to both regulatory actions (such as random breath testing and mandating airbags and vehicle crumple zones) and improved driver competency (such as training and testing).*

While the above is no doubt true, it does not mention changes in road standards, and in particular the highways where many of the deaths occur - or define what part of the 25% is attributable to vehicle standards, and out of that, how much has been due to action taken by Australia, as distinct from what improved has technology gifted us. With some exceptions, Australia has never been a major player, and innovation does not normally arise out of any regulatory actions taken by here

The ODP are also indicates that,

> "*Australia's geography, freight task and use of high productivity innovative heavy vehicle combinations require larger loading capacities and longer trailer combinations than are typically used overseas*".

This is probably not supportable at a level that would justify special and costly regulatory provisions. I say this for a number of reasons, and starting with the fact that probably all major truck components are sourced overseas. Australian truck manufacture is mainly limited to assembly and custom bodybuilding. The construction of the fire trucks that were built in the 80s for use at our major airports is one example of this. In a more recent case I can think of, the majority of the build itself was undertaken offshore.

It is true that there are differences between Australian and overseas fleets - for example, European and US trucks have better provisions for cold starting, and it is true that the very small part of Australia's truck fleet operates on other than bitumen highways, but it is also the case that B-Doubles came out of the US into Australia and that the Australian braking rule for heavy trailers (ADR38) had its origins, almost entirely, in ECE 13.

Against these few pegs in the ground, a claim that Australia is different in a way that is significant enough to shape the essential nature of the regulatory framework sounds a little thin. To allow it to do so would be let, "perfect be the enemy of good", and turn what could be an efficient regulatory model into one that is mostly overkill.

The ODP comments that:

> *A key object of the Act is to regulate the first supply of used imported vehicles. In this way, successive Governments have sought to limit the impact of non-*

standard vehicles to ensure community and consumer protection, whilst not overly constraining consumer access to a wide range of vehicles.

This claim is of course true, but it does not qualify how well the job has been done, to what extent other policy imperatives might have been imbedded in the approach, and what scope there might be for efficiency changes.

Another party could have written that entire section and cast a very different interpretation on the "facts" as they are today. To borrow from a later point in this submission - how effective has the system been when it has cost the Australian community over $10m per year for many years, and per only a small portion of the market, because the approach used in managing the low volume market extinguished competition in the full volume market.

One should also be a little concerned that there is a real chance that arguments which conflate "safe-vehicles" with "new vehicles, could provide an appealing but entirely misleading view. The reality is that vehicles here are relatively expensive, the current vehicle fleet is aging and most people in Australia are not that wealthy - the motorcar is the second largest investment most make and 80% would miss a mortgage payment if they missed two pay packets It is not clear that keeping out "cheaper Imports" will lead to a "newer" and "safer" fleet as the ODP suggests.

THE MAIN ISSUES

This submission addresses some of them.

Current low volume policy stifles competition and costs the consumer.

I have become aware that at least two other parties have made submissions in this regard, so only a minimum comment is made here.

It is a straight forward, well known and unarguable, that an impost of over $100,000 was put on each vehicle supplied to the market in Australia from one marquee. This was coincidently, as I recall it, at the same time that the wholesaler in Australia moved from low volume to full volume compliance. In due course the manufacturer learned what was happening and added the impost at its end - with all of the obvious cost and tax implications that followed. That situation still exists today.

One could not do other than assume that the rest of the market has positioned itself in a like, if not so extreme, manner, and it follows that prices generally in Australia have to be higher than they need be for this reason. It is not a complex accounting exercise to accurately determine what those figures are.

Current Compliance Requirements for Imported Vehicles are not cost effective

There is wide agreement that vehicles need to be safe, but it is not agreed and it is difficult to support an approach that requires low mileage used vehicles to have high cost items like tires, charcoal canisters and catalytic converters replaced with new ones as a matter of course.

It is a requirement that used cars, from where ever they come, are sold in a condition that indicates they still comply with the ADRs - so why would a vehicle coming out of Melbourne and into Sydney not require new tires to be fitted when one from Tokyo does - as a safety related matter.

The answer to this seeming conundrum is that the car on sale is not the reference point. The reference point is the "source of the car", and so any source has to pretend to be a manufacturer. Manufacturers have to provide a very high level of assurance that the car is able to meet the ADRs, and so it follows that importers must meet the same standard, and supply their vehicles with new tires! If there was ever any real legitimacy in that argument, out of the sources of vehicles having to be on an equal footing, little is left of that line of argument once local manufacturing ceases and the entire issue can be looked at from a consumers perspective only.

For a high-end vehicle, and a vehicle that is unlikely to be used as a daily driver, these costs can be as high as $6000 for a catalytic converter and $2400 (or more) for a set of tires. For a low-end vehicle these costs are not so high, but they are still quite high as a proportion of the landed cost of the vehicle.

The preparation of extensive documentation, to demonstrate compliance with the ADRs for each model of vehicle that is imported, is a significant cost. The plus side of this is that it helps keep unprofessional players out of the market, however it is also a cost that the consumer has to bear. If I wanted to import a unique vehicle tomorrow, it could well cost me $10,000 in effort to prepare the relevant paperwork. That is a fairly large amount if the vehicle concerned was already known prima facie to be ADR compliant, or alternatively, that its few deficiencies were known.

It is not immediately obvious how a more cost effective and workable system could be devised within RAWS as it stands, however if the role of ADRs was reduced and a greater or sole reliance placed on UN ECE certification in combination with a pre-existing registration in a suitably mature right hand drive (RHD) country, then much of the cost of the present documentation, and the policing of it by the Department, could be reduced. With a given level of resources the Department would then be free to invest more time in spot checks and auditing - and probably produce a superior result to what is evident today.

Interpretation of the MVS Act is ambiguous and costly.

There are a number of points within the MVS Act where differences of view can and have arisen, which are costly to resolve when perhaps they should not have arisen in the first place, and are likely to need change as a consequence of the review that is taking place.

The Scope of the Act

The MVS Act originally came into being for the purpose of ensuring that the standard of vehicles that were presented to State authorities were to a common standard, and the involvement of the Department came about through the Federal Governments border protection role in the Constitution.

The reality has always been that there are many vehicle types that the Federal government has no real interest in, and the main reason for this is that that they are not used for transport on public roads. These include farm machinery, golf carts, off-road motorcycles, monster trucks, mini motorcycles, and the list goes on. It was and still is the States who have to address the day today realities of in-service operation and vehicle registration.

Recent interpretation, if not historical interpretation by the Department does not align with all of the sentiment expressed above, and that has led to confusion, and cost.

Example 1 - *Let's Import a Segway*

When a party attempted to import a Segway type vehicle into Australia, and applied late for an import permit, on the unexpected advice of his broker, the application was rejected by the Department for the reason that the vehicle was not an off-road vehicle.

The off-road rule is relevant, when interpreting the MVS Act, as it is something that distinguishes a class of vehicle that might otherwise be allowed to be used on public roads. However, Segway's were not allowed to be used on any public roads or footpaths at the time, and the Department's own literature on importing vehicles stated for this reason that an import permit was not required.

The Department did not, as might have been expected, advise, "MVS Act not applicable, no import permit required", as it has for a range of vehicles over many years - as mentioned before, including golf carts, tractors are other vehicle types. The resolution of this seeming "non-issue" cost the Department and the other party several thousand dollars and months of time - but it was worse than that.

While the Department was running the argument that one can import an "off-road" Segway, but cannot import an "on-road" model, the "on-road" model had been imported a short time before and a number of them were operating under permit in the Parliamentary Square in Canberra! In addition to this, it transpired that ninety vehicles identical to those that had been refused by the Department were imported and sold on the Internet by another organization (Catch-of-the Day) while the matter referred to above was under appeal in the Administrative Appeals Tribunal.

This all comes about because the Customs Department, per the MVS Act, only defer to the Department of Infrastructure and Regional Development (the Department) if a vehicle is, or could possible be, a motor vehicle for road transport. If, in the view of Customs it is not likely to be a road transport vehicle, then they do not refer it to the Department. It becomes the importers problem when there is a difference of view what the correct interpretation should be.

Example 2 - *Big Tractors are OK, Big Trucks are not*

If a mining company wants to import a huge mining truck for use on a mine site, then the company is required to get an import approval and agree to either export the vehicle or destroy it when the company has finished with it. The situation for these vehicles is that they operate in controlled areas that are not open to the public. The dimensions of these vehicles is also such that they cannot not be moved on public

roads without a special movement permit - these are issued by the relevant State. It would seem clear enough to many that such vehicles should not, and do not, fall under the MVS Act - if only for the reason that it serves no useful purpose - but the Department's interpretation is that such vehicles do come under the MVS Act.

I am not able to think of a single cogent argument why this class of vehicle should require an import permit when, for example, an off-road dirt bike, or a farm tractor does not - and the more so when this class of vehicle is imported in such low numbers and is so specialized in its role, and probably no sensible ADR related legislation for such a vehicle.

Example 3 - *What is Structural Integrity*

This example goes to two issues - the fact that the interpretation is ambiguous, and the inappropriateness of this situation in its own right, the more so if the relevant provision continues to stand if used vehicle import standards are otherwise relaxed.

A brief account is that a RAW imported an exotic vehicle and the Department took the view that a lightly rusted grommet hole in an attachment to the chassis of the vehicle could cause the torsional stiffness of the chassis to be reduced and that this required per Regulation 58(k) that the vehicle be exported, because its structural integrity had been reduced.

The Department had no definition for the term "structural integrity" and advised:

> ***"Structural integrity" refers to the ability of a thing to withstand/support/transmit whatever load the thing is likely to be subject to and/or has been designed to withstand/support/transmit.***
>
> ***The definition of "vehicle structure" is not relevant here, as the legislation being applied specifically refers to "structural integrity" rather than "vehicle structure".***

It is hard to see how anyone could regard the situation that the RAW found himself in as reasonable - a reasonable professional view on the above is that the definition is to wide to be workable, and that the claim in respect of the subject hole causing reduced torsional stiffness was untenable. The Department backed down on all claims after twelve months of delay and costs of thousands of dollars.

The situation is one that could happen tomorrow, and it is inappropriate that the wording of Regulation 58(k) be allowed to stand for that reason. The matter would become more pressing if there was a wider importation of used vehicles because it would create a situation where all sorts of repairs that were perfectly acceptable here would require an imported vehicle to be destroyed or re-exported it the same repair was found to have been done on it, at any time.

Regulations for the States

It seems that there is an increasing level of complexity and rule making in the States - and that this arises mainly out of the need to modify vehicles in an environment that is

increasingly more complex, legalistic, and with the need to push responsibility away from government.

Example 1 - *Van bodies*

If a person purchases a truck with a van body in Victoria and seeks to register that in (say) NSW, then he/she is likely to be asked for an engineering certificate to the effect that the van body is mounted properly - no matter that the vehicle has been operating in Victoria on the same duties for a decade or more, and which if by any other approach, or a decade ago, would/should need no more than a standard "road worthy" inspection.

Example 2 - *Vehicles for Handicapped People*

Standard vehicles modified by a professional body builder for use by handicapped patients in wheel chairs, having been accepted in NSW, Qld, SA and possibly Victoria all require a submission that are similar, but different in format, and with some differences in what is required. If that same vehicle is to go to WA it is likely to be re-examined, and sometimes at a standard that is higher than the other States. This piecemeal and variable environment for the manufacturer and his engineer to interact with is not productive, and in many ways has parallels to what occurred in (was it) the 50's when the "Draft Consolidated Regulations" were came into being.

Presumably the same sort of re-examination might be expected if the owner had moved to WA rather than having taken possession of the vehicle in that State. If the MVS Act (or associated Regulations) could make the "sale" and associated movement across State borders, of modified vehicles, more transparent it would be useful. Australia's constitution guarantees "free trade" between the States, but it is hardly free if there are regulatory hurdles to jump in the process.

These are situations that amendments to the MVS Act might be able to improve. It is understood that this area has always been difficult, but it is also noted that Clause 38 in the MVS Act doest at least in part restrict a State from invoking a standard that is higher than the agreed standard. If an approach of this type could be extended to cover at least certain types of vehicle modification it would be useful.

In passing

There are a number of important matters that ought not be completely overlooked.

Vehicle Recalls

This is an item that might have been included in the first part of this submission, about care in taking things at face value in the ODP. The concerns in the ODP about the consumer being vulnerable if a greater volume of used imported vehicles displaced the manufacturers role do not seem to be realistic.

It is true that historically, recall action was usually implemented through the dealer service network and through a national advertising program. But that approach would

not work so well today, if only for the reason that not so many people read newspapers.

The simple fact is that every motor vehicle on the road has to be registered, and every motor vehicle has a VIN recorded in the relevant data set - and that the VIN says a lot about the car.

All that is needed for a recall alert system to exist is a small intelligence feed into the State motor registries, a minor VIN code interpretation exercise and an auto email to all owners of the relevant make and model of vehicle. For those few people who do not have email address, it would probably suffice that an, “email a friend” approach could be used in lieu. Overall, such a system as proposed would probably be more effective than what was historically used.

Cheap Imports

Claims that Australia might be flooded with cheap sub standard imports if import standards for used vehicles were relaxed are probably not supportable by the facts. It is true that this may have happened in New Zealand many years ago - but that market was very high for the reason that it had been isolated from the world market for many years.

The New Zealand case is not one that will apply to the same level here, and if it did to some extent, it would only be for a short period while the market stabilized, and then only because prices here have been artificially propped up here by charging the consumer more than a competitive market would have allowed. Once the market here is stabilized, the additional full cost of shipping on top of the relatively low price for a used import would preclude it from being a commercially attractive proposition. The only vehicles that would continue to be attractive would be those that would otherwise tend to be a SEVS vehicle.

I have no strong view on how import standards should be controlled and whether RAWS should continue. But my inclination is to leave RAWS run, but with a less demanding compliancing role and more of a specialist importer control on the proper sourcing of vehicles - and particularly for a transition period until the realities of the new market place were better understood.

Private Certifiers

Private certification is a role that a current RAW might move into if the approach to standards for used imported vehicles were changed. But of course there might be other areas that such certifiers could also play a role.

My interests at the present time do include certification for vehicle modifications - though not to the extent that I have any commercial interest in the outcome of the review. I have no final view on the use of private certifiers but would caution those who see it as some sort of easy and economical fix.

The first point is that any system of private certification still has governance issues to manage and there would need to be an over-view body to ensure that standards were

maintained and corruption minimised. If all this were effectively achieved it would still remain the case that the consumer would have to pay someone - either a government entity through taxes, or a certifier through vehicle purchase costs.

Overall efficiency ought to be the determinant, and while it is not clear to me that outsourcing is the answer, it is clear that private certification may be a costly solution. I am aware of some of the costs through the work I do - it is very lucrative.

The cost of getting professional engineering certification can be high - even a small job can cost $800 and double this is more likely for nothing major. Effective hourly charges can run to $300/hr.

It is not clear that the number of skilled engineers is increasing in Australia, and it seems number in the future might be less with a diminished automotive manufacturing industry and this combined with the fact that the government does not train engineers in its departments to the level it once did - I understand that the level is about one quarter of what it was. I am also aware that while I am comfortable with assessing complex vehicle systems, for the reason that my first years were as a design engineer, that this is not the case for many people, and it is difficult for consumers in today's market to find people to do the more complex work. This is no small matter, as even the Department's own resources are technically more limited than they were.

The issue of professional indemnity is also a major concern to those who would contemplate entering the industry.

All of this is fixable and workable in the longer term. The market will take care of it, somehow. Just do not assume that it will be quick or pain free, or optimum.

Modular

The ODP does raise a question about the use of modularity in approvals. Without being an expert on the matter it is fairly obvious that there is significant scope for this approach where vehicle systems can be isolated and their interfaces characterized. Engine and engine-gearbox systems are a likely candidate, as are braking systems. That said however, there is less scope for this today because electronic stability systems and the like make it difficult to isolate the sub elements and to characterize the interfaces. ADR 38 is an example of a modularized rule. The decision to do it that way at the time was based on the realization that it (a) could be done, and (b) if it were not done, the commercial side effects of the regulations would be massive as it would be difficult for the brake manufacturers, the suspension manufacturers and the chassis manufacturers to continue operating as relatively independent business.

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