



**FEDERAL CHAMBER  
OF AUTOMOTIVE  
INDUSTRIES**

ABN No 53 008 550 347

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**BY EMAIL**

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Dear Secretariat

**Submission: Competition Policy Review**

The Federal Chamber of Automotive Industries (FCAI) welcomes the opportunity to provide this submission on the Competition Policy Review Issues Paper. The FCAI is the peak industry body representing both manufacturers and importers of passenger motor vehicles, SUVs, light commercial vehicles and motorcycles in Australia.

**Background – Competition in the automotive industry in Australia**

1. Australia's new car market is one of the world's most competitive retail car markets. The main reason for this is the country's comparatively low population matched with a very high concentration of available brands. There are approximately 67 competing brands on the Australian new car market, exceeding the number of brands available in the United States, UK or Canada, which, despite their far larger populations, variously have only 49 – 53 brands available. The effect of this is that the average market size per brand in Australia is only 16,597, compared with, for example, an average per brand market size of nearly 256,000 in the US.
2. This competition has delivered better product to Australian consumers at world-competitive prices. Despite the apparent perception held by some, the CommSec Car Affordability Index, as at June 2013, shows cars are at their most affordable since 1976 when the index began. When comparing like-for-like models, the FCAI has observed that Australian new car prices are in fact lower in many instances, to comparable product sold in other markets overseas, such as the UK and New Zealand. The FCAI considers the benefits associated with the competitiveness of this industry extend beyond the obvious affordability results. Unlike older, second-hand cars, new cars are proven to be both more environmentally-sound and safer than older cars and are required to meet more stringent emission and safety requirements, both here and abroad.

3. The increasing number of new cars, and new parts, in the Australian market in recent years has contributed to the lowered road toll (as recently acknowledged by Assistant Minister Briggs) and the reduction of harmful emissions. In the face of such positive outcomes from a highly competitive market, the FCAI considers that any measures that relax the current arrangements would not be in the public interest and would risk coming at the expense of progress made over the past 25 years in the areas of motor vehicle safety and security as well as putting at risk national environmental expectations.

**Are there unwarranted regulatory impediments to competition in any sector in Australia that should be removed or altered?**

4. As a general comment, FCAI would like to express its support for the regulatory impact statement process. The FCAI agrees with the concept that any proposed legislation must meet the test that proposed changes will benefit the community as a whole, and outweigh the associated costs.
5. While considering the issue of unwarranted regulatory impediments it is essential to note that any changes to the competition policy framework recommended by this review must be undertaken in coordination with state and territory administrations. A nationally consistent framework is essential to ensure that duplication of effort and inconsistency in approach does not become an impediment to business efficiency. A recent example of an approach that does not achieve these outcomes can be seen through the NSW moves to introduce laws aimed at motor vehicle dealer and distributor relationships. These moves have led to an inconsistency in approach and confusion for both dealers and distributors who operate both in NSW and nationally in many instances. The national Franchising Code, together with the Competition and Consumer Act provisions, already provide the national framework to work through commercial disputes involving motor vehicle dealers and distributors.

**Are there import restrictions, bans, tariffs or similar measures that, on balance, are adversely affecting Australians? (Section 2.5 of the Issues Paper)**

6. Australia's new car market is one of the world's most competitive. There are around 67 brands selling around 350 models for a market size of 1.1 million new car sales annually (valued at approximately \$38 billion in wholesale sales terms). This has helped contribute to car affordability being at its best level in nearly 40 years, according to CommSec. This competition is helping make our fleet younger, with newer cars on the road than ever before. A newer fleet is better for the consumer as newer cars are safer, more environmentally friendly, better quality and more reliable. Partly as a result of this high level of competition, the Australian car fleet has in fact been getting younger at a time when car fleets in the US, Canada and New Zealand have been getting older. As such, the FCAI does not believe that we have a restrictive market in this country and is deeply concerned about any proposal – such as that made by the Productivity Commission – to change the current arrangements. In this regard, the FCAI refers to its submission to the Productivity Commission's Position Paper into the Review of the Australian Automotive Manufacturing Industry earlier this year (*enclosed*).
7. A greater market availability of new cars benefits not only the automotive industry and the people it employs, but the community as a whole. This is because new cars are proven to be:

- safer;
  - subject to greater consumer protection and warranties, leaving the burden of risk with car brands rather than the consumer;
  - of known, legal and secure provenance; and
  - more environmentally-sound.
8. The MVSA sets the standard for vehicles to be imported into Australia. The standards allow used vehicles to meet a lower level of standard in some circumstances; that is the compliance with standards applicable at build date as opposed to the general requirement for compliance with standards at the date of importation. The FCAI does not agree with the Productivity Commission that the relaxation of these import concessions would benefit consumers. The FCAI urges policymakers to be mindful that in considering whether allowing grey imports would reduce costs to consumers - the lifetime ownership costs of a car must be considered, not simply the purchase price. The cost of servicing and obtaining parts for motor vehicles that are not supported by established brands, and the limited availability of trained technicians to service offshore models that are not imported into Australia by the authorised distributor of the brand in this market, must be carefully considered. These hurdles run counter to any competitive whole-of-life pricing aim that such a policy would ostensibly promote. Further, there is an increased risk that is borne totally by the consumer who would, in nearly all instances, not be in a position to determine the degree of risk with any certainty.
  9. Allowing the importation of second hand vehicles is inconsistent with government policy objectives in other areas such as road safety and the environment. Firstly, the issue of safety. The Productivity Commission's recommendation is for safety issues to be dealt with through regulatory standards applicable to all vehicles sold in Australia. This sits uncomfortably with the proposal to allow imported used cars enter the country. The FCAI has serious reservations about the government's resourcing capacity to adequately police, at the time of importation and subsequently, the safety of used vehicles including compliance with the standards that applied when the vehicle was built and the continued compliance with such standards following any modifications or repair.
  10. In light of this, costs to importers of used cars would increase as extensive certification testing would be required to demonstrate the used car meets the relevant safety and environmental standards, along with the need to confirm the identity and history of the vehicle. Importers would not have access to the brand's own (propriety) extensive research and testing data which at present lessens the cost of certification to importers. Unfortunately, there does not appear to be any way to make the costs of such a scheme feasible, other than by lessening safety and environmental standards. Even this would be unlikely to substantially reduce overall costs, but would shift them, as it would result in increased health and injury costs ultimately borne by the community as a whole and not simply the purchaser. Regardless of all of this, the early findings from the research commissioned by the FCAI indicates that at present the price of used vehicles in Australia is comparable with the prices for the same vehicle in New Zealand. Clearly the scheme in New Zealand has many downsides but few, if any, upsides.
  11. The community has higher expectations as to the level of consumer protection and avenues of recourse for a faulty car when compared with other consumer goods. This is because of the technical sophistication of the motor vehicle, the significant financial outlay required to purchase a car and the serious and potentially life-threatening danger in driving an unsafe car to both the

vehicle occupants and other people on the road. The relaxation of grey import concessions would contradict this expectation. In the purchase of a new, Australian-marketed car, the consumer bears minimal risk, because the brand bears all risk in ensuring that they are meeting the standards of the Australian Consumer Law, the Radio Telecommunications Act, Ozone Protection and Synthetic Greenhouse Gas legislation and complying with the Australian Design Rules ('ADR's). Used Australian cars, are lower-risk than grey imports: the history and provenance of used cars sold in Australia are to a very large extent known. This is achieved by such measures as the state registration databases, linked by NEVDIS, the wrecks register and the Personal Property Securities Register. In contrast, the safety, security and true condition of grey imports are extremely difficult to ascertain and would largely be unknown. The consumer bears all risk in the purchase of a grey import, a fact which may not be adequately understood by the purchaser at time of purchase. Compounding this risk is that the service and repair history of a used grey import is unknown. The capacity for fraud, such as through 'clocking' the odometer, is heightened, and this risk has already been observed by the NSW Office of Fair trading in relation to grey imports under the current Registered Automotive Workshop Scheme system. Given that much of this fraud occurs offshore, the reach of the Australian consumer protection laws may be hindered. In regard to security, the amendment to grey import concessions has in other markets such as New Zealand increased the prevalence of stolen motor vehicles being 're-birthed'. It is also important to note that the same vehicle may have different features in another country, meaning that a grey import may not perform in the same way as the Australian model. This differential may not be identifiable to the general public.

12. It is appropriate to look to the example of New Zealand, which has allowed used imports since the 1980s. Such a policy response may have been appropriate when considering the New Zealand car parc at that time (i.e. a very old car parc with high prices due to high levels of protection) to empower consumers through a wider choice of available cars and provide safety and environmental benefits from a reduction in the average fleet age. In practice it disempowered consumers in two ways: firstly flooding the market with a greater proportion of less reliable cars, and secondly, removing avenues to remedy. When lower quality vehicles become the norm, the value of other used cars is also driven down, as consumers no longer have confidence in the worth of a used car. New Zealand became a 'dumping ground' for offshore vehicles that had been written off and could not be sold in their country of origin. It became the world's second largest importer of used Japanese vehicles behind Russia. When viewed on a per capita basis, the portion of lesser-quality Japanese vehicles entering the market in New Zealand is markedly higher even than in Russia.
13. The falling average age of cars in Australia is considered a key reason for Australia's falling road toll, and has been acknowledged by Assistant Minister Briggs. Allowing grey imports is likely to increase the average car age in Australia, as has occurred in New Zealand, with significant adverse implications for continuing road safety.
14. Secondly, is the issue of protecting the environment. New cars are required to meet higher vehicle emissions standards, i.e. ADR 79/04 introduced the 'Euro 5' vehicle emission standard. The New Vehicle Average CO<sub>2</sub> Emissions measure (also known as NACE) shows that emissions of carbon dioxide – the main greenhouse gas contributing to climate change – continue to reduce by more than 2% each year, and has achieved a reduction of 22% in the last ten years. The standards grey vehicles will meet are unclear.



15. Ongoing developments in vehicle engine and exhaust technology to reduce pollutants and improve fuel consumption mean that new cars present the best opportunity to protect the environment. Record levels of vehicle affordability, as well as population growth, mean that an increase in the number of cars on Australian roads is certain, making it all the more critical to ensure that this increase is comprised of vehicles that are as emissions-efficient as possible to minimise environmental impacts.

**Should any current restrictions on parallel importation be removed or altered to increase competition?  
(Section 2.9 of the Issues Paper)**

16. The parallel importation of car parts already causes significant issues for the industry. To remove any current restrictions would exacerbate these problems.
17. One concern is that grey importers have an unfair advantage when compared to the authorised Australian motor vehicle distributors. Australian distributors are required to maintain a large inventory of authorised parts by virtue of various laws. For example, the *Australian Consumer Law* requires Australian manufacturers/distributors to ensure that adequate parts are available to repair vehicles sold in this country for a 'reasonable period'<sup>1</sup>. Although in theory parallel importers face the same obligations, in practice they are far less able and likely to comply.
18. One other issue that has been found to be prevalent in the market place around parallel or grey imports is that the authenticity of parts cannot be assured. Where parts are sourced from the authorised distributor, there are numerous safeguards in place to ensure that the part is a genuine part that has been sourced and, importantly, stored under the manufacturers approved processes. Parallel parts offer no such guarantee and the consumer of such parts would not know if the part was either a parallel import or in fact a counterfeit part. Depending on the actual part under consideration there may be significant safety consequences, for example an air bag not deploying as designed.
19. As mentioned above, the grey and parallel importation of vehicles and/or parts is likely to create issues where safety, quality, authenticity and provenance could not be guaranteed. To the extent that there are restrictions in place, they certainly should not be removed and where concessions currently apply to used motor vehicle imports these should also be rigorously enforced by all levels of government.

**Are there regulations governing the sale of goods for health and safety or environmental reasons whose purpose could be achieved in a manner more conducive to competition?**

20. Given the enormous risks posed by unsafe vehicles – not only to drivers but third parties – we wish to take this opportunity to highlight the absolute importance of ensuring that vehicle and parts standards are enforced on a consistent nationwide basis. This can only be done through a Federal or State/Territory government body and the FCAI would oppose any proposal that enforcement of regional or national regulatory requirements be transferred to other than state or territory government bodies.

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<sup>1</sup> section 58 of the ACL

21. For example, the Australian Vehicle Standards Rules (AVSR), developed and maintained by the National Transport Commission, set a uniform set of standards that are then incorporated into each State/Territory's road law. The AVSRs:
- require a vehicle that is subject to an ADR when built or imported to continue to comply with the ADR.
  - apply certain other standards (adopted standards) that are intended to complement the ADRs.

**What are the competition policy reform priorities in sectors such as utilities, transport and telecommunications?**

22. The FCAI would like to reiterate its long-held view that the pricing at key infrastructure points (such as ports) is a matter for the government. The problem with unregulated privately run essential facilities such as ports is that the facility owner may be able to set prices that substantially exceed its forward looking, long-run economic cost – the level of price that would prevail in the presence of effective competition. While from time to time there are obvious benefits to privatisation of government assets, where the asset is a monopoly provider (such as in automotive import, export and terminal services) there must remain the capacity for price monitoring and price regulation, both activities rightfully resting with government. Should the government attempt to delegate these tasks to other parties such entities must be transparently free from the pressures of short term political aims.

**Are the existing unfair and unconscionable conduct provisions working effectively to support small and medium sized business participation in markets? Are there other measures that would support small and medium sized business participation in markets?**

23. We note the Issues Paper discusses the possibility of extending unfair contract terms protection to small businesses. Clearly the law developed to protect individual consumers in instances where pro-forma non-negotiable contracts may be the norm has no place in business to business commercial arrangements. The issues and the protections needed in each instance are not comparable. They are fundamentally different and it would not be appropriate to slide the protections from one area into the other.
24. Any legislation that involves protection for a class of person or business needs to be considered with special care. In this case, care must be taken in determining the definition of 'small business' to ensure it is appropriately defined to accurately capture only those entities which this law is intended to protect. There is a view, which is sometimes expressed, that motor vehicle dealers are 'small businesses'. In a large number of cases, this is not true. Most dealers are multi-franchised and are complex operations selling new and used cars, parts, insurance and finance. Many are large, with at least 2 being publicly listed companies who in fact own a very large number of dealerships. They are not at a disadvantage vis-a-vis the distributor and are properly protected by the existing laws, in particular the Franchising Code of Conduct and those dealing with unconscionable conduct. Further, they have sufficient knowledge and resources to protect their own interests, including to obtain legal advice regarding their business contracts.
25. We note that small businesses are defined in various ways. For example:
- The Australian Bureau of Statistics defines a small business as having 0-19 employees.
  - The Australian Taxation Office (ATO) defines small business as 'an entity that operates a business with an aggregated turnover of less than \$2 million'.

26. We also wish to highlight that in our industry, significant and substantial capital investment is required to be a motor vehicle dealer in certain locations, particularly in metropolitan areas and for flagship dealership sites. The levels of investment required are such that only sophisticated and experienced firms of substantial means would be in a position to acquire or be granted such a dealership.
27. We acknowledge that certain accepted small business definitions referred to above may not be appropriate in the context of the motor vehicle industry. However, we submit that there should still be exceptions or thresholds applied to any new laws so that small business protections do not apply to large and sophisticated counterparties.
28. We submit that these criteria could include all of the following:
- where the relevant person is, or is controlled by, a public company (listed or unlisted) (as defined in the Corporations Act 2001 (Cth));
  - where the relevant person is, or is controlled by, a large proprietary company (as defined in the Corporations Act 2001 (Cth));
  - where the relevant person's business has a turnover or revenue above a particular threshold; or
  - in relation to dealer agreements, where the relevant person is required to invest a certain level of working capital to commence operation of the sub-distribution or dealership business.

**Do the provisions of the CCA on third line forcing operate effectively and do they work to further the objectives of the CCA? (Section 5.25 of the Issues Paper)**

29. The FCAI supports the introduction of a 'substantial lessening of competition' test to replace the current treatment of third line forcing as a 'per se' breach. The reasons for this position are outlined in detail below.
30. Firstly, it is anomalous to treat third line forcing as a per se breach when other forms of exclusive dealing are subject to a competition test. For example, 'full line forcing' is not illegal per se but, rather, only if it has the purpose, effect or likely effect of substantially lessening competition in a market.
31. Secondly, there is no reasonable justification for this anomalous treatment of third line forcing as a per se breach. Conduct should only be the subject of a per se breach if the conduct "is almost always likely to lessen competition". Yet, there are many examples of third line forcing where the conduct is beneficial, or at least neutral, to competition. For example, bundled marketing offers, particularly those involving discounts, may be beneficial to consumers and are often not compulsory yet such offers are prohibited per se under the current provisions. As the ACCC observes at page 10 of its Guide to Exclusive Dealing Notifications:

"... third line forcing conduct under which customers can save by buying the package of products A and B instead of buying the products separately in competitive markets, can be have positive benefits in terms of competition and consumer welfare."

32. Further, a number of judges have observed that many, if not most, instances of third line forcing are not anti-competitive. See, for example, *ACCC v IMB Group Pty Ltd (in liq)* [2003] FCA 402 at [56]-[58] (Dummond J); and *ACCC v Link Solutions Pty Ltd (No 2)* [2010] FCA 919 (Bennett J).
33. Indeed, the system of notification was introduced in 1997 in recognition that there may be benefits associated with allowing third line forcing conduct that would otherwise be prohibited under the Act. The ACCC receives hundreds of third line forcing notifications each year. Further, the ACCC opposes very few of the notifications it receives. For example, according to the ACCC's notification register, the ACCC received over 450 third line forcing notifications in 2013, of which none were opposed and only one was withdrawn.
34. However, the notification process involves a significant amount of time, work and expense for the parties in completing the form required for notification (which are often completed upon obtaining legal advice) and for the ACCC in assessing whether the notifications lodged satisfy the statutory test. Whether these costs are justifiable is highly questionable given that the vast majority of notifications relate to conduct which is not objected to by the ACCC.
35. Thirdly, the introduction of a 'substantial lessening of competition' test for third line forcing conduct would be in line with the recommendations of a number of previous committees which have reviewed the Act. For example:
36. The Dawson Committee's review of the (then) Trade Practices Act in 2003 recommended that:
- "the prohibition of third line forcing should cease to be a per se prohibition and be made subject to a substantial lessening of competition test."
37. In recommending the replacement of the per se prohibition with the 'substantial lessening of competition' test, the 1993 Hilmer Report stated:
- "Economic analysis provides no simple rules for the treatment of vertical restraints, including such tying arrangements as 'third line forcing'. As a consequence, a test which enquires into the effects of individual prohibitions is required."
38. Fourthly, Australia's treatment of third line forcing as a per se prohibition is unique. New Zealand and Canada prohibit third line forcing only if it has a detrimental effect on competition. The United States and European Union do not have a specific prohibition against third line forcing, but such conduct is instead caught by the general laws relating to anti-competitive arrangements.
39. The introduction of a 'substantial lessening of competition' test for third line forcing conduct would be effective in capturing conduct that has detrimental effects on competition, whilst permitting third line forcing conduct that is neutral or beneficial to competition. This would be a significant improvement in the treatment of third line forcing conduct, as well as reducing the unnecessary administrative burden currently imposed on both market participants and the ACCC under the current regime.



**Is the code framework leading to a better marketplace, having regard to both the aims of the rules and the regulatory burden they could create? What has been the experience of businesses in the use and implementation of codes of conduct? (Section 5.42 of the Issues Paper)**

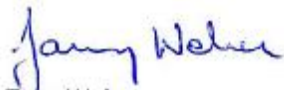
40. The FCAI is of the view that while a range of industry codes (both voluntary and mandatory) do provide significant benefits to consumers and to industry the Franchising Code (a prescribed mandatory industry code under the Act) (Code) is not such a document with respect to the motor vehicle industry. The idea of a code is to ensure that parties are well aware of the expected behaviours or requirements of the respective parties in any transaction. The FCAI is of the view that particularly of late the Code and its amendments are being used to hold the motor vehicle industry to a higher standard of account than any other commercial arrangements. The Code does not improve the operating environment for either party.
41. The Code has provided very little, if any, advantage to the automotive industry while imposing significant administrative and compliance costs on both distributors and dealers. The Code is clearly weighted towards protection of franchisees that have little or no business experience when entering a franchise. In automotive this would be an extreme that is quite unusual as the level of experience and sophistication of the automotive franchisees is very high.
42. We submit that while we support the objectives of the Code, which are laudable, its 'one size fits all' approach to the industry sector does not take into account the fact that there are franchisor - franchisee relationships where this 'market failure' or 'information asymmetry' does not exist. In such instances the Code amounts to over-regulation and over-reach into relationships between sophisticated firms who do not require the added layer of a co-regulatory measure on top of primary legislation to protect one of the party's interests or to constrain the parties' freedom to agree mutually acceptable commercial terms.
43. For example, providing a disclosure document and a copy of the Code to, and requiring franchisee statements from, franchisees who may be public companies or controlled by public companies, amounts to a classic example of 'red tape' with limited value or purpose.
44. Significant and substantial capital investment is required to be a motor vehicle dealer in certain locations, particularly in metropolitan areas and for flagship dealership sites. The levels of investment required are such that only sophisticated and experienced firms of substantial means would be in a position to acquire or be granted such a dealership. This applies equally to the grant of distribution rights to a master franchisee whether it be a grant by a foreign franchisor or a grant by the authorised importer to a sub-distributor.
45. We submit that the Code should not apply to master franchisees or to franchisees who meet certain criteria that qualify them as 'sophisticated investors' or 'knowledgeable franchisees' for the purposes of the Code. We submit that these criteria could include:
  - where the franchisee is, or is controlled by, a public company (listed or unlisted) (as defined in the Corporations Act 2001 (Cth));
  - where the franchisee is, or is controlled by, a large proprietary company (as defined in the Corporations Act 2001 (Cth));
  - where the franchisee's business has a turnover or revenue above a particular threshold; or
  - where the franchisee is required to invest a certain level of working capital to commence operation of the franchised business.

46. We further submit that, in respect of the first two dot points in paragraph 45 above, this means the onus is properly placed on the sophisticated controlling shareholder to provide information and support to its minority shareholder(s) rather than place this burden on the franchisor.
47. We wish to note that various 'sophisticated investor' exemptions apply in foreign jurisdictions that have franchising regulation similar to the Code, such as in the United States.
48. For the avoidance of doubt, we wish to also note that sophisticated investor exemptions should otherwise not affect the application of the Code to franchise agreements with franchisees who do not meet the exemption criteria.

**What is the experience of businesses in dealing with the state and territory regulators?**

49. The FCAI has regular dealings with State and Territory bodies such as the EPA and the Essential Services Commission (or their equivalents). The FCAI is supportive of these bodies and is of the view that they should continue to be active and adequately resourced so that they can ensure that the efficiencies gained, through privatisation, are not lost through increased prices for access or service.
50. We would welcome the opportunity to discuss any of the matters raised in this submission further with you and look forward to reading the panel's final report.

Yours faithfully



Tony Weber  
Chief Executive

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Submission to the  
Productivity Commission's  
Position Paper into the  
Review of the Australian  
Automotive Manufacturing  
Industry

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## OVERVIEW

The FCAI welcomes the opportunity to respond to the position paper released by the Productivity Commission's Review of the Australian automotive manufacturing industry.

The FCAI is the peak industry organisation representing vehicle manufacturers and importers of passenger motor vehicles, SUVs, light commercial vehicles and motor cycles in Australia. The FCAI made its initial submission to this Inquiry in December 2013.

In the time since the 31 January release of the PCs Position Paper, Toyota Motor Corporation-Australia (TMC-A) has announced it will also cease automotive manufacturing in Australia by the end of 2017. This means that all three domestic automotive manufacturers will cease operating in Australia, bringing to an end the Australian automotive manufacturing industry. This will have profound implications for other businesses throughout the economy, most particularly the automotive supply chain.

The FCAI offers the following feedback on specific elements of the PCs position paper and broader government policy.

### Ongoing financial assistance

All three domestic automotive manufacturers have announced they will cease automotive manufacturing in Australia. Ford has announced it will cease manufacturing in 2016, while Holden and Toyota have announced they will cease domestic manufacturing by the end of 2017.

There is an urgent need for Government to provide clarity and certainty around the Automotive Transformation Scheme funding profile. The incoming Abbott Government announced as part of its election commitment a reduction in the level of funding of the Automotive Transformation Scheme of \$500 million. In its Mid-Year Economic and Fiscal Outlook (MYEFO) the Government outlined how it would achieve this reduction in funding.

**Mid-Year Economic and Fiscal Outlook 2013-14 (Page 170)**  
**Automotive Transformation Scheme — reduction in funding**

Expense (\$m)	2012-13	2013-14	2014-15	2015-16	2016-17
Department of Industry	-	-	-100.0	-175.0	-150.0

The Automotive Transformation Scheme operates on a calendar year basis. When the Government's budget cut is reported on that basis the Government has advised that the ATS will be reduced accordingly:

ATS Calendar Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
	(\$m)	(\$m)	(\$m)	(\$m)	(\$m)	(\$m)	(\$m)	(\$m)	(\$m)	(\$m)	(\$m)
Capped Funding as Currently Legislated under ATS Regulation 3.9	300.0	300.0	300.0	300.0	300.0	300.0	300.0	216.7	133.3	50.0	2,500.0
Less MYEFO Savings	-	-	-	-	200.0	150.0	150.0	-	-	-	500.0
<b>Capped Funding After MYEFO Savings (and subject to legislative amendment)</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>300.0</b>	<b>100.0</b>	<b>150.0</b>	<b>150.0</b>	<b>216.7</b>	<b>133.3</b>	<b>50.0</b>	<b>2,000.0</b>



Notwithstanding the decision by the three domestic manufacturers to cease automotive manufacturing there remains an ongoing need to ensure policy and funding certainty between now and 2017 for the OEMs and potentially until the end of the ATS for the supply chain and other entities. As currently proposed, the effect of the phasing of these reductions will mean that 66 per cent of funding in 2015 will be cut, leaving both the automotive manufacturers and its supply base without the policy and program support they require as part of the industry's transition and consolidation. The FCAI agrees with the Productivity Commission's finding that:

“...the uneven funding profile could elevate the risk of earlier plant closures by Ford and Holden and might negatively affect investment decisions by Toyota and its component suppliers. The changes to the legislated funding schedule could therefore result in costs greater than the savings benefits by front-loading large, simultaneous adjustment costs throughout the automotive manufacturing industry. The announced savings will potentially elevate policy uncertainty for the automotive manufacturing industry at a time of already major structural change.”<sup>1</sup>

Left unaddressed, the FCAI is strongly of the view that this is likely to precipitate an early closure of the entire automotive industry, particularly through increased financial pressure on the supply chain that have already factored in the ATS to the their long-term business and investment decision-making process. Undermining this certainty will bring forward the early closure of the supply chain and the closure of the three domestic manufacturers. As modelling undertaken for the FCAI as part of the PC review process shows, the closure of the automotive industry in Australia will cause a significant economic downturn in both South Australia and Victoria, with substantial reductions in economic activity, investment activity and increased unemployment levels in areas already economically disadvantaged. On a national basis, it is modelled that it will leave Australia's GDP with a \$7.3 billion hole in it (in 2018 \$ terms)<sup>2</sup>.

The FCAI does not support the \$500 million reduction to the Automotive Transformation Scheme (ATS) funding profile, particularly at a time of substantial ongoing structural adjustment in the industry. In the event that the Australian Government persists with this commitment, the FCAI questions the phasing of the proposed reduction, in particular cutting the ATS funding in 2015 by \$200 million. Should the Government proceed with this funding reduction, the FCAI believes that the bulk of savings proposed should be made in the outyears, when there will be substantially less demand from the three car manufacturers and the supply chain. Given that these companies have expressed their intent to maintaining their manufacturing operations until 2016 and 2017 respectively, adjusting the ATS reduction would allow the three manufacturers and the supply chain access to ATS entitlements and ease the transition for the substantial supply chain that will need to adjust to a post-local vehicle manufacturing environment. Early clarification of the phasing of the reduction of ATS funding will enable suppliers to better understand the level of modulation that will occur on claims made under the ATS and how this will impact on their business operations.

The FCAI supports the proposal put by other participants to modify the parameters of the current ATS to recognize, support and facilitate investment in research and development activities post the ceasing of domestic automotive manufacturing. While it is regrettable that automotive manufacturing will cease in Australia, both Ford and Holden have committed to maintaining their significant design and development

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<sup>1</sup> Productivity Commission Position Paper, *Australia's Automotive Manufacturing Industry*, p.85

<sup>2</sup> [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0010/130123/sub030-automotive-attachment.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0010/130123/sub030-automotive-attachment.pdf)

facilities in Australia. A change to the ATS parameters to encourage further investment in these, and other, facilities would help nurture complex design and engineering work in Australia, in turn providing significant technical skills for the country.

### ***Other Transition Matters***

Given that all three domestic motor vehicle manufacturers have announced they will cease domestic manufacturing it is now critically important to provide the automotive supply chain access to transitional support through mechanisms that help foster diversification and consolidation.

To support an orderly wind-down of manufacturing, the FCAI supports a government-led review and development of a plan of action for business continuity.

### **Large-scale importation of second-hand vehicles**

In its Position Paper the Productivity Commission stated at Draft Finding 3.2:

The policy rationale for prohibiting the large-scale importation of second-hand vehicles into Australia is weak. However, appropriate regulatory measures are required to ensure that consumer protection, community safety, and environmental performance standards are maintained before the restrictions are removed. These concerns are best dealt with directly, through regulatory standards applicable to all vehicles sold in Australia. The \$12,000 specific duty on imported second-hand vehicles appears to be largely redundant, providing a prima facie case for its removal.<sup>3</sup>

The FCAI notes that the PC seeks further information on the benefits and costs of removing restrictions on the large-scale importation of second-hand vehicles.

Initially, the FCAI would like to point out that the PC has only considered the importation of second-hand vehicles in terms of the review into domestic automotive manufacturing. The FCAI believes that any consideration of this policy needs to have a ‘whole-of-government’ view to consider other policy objectives, such as the health impacts from government road safety and environmental policies.

Specifically in terms of both these policies, it is generally acknowledged that newer cars are safer and more environmentally friendly than older cars. Indeed, the entire regulatory regime around the Motor Vehicle Standards Act is based on the philosophy that introducing newer Australian Design Rules provide a benefit to the Australian community with safer and more environmentally friendly cars. The FCAI refers the Productivity Commission to Regulatory Impact Statements released by the Department of Infrastructure and Regional Development for various Australian Design Rules including mandating brake assist systems and Euro 5 emissions standards.

The FCAI also refers to the experience in New Zealand, where there are few restrictions on the large scale importation of second-hand cars. As a consequence of that policy position, around 50 per cent of all ‘new’ light vehicles introduced into New Zealand today are second-hand vehicles. As a consequence the average age of a second-hand light vehicle entering New Zealand since 2000 has risen from just over 7 years to more than 8 years in 2012. This has resulted in an increase in the average fleet age in New Zealand from around 11.5 years in 2000 to around 13 years in 2012.<sup>4</sup>

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<sup>3</sup> Productivity Commission Position Paper, *Australia’s Automotive Manufacturing Industry*, p.29

<sup>4</sup> New Zealand Ministry of Transport, February 2013, *The New Zealand Fleet, Annual Fleet Statistics 2012*

In contrast over the same period, the Australian vehicle fleet age has decreased from around 10.5 years to 10 years old<sup>5</sup>.

The FCAI acknowledges that the PC has noted it would be appropriate to deal with the consumer protection, community safety and environmental performance through regulatory standards. The FCAI's view is that to deliver the community's expected consumer protection and the government's road safety and environmental objectives, regulatory standards for both new and used imports (i.e. current ADRs) and the level of evidence required to demonstrate compliance would need to be the same for both new vehicles and second hand imports. This would lead the cost of used imports to increase due to the need for importers to undertake extensive certification testing without the ability to amortise the cost of large number of vehicles sold into many markets and access to the brands extensive research and testing data. The FCAI believes that the only effective way of reducing the cost of compliance in this circumstance would be to also reduce the level of safety and environmental standards which would lead to increased cost to the community through health and injury associated with less-safe vehicles.

Beyond the safety issues associated with the large-scale importation of second-hand cars, the FCAI is concerned that the Productivity Commission only considered the initial purchase cost of the motor vehicle. It does not appear that, in making this draft finding, the PC has considered the total cost of ownership of the motor vehicle. It does not appear to give appropriate consideration to the cost of servicing and obtaining parts of motor vehicles that are not supported by the established brands and their service network. Nor does it appear to consider the availability of trained technicians within Australia in both the franchised dealer network and non-aligned workshops to undertake the service and repair of second-hand models sourced from many locations around the world.

Similarly, the PC appears to have not considered the reputational impact on the motor vehicle brands of another organisation importing poor quality second-hand motor vehicles. Motor vehicle brands make a significant investment in building and maintaining their brand recognition, including ongoing in-service support (parts and repairing) of their products in the marketplace. This needs to be better recognized by the PC in its consideration of this draft finding.

Finally, the FCAI is concerned that the PC has not given appropriate consideration of the ability for existing government agencies at both state and federal levels to provide adequate levels of consumer protection to ensure second-hand cars meet necessary quality, safety and environmental standards.

### **Luxury Car Tax**

The FCAI supports the abolition of the Luxury Car Tax (LCT). The FCAI recommends that Government consider options to abolish the LCT, such as a staged phase-down of the LCT threshold from the current 33 per cent to zero.

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<sup>5</sup> Australian Bureau of Statistics, January 2013, *Motor Vehicle Census, 9309.0*,