



October 2014

Motor Vehicle Standards Act (MVSA) Review Submission by the National Motor Vehicle Theft Reduction Council (NMVTRC)

Introduction

This document is a formal submission by the National Motor Vehicle Theft Reduction Council (NMVTRC) to the 2014 Review of the (Commonwealth) Motor Vehicle Standards Act 1989 (MVSA) by the Department of Infrastructure and Regional Development.

NMVTRC is a joint initiative of Australian governments and the insurance industry. Our mission is to drive down Australia's unacceptably high level of vehicle theft. This will benefit the economic and social wellbeing of the nation.

The MVSA Review is wide ranging. This submission concentrates on the potential impact of changes to the Act on future vehicle crime in Australia arising from changes to

- The ability to identify a vehicle and establish its provenance
- Vehicle security standards.

The Department of Infrastructure and Regional Development has produced an Options Discussion Paper in conjunction with the Review. Apart from other matters, the Options Paper canvasses a number of ways in which import restrictions might be lessened. NMVTRC does not object to the lessening of import restrictions per se, but has concerns about how this might be effected and the potential for very significant consequences to arise.

The first part of this submission provides an overall view of the situation. The second part responds specifically to questions in the Option paper. These responses should be read in conjunction with the first part. The final part considers ways of mitigating the potential damage that might be caused by a purely market based approach to deregulation.

General Comments Relating to the Relaxation of Import Restrictions

Relaxation of import restrictions could create a very significant market for privately or commercially imported vehicles outside the normal manufacturers' programmes. Any relaxation is likely to create business opportunities. New businesses and new business models might be created in response to change.

New vs Used cars

There is an important distinction between new and used cars for this purpose. Almost all new vehicles provided into the Australian market are currently built in Australia or imported under so-called Full Volume arrangements where the vehicles are built to Australian standards and identified by the manufacturer at the point at which they are



released onto the Australian market. There are a small number of very specific situations where very small volumes of new vehicles enter the market under concessional arrangements, and the regulations provide a high level of confidence that their identity is valid and security standards are met. With specific exceptions noted below, this submission relates to used cars.

Right hand drive

NMVTRC makes the assumption in this submission that relaxation of standards would not be allowed to facilitate the import of left-hand drive vehicles into the Australian market. Doing so would introduce very significant safety issues which we assume would not be acceptable to the community.

Restricting any possible relaxation of import requirements to right hand drive vehicles narrows the potential sources to a small number of large, sophisticated markets (notably Japan and the UK) as well as a number of smaller markets which drive on the left and therefore already have a fleet of used right hand drive vehicles on their roads (such as New Zealand and Samoa).

New Zealand – A case study

New Zealand offers some insight into the potential scale of used car imports into Australia. New Zealand has a car fleet approximately one fifth the size of the Australian fleet. Almost 100,000 used vehicles were imported in 2013. In the peak year for the import of used vehicles, just under 157,000 were registered in New Zealand (2003). If the same regulation and market response were to apply to Australia, this could mean the import of up to 750,000 vehicles per year, creating a very different environment for vehicle fraud.

Identification

Accurate identification of a vehicle, and the major parts it is made up of, is essential in the reduction of vehicle crime.

The risks associated with an incorrectly identified vehicle are that it may be stolen, that it may be a different vehicle from what it appears to be (rebirthed), or that it may be modified or to a different specification.

The community must be confident that the vehicle is what it is purported to be.

Vehicle Identification Number

The Vehicle Identification Number (VIN) system is a specification for unique identifiers that are used worldwide to support vehicle identification, but the system is not in itself sufficient to provide the necessary confidence that a vehicle carrying a valid VIN is the vehicle it is purported to be. It is important to see how the VIN system works to understand why this is.

- Each nation is allocated a part of the VIN code that identifies a vehicle as having been built in that country.



- The remainder of the VIN code is coordinated and recorded by each national body. The full code includes information about the manufacturer and vehicle.
- National manufacturers lodge full VIN codes with their national coordinating body each of which maintains a register of all valid VIN codes issued in their jurisdiction.¹
- There is no global register of VINs and Australian regulators need to interrogate individual overseas databases to check that a VIN is valid.
- The fact that a VIN exists does not establish that a vehicle marked with that VIN is that vehicle.
- Modern vehicles show the VIN in a number of places, including, in Australia, on the compliance plate and other significant parts.
- While it can be difficult to remove all evidence of the original VIN from a vehicle and replace it with a different one, it is not impossible – even on vehicles with the latest technologies.

Globally, and in Australia, changing the identifying marks of a vehicle or its parts by 'rebirthing' is a significant part of organised vehicle related crime. Reliably confirming that a vehicle is correctly identified, given the potential to change the identifying elements, requires information in addition to the VIN.

Provenance

Providing consumers, the motor trades and insurers with timely and accurate information on a vehicle's history has the potential to severely limit the criminal activities of would-be thieves and fraudsters.

The timely communication of information such as when a vehicle is declared a statutory write-off back to vehicle manufacturers also has the potential for them to "bar" the ordering of replacement parts for a vehicle bearing that Vehicle Identification Number.

Given sufficient effort on the part of a criminal, it is currently still possible to rebirth a vehicle so that the rebirthing cannot be detected, though new identification technologies and the increasing use of electronic systems in vehicles makes this more difficult and expensive.

However, even for less sophisticated vehicles, the steps to rebirth a vehicle are complicated and the more information that is available about a vehicle, the more likely it is that such fraud will be discovered.

Rebirthing is often part of a wide spectrum of vehicle crime – for instance the sale of flood damaged vehicles which have been written off by insurers and which cannot be safely recommissioned, but are passed off as undamaged.

¹ Only a small number of new vehicles (especially Japanese domestic production) are not issued with compliant VIN codes.



Information about the provenance of a vehicle is therefore essential in minimising vehicle crime.

Critical information about a vehicle to establish its provenance includes elements such as:

- VIN
- Registration history
- Stolen vehicle registers
- Written off vehicle registers

Closed loop

Over the last ten years, Australia has created a 'closed loop' whereby vehicles (primarily passenger cars) can be tracked from their entry to the marketplace through to write off or loss by theft. Although the system is not perfect and work remains to be done, the closed loop has had a demonstrable effect on vehicle related crime.

The closed loop involves actions by the regulators (Commonwealth and State/ Territory) as well as industry. A number of elements are now in place to provide this closed loop.

- A VIN is allocated to most vehicles, by the manufacturer, through the national FCAI database. An equivalent local code is created by NEVDIS, the joint State and Territory vehicle registration database, for vehicles that have been imported. Every vehicle registered in Australia must appear on the NEVDIS database.
- All registration systems in Australia link each registration to an entry on the NEVDIS VIN database, meaning that other key data elements are linked.
- NEVDIS also administers a database of written-off vehicles, making it harder to rebirth a written-off vehicle without detection.
- The Personal Property Securities Register (PPSR) records financial interests in vehicles.
- Databases of stolen vehicles are linked to the above, meaning that stolen vehicles and their identities can be identified.
- To some extent, the process for legitimate re-commissioning and re-registration of written off cars requires evidence about the provenance of parts as part of the inspection process, making the introduction of stolen vehicles and their parts into the supply chain more difficult.

Taken together, these elements make it difficult to rebirth a stolen vehicle or to recycle parts from one.

Reducing import restrictions would essentially mean that Australia would become part of a broader world market rather than operating behind a secure wall. The broader world marketplace offers significantly less rigour for a number of reasons.



- There is no network of data connections between jurisdictional registration databases, in contrast to Australia where all are connected through NEVDIS. It is possible for two different countries to record the same VIN on their registration databases. Australian regulators do not check overseas registers to find if vehicles are registered in two places (which would suggest identity falsification).
- There is no consolidated international VIN database.
- There is no international database of stolen vehicles, and specific databases are reported to be not easily accessible or of doubtful quality.
- There is no international register of written of vehicles and, while some jurisdictions (such as the UK) have registers that are comparable to Australia's, the difficulties of reliably matching records to imported vehicles would be considerable.

Current risks

There is a rational argument that there is little evidence of criminal activity in relation to the current concessional scheme and that allowing the non-personal import of used vehicles under similar arrangements would not introduce additional risk.

The reality is the reverse.

The current concessional arrangements for the import of used cars breaks the successful Australian closed loop that is currently in place. The mitigation for the current risk is that limiting such imports to personal use means that there is not the scale to attract criminals, and the presence of a known individual in the chain is a deterrent to fraud.

Consequences of uncertain provenance

The options paper refers to vehicle theft and vehicle crime in a number of places. This paper does not set out all the situations in which uncertain provenance creates problems, but there are a number of dimensions.

There is risk to the individual that a vehicle that they buy may not be owned by the seller and that they may not gain title to it. While there is no history of overseas owners repossessing vehicle stolen and rebirthed in Australia, US based insurers do repossess cars from overseas and it is not impossible to envisage this happening here.

There is also risk to the individual that imported used vehicles may be superficially the same as Australian models supplied new, but are in fact built to a lower standard. The buyer is essentially at risk of being fraudulently sold a vehicle that is of lower value than it appears.

There is a risk to owners and insurers alike that an imported vehicle, built to an overseas standard or specification, will be significantly more expensive to repair if damaged. Had either the owner or the insurer been aware of this additional potential cost burden, the owner might have paid less for the car, or more for the insurance, or both. This market ignorance creates the opportunity for fraud.



Vehicle standards

Vehicle security determines how easy it is to steal a vehicle. Vehicle standards ensure that all vehicles in Australia meet minimum anti-theft standards through requiring such items as immobilisers. Technologies develop over time and the standards for new vehicles are higher than older vehicles already on the road.

Lowering the average age of the fleet increases the overall coverage of the latest security devices, although some manufacturers have fitted some of these devices to their vehicles for some time, so the age of the vehicle is not a precise indicator of how theft-resistant it is.

As far as security elements are concerned, Australian standards are the same as the UNECE standards that apply in the major overseas markets from which imported new and used vehicles would probably be sourced. Other countries which do not comply with UNECE standards may not require identical or comparable security devices to be fitted to cars, nor may they have upgraded their standards at the same time as the UNECE standards.

The risk associated with accepting vehicles which have mandated UNECE standards in recent years is low, but the risk from non-UNECE countries is unknown and likely to be significantly higher. In particular, New Zealand does not mandate security standards, so vehicles from there might not meet current Australian standards.

Consumer issues

Consumer law has an indirect but important relevance to the potential impact of relaxing import restrictions on used cars.

If a vehicle seller is not responsible for the provenance of a vehicle (in other words, inadequate recourse if the vehicle is not what it is purported to be), then it would be easier to rebirth a vehicle via this channel. This might create the environment for an organised market for imported stolen or rebirthed vehicles to emerge.

Critical mass for criminals

The campaign against vehicle crime in Australia has driven many criminals out of the sector. As fewer and fewer organised criminals are present in the market, it becomes much more difficult to operate as they lose the network in which they trade.

To the extent that relaxation of import restrictions creates any opportunity for criminal activity to increase, this will result in growth in criminal networks, facilitating further criminal activities in the vehicle sector.

In particular, if a criminal network emerges supplying used cars into the Australian market, the same infrastructure will most likely be used to support the theft and export of cars from Australia – infrastructure that we know exists today but is probably relatively small scale.



Responses to Options Paper Questions

Q. 7-4	<p>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>
	<ul style="list-style-type: none"> • This relates only to security and not identity. • Security standards globally are broadly similar and converging. • Australia, in particular, is aligned with UNECE so all vehicles from countries that have security standards compatible with UNECE will meet Australian standards. Verifying that a vehicle has been manufactured to UNECE standards may be simpler than checking compliance to the Australian Standards². • Australian Vehicle Standards Rules are designed to support the ADRs and are developed by the NTC. • Jurisdictions³ are encouraged to comply with the AVSRs but do not have to. A recent example exists outside the security arena where Victoria additionally mandated an ESC standard, though all jurisdictions are again aligned now. • The AVSRs therefore merely provide a framework for consistency. • It would currently be possible, if jurisdictional differences existed, for a vehicle to be imported into a jurisdiction with a lower standard and then re-registered in a jurisdiction with a higher standard, based on the previous registration. • Therefore the alternative suggested by this question does not appear to provide any advantage either in national consistency or administration. • If the ADR system was nationally enforceable, this would prevent jurisdictional misalignment, but there is no indication that any jurisdiction is likely to relax security standards or fall out of line with current security standards.
Q. 7-8	<p>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>

² There are Australian standards that are not included in the UNECE standards but they are not those related to security.

³ Jurisdiction in this submission refers to a State or Territory of Australia. Other nations are referred to in this document as countries.



	<ul style="list-style-type: none"> • This question relates primarily to identification and provenance. • The compliance processes and enforcement for imported used vehicles are currently administered partly by the Commonwealth and partly by the States and Territories. • We understand that it is possible to validate (and decode) any VIN which has been notified through the WMI network. • No-one currently checks whether the VIN for a vehicle being imported into Australia or registered in an Australian jurisdiction is concurrently registered on an overseas registration database. This creates the potential for two vehicles with the same identity to be registered in different countries without the Australian jurisdiction being aware. • We also understand that it is often possible to check the manufacturer's history through local representatives. • Both of these provide comprehensive information about the identity and history of a vehicle. As with locally produced vehicles, criminals may succeed in concealing the true ID of a vehicle. • Commonwealth enforcement is currently considered by many to be less effective than it should be. • The Act as currently worded provides enforcement powers that might provide adequate compliance, but in the absence of experience, this is uncertain. • Jurisdictions vary in their requirements but some inspection is carried out on imported vehicles at the time of registration. However, the nature of the inspection differs and it is not clear that it currently focuses on identification, nor that jurisdictions have access to the information sources they need to verify the identification of a vehicle. • New Zealand combines physical inspection of imported vehicles on the docks with a mechanical inspection at the time of registration. They advise that the only interceptions of rebirthed vehicles have been made through thorough Customs inspections at the point of arrival. • Overall, the Australian regime to manage identification works well and there seems to be no advantage in changing it.
Q. 7-17	<p>What risks would a regulatory framework need to address if barriers were reduced on vehicle imports?</p> <ul style="list-style-type: none"> • This question covers both security and identification.



	<ul style="list-style-type: none"> • The question is broad and a number of 'barrier reductions' are possible. • In terms of security, post manufacturing modifications pose a risk as the VIN profile is entered prior to the completion of manufacturing. It is possible that security devices might be removed or decommissioned and without checking for compliance, vehicles might enter the Australian market without required security features. • If second hand vehicles are imported as a substitute for new vehicles under the current regime, this would increase the age of the fleet and would mean that where the standard has been strengthened in recent years, vehicles would enter the Australian market without some security features. • In terms of identification, as a general observation, a clearly identifiable vehicle is no more likely to be stolen than if it were first registered here provided there is an equal level of identity built into the vehicle as there is with an Australian vehicle. • If the vehicle is difficult to identify, the current regime will not allow an import certificate to be issued and the vehicle therefore cannot be registered. If the identification requirements were relaxed, this would make it easier for rebirthed and other stolen vehicles to enter the Australian market. • Overall, there is a risk to insurers, and the potential for fraud, if the vehicle being imported and later insured is not the vehicle it is purported to be or is of a lower value because (at present) insurers do not collect enough information to identify imported vehicles. To do so would require the VIN to be provided in setting a premium, and for the insurance quoting engine to have access to international VIN databases. • The risks to insurers are both random (i.e. that potential losses occur in the normal run of business) but also that they are systematically exploited by criminals who arbitrage vehicles of different values passing them off as local.
Q. 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> <ul style="list-style-type: none"> • This question relates to both security and identification. • Country of origin information will identify the standards to which the vehicle was built, though not any modifications that have occurred. It will enable countries with similar or higher standards to be identified. • It appears that New Zealand does not set security standards. This



	<p>being a relatively nearby market, allowing vehicles which do not meet the UNECE standards to be imported from there would increase the security risk for insurers and the community.</p> <ul style="list-style-type: none"> • Creating a country of origin criterion for import regulation would rely on access to overseas national VIN databases ⁴and confidence that the identification was valid. • Vehicle age is relevant to the extent that by allowing second hand vehicles to be imported, the age of the fleet increases (but only the extent that they are substituting for newer vehicles) and therefore older security standards might have applied, increasing the risk of theft. • Setting an age restriction would reduce the risk of the average age of the fleet rising significantly and therefore increasing the proportion of vehicles built to older, lower standards. However, age is a surrogate for standards. Older vehicles built to current standards would not increase the identification and security risks and in this sense, the age of the fleet is only an imperfect indicator.⁵
<p>Q. 7-20</p>	<p>How can standards be used to affect the average age of the vehicle fleet and the distribution of the age profile?</p> <ul style="list-style-type: none"> • This question primarily relates to security as identification standards have not changed in recent years. • Where an imported used vehicle is a substitute for an alternative new vehicle, and where a lower security standard applied to the used vehicle, this will increase the risk of theft, unless there is a low age restriction. • It is, however, becoming more likely that the widespread adoption of computers within progressively lower grade vehicles will both introduce much better identification opportunities and create a framework for the introduction of new identification and security standards. Accepting lower overseas standards in imported vehicles in the future might therefore increase the theft risk for these vehicles in comparison with vehicles to future, higher Australian standards.

⁴ We understand that the VIN of imported vehicles is currently checked against the relevant overseas national VIN database. It is not clear who has or can have access to these databases, but it appears that the Commonwealth and NEVDIS have access, while jurisdictions may not. In any event, these databases are not necessarily fully up to date and some investigative work is often required to confirm the identity of a vehicle.

⁵ This also makes the assumption that an imported vehicle will be substituted for a newer 'local' vehicle. There are many scenarios where this will not be the case. The imported car might be an additional purchase, replacing public transport or a bicycle. The imported car might be replacing a much older locally built used vehicle which will instead be scrapped. While the generalisation is probably true, it is not universal.



Q. 7-21	<p>Could consumer protection for personally imported new vehicles be left to consumer laws, and why/why not?</p> <ul style="list-style-type: none">• It is essential that consumers (whether private or business) have some recourse against being sold stolen vehicles or ones which are not what they appear to be, otherwise it is possible that criminals would profit from such activity.• NMVTRC cannot advise on whether state and territory consumer laws are adequate to provide the same degree of support to private or business buyers that MVSA might at present.
Q. 7-22	<p>What impact would an increase in second hand imports and personally imported new cars have on the insurance industry?</p> <ul style="list-style-type: none">• This question primarily relates to provenance.• It is harder to prove provenance of an imported used vehicle as the ownership records are not in Australia and it may be difficult and expensive to access them, if they are available.• It would be more difficult to identify whether the specification of the vehicle being insured was local or overseas so there is a risk of fraud where a lower value overseas car is brought in and insured for a higher value in Australia. This would amplify the fraud if the vehicle had been stolen and rebirthed overseas.• There is a very significant cost for insurers in repairing overseas built cars, many of which have model differences when compared with their Australian equivalent. This means that an Australian repairer may have to source parts from overseas and that parts from different national models may not fit together. The inability of insurers to identify overseas models currently makes it impossible to build this into premiums. This is relevant to this response in the event that a comprehensively insured, stolen vehicle is damaged and recovered.

Recommendations

This section summarises the NMVTRC position on relevant sections of the options paper, setting out our views on possible changes to the Motor Vehicle Standards Act.

Current system works well

The development of the current 'closed loop' has had a significant impact on vehicle crime in Australia. NMVTRC believes that the regulatory arrangements set out in the MVSA should not be changed without good reason, and then only after careful



consideration. This submission is expressed in general terms and does not explore the many and complex issues in detail. More research is needed to properly assess the consequences of change, especially as changes could quite possibly attract over half a million imported used cars per annum. NMVTRC is very keen to participate in any further consultation.

UNECE standards

Access to relaxed import restrictions should be limited to vehicles first supplied in, and sourced directly from, countries which have fully adopted the same UNECE standards concerning the identification and security of vehicles. Making it easier to import vehicles built to lower standards would have a number of significant and potentially unforeseen consequences.

Imported used vehicles must be identified as used imports

Many of the risks accompanying used imported vehicles (such as safety and rebirthing) cannot or should not be costed in by the market. Regulation rather than pricing is the appropriate response to the risk of an imported vehicle having been rebirthed. Where a monetary value can be placed on risks, it is essential that all vehicles entering the Australian market can be easily identified. This will mean either creating a register identifying imported used vehicles as such, or the addition of one or more fields in all the state and territory registration databases to achieve the same result.

Consumer protection

It is important that consumers are afforded recourse against misrepresentation to protect them from being sold a vehicle that is either stolen or of a lower grade than they should reasonably expect, when this is because it has been imported rather than sourced via a mainstream new vehicle programmes. NMVTRC is not in a position to advise on the appropriate consumer law that should apply, but there is the risk of consumer exposure otherwise.

Physical inspection

Office based vehicle 'inspection' alone is insufficient to identify a vehicle and it is essential that a physical inspection of an imported vehicle is undertaken by or on behalf of a regulator to do this, particularly looking for:

- Identity tampering (suggesting rebirthing)
- Damage including flood (suggesting rebirthing)
- Other write off causes (suggesting rebirthing)
- Lower specifications (which might encourage trade in stolen parts)

Information

Vehicle rebirthing and vehicle identity fraud can only be combatted with effective information.



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NMVTRC believes that it is strongly desirable to create permanent 'look-up' links to the registration databases of other jurisdictions from which used cars can be imported other than under the current concessional arrangements.

NMVTRC also supports the development of information brokers who would research and guarantee the provenance of imported overseas vehicles, preferably as a mandated condition for import, but alternatively as a commercial service which links to the quotation engines of vehicle insurers.