

ANDREW J. McKELLAR
CHIEF EXECUTIVE



21 April 2010

FEDERAL CHAMBER
OF AUTOMOTIVE
INDUSTRIES

ABN 53 008 550 347

The Chair
Senate Standing Committee on Economics
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

GPO BOX 313, CANBERRA ACT 2601

10 RUDD STREET, CANBERRA CITY

ACT 2600 AUSTRALIA

TELEPHONE 02 6229 8212

FACSIMILE 02 6257 4500

Dear Senator

Trade Practices Amendment (Australian Consumer Law) Bill (No.2) 2010

The Federal Chamber of Automotive Industries (FCAI) is the peak industry body representing vehicle manufacturers and importers of passenger cars, light commercial vehicles, SUVs and motorcycles in Australia. The FCAI has prepared this submission in response to the Senate Economics Committee's inquiry into the *Trade Practices Amendment (Australian Consumer Law) Bill (No.2) 2010*. The submission addresses the likely impact of the proposed new sections 131 and 132 in relation to the requirement for a supplier to report instances where that supplier's consumer goods have been associated with the death, serious injury or illness of any person (the "Provisions").

The FCAI, after considering advice it has received on the matter, believes that the Provisions are likely to require suppliers of motor vehicles to report instances involving death, serious injury or illness associated with any motor vehicle (of which they become aware) regardless of the cause of the circumstances and not withstanding a range of other existing arrangements regulating motor vehicle safety and motor vehicle accident reporting.

The FCAI supports the aims of government in investigating and reviewing current consumer protection laws. However, given the:

- (i) deliberately broad nature of the drafting of the Provisions;
- (ii) number of motor vehicles currently in use in Australia; and
- (iii) number of incidents involving motor vehicles that would satisfy the reporting requirements of the Provisions,

the impact of the currently proposed Provisions would require our members to undertake an extremely difficult, if not impossible, task.

I note that in relation to motor vehicles, a substantial Federal and State framework already exists which can readily provide the information sought by the Provisions – in a significantly more comprehensive manner than could be achieved by requiring suppliers of motor vehicles to report under proposed new sections 131 and 132. This framework includes comprehensive safety related legislation and controls, together with incident reporting mechanisms, which provide for a comprehensive and effective means by which to collect the required information, in a manner which meets (and likely exceeds) the requirements and objectives of the Provisions.

Some of these mechanisms include:

Motor Vehicles Standards Act 1989 (MSVA)

The aim of the MSVA is to achieve uniform vehicle standards for new vehicles and to regulate the first supply of used imported vehicles into the Australian market. Under section 5 of the MSVA, the first objective of having uniform vehicle standards is to make road vehicles safe for use.

Every vehicle imported or manufactured in Australia intended for road use is required to comply with the Australian Design Rules (ADRs) which provide “national standards for vehicle safety, anti-theft and emissions. The ADRs are generally performance based and cover issues such as occupant protection, structures, lighting, noise, engine exhaust emissions, braking and a range of miscellaneous items.

The current standards, the Third Edition ADRs, are administered by the Australian Government under the *Motor Vehicle Standards Act 1989*. The Act requires all road vehicles, whether they are newly manufactured in Australia or are imported as new or second hand vehicles, to comply with the relevant ADRs at the time of manufacture and supply to the Australian market. When a road vehicle is first used on Australian roads the relevant state or territory government's legislation generally requires that it continue to comply with the relevant ADRs as at the time of manufacture.”

<http://www.infrastructure.gov.au/roads/motor/design/index.aspx>

State and Territory Road Safety Regulation and Reporting Requirements

Each State and Territory has reporting requirements that require the driver of a vehicle involved in an accident to report the incident to police (generally within 24 hours) where injury to person or property has occurred. The State and Territory police therefore have a comprehensive database of all accidents involving injury and death and are best placed to investigate the cause of the accident and whether factors other than vehicle defects were

most likely the contributing factors. In the case of death, the matter is generally investigated by the coroner and if the vehicle is considered to be a contributing factor, recommendations are documented in the coroner's report for further investigation.

Assessing police central records either directly or through the Road Traffic Authorities in each State and Territory would provide a single, investigated and therefore informative source to identify potential product failure involving motor vehicles.

The State Traffic Authorities have a responsibility for improving road safety. For example, the NSW RTA is the NSW State Government agency responsible for improving road safety and testing and licensing drivers and registering and inspecting vehicles. The NSW Centre for Road Safety looks at emerging road safety technology like electronic stability control and in cooperation with interstate and national bodies seeks to introduce advances in safety technology such as improved child restraints, Australian Design Rule changes and safety classifications for vehicles. The NSW Centre for Road Safety consults broadly and utilizes the expertise available within the community, insurance bodies, NSW Police and the Motor Accidents Authority. The Centre will play a key role in achieving the target to reduce the loss of life on NSW roads. (<http://www.rta.nsw.gov.au/roadsafety/aboutthecentre.html>)

Code of Practice for the Conduct of an Automotive Product Safety Related Recall Campaign (the "Recall Code")

Where an FCAI member receives a report of an incident that involves a possible safety related defect in any of its products, the member is required to immediately instigate an investigation to determine whether a safety related defect does in fact exist. Where a safety related defect is found to exist, the member is required to conduct a recall campaign following the procedures set out in the Recall Code. A campaign can be conducted prior to any known consequences of the defect causing harm to any occupant of the vehicle model under recall and as such is a preventative measure to avoid the risk of injury or death occurring as a result of any vehicle defect.

Conclusion

In the light of these existing product safety regulation and reporting requirements, the FCAI submits that proposed new sections 131 and 132 impose a significant additional administrative and compliance burden on suppliers of motor vehicles but without any net benefit in terms of the intended public policy objectives underpinning the Provisions. Accordingly, the FCAI urges that the Committee give consideration to options which would alleviate this additional reporting requirement without detracting from the broader application of the Provisions or other relevant amendments proposed in the Bill. These might include:

- amending subsections 131(2) and 132(2) so as to include a new exemption specifying that sections 131 and 132 do not apply in specified circumstances where the reporting of the incident (by any person) to the appropriate authorities is separately required under a law of the Commonwealth, a State or a Territory (of course, it would be necessary to develop a process by which this information is provided to the Commonwealth Minister); or
- amending subsections 131(2) and 132(2) so as to specifically exempt motor vehicles as defined under the *Motor Vehicle Standards Act 1989* (which can be done either expressly, or through a general exemption power in the regulations which goes on to specifically refer to motor vehicles); or
- formally recognising in some manner that the combination of the Recall Code and the existing statutory framework noted above meets the reporting requirements detailed in the Provisions (perhaps this is more likely achieved through appropriately drafted regulations).

I look forward to continued dialogue in regard to the Provisions, and am happy to make myself available to discuss any queries arising from this submission.

Yours sincerely

(...)

ANDREW McKELLAR
Chief Executive