



**FEDERAL CHAMBER
OF AUTOMOTIVE
INDUSTRIES**

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Committee Secretary
Senate Standing Committees on Rural
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Dear Committee Secretary,

Biosecurity Amendment (Advanced Compliance Measures) Bill 2023

The Federal Chamber of Automotive Industries (FCAI) is the peak industry body representing the importers and distributors of new motor vehicles and motorcycles in Australia. Our members represent brands that supply over 99% of all new passenger, SUV and light commercial vehicles and motorcycles each year and a list of members can be found on our website at www.fcai.com.au.

The FCAI supports the underlying principle of a shared responsibility for Australia's biosecurity regime and engages regularly with the Department of Agriculture, Fisheries and Forestry (DAFF) in identifying opportunities for enhanced biosecurity outcomes. While imports of new motor vehicles have always required surveillance by the DAFF on arrival to ensure there is no evidence of biosecurity risk material (particularly seeds), of late the new motor vehicle industry has faced significant challenges in ensuring all products arrive in Australia free from biosecurity risk material. There are a range of reasons for this ranging from transshipment through to short-term failure of export procedures, and the industry is continuing in its efforts to ensure that vehicles are properly inspected and treated (if necessary) offshore prior to loading for export to Australia.

That said, as is noted in the guidance provided with the amendment Bill, the concept of an Appropriate Level of Protection for Australia is an important one for importers of "break bulk" cargo such as new motor vehicles. This cargo is not (in the large majority of cases) protected within a six-sided container which prohibits most risk material attaching to the products after packing. New motor vehicles are to a large extent exposed to the elements from the time they leave the factory production line until they are loaded into the roll-on roll-off (RORO) vessel, and then again when they are unloaded in Australia awaiting surveillance and, if necessary, inspection by DAFF officers. While not in essence a high-risk product, the storage and conveyance to Australia does hold risks.

The Australian import terminals for new motor vehicles also provide DAFF approved biosecurity cleaning services to the new motor vehicle industry at the terminal. These terminals handle the bulk of biosecurity cleaning, and after cleaning the vehicles are inspected by DAFF to ensure they are suitable for release. While post arrival cleaning is effective, compared to zero contamination it is not an industry (nor I am sure

Departmental) preference. It is, however, a necessary service for cargo that is exposed to the elements for much of the export-import logistics chain.

We can understand the rationale for the proposed amendment making a number of offences strict liability: to *'ensure that a non-compliance can be addressed swiftly and effectively'* and to *'provide specific and general deterrence, as well as to enable proportionate and appropriate penalties'*¹. The industry's concern is with one section in particular – s 140 (2A) - which is proposed to provide that a person commits an offence of strict liability if the person does not comply with a direction given under section 135(2)(b). Under this section an officer can require a person to export goods from Australia:

*'If a biosecurity officer suspects, on reasonable grounds, that the level of biosecurity risk associated with goods that are subject to biosecurity control is unacceptable'*².

We have 2 main concerns. The first is that if one of our members was served with a notice, it would be extremely difficult, if not impossible for the member to comply with the notice. This is because our members do not have any ability to compel a shipping line to load cargo and take it offshore. Vessels that deliver our members' vehicles are programmed for a particular voyage. Once the vehicles are unloaded the vessel is committed to travel to another place. They cannot simply head back to the Australian port and load up the affected vehicles. In addition, RORO vessels, unlike container vessels, are scarce and there is no scheduled RORO trade for the export of new motor vehicles from Australia.

The second is that, notwithstanding all the work that is being done by the industry to ensure that vehicles are properly inspected and treated (if necessary) offshore prior to loading for export to Australia, the reality is that, for the reasons explained above, it is inevitable that some vehicles will arrive in Australia with low level contamination. As has been the case, and will continue to be the case, these vehicles will be properly treated before they are released. Given this, it would be unfair and inappropriate for a notice to be served by an officer that relates to contaminated vehicles that have arrived and not been treated and for a failure to comply with that notice to be a strict liability offence.

The first concern means that if a notice was issued to one of our members, it is guaranteed that the member will be in breach and liable for a penalty. Offences should not be strict liability in these circumstances. The second concern demonstrates that, at least for our members, the introduction of a strict liability offence, without an assessment of the likelihood that our members will ensure that the vehicles are properly cleaned, and the border protected, will not provide for any increased deterrence.

FCAI is happy to expand on the above to assist the Committee as necessary. Please contact me on 0410 451 342 if you require any further information.

Yours sincerely,

Tony McDonald

Director, Industry Operations

7 July 2023.

¹ Both at p 77 of the Explanatory Memorandum

² S 131 of the Biosecurity Act