



Competition Policy Review Final Report Submission

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Contact

Rohan Martin
NALSPA Secretary
Locked Bag 32004
Collins Street East, Melbourne Vic 8003
(03) 9097 3999
secretary@nalspa.org.au
www.nalspa.org.au



About NALSPA

NALSPA represents the combined interests of Australia's major vehicle fleet leasing and salary packaging providers. The Association was formed in 2014 to provide a dedicated and considered focus on key policy matters relevant to its members and to, importantly, those many thousands of organisations and employees who rely on the products and services provided by the sector.

Our members manage or facilitate a significant bulk of leased employer-provided and salary-packaged vehicles in Australia and the salary packaging arrangements of hundreds of thousands of employees. Combined NALSPA members administer more than 200,000 wheeled assets. Based on these numbers it has the largest representation of any Association of its type in Australia.

NALSPA members are major participants in the NFP Health, Aged Care and Charities sector as trusted providers of outsourced salary packaging/workplace benefit administration services, with up to two decades of experience in the sector.



Submission in response to the Final Report of the Competition Policy Review

Executive summary

NALSPA welcomes the opportunity to respond to the Final Report of the Competition Policy Review (the Final Report).

Our submission focuses on Recommendation 13 – that *“parallel import restrictions on second-hand cars should be removed, subject to transitional arrangements as recommended by the Productivity Commission.”*

NALSPA notes that Recommendation 13 also provides the caveat that such restrictions should not be removed “unless it can be shown that

- (a) the benefits of the restrictions to the community as a whole **outweigh** the costs; and
- (b) the objectives of the restrictions can only be achieved by restricting competition.” [Emphasis added]

In NALSPA’s view that caveat cannot be satisfied in respect of the importation of second-hand cars, particularly if it is accepted that “the costs” to the community include the substantial risks to consumers, the general public, and the automotive sector represented by such a proposal.

Background

The Productivity Commission’s March 2014 Inquiry Report on the Australian Automotive Manufacturing Industry recommended, among other things, that:

- (a) the Australian Government should progressively relax restrictions on the importation of second-hand passenger and light commercial vehicles, with new regulatory arrangements for imported second-hand vehicles being developed in accordance with the outcomes of the concurrent review of the *Motor Vehicle Standards Act 1989* (the MVSA Review);
- (b) those regulatory arrangements should not commence before 2018, and ensure that reasonable advance notice is given to affected individuals and businesses, such as vehicle leasing companies, be limited to vehicles manufactured no earlier than five years prior to importation, and be limited to second-hand vehicles imported from countries with vehicle design standards consistent with Australia’s; and



- (c) there should be a prior regulatory compliance framework put in place that includes measures to provide appropriate levels of community safety, environmental performance and consumer protection.¹

The MVSA Review had commenced in January 2014 on the instruction of the Assistant Minister for Infrastructure and Regional Development. Whilst its terms of reference did not specifically include any issues relating to the importation of second-hand vehicles, they did require the Review to have regard to the Productivity Commission’s Inquiry.

Thus, the MVSA Review options discussion paper issued in September 2014 (the Options Discussion Paper) included questions directly related to the importation of second-hand vehicles – **Option 7**. This option also included the removal of restrictions pertaining to the personal importation of new motor vehicles.

Subsequent to receiving the Final Report of the Competition Policy Review, the Government announced its decision:

“to consider possible options to reduce restrictions on the personal importation of new vehicles after further public consultation is undertaken. **The Australian Government is not inclined to take the same approach with used vehicles.**”²
[Emphasis added]

The case for removing barriers to the importation of second-hand vehicles

Despite the ongoing obvious reasons why Federal law applies minimum standards to *second-hand cars* and not to *books*, the Final Report discusses both products interchangeably, and advances the following as its justification for allowing parallel imports:

“Parallel imports provide an alternate source of supply, which promotes competition and can provide consumers with products at lower prices.”

NALSPA disputes that reasoning can be applied to second-hand cars.

Australia is blessed with one of the most open and competitive car markets in the world, with **67 brands** competing with each other to sell a combined range of over **350 models** to only 1.1 million new car purchasers per annum.³

By comparison, 51 brands compete for 13 million annual sales in the United States, and in the United Kingdom 53 brands are competing for 2.25 million annual sales.⁴

¹ Productivity Commission, *Australia’s Automotive Manufacturing Industry Inquiry Report*, No.70, Canberra, 31 March 2014, Recommendation 5.4, page 32.

² Jamie Briggs, Federal Minister for Infrastructure and Regional Development, *Motor Vehicle Standards Review – Safer roads and better cars*, Media Release JB029/2015, Canberra, 16 April 2015.

³ Federal Chamber of Automotive Industries, *Consumers benefit from Australia’s competitive car market*, 2014.



All of those new cars translate to second-hand vehicles in the Australian consumer market after the first point of retail sale. It is thus very difficult to understand how allowing the importation of second-hand vehicles will “promote competition”, as claimed by the Final Report, when the new and second-hand car markets in Australia already comprise such a plethora of brands and models.

In fact, Australia’s robust car market thrives because car affordability is at its best levels in 37 years⁵, underpinned by an intense level of competition.

In addition, Australia has experienced average wage increases combined with across the board *decreases* in inflation-adjusted car prices. NALSPA members believe it is a myth that consumers will be able to secure comparable second-hand vehicles from overseas markets, including Japan, for materially lower prices than if purchased in Australia. Any apparent price differential **dissipates** once landed costs and refits for compliance and safety are taken into account.

This is a fundamental matter that resides at the core of any policy re-consideration and which was cited by submissions to the MVSA Review and related analysis, including that conducted by Deloitte Touche Tohmatsu (Deloitte), the Federal Chamber of Automotive Industries and RedBook Australia.

For example, NALSPA notes the following statements by Deloitte in its submission to the MVSA Review:

“The Federal Chamber of Automotive Industries has recently released a comparison of international car prices. Case studies were undertaken of fully optioned popular Australian car models and similarly optioned models in the UK and New Zealand. The FCAI analysis indicated that for many models of car Australian prices were at least comparable and in many cases cheaper than overseas market..”

...Though there are many upfront financial benefits of used import vehicles, it is likely that used import cars will have higher operating costs than similar cars in the Australian market. These costs are likely to stem from three major areas: parts and servicing and insurance.”⁶

NALSPA also notes the findings of Redbook Australia in comparing Australian used vehicle prices with Japan:

“Our findings show that for popular models within our sample, **the Australian used price is consistently lower** (approximately \$4,000-\$5,000 lower) than the

⁴ Federal Chamber of Automotive Industries (2014) *International new vehicle price and specification comparison—Australia, United Kingdom and New Zealand*, 2014.

⁵ CommSec, *Car affordability at best levels in 37 years*, 2013.

⁶ Deloitte Touche Tohmatsu, *Final Draft Report: Impact analysis of potential changes to the current restrictions on the import of used motor vehicles into Australia*, 9 September 2014, pages 44 and 48.



calculated price for a grey import from Japan. The variation in average price was materially consistent over the entire time frame researched. We understand that this outcome sees little commercially viable opportunity for the importation of grey imports for any business model.”⁷ [Emphasis added]

We also submit that direct comparisons with regard to the underlying demand for second-hand imports in New Zealand are somewhat misplaced, given NALSPA’s understanding that retail prices of imported-new second hand vehicles in that market are consistently higher than in Australia for comparable vehicles and that vehicle safety standards are not as robust as Australia’s.⁸

In its submission to the MVSA Review, Deloitte also note that given Australia’s population is five times that of New Zealand’s, competition for the same supply of spare parts for imported second-hand vehicles makes it conceivable that “consumers would not have access to significantly lower prices”.⁹

In summary, NALSPA does not believe the Final Report’s arguments for recommending the removal barriers to the importation of second-hand vehicles are valid.

The case against removing barriers to the importation of second-hand vehicles

In NALSPA’s view, lowering the barriers to the importation of second-hand vehicles would present a raft of problems.

Safety and other standards

Safety of motor vehicles is paramount in Australia. For a *new vehicle* to be sold in Australia it must comply with a range of Australian Design Rules and having done that, a “type approval” is given to that vehicle model. This means that all new vehicles coming off the production line that meet the description of the model in the “type approval” are certified.

Quality control in the manufacturing of new cars allows for this type of sample-based certification. Similarly, the Australasian New Car Assessment Program (ANCAP) is able to select vehicles for testing that will be representative of all vehicles covered by the “type approval” and in turn the community can rest assured that all of these vehicles will be of equivalent safety.

⁷ Automotive Data Services Pty Ltd (t/a Redbook Australia), *Research undertaken on pricing for used passenger vehicles sourced from Japan, the United Kingdom, Australia and New Zealand*, prepared for the Australian Fleet Lessors Association’s submission to the MVSA Review (Submission 210), October 2014, page 3.

⁸ See, for example, Redbook Australia, fn 7, at pages 12-17.

⁹ Deloitte Touche Tohmatsu, fn 6, at page 46.



However, this is **not the case** for imported second-hand vehicles which have not been subject to this process.

Irrespective of whether these vehicles may have had an original certification in another country, this certification typically will be to a **lower standard** (according to ANCAP) and therefore consumers will have no or little visibility on the safety performance of the vehicles. Importantly, it is not possible for ANCAP to sample test these vehicles because it is not possible to identify a test vehicle, which will be representative of them all.

ANCAP has highlighted the case of 4 specific imported vehicles, each of which complied with the ADRs but which had “**very poor ANCAP safety ratings**” which “put occupants at extreme risk of life-threatening injuries in a crash (test speed 64 km/h).”¹⁰ ANCAP concluded that:

“[v]ehicles similar to these would be likely candidates for importation as used vehicles. The difference being that the community would have no visibility of their safety ratings - used cars cannot be reliably tested and in many cases they may never have been tested, in their country of origin, when new. These and many similar vehicles would be sold to consumers without knowledge of the serious life---threatening safety deficiencies.”¹¹

These processes mean that consumers currently acquire second-hand vehicles in Australia (which were originally sold new in Australia) with the knowledge and comfort that they meet necessary safety, environmental, theft and related design standards.

Furthermore consumers also know that these vehicles are specified ‘fit for purpose’ for Australian road and climate conditions, so that their purchase decisions focus ostensibly around vehicle preference, colour, price, engine capacity, visual appeal and condition (in the case of used vehicles). Such purchase decisions do not need to include whether:

- the vehicle meets certain safety criteria,
- they will be able to get it repaired,
- it will cope with local road types, payloads and climatic conditions, or whether
- its drive-train and features are as normally found in that model type sold new in Australia.

NALSPA’s concern is that the average consumer does not generally have the knowledge to clearly identify and comprehend the potential unique risks associated with imports in the absence of the existing MVSA policy regime and its association compliance and certification process.

¹⁰ ANCAP, fn 3, at page 2. The vehicles were the Chery J1 (still on the market), the Proton Jumbuck (withdrawn in 2012), the 2006 Holden Barina and the 2008 Chrysler Voyager.

¹¹ ANCAP, fn 3, at page 3.



For example:

- How would a consumer know if a given imported vehicle is fit to be driven safely on Australian roads? As described above full volume new vehicles imported to Australia are designed and manufactured to specification to be fit for purpose for Australian conditions (ie to cope with our hot climate, harsh roads, long distances travelled, high incidence of towing compared with countries such as Japan, etc).
- How would a consumer know if a given imported vehicle had been subject to a recall notice?
- How would a consumer be able to confirm the provenance of a given imported vehicle or the genuine nature of any repairs or maintenance? How would such a consumer obtain redress for any problems with the legality of their ownership or with substandard repairs or maintenance? It cannot be assumed that local dealer networks will honour any overseas-sourced warranties, and nor can the consumer assume that parts will be available in Australia or that local repairers have the necessary diagnostic tools.
- Given those matters, will consumers be able to secure insurance or finance in respect of any given imported second-hand vehicle without paying more than would be the case for an imported new vehicle. And would such issues be known to consumers prior to them acquiring such vehicles so that they can make an informed decision?

Safety is paramount - **it is a major purpose of the MVSA**. Reducing barriers to importations of second-hand vehicles **will defeat or at best weaken** that purpose for little if any consumer benefit.

Compliance issues

Whilst we recognise that the Final Report also states that the regulatory regime would need to consider limiting the age of imported second-hand vehicles, NALSPA believes it would be exceedingly difficult to impose compliance obligations when a number of the relevant issues (for example, repair and maintenance history, whether the vehicle is **fit for purpose** for Australian conditions, whether its technical specifications are the same as similar models sold new in Australia, whether the odometer is accurate, whether parts would be available, whether any warranties could be relied upon) are problematic and difficult to verify even through visual inspection by experts and other means.

Problems with lawful ownership, odometer tampering, and other vehicle frauds are serious and ongoing in New Zealand.¹² For example, in 2014 the Managing Director of

¹² See, for example, Australian Fleet Lessors Association (AFLA), Australian Equipment Lessors Association (AELA), and Australian Finance Conference (AFC), *Joint Submission in response to the Productivity Commission's Position Paper in relation to the Automotive Manufacturing Industry*, February 2014, at page 8.



Glass's Guide made the comment that it has always been a problem with imported second-hand vehicles in New Zealand that their true history can not be established.¹³

There is no reason to suspect the same issues will not be experienced in Australia with an influx of imported second-hand vehicles.

Despite such jurisdictions as NSW recently introducing tougher sanctions against odometer tampering, for example, these issues already have to be more strenuously managed in the current regulatory environment. For example, The Queensland Department of Transport and Main Roads recently voiced its concern that:

“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.”¹⁴

Impact on the wider automotive sector

The most significant potential impact upon the automotive sector relates to those stakeholders, such as the dealer and servicing networks, who have made significant investment in capital, stock and people under the existing regulatory regime.

It is our understanding that many established new vehicle and second-hand car dealers would, either due to contractual obligations or preference, be unable to market or service second-hand imports which we understand has generally been the experience in New Zealand.

This supply-side issue also translates to a demand-side issue, as it is unlikely many domestic dealers and service centres will be in a position to respond to owners of imported second-hand cars that have no extended warranties or capped servicing arrangements without greater costs being incurred.

Furthermore, an associated cost outcome for lease providers on lowering barriers would arise in respect of depreciation values and annual write-downs. Whilst for accounting purposes, adjustments to opening values are possible to accommodate structural change to the Australian car fleet, for tax purposes no such adjustments are possible. Rates are set on acquisition and the Australian Taxation Office does not have the discretionary power to “re-set” rates mid-depreciation.

Registered Automotive Workshop Scheme (RAWS)

RAWS is designed for enthusiasts and allows for the importation and supply of used specialist vehicles into Australia. Under this scheme **only a Registered Automotive**

¹³ <http://www.smh.com.au/national/secondhand-car-prices-could-drop-on-commission-recommendation>

¹⁴ Queensland Department of Transport and Main Roads, Responses to the *Options Discussion Paper—2014 Review of the Motor Vehicle Standards Act 1989*, Submission 56b, at page 8.



Workshop (RAW) can import a used vehicle into Australia. RAWs arrangements only apply to vehicles manufactured on or after 1 January 1989 and which are not to be imported under the Personal Import Scheme. Before a vehicle can be fitted with a Used Import Plate (required for first registration and for use as transport in Australia) the RAW must modify the vehicle to meet the ADR requirements.

As of 2013 there were less than 160 Registered Automotive Workshops in Australia. In that year, only 10,395 plate approvals were given, substantially less than the approved scheduled capacity of 29,000. The Department of Infrastructure and Regional Development attributes this to “uneven demand” and has included RAWs in the MVSA Review.¹⁵

NALSPA believes that the selective import of specialised second-hand vehicles for enthusiasts under the RAWs should be allowed to continue, and supports the redressing of any shortcomings in the scheme identified in the MVSA Review. This will mean that appropriate vehicles will continue to only be imported into Australia by persons with specialised knowledge and by informed decision-making. Reforms to the import of second-hand vehicles should be limited to the RAWs.

5. Summary

To summarise our submission in response to the Final Report of the Competition Policy Review, NALSPA maintains its view that barriers against the importation of second-hand vehicles into Australia **should not be lifted**.

The Australian motor vehicle market is one of the **most competitive** in the world, rendering very high levels of domestic affordability of both new and second-hand vehicles. This status has been achieved with defined standards in place for the benefit of consumers to ensure that all vehicles sold in or imported into Australia are safe, environmentally friendly, and are fit to be driven on Australian roads and conditions which are different to many other parts of the world.

The intent of the then Federal Government when introducing the MVSA was to set minimum safety, environmental and other standards for motor vehicles entering the Australian market, and to restrict the importation of used vehicles to those meeting equivalent standards of safety to those of the ADRs.

In our view, no material evidence exists that Australian consumers or the wider Australian automotive sector and its constituent stakeholders would derive meaningful net benefit from reducing existing barriers to the personal importation of new vehicles or the general importation of second-hand vehicles.

We believe the case for reducing those barriers is weak and ignores the potential for realising the very risks the MVSA is intended to avoid, to the detriment of consumers

¹⁵ Department of Infrastructure and Regional Development, *2014 Review of the Motor Vehicle Standards Act 1989 – Options Discussion Paper*, 2014, page 50.



and the community, together with the potential for significant disruption to Australia's wider automotive sector and its many stakeholders.

The risks to consumers presented by such a reform significantly outweigh any perception cheaper and more affordable cars for the bulk of consumers would be the outcome. Moreover, it is our view that such a perception is misplaced – consumers will, in the overwhelming majority of cases, not be able to buy and import more affordable cars than those already available in the Australian market.

In addition, a consumer buying an imported second-hand vehicle is likely to face a range of issues, including potentially higher repair, maintenance and insurance costs, as well difficulties in determining whether such a vehicle is 'fit for purpose' for Australian conditions, whether overseas warranties will be obligated, whether its safety and environmental performance meets Australian requirements and so on. Critically, the bulk of consumers are unlikely to be unsuspecting of such matters.