

Ford Motor Company of Australia Limited

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The Secretary
Senate Economics Legislation Committee
Room SG-64
Parliament House
CANBERRA ACT 2600



Dear Sir/Madam

Subject: Designs Bill 2002 and the Designs (Consequential Amendments) Bill 2002

Thank you for the opportunity of providing a submission in response to consideration of the abovementioned legislation by the Senate.

Ford Australia is supportive of the overall objective of the legislation and has been an active participant in the long-running review(s) of the Designs Act 1906 (and amendments) which have been conducted in recent years. In essence, the company welcomes the objectives of the new legislation, which should provide more rigorous coverage of registered designs. In response to this greater rigor, Ford Australia believes a stricter eligibility test and reduced registration period represent fair and reasonable trade-offs in providing a balanced package.

However, Ford Australia is disappointed the legislation seeks to exclude spare parts from design registration coverage by way of a "right of repair" entitlement.

We believe the decision to exclude spare parts from design registration coverage was made from the perspective of economic theory, and in the absence of supporting empirical evidence of any demonstrable need. It will also provide no consumer benefits in that those automotive spare parts already design registered are among the cheapest available.

Ford Australia is committed to providing a comprehensive, quality and competitive replacement parts service. It believes the design registration of spare parts insulates intellectual property from those seeking unfair commercial advantage by "boot leg" copying. It has no impact on consumer issues (pricing and safety) which are comprehensively covered by trade practices, consumer and design standards legislation.



Ford Australia - one of the biggest national investors in new product research and development - has utilised the design registration of "must fit/must match" styling parts for some years. It has done so because it can provide for increased production volumes and a broader amortisation of design costs. This in turn helps secure the viability of domestic automotive design and development, assists in the ready provision of a full range of competitively priced replacement parts and also denies counterfeit suppliers the ability to short-cut and profit from somebody else's design work.

The difficulty in separating spare parts from design registration was recognised by the Intellectual Property and Competition Review Committee. In its report, the committee said it did not believe there was a need for further legislative modifications concerning spare parts. In fact, it cautioned against a decision by advising it would be extremely difficult to define a spare part which, if it could be accomplished, was likely to lead to complex and arcane legislation.

Ford Australia believes the "right of repair" exemption contained in the legislation does incorporate complexities. For example, there will be significant difficulties in seeking to demonstrate whether a design registered component, such as a rear spoiler kit, was being manufactured for use in the repair market as opposed to the accessory fitment market.

The Government appears to have recognised the likely difficulties of administering the spare parts exclusion by proposing a formal review before the end of 2005, barely 2½ years away. Ford Australia welcomes this intent to closely monitor the "right of repair" exemption. However, the company believes a sounder public policy approach would be to maintain the status quo and not discriminate against spare parts. This approach would also reflect the fact Ford Australia is unaware of any empirical data or economic modelling work that has been prepared to demonstrate possible benefits which are anticipated to accrue to the wider community from the decision to exclude spare parts from design registration.

Please feel free to call me on (03) 9359 7142 if you have any queries.

Yours sincerely

A handwritten signature in black ink, appearing to be 'RS', followed by a long, horizontal, slightly wavy line that tapers at both ends, serving as a stylized signature or underline.

Russell Scoular
Government Affairs Manager