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Consumer Law Enforcement and Administration  
Productivity Commission  
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**FEDERAL CHAMBER  
OF AUTOMOTIVE  
INDUSTRIES**

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Dear Commissioner

## **CONSUMER LAW ENFORCEMENT AND ADMINISTRATION**

The Federal Chamber of Automotive Industries (FCAI) is the peak industry body for the manufacturers and importers of passenger motor vehicles, motor cycles and light commercial vehicles in Australia. The FCAI members, which account for over 99% of total sales of new motor vehicles sold in Australia, have significant interaction with the administration of the Australian Consumer Law (ACL) through the operational side of their respective businesses.

Australian industry and consumers need a uniform national consumer law and the adoption of the ACL by the States and Territories has certainly assisted in that respect. As the ACL continues to bed down, industry, consumers and all levels of government will be better positioned to implement the law in a consistent manner. In effect the law has only been in operation for around six years at this point, so it would be expected that the application and agreed understanding of the law is still evolving. Further, it should be acknowledged that even with a template approach outcomes will differ due to the unique circumstances in similar matters. Overall the FCAI is of the view that the current model is appropriate.

FCAI has also raised, on previous occasions, that a key improvement in the operation of the ACL is achieved through all levels of government continuing to educate consumers as to their rights under the law.

The FCAI notes that the Productivity Commission Issues Paper refers to the value of the establishment of a database of complaints. The FCAI also notes the reference to the NSW Fair Trading Complaints Register which has only recently been released. The Commission should be aware that this Register has, according to the NSW Government, sufficient rigidity to weed out vexatious complaints which is important. One of the issues with such a register, and with any national register replicating this type of approach, is the linking of national brand names to individual traders. This occurs in many situations such as franchised businesses where one particular operator, who may be far from indicative of all the other traders operating under that brand name, can cause damage to the overall brand. Careful consideration of these impacts is necessary before developing any publically available national register.

FCAI notes the Productivity Commission comment with respect to the increased prevalence of on-line purchasing from overseas where there is no Australian based distributor. The lack of access to remedies in these circumstances would be replicated in instances of parallel imports of near new motor vehicles as is currently proposed by Federal Government. The FCAI believes the Australian Consumer Law (ACL) is among the most stringent in the world in terms of consumer guarantees. The ACCC has previously warned that consumers who purchase goods offshore are, in many cases, outside the protection of the ACL<sup>1</sup>. This would be the case for personally imported motor vehicles.

FCAI members do, from time to time, sell product online. In contrast to the above, in these instances the consumer receives the full support for the product backed by the brand in Australia as, although purchasing online, they are purchasing from an Australian distributor. Not all on-line sales will leave the consumer lacking the protection and support of the ACL, only consumers who, perhaps unwittingly, purchase from those companies or individuals that are free riding on the investment by the brand in the Australian market.

The products distributed by members of the FCAI are subject to a specialist safety regime through the Department of Infrastructure and Regional Development (DIRD). From the FCAI perspective this system is working well in respect of imports of new motor vehicles by FCAI members. The law is now nationally consistent which ensures that vehicles approved for importation are compliant with registration requirements in each state and territory.

With respect to the product recall requirements, the FCAI members operate according to the FCAI Code of Practice for the Conduct of an Automotive Safety Recall and the ACL. The FCAI has regular meetings with DIRD to ensure that the operation of the Code is meeting expectations and DIRD in turn liaise with the ACCC on the overall administration and implementation of the consumer law in this respect.

FCAI have identified one issue that could be improved in the administration of recalls, which is the ability of the industry to campaign vehicles subject to a particular recall. In some instances the vehicle subject to recall has been through three or more owners by the time the need to campaign the vehicle is identified. FCAI members will, if they have current owner name and address, encourage that consumer to present the vehicle for campaign, or in the case of a recently sold vehicle will undertake the campaign when the vehicle is next presented for service.

However, where the FCAI member does not have the name and address of the current owner they are required to use the National Exchange of Vehicle and Driver Information System (NEVDIS), which is a central database of all owners, their vehicles and their registered address supplied by each of the state and territory registration authorities. Unfortunately, members are not allowed to publicise inducements (such as courtesy vehicles) to encourage persons to present their vehicle for campaign if contacted through the NEVDIS pathway. Added to this complexity the contact details are often incomplete even through this path.

After sending three notices to the address details provided by NEVDIS a final step to contact owners is to undertake a public advertising campaign.

Using these methods the vast majority of vehicles are successfully campaigned. However it is not always possible to encourage owners of older vehicles (the vehicles could be 8+ years old with a 2<sup>nd</sup> or 3<sup>rd</sup> owner) to present their vehicles to a dealer for completion of the campaign. The FCAI Recall Code requires member brands to provide the vehicle details to the state and territory registration authorities, who have the relevant regulatory responsibility and authority for vehicle safety, for their action.

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<sup>1</sup> <http://www.accc.gov.au/consumers/sales-delivery/buying-parallel-imports>

The FCAI is discussing with DIRD how to engage with the state and territory registration authorities on actions that could be taken to address un-campaigned vehicles such as refusing re-registration or refusing the transfer of registration if the particular vehicle has not been campaigned. FCAI is unaware of the state and territory appetite, nor the legal aspects that may come into play, with this suggested approach. Another approach may be that the relevant state/territory registration authority contact owners and point out the legal requirement for the vehicle to remain compliant with the Australian Design Rules (as outlined in each state/territory version of the Australian Vehicles Standards Regulation), and that this recall campaign is conducted in order to ensure that the vehicle remains compliant. However, not all recalls are ADR related, so this may assist in only certain instances.

If there are any questions or further detail that you would like on the above please feel free to contact me

Yours faithfully

**Tony Weber**  
Chief Executive