



Australian Automotive Dealer Association Ltd.

ACN: 167 598 085

The Sir Jack Brabham Automotive Centre of Excellence

8/2728 Logan Road, Eight Mile Plains, Brisbane Queensland 4113

CEO - Patrick Tessier
P.O. Box 4072 McKinnon Victoria 3204
+61 3 9576 9944
0412 685 857
ptessier@aada.asn.au

Strategic Operations Director
Steve Ghost
0411 246 315
sghost@aada.asn.au

Policy Director
Michael Deed
07 3237 8711
mdeed@aada.asn.au

Directors

Chairman & QLD - Ian Field
0419 729 763
ifield@aada.asn.au

NSW - Terry Keating
0418 668 277
terry.keating@jtfossey.com.au

VIC - Leigh Smith
0411 266 977
leighsmith@gws.com.au

WA - Colin Lane
0407 903 016
colin@thelaneigroup.com.au

SA - Hillar Puvi
0418 803 691
hpuvi@formulamg.com.au

TAS - Marcus Birrell
0407 872 052
marcusbi@motors.com.au

ACT - Richard Rolfe OAM
0411 189 714
richard.rolfe@audicc.com.au

NT - Dave Russell
0417 926 337
daver@bridgetoyota.com.au

Appointed - Martin Ward
0418 855 455
mward@apeagers.com.au

Appointed - Geoff Pickering
0417 197 655
geoff@pickering.com.au

Appointed - Mike Claridge
0402 131 660
mclaridge@claridgeholden.com.au

Appointed - Paul Warren
0418 233 332
paul.warren@peterwarren.com.au

Appointed - Anthony Altomonte
02 9418 5588
aaltomonte@alto.com.au

Appointed - Lou DiVirgilio
0417 755 200
lou.divirgilio@dvg.com.au

Secretary - Paul Moni
0419 481 000
paul@monisolutions.com

Legal Advisers - HWL Ebsworth
estents@hwle.com.au

Business Advisers - BDO Australia
mark.ward@bdo.com.au

16 June 2014

Competition Policy Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Commonwealth Policy Secretariat

Lodge online at www.competitionpolicyreview.gov.au

COMPETITION POLICY REVIEW

AUSTRALIAN AUTOMOBILE DEALER ASSOCIATION LTD (AADA) ACN 167 598 085

The AADA welcomes the Federal Government's timely and wide ranging review of Australia's competition laws and policy at a time when the automotive value chain is undergoing structural change as a result of the announcement of the cessation of motor vehicle manufacturing in Australia, a removal of tariff and other barriers to trade under current and proposed Free Trade Agreements (FTAs), review by the Productivity Commission into Australia's Automotive Manufacturing Industry, and review of the *Motor Vehicle Standards Act 1989* (MVSA). Our response to the Issues Paper released on 14 April 2014 addresses a number of concerns raised by our members both as a small business (SME) and consumer in their dealings with larger businesses being global motor vehicle manufacturers (OEMs).

AADA was registered under the *Corporations Act 2001* (Corporations Act) in Queensland on 17 January 2014 to represent franchised new car dealers in Australia. There are over 1500 new car dealers in Australia that operate something in the order of 2600 new vehicle outlets. Dealerships range from family-owned small businesses in the regions to larger businesses and public companies operating in the regions, capital cities and across the States and Territories.

The *Australian Competition and Consumer Act 2010* (CCA):Schedule1-Franchising Code of Conduct (the Franchising Code), Schedule 2-Australian Consumer Law (ACL), the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and the unwritten law are relevant and applicable to a franchised motor vehicle dealer in respect of this review. The Franchising Code is applicable to all franchises in addition to three other mandatory industry codes: the Horticulture Code of Conduct, the Oilcode and the Unit Pricing Code.

COMPETITION POLICY PRINCIPLES

The fundamental elements of Australia's competition policy was summarised in the issues paper as:

- limiting the anti-competitive conduct of firms;
- legislation should not restrict competition unless the benefits of the restrictions to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition;
- structural reforms of government monopolies to facilitate competition;
- providing for third-party access to significant infrastructure facilities that are essential for competition;
- independent prices oversight of government business enterprises; and
- fostering competitive neutrality to ensure that government businesses do not enjoy a competitive advantage simply as a result of public sector ownership.

One of the key questions asked was what should be the priorities for a competition policy reform agenda to ensure that businesses large, or small, can compete effectively and drive growth in productivity and living standards.

Australia's retail new car market is highly contestable and sub-optimal by global standards with sales of new vehicles just over 1.1 million units in 2013 or 1.4 per cent of the 82 million passenger and commercial vehicles sold globally. Passenger cars accounted for 49.5 per cent of the market and sports utility vehicles (SUVs) around 29.4 per cent. Currently, 90 per cent of all new vehicles in Australia are imported and the average age of all vehicles registered in Australia is around 10 years which has remained constant since 2008. There are 66 brands in Australia competing for market share compared to 51 in the United States which has a market of around 13 million units annually. The Australian market is fragmented and one of the most highly competitive in the world distorted to a large extent by the imposition of a luxury car tax (LCT) and Australian design rules (ADRs) the policy rationale for which (protection of local manufacturing of motor vehicles) is weak given the structural changes in the automotive value chain.

Trade liberalisation

Australia's trade liberalisation policies have resulted in one of the most open and competitive markets in the world and have brought many benefits to the community. The latest Japan-Australia economic partnership agreement (JAPEA) joins a growing list of agreements with other countries. The elimination of the 5 per cent tariff barrier on a new motor vehicle was estimated by the Government to reduce the price of an "average" vehicle by an amount up to \$1500. It has increased competition between the brands through a combination of lower prices and/or higher specification, advanced security and safety features and improved environmental performance standards. AADA supports the Government's trade liberalisation agenda as a necessary reform to increase competition in the Australian market.

Areas for panel to consider

AADA members are not afraid of competition and changing consumer preferences but based on issues raised by its members as consumers and SMEs submits the independent panel should examine in both a broad and motor vehicle sector based context the following competition policy issues:

- abolition of barriers to trade and competition including the thinly disguised luxury car tax (LCT) tariff and international harmonization of Australian Design Rules (ADRs);
- clarification of the scope, meaning and operation of acting in legitimate commercial interests based on relative and/or proportional size;
- international price differentials for the same product in a similar economy;
- monitor and assessment of incomplete pass through or transfer of benefits to consumers flowing from the removal of tariffs and other barriers to trade:
- clarification of the meaning of small business vis-à-vis consumer;
- consideration of change of emphasis in competition policy from black letter law to economic impacts or effects on the market resulting from a dominant position;
- statutory guidance to facilitate the evolution of the meaning of unconscionable conduct;
- scope for a representative industry body to bring complex legal and other issues for clarification and resolution outside the judicial system;
- market distortion caused by fringe benefits tax (FBT) and salary packaging arrangements;
- reform of industrial relations laws; and
- failure by ASIC to include motor dealers in discussions directly affecting the competitiveness and sustainability of their businesses.

AADA members operate in a highly competitive retail market and believe the review panel needs to understand the dynamics of how competition works in this sector. AADA would not support any policy change which might offer greater freedom of choice and lower prices in the short term but which might ultimately lead to loss of consumer welfare, reduced productivity and innovation in the longer term.

AADA is happy to assist the review panel in providing further information and clarification about the market sector in which our members operate. We would appreciate the opportunity to discuss any aspects of competition in this market sector with you.

REGULATORY IMPEDIMENTS TO COMPETITION

It is acknowledged that competition may be affected by restrictions that are not designed for competition purposes but for some other public policy objectives (protection of local manufacturing, taxation, safety, health) found in other legislation, regulations, ordinances and jurisdictions. Such restrictions that can affect a motor vehicle dealership include import restrictions such as tariffs, disguised tariffs including the LCT, products that must meet country specific design rules including ADRs, restrictions on land use for dealership facilities, and absence of uniform motor vehicle registration and inspection requirements.

Second-hand motor vehicles

In AADA's submission to the Productivity Commission dated 13 February 2014 (copy attached) we raised a number of regulatory and other issues for consideration. The submission was in response to the Productivity Commission's draft finding 3.2 that "The policy rationale for prohibiting the large-scale importation of second-hand motor vehicles into Australia is weak". AADA formed the view that the adoption of a [competition] policy by the Government liberalising the importation of large volumes of second-hand (end of life) vehicles into Australia may not necessarily result in a net benefit to the community. In this instance we believe consumer protection, safety and environmental standards demand a less risky product over any marginal gain to the community as a whole in an already highly competitive and fragmented market. That is, the promotion of a second-tier level of competition should not be adopted where the benefits are short term or marginal and there is a loss of consumer welfare in the longer term.

The net impact of the adoption of this policy proposal may initially increase competition and result in lower priced vehicles (end of life vehicles in the case of Japanese imports) but the longer term effects on the economy in terms of consumer, safety and environmental protection, and drag on productivity by an aging fleet should be the subject of sound economic analysis before a decision is made. It will also reduce the current value of Australia's existing fleet to the detriment of those owners in future transactional costs involving those vehicles.

Motor Vehicles Standards Act 1989 (MVSA)

The regulatory requirements for importing vehicles into Australia are governed by the MVSA and associated regulations. The MVSA was enacted to apply uniform vehicle standards to new vehicles first used in transport in Australia, and to regulate the supply to the market of used imported vehicles. ADRs were adopted as national standards for vehicle safety, anti-theft and emissions and if an additional second-tier level of competition were introduced into the Australian market through the large-scale importation of second-hand motor vehicles a comprehensive review of the MVSA needs to be undertaken to ensure there is no erosion of Australian motor vehicle standards to the detriment of consumer welfare.

AADA supports the announcement on 16 January 2014 by the Hon Jamie Biggs MP the Assistant Minister for Infrastructure and Regional Development for a comprehensive review of the MVSA which is currently underway. AADA understands that an options paper to reduce the regulatory burden on business and improve the safety, environmental and anti-theft provisions of the MVSA will be released for comment mid-year.

AADA submits that this review should set a deadline on Australia's commitment to finalising the international harmonizing of national standards through ADRs and/or the adoption of United Nations (UN) standards to reduce the regulatory burden on business and enhance competition.

International price discrimination

An issue raised for consideration in relation to imports is international price discrimination and whether there is a case to effectively regulate international price discrimination while not limiting choice for consumers or introducing other adverse consequences. There are many examples and degrees of price discrimination to be found in Australian and overseas markets.

While there is no single definition of “price discrimination” the issues paper suggests international price discrimination occurs when sellers charge different prices in different countries and those prices are not based on different costs of doing business in each country. A motor vehicle dealer is continually asked and is unable to explain to a consumer the reasons for a price differential of a similar vehicle in an overseas country. The price differential divergence is greater in respect of premium brands.

In the case of a motor vehicle, it is an OEM’s ability to charge without regulatory challenge a different price for a similar vehicle in a different country and whether from an Australian competition policy point of view an examination, justification and regulation of price discrimination should be a permanent feature of the competition policy framework.

AADA suggests that an examination of a motor vehicle price differential would involve complex economic analysis and modeling including:

- average price differences;
- pricing to market;
- country of manufacture;
- limited production and supply of right hand drive vehicles;
- exchange rate fluctuations;
- fiscal policies;
- price elasticity;
- taxes including the LCT;
- tariffs, barriers and other restrictions;
- distribution and shipping costs;
- consumer purchase incentives such as salary packaging, low interest financing and rebates;
- product regulation and standards; and
- population density.

AADA submits that there is a strong case to regulate international price discrimination in certain industries balanced against the objectives of promotion of competition and increased regulatory and compliance burden.

We note the Canadian Government intends to introduce legislation to address price discrimination between Canada and the United States where it cannot be justified by higher operating costs in that country, and to empower the Commissioner of Competition to enforce the new framework. We understand the proposed changes to competition law will be directed at companies with market power and may require multinational suppliers to provide detailed cost justification for higher cross border price differentials. A study analysed 4000 product-level prices of a large grocery chain that operates in both countries and concluded that distributors were pricing to market.

COMPETITION LAWS

The importance of the policy objective of the CCA is clearly stated in section 2:

“The object of the Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provisions for consumer protection”

There have been numerous reviews, reports and inquiries of competition laws and the question has been asked whether the competition laws are working effectively to promote competitive markets, given increasing globalization, changing market and social structures, and technological change.

AADA's response to this question is contained in the paragraphs addressing:

- markets;
- definition of small business;
- misuse of market power;
- unfair and unconscionable conduct in business transactions; and
- agreements between suppliers and customers.

Markets

Under the CCA market is a market in Australia where competition takes place and the question has been asked that given the structural changes in the economy over time do the definitions of market operate effectively, and do they work to further the objectives of the CCA.

The use of the internet has enabled businesses and consumers to acquire goods and services across State and Territory borders and across countries. It allows customers to browse, compare prices and buy a motor vehicle from dealers across the country and overseas. The use of the internet transcends markets over which Australia has no jurisdiction and the policy issue is not competition or definition of market but an awareness of, and protection of, the rights and obligations of a motor vehicle dealer both as a SME and a consumer.

Definition of small business (SME)

AADA in its submission to the Treasury dated 23 May 2014 on the proposal to appoint a Small Business and Family Enterprise Ombudsman referred to the need for a definition of a SME without reference to definitions based on thresholds, concessions and past policy decisions. In terms of the competition law framework AADA submits that a SME is also a "consumer" and should be afforded the protection of applicable competition law provisions.

AADA submits that for the purposes of competition policy and law a motor vehicle dealer should be classified as a SME based on the relative size in business to business dealings with an OEM global motor vehicle manufacturer.

Misuse of market power

The misuse of market power provisions are to be found in section 46 of the CCA and prohibits a business with a substantial degree of power in the market from using that power for the purpose of eliminating or substantially damaging a competitor or to prevent a business of entering into a market.

A review of section 46 involves consideration of whether an appropriate way of modernising Australia's competition policy on abuse of a dominant market position should move from the current purpose-based test to an effects-based test. AADA is aware of arguments that there has been too little emphasis on the

economic impact or the effects of the conduct on the market. Rather, the focus has been on the legal form of the conduct.

AADA submits the adoption of a methodology based on rigorous economic analysis in examining the effects of anti-competitive conduct should be given careful consideration in terms of any additional compliance and regulatory impositions on an already highly competitive motor vehicle retail industry sector.

Unfair and unconscionable conduct in business transactions

The Terms of Reference ask the review panel to examine the previous reforms in 2010 that deal with unfair and unconscionable conduct but insofar as they relate to small business in recognition that not all parties have equal bargaining power.

We note the Hon Bruce Billson MP, Minister for Small Business has requested separate formal submissions on this issue by 1 August 2014.

AADA submits that protections against unfair contract terms and unconscionable conduct applicable to consumers under the ACL be extended (as is relevant) to a motor vehicle dealer defined as a SME regardless of size.

A major concern has been the lack of statutory guidelines to facilitate the evolution of the meaning of unconscionable conduct.

Agreements between suppliers and customers

We are aware of situations where the performance of a dealer in meeting OEM sales targets is dependent on and linked directly to the dealer entering into a separate agreement to source finance from a third party even though better terms and conditions are available from other parties. This, in effect, is third line forcing and the fear of reprisals, cost of instigating proceedings, and lack of access to alternate dispute resolution mechanisms has resulted in no action being taken.

Codes of conduct – Setting behavioural standards and providing for dispute resolution

The codes of conduct applicable to AADA members are the mandatory Franchising Code under the CCA and the proposed Voluntary Code of Practice and Automotive Industry Agreement on access to service and repair information. AADA is of the view that the Franchising Code has assisted in regulating the conduct between an OEM and a motor vehicle dealer but the lack of precedent as to the meaning of acting in legitimate commercial interests and unconscionable conduct has resulted in unacceptable behavior in a number of instances.

It is important to note that under the Franchising Code a “motor vehicle dealership agreement” is specifically defined as a franchise agreement and therefore subject to the Franchising Code. A motor vehicle dealership means a businesses of buying, selling, exchanging or leasing motor vehicles that is conducted by a *person* other than a person who is only involved as a credit provider, or provider of other financial services, in the purchase, sale, exchange or lease (emphasis added).

There is no reference in the Code to the size of the motor vehicle dealership and AADA submits that the panel in its review of extension of consumer protection provisions should give careful consideration to the definition of a SME and it should include a “motor vehicle dealership”.

The proposed amendments to the Franchising Code and the CCA released by the Government in April this year were welcomed by AADA and addressed a number of concerns raised by motor vehicle dealers during the review of the Franchising Code by Alan Wein in 2013.

AADA has been involved in discussions with the Federal Chamber of Automotive Industries (FAI) and other industry bodies in the development of a voluntary code of practice concerning access to manufacturer service and repair information. This issue arose because of the complexity of design of a modern motor vehicle incorporating on board computers and diagnostic systems. This followed a recommendation by the Commonwealth Consumer Affairs Advisory Council (CCAAC) in its final report dated 27 November 2012 to find an industry led-solution rather than intervention by Government regulation.

Under the guidance of the Chairman of the CCAAC Colin Neave AM a draft Automotive Industry Agreement on Access to Service and Repair Information for Motor Vehicles and a FCAI Voluntary Code of Practice committing to the principles in the agreement has been developed within a relatively short timeframe and is expected to be finalised shortly.

Remedies, powers and pecuniary interests

We note the ACCC has a range of powers as part of its competition enforcement toolkit and it has been asked whether those powers, penalties and remedies are effective in furthering the objectives of the CCA.

AADA submits that consideration be given to the level of resources required to allow the ACCC to respond quickly to issues and consideration be given to levels of enforcement in the framework to enable issues to be resolved without jeopardising the ability of a SME to continue business with a supplier. The level of enforcement against directors, senior management and staff and their behavior needs to be reviewed.

The question of confidentially including confidentially of information in allowing a SME to bring an issue forward is also seen as crucial element of the competition policy framework. A shield of protection needs to be given to a SME in resolving competition issues.

Dispute resolution and private enforcement

The issues paper asks for comments on the experiences of SMEs in dealing with the ACCC and any factors that might make it difficult for a SME to enforce their rights or otherwise take action in relation to in relation to competition issues.

AADA is unaware of any member having an unsatisfactory or unacceptable dealing with the ACCC.

The three major dispute resolution mechanisms available to a SME include ombudsman, tribunals and civil courts.

There are many reasons including loss of productivity, fear of commercial reprisals and lack of confidentiality in preventing a SME from enforcing their rights or taking action in regard to competition and other issues.

We agree with the comment that in the case of a SME such as a motor vehicle dealer Australia's civil justice system is too slow, too expensive and too adversarial. This together with a lack of statutory precedent as to the meaning of "unconscionable conduct" and "acting in legitimate commercial interest" seek to deny access to justice.

Alternate dispute resolution mechanisms should also be considered and in the case of the Franchising Code AADA would support the appointment of an industry specific ombudsman as a Commonwealth-wide advocate for a SME being a motor vehicle dealer. AADA's views on such an appointment and access to the ombudsman are contained in our submission to the Small Business Ombudsman and Procurement Unit of the Treasury on 23 May 2014.

We believe there is also scope for industry specific private representation and draw your attention to the *Motor Vehicle Dealers and Repairers Act 2013* (NSW) which commenced on 27 November 2013. The Act allows a "motor industry group" to apply to the Small Business Commissioner for assistance in dealing with a dispute with a manufacturer on behalf of a dealer or class of motor dealers.

AADA and other parties are closely following the ACCC proceedings against Coles for unconscionable conduct towards 200 of its smaller suppliers. An important aspect was the degree of confidentiality granted to SME suppliers to enable proceedings to commence. The behavior of senior personnel in threatening commercial consequences is also the subject of proceedings.

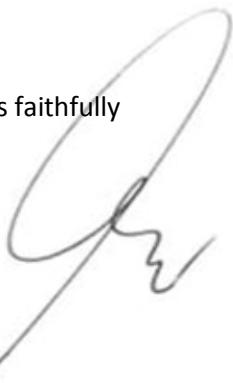
ADMINISTRATION OF COMPETITION POLICY

The key question raised is whether the competition-related institutions are functioning effectively and promoting efficient outcomes for consumers and maximum scope for industry participation.

The ACCC needs to be allocated sufficient resources to enable it to identify, commence and conclude investigations quickly.

AADA would welcome the opportunity to contribute further to this review and if you require additional information or clarification of any matters raised please do not hesitate to contact me on 03 9576 9944

Yours faithfully



Patrick Tessier
Chief Executive Officer



Australian Automotive Dealer Association Ltd.

ACN: 167 598 085

The Sir Jack Brabham Automotive Centre of Excellence

8/2728 Logan Road, Eight Mile Plains, Brisbane Queensland 4113

13 February 2014

CEO - Patrick Tessier
P.O. Box 4072 McKinnon Victoria 3204
+61 3 9576 9944
0412 685 857
ptessier@aada.asn.au

Strategic Operations Director
Steve Ghost
0411 246 315
sghost@aada.asn.au

Policy Director
Michael Deed
07 3237 8711
mdeed@aada.asn.au

Directors

Chairman & QLD - Ian Field
0419 729 763
ifield@aada.asn.au

NSW - Terry Keating
0418 668 277
terry.keating@jtfossey.com.au

VIC - Leigh Smith
0411 266 977
leighsmith@gws.com.au

WA - Colin Lane
0407 903 016
colin@thelanegroup.com.au

SA - Hillar Puv
0418 803 691
hpuv@formulamg.com.au

TAS - Marcus Birrell
0407 872 052
marcusb@motors.com.au

ACT - Richard Rolfe OAM
0411 189 714
richard.rolfe@audicc.com.au

NT - Dave Russell
0417 926 337
daver@bridgetoyota.com.au

Appointed - Martin Ward
0418 855 455
mward@aapeagers.com.au

Appointed - Geoff Pickering
0417 197 655
geoff@pickering.com.au

Appointed - Mike Claridge
0402 131 660
mclaridge@claridgeholden.com.au

Appointed - Paul Warren
0418 233 332
paul.warren@peterwarren.com.au

Appointed - Anthony Altomonte
02 9418 5588
aaltomonte@alto.com.au

Appointed - Lou DiVirgilio
0417 755 200
lou.divirgilio@dvg.com.au

Secretary - Paul Moni
0419 481 000
paul@monisolutions.com

Legal Advisers - HWL Ebsworth
estents@hwle.com.au

Business Advisers - BDO Australia
mark.ward@bdo.com.au

Australia's Automotive Manufacturing Industry
Productivity Commission
LB2 Collins Street East
Melbourne VIC 8003

Email: automotive@pc.gov.au

AUSTRALIA'S AUTOMOTIVE MANUFACTURING INDUSTRY PRODUCTIVITY COMMISSION POSITION PAPER JANUARY 2014 AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION LIMITED (AADA) ACN 167 598 085

This submission from AADA is in response to the invitation by the Productivity Commission to provide written comments on its Position Paper dated January 2014. We appreciate this opportunity to comment on behalf of Australia's franchised new car dealers and direct our comments to the Commission's Draft Finding 3.2 and the related information request – "The policy rationale for prohibiting the large-scale importation of second-hand motor vehicles into Australia is weak." We note that such vehicles may be referred to as either used imports, or parallel or grey imports.

2 AADA

2.1 The Australian Automotive Dealer Association Limited ACN 167 598 085 was registered under the *Corporations Act 2001* in Queensland on 17 January 2014 to represent the interests of Australia's franchised new car dealers. There are over 1500 dealers in Australia that operate something in the order of 2600 new vehicle outlets. Dealerships range from family-owned small businesses in regional centres to larger businesses and public companies conducting operations in capital cities and across the States and Territories of the Commonwealth.

2.2 Dealers generally operate under non-secure franchise agreements with suppliers being manufacturers and importers. Some of the agreements have no fixed term and can terminate after 12 months. The retail market in which dealers operate is characterised by low-margins, intense competition, fragmentation (over 66 brands), demonstrated by a consumer preference for smaller cars and sports utility vehicles (SUVs). Many existing long term franchise agreements with major manufacturers are due to expire in the next few years and together with the impending cessation of manufacturing in Australia by Ford, Holden, and Toyota have crystallised dealer concerns about the long term sustainability of their businesses.

3 AADA STATEMENT

AADA members would not support a recommendation by the Productivity Commission to the Government to adopt a policy liberalising the large-scale importation of second-hand vehicles into Australia. By global standards Australia's motor vehicle market is small, open, and highly competitive with annual sales of new vehicles at just over 1.1 million units. Consumers have had the benefit of this open market through lower vehicle prices, enhanced vehicle equipment and safety levels, fixed price servicing, and extended warranty periods. This policy has the potential for Australia to become a dumping ground for sub-standard vehicles and could result in a substantial loss of new vehicle sales and the closure of traditional dealership facilities.

4 EXECUTIVE SUMMARY

- 4.1 AADA members are not afraid of competition, operate in a highly contestable environment and ask for a level playing field in terms of regulatory, taxation and other statutory compliance requirements. The structural changes in the automotive value chain associated with the impending cessation of manufacturing in Australia by Ford, Holden and Toyota, and the adoption of a policy by the Government liberalising the importation of large volumes of second-hand vehicles may not necessarily result in a substantial net benefit to the community.
- 4.2 AADA supports the Treasury recommendation for the abolition of the luxury car tax (LCT) and submits that the Productivity Commission should, as part of this review, consider whether the LCT acts as a barrier to trade in a manner similar to the \$12000 special customs duty. While AADA would not support any recommendation to the Government for the adoption of a policy to liberalise the large-scale importation of second-hand vehicles these items should be considered as a package of measures for abolition in the event the policy was adopted.
- 4.3 AADA submits the *Motor Vehicle Standards Act 1989* (the *MVS Act*) and *Regulations* should be amended to apply non-discriminatory vehicle standards to both new and used vehicles when they begin to be first used in transport in Australia. As a minimum those standards should be the Australian Design Rules (ADRs) or appropriate international equivalent. Enforcement of those standards should preclude the need for additional consumer protection.

5 COMMISSION'S DRAFT FINDINGS

- 5.1 The Commission's Draft Finding 3.2 suggests the policy rationale for prohibiting the large-scale importation of second-hand vehicles into Australia is weak and is seeking further information on the benefits and costs of removing restrictions to allow entry of large volumes of such vehicles into the Australian market. The Commission noted that appropriate regulatory measures are required to ensure that consumer protection, community safety and environmental standards are maintained.

5.2 The draft finding and information request are reproduced below for your convenience.

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.

Information Request 3.2

The Commission is seeking further information on the benefits and costs of removing restrictions on the on the large-scale importation of second-hand vehicles. In particular:

- *what would be the potential benefits of removing these restrictions?*
- *how could compliance with Australian safety and environmental standards be most efficiently ensured?*
- *if benefits are expected to exceed costs, how should those restrictions be removed and over what timeframe?*

6 CONTEXT

6.1 Australia's trade liberalisation policies have resulted in one of the most open and competitive markets in the world and has brought many benefits to the community. As most of these benefits have been enjoyed by the community it is doubtful there will be a further substantial net benefit if the Government adopts a further policy of liberalising the large-scale importation of second-hand vehicles into the country.

6.2 Australia's new car market is sub-optimal by global standards with sales of new vehicles just over 1.1 million units in 2013 or 1.4 per cent of the 82 million passenger and commercial vehicles sold globally that year. Passenger cars accounted for 49.5 per cent of the market and sports utility vehicles (SUVs) around 29.4 per cent. It is estimated that nearly 90% of new vehicles sold in Australia are imported. The average age of all vehicles registered in Australia is around 10 years and has remained constant since 2008.

7 CONSIDERATIONS

7.1 AADA recognises Australia's international trading obligations and notes its leadership focus for the G20 Presidency this year as stated by the Prime Minister in his address to the World Economic Forum at Davos on 23 January 2014. He said "At the very least, the G20 should renew its resolve to undo any protectionist measures put in place since the Crisis."

7.2 AADA members are not afraid of competition and operate in a highly contestable environment and ask for a level playing field in terms of regulatory, taxation and other statutory compliance requirements. The adoption of a policy by the Government to liberalise the large-scale importation of second-hand vehicles would require a transition period to allow stakeholders in the automotive

value chain to adjust and respond to the impact of any import surge. This situation should be monitored to see if some form of temporary protection is warranted because of unintended consequences.

7.3 *Second-hand vehicle import duty*

- 7.3.1 We understand the specific duty of \$12000 was introduced for a number of reasons including a response to concerns about the importation of used vehicles from Japan and the impact on local manufacturing. Vehicles cannot be imported into Australia without a Vehicle Import Approval and the special duty is now regarded by the Customs as essentially redundant.
- 7.3.2 AADA believes that the specific customs duty of \$12000 on imported vehicles and the LCT act in similar ways and should be regarded as barriers to trade and may be in breach of Australia's international obligations under the World Trade Organisation (WTO).
- 7.3.3 While AADA would not support any recommendation to the Government for the adoption of a policy to liberalise the large-scale importation of second-hand vehicles, AADA submits that the specific customs duty and the LCT should be considered by the Productivity Commission as a package of measures to be repealed simultaneously in the event the Commission recommends a policy change.

7.4 *Regulatory requirements for importing second-hand vehicles*

- 7.4.1 Regulatory requirements for importing vehicles into Australia are governed by the *Motor Vehicle Standards Act 1989* and associated *Regulations*.
- 7.4.2 The objects of the *MVS Act* are:
- to achieve uniform vehicle standards to apply to new vehicles when they begin to be first used in transport in Australia; and
 - to regulate the first supply to the market of used imported vehicles.
- 7.4.3 The *MVS Act* regulates the import of used vehicles by limiting the application of a used import plate to a single vehicle and in the case of registered automotive workshops to not more than 100 vehicles per year in any category. The Department of Infrastructure and Regional Development is carrying out a review of the *MVS Act*.
- 7.4.4 The importation of large volumes of second-hand vehicles sourced from various countries should not compromise existing consumer protection, safety, and environmental standards. For example, AADA members are aware of large-scale operations in a certain country that specialise in the fraudulent alteration of odometer readings prior to the export of vehicles. Consumer access to vehicle service and accident history in a foreign country is almost impossible and any declaration by an importer at the "gate" has to be taken at face value.
- 7.4.5 AADA submits that the Productivity Commission consider a recommendation that the States and Territories adopt a uniform approach to the first time registration of a used imported vehicle in Australia, and the requirement for an annual vehicle safety inspection of all used and new vehicles.

- 7.4.6 Australia should not become a dumping ground for vehicles that do not comply with Australia's safety and environmental standards. AADA submits that a used imported vehicle should comply with identical Australian Design Rules (ADRs) that apply to new vehicles. Enforcement of those standards should preclude the need for a "consumer information notice" to be attached to each vehicle. This notice is required to be attached to a vehicles imported under the Registered Automotive Workshop Scheme (RAWS) – compliance with ADRs, service and replacement parts may not be available from a franchised dealer, vehicle handbook in English.
- 7.4.7 AADA submits the *Motor Vehicle Standards Act 1989* and *Regulations* should be amended to apply non-discriminatory vehicle standards to both new and used vehicles when they begin to be first used in transport in Australia. Those standards should incorporate the ADRs or appropriate international equivalent. Enforcement of those standards should preclude the need for a consumer information notice.
- 7.4.8 The policy objectives of consumer protection, community safety and environmental protection would require the allocation by Government of additional resources for surveillance, compliance and auditing.

7.5 *Benefits and costs of removing restrictions*

- 7.5.1 The economic benefits and costs of adopting a policy to liberalise the importation of large volumes of second-hand vehicles are difficult to quantify. While there are claims this may lead to increased competition, greater choice and lower prices to the consumer Australians have already enjoyed the benefits of an open economy and any further benefit may be marginal.
- 7.5.2 The market in which dealers conduct their businesses is open and highly competitive where margins average in the order of 1.5 per cent. Return on investment for the level of risk assumed is considered by many advisors to be marginal. Consumers have been the beneficiaries of this intense competition through lowering of prices and the introduction of vehicles with additional safety and other features as well as extended warranty and fixed price servicing.
- 7.5.3 Consumers have also had the benefit of this highly competitive environment to a greater degree than in many other countries. Consumer choice is not lacking with around 66 brands on offer in a market of just over one million units in annual sales. In the US for example, there are 51 brands in a market of around 13 million units annually.
- 7.5.4 Consumers are at risk in thinking that a used import may have the backing of the manufacturer in terms of product recourse, warranty, spare parts and service backup. There is a further risk in a situation where a vehicle is "passed-off" by an import entity as having manufacturer and franchise dealer product support.
- 7.5.5 AADA believes adoption by the Government of a policy to liberalise the large-scale importation of second-hand vehicles will present dealers with additional challenges and may not allow them to transition their businesses to absorb the impact of any import surge.

- 7.5.6 Under existing franchise agreements many AADA members have made significant investments in promoting brands through marketing and advertising, and in showroom and workshop facilities. A new importer entering into the market can leverage off the goodwill generated by the franchised dealers and may initially lower prices in order to gain market share. This may result in a displacement effect where imported vehicles do not replace older less safe vehicles but rather new vehicles.
- 7.5.7 The average age of vehicles in Australia's fleet is around 10 years compared to New Zealand - 12.7 years, Canada - 9 years and the United States - 11 years. The displacement effect on new vehicle sales has the potential to increase the age of Australia's fleet over time.

7.6 *Aging of the vehicle fleet*

- 7.6.1 There were almost 17.2 million vehicles including motorcycles registered in Australia in 2013. Passenger vehicles accounted for 75.7 per cent of all vehicle registrations. The average age of all vehicles registered is 10 years and has remained constant since 2008. The vehicle fleet in New Zealand has an average age of 12.7 years and is one of the oldest in the developed world.
- 7.6.2 The liberalisation of trade of used imports (mainly Japanese) into New Zealand is a useful guide in determining any effect on fleet age. The import pattern was characterised by an initial import peak of vehicles in an "age band" in the early years. Those vehicles remain in the fleet and have not been scrapped or replaced with newer vehicles, and are partly responsible, together with increased vehicle ownership retention rates, for a lengthening of the age of the fleet. If this pattern was replicated, Australia could become a dumping ground for older vehicles and the fleet would not be rejuvenated with new vehicles incorporating the latest safety and environmental technologies.

7.7 *Luxury car tax (LCT)*

- 7.7.1 The case for the abolition of the LCT has been well established and accepted by the Treasury as one of the taxes that should, in time, "be abolished and their revenues replaced by taxes applying to the four robust and efficient tax bases". Indeed, the former Secretary to the Treasury Ken Henry has referred to it as our 'truly absurd luxury car tax.' The Productivity Commission has indicated that because of the effect on Government revenue its removal be considered as part of a broader package of tax reform measures.
- 7.7.2 AADA submits that the Productivity Commission should as part of this review consider the LCT as a barrier to trade in the same manner as it views the \$12000 special customs duty and together they should form part of a package of trade liberalisation measures in any recommendation to the Government for the adoption of a policy to liberalise the large-scale importation of second-hand vehicles into the country.

8 CONCLUSION

AADA members would not support a recommendation by the Productivity Commission to the Government to liberalise the large-scale importation of second-hand vehicles into Australia. Consumers are already reaping the benefits of one of the most open and intensely competitive markets in the world through lower prices, additional vehicle safety and equipment levels, extended warranty periods, fixed price servicing, and a choice of 66 brands.

Any recommendation by the Productivity Commission to the Government to adopt such a policy should be accompanied by a package of measures to include non-discriminatory compliance with Australian Design Rules or appropriate international equivalent and the simultaneous abolition of the LCT and special customs duty.

PATRICK TESSIER

Chief Executive Officer

Office: 03 9576 9944

Mobile: 0412 685 857

Email: patrick@aadaconvention.com.au

IAN FIELD

Chairman

Office: 07 3374 2166

Mobile: 0419 729 763

Email: ifield@qautomotive.net.au