



## AUTOMOTIVE INDUSTRY GROUP

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### Sydney Motor Show

The 2008 Australian International Motor Show opened today in Sydney. This year there was a strong emphasis from exhibitors on alternate fuel and fuel efficient vehicles. In his opening address, Andrew McKellar, Chief Executive of the Federal Chamber of Automotive Industries predicted another very strong year for vehicle sales despite the economic downturn. Mr McKellar was also critical of the Federal Government passing legislation to increase the luxury car tax. The Motor Show concludes on the 19th October and is taking place at the Sydney Convention and Exhibition Centre, Darling Harbour, Sydney.



To view more photographs, please visit [www.hwlebsworth.com.au](http://www.hwlebsworth.com.au)



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### Vehicle Fuel Efficiency Report

The Federal Government has released a discussion paper that considers potential measures that may be adopted to encourage the uptake of more fuel efficient, low carbon emissions vehicles in Australia. The report evaluates a number of potential measures and calls for public comment in relation to these measures. Following consideration of comments from interested parties, a final report will be prepared for consideration by the Federal Government. The potential measures considered in the discussion paper are complementary to the Carbon Pollution Reduction Scheme that the Federal Government is committed to introducing in 2010.

The paper considers the following potential measures:

1. setting a revised CO<sub>2</sub> emissions standard for new vehicles based on the sales weighted average of annual vehicle sales;
2. develop increased demand for low emissions vehicles through the use of varied stamp duty and registration charges or the provision of direct financial incentives;
3. implementation of measures to increase consumer awareness, such as requiring fuel consumption and emissions data to be presented within vehicle advertising and the introduction for labelling requirements for non vehicle components that impact on CO<sub>2</sub> emissions, such as air conditioners.

A copy of the discussion paper is available at <http://www.environment.gov.au/settlements/transport/>.

Interested parties can make submissions at [vfedpaper@environment.gov.au](mailto:vfedpaper@environment.gov.au) Submissions close on 7 November 2008.

### Re-tooling for Climate Change Program

AusIndustry is implementing a program to assist small and medium sized manufacturers to reduce their environmental footprint. The program encourages the adoption of improved energy and/or water efficiency in their manufacturing processes. The program provides manufacturers with grants between \$10,000 and \$500,000, up to a maximum of one third of the cost of each project.

To be eligible for the grants applicants must:

1. be a non tax exempt company;
2. have or be part of a group that has annual turnover of less than \$100 million in each of the three financial years before the year that the application is lodged; and
3. be able to fund the costs of the project not met by the grant.

### Chinese Delegations Target Victoria

The Victorian Government has been active in promoting high level delegations from Chinese automotive manufacturers to visit Victoria to encourage sourcing of automotive components from Australian suppliers.

A seven person delegation from Shenyang Brilliance JinBei Automobile Co (**Brilliance**) and Shenyang Transport Group visited Victoria last week and met with a number of Victorian based component producers. The delegation was led by Mr Liu Pengcheng, the Vice President of Brilliance.

Brilliance is one of China's leading automotive manufacturers and manufactures cars, minibuses and automotive components. Brilliance is a Partner with BMW in a joint venture that

The program is competitive and based on merit. Applications will be assessed on the quality of the supporting data addressing the following criteria:

1. potential for the reduction of the environmental footprint;
2. scope and impact of the process improvement; and
3. organisational capacity/capability to undertake the project.

More information and application forms are available at: <http://www.ausindustry.gov.au/content/level3index.cfm?ObjectID=3084422A-081D-4C6A-AAFoA94C1EA00A85&L2Parent=AEB901E5-7CB8-4143-A3BF33B2423F9DA6>

manufactures BMW 3 and 5 series sedans for the Chinese market.

A high level delegation from the Hefei Government will also be visiting Victoria on 10 to 12 November 2008. Hefei is a burgeoning industrial city located in Anhui Province, central China and is the home of Chinese car manufacturer JAC. The delegation comprises senior Government officials from Hefei as well as the President and Deputy vice Director, Planning & Development of JAC.

JAC is a manufacturer of trucks and buses that has recently moved into the booming Chinese passenger vehicle segment.



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### Holden Settles ACCC Carbon Claims Prosecution

The ACCC and GM Holden Ltd (**Holden**) have settled the case brought by the ACCC against Holden. It was alleged that Holden had engaged in misleading and deceptive conduct in relation to the advertising of the green credentials of the SAAB range of vehicles which it imports.

The proceeding was settled by consent with orders being made by the Federal Court on 18 September 2008. The Court declared that the relevant advertisements were likely to mislead or deceive in contravention of section 52 of the *Trade Practices ACT 1974 (Cth)* (**Act**) and represented that SAAB motor vehicles had performance characteristics or benefits that they do not have in contravention of section 53(c) of the Act.

Holden agreed to:

1. refrain from re-publishing the advertisements; and
2. within three months train all SAAB marketing staff in relation to misleading or deceptive conduct in the context of "green" marketing claims.

The ACCC prosecution arose following a series of newspaper and magazine advertisements which ran in July and August last year in which Holden made a number of claims about the environmental impact of SAAB vehicles, including:

1. every SAAB is green;
2. SAAB is carbon emissions neutral across its entire range; and
3. that SAAB would plant 17 native trees in the first year following the purchase of a SAAB vehicle, as a carbon offset.

The ACCC alleged that these advertisements were misleading and deceptive in contravention of sections 52 and 53(c) of the Act because:

1. there would be a net release of carbon dioxide into the atmosphere by the operation of any vehicle in the SAAB range;
2. planting 17 native trees would not provide a carbon dioxide offset for any period other than a single year's operation of any vehicle in the SAAB range; and
3. SAAB vehicles do not have any attributes which contribute to reduced carbon dioxide emissions by those vehicles compared with SAAB vehicles supplied prior to the advertisement.

Since the commencement of this proceeding the ACCC has published a detailed guidance paper in relation to carbon claims in marketing. This sets out a blueprint for how companies can avoid breaching the Act when making such claims. This guidance paper was reviewed in our August edition of the Automotive Industry Update. The review can be accessed at <http://www.climatechange.gov.au/greenpaper/index.html>

### Franchising Certainty For Motor vehicle Dealers

A recent High Court decision has removed an area of uncertainty in relation to the enforceability of franchise agreements by overturning the controversial decision of the New South Wales Court of Appeal in *Ketchell v Master of Education Services Pty Limited*. Motor vehicle dealer agreements are deemed by the law to be covered by the Franchising Code of Conduct (**Franchising Code**). The High Court held that failure of a franchisor to comply with clause 11 of the Franchising Code did not automatically result in the unenforceability of the franchise agreement. Clause 11 of the Franchising Code specifies that a franchisor must not enter into, renew or extend a franchise agreement unless the franchisor has received from the franchisee a written statement that the franchisee has received, read and had an opportunity to understand the disclosure document and the Franchising Code. The New South Wales Court of Appeal had held that failure to comply with clause 11 of the Code rendered a franchise agreement unenforceable.

### New President at Ford Australia

Ford Australia has announced the appointment of Mr Marin Burela as its new President and CEO. Mr Burela commenced these roles on 1 October 2008. Mr Burela was previously the Director, Global Small Car Segment Vehicles and has served in a range of roles across manufacturing, sales and marketing and product development since commencing employment with Ford Australia in 1984.



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### Export Policies Review

The Department of Foreign Affairs and Trade has released a detailed review on Australia's approach to trade and international investment. This is the most comprehensive review of Australia's approach to these fields in more than a decade. The report makes the following key recommendations that the Federal Government should adopt as part of its national export and investment strategy:

1. Focus on reforms in relation to infrastructure, skills, taxation and regulation so as to improve export performance and international competitiveness.
2. Target impediments and restrictions that severely constrain Australian trade and investment in high growth markets.
3. Establish new benchmarks for free trade agreements that emphasise consistency with World Trade Organisation rules.
4. Reinvigorate APEC's trade and investment agenda, with a long term goal of achieving a region-wide free trade agreement.
5. Seek to progress the Doha Development Round of World Trade Organisation negotiations and focus more attention on the dispute settlement system and advancing a World Trade Organisation reform agenda.
6. Rationalise the Export Market Development Grants scheme and Export Finance and Insurance Corporation's roles to include limited support for small businesses investing abroad.
7. Foster improved policy and program coordination at all levels of government and between government and business.
8. Allocating resources in the trade portfolio to accord with new priorities in Australia's engagement with the global economy. These priorities should include a focus on rapidly growing markets and enhancing exports of services and elaborately transformed manufactures.

A copy of the review is available at [http://www.dfat.gov.au/publications/mortimer\\_report/](http://www.dfat.gov.au/publications/mortimer_report/)

### Delphi Reorganisation

US components manufacturer Delphi Corporation, the former components arm of General Motors (GM), has filed a voluntary petition for reorganisation under chapter 11 of the US Bankruptcy Code. In the absence of any investors, Delphi plans to reorganise on its own. Delphi needs to raise US\$3.75 billion and will do so through debt and equity offerings.

GM has agreed to provide US\$10.6 billion to support Delphi's reorganisation, including the assumption of US\$3.75 billion in pension liabilities. The plan was approved by creditors on 25 September 2008. A hearing on this plan is set for 23 October 2008 in the US Bankruptcy Court in New York.

### Trade Expert Joins HWL Ebsworth

Maurice Thompson recently joined HWL Ebsworth to lead the Firm's Maritime/Trade/Transport practice in Melbourne. Having previously worked for international maritime/trade law firms in Dubai, Shanghai and Melbourne, and having obtained specialist Masters of Laws degrees in his fields of expertise from universities in Cape Town and New Orleans, he brings a truly global perspective to the specialist legal services he provides to shipping, international trade and insurance interests nationally and internationally.

Maurice has recently provided advice in respect of sales contracts (eg. NACMA, GAFTA, FOSFA, FOB, CIF etc), letters of credit, marine/transit and export finance, insurance, export licencing/ accreditation, customs issues, TPA and

access issues and the impact of the World Trade Organisation and Vienna Sales Convention.

The Firm is confident that the addition of Maurice Thompson to the Partnership will enhance the breadth of legal services we can provide to our automotive industry clients with their ever increasing global reach.

Contact Maurice Thompson at [maurice.thompson@hwlebsworth.com.au](mailto:maurice.thompson@hwlebsworth.com.au)



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### Chrysler Sues Consultant for Failure to Identify Low Cost Producers

Chrysler has commenced legal proceedings against consultant Accenture in the United States. Chrysler engaged Accenture in 2006 to advise it in relation to sourcing components from low cost countries. Chrysler, which spends US\$40 billion per year on components, expected to receive a savings of approximately US\$900 million. Instead it saw almost no savings. Chrysler has alleged that Accenture engaged in fraudulent representations in relation to its experience and in-country presence in low cost countries.

### Dangers in Redundancies

In a recent example of extreme action taken by employees following mass layoffs, it has been reported that an Indian manager was beaten to death by workers disgruntled over redundancy payouts. Lalit Kishore Choudray, a manager at the Italian parts manufacturer Graziano Transmissioni India's factory north of New Delhi was attempting to defuse the protest when he was set on by the crowd. 63 of the workers have been charged over the murder of Mr Choudray along with a further 73 people charged with the subsequent looting of the factory.

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