

Australian Historic Vehicle Interest Group

The Hon Josh Frydenberg MP
Treasurer

31 January 2020

The Hon Michael Sukkar MP
Minister for Housing and Assistant Treasurer

Senator the Hon Zed Seselja
Assistant Minister for Finance, Charities and Electoral Matters

All c/o The Treasury
Langton Crescent
PARKES ACT 2600
AUSTRALIA

By email to: PreBudgetSubs@treasury.gov.au and to Ministers individually

Dear Ministers

2020-21 Federal Budget – Pre-Budget Submission Removing the Luxury Car Tax (“LCT”) from the importation of cars over 30 years old (“Historic Cars”)

We refer to our Pre-Budget Submissions from 2018-19 and 2019-20¹, and discussions with **Susan Bultitude** and our meeting on 19 December 2019 with **Lucas Rutherford**, both being Treasury officials.

We also refer to the 90 page, 11,000+ signature **Petition** presented to the Treasurer and other Ministers in recent weeks.

This submission seeks an exemption from the Luxury Car Tax for the importation of Historic Cars (over 30 years old). It not only distorts consumption decisions, it stops them in their tracks – with the bulk of the meagre amount raised paid by those who buy old cars overseas, blissfully ignorant of the LCT liability awaiting them on importation.

We ask you to consider the following matters:

1. The AHVIG on-line petition presented to you has over 10,000 petitioners.

This demonstrates that that this issue resonates with the 500,000+ voting car club members, who are from both sides of politics. These car club members reflect a “broad church” of supporters with diverse interests in cars, who see the benefits of a strong and vibrant historic car community in Australia.

¹ 2019 Submissions here <https://treasury.gov.au/sites/default/files/2019-03/360985-Australian-Historic-Vehicle-Interest-Group.pdf> and <https://treasury.gov.au/sites/default/files/2019-03/360985-Australian-Historic-Vehicle-Interest-Group-supporting-document.pdf>, which provide much of the verified data on which this Submission is based.

**C/- Association of Motoring Clubs
21 Rosalie Street, Springvale Vic 3171**
All Correspondence to the Chairman by email only
Doug Young: doug_young@iinet.net.au
0418 719 430

2. **Jobs foregone**

Attached are 2 letters from Wolf Grodd, proprietor of one of Australia's premier Historic Vehicle restoration businesses, Sleeping Beauties (<http://sleepingbeauties.com.au/>) outlining the new jobs that would have been created in his business were it not for the LCT on Historic Car imports.

- (a) Letter dated 14 December 2017 (Attachment 1) identifying 12 vehicles clients wanted to import for him to restore, but none of those clients were prepared to pay the LCT to import them. These vehicles ranged in cost from A\$80k to A\$2m. **The restoration work foregone amounted to over A\$4.3m, which Mr Grodd has confirmed would employ 16 people in his business for 3 years.** His business is very busy and these would be NEW jobs. The GST foregone on the importation of those unrestored vehicles alone would exceed \$1m.
- (b) Email dated 13 November 2019 (Attachment 2), outlining how the LCT is preventing the importation of a vehicle that would generate \$100k in GST and **\$350k in restoration work** for his business. Mr Grodd has confirmed this **would provide a new job for one person for 4 years.**

Sleeping Beauties is not alone in this situation – the story is echoed across the country, as letters attached to the 2019 AHVIG Submission attest.

3. **Needless Alienation of Voting Enthusiasts**

Much of the LCT from Historic Car imports is generated from enthusiasts who buy them overseas without having any idea they will be liable for LCT on something with no vestige of luxury about it. Attachment 3 is a copy email from a very upset James Scammell, who in 2012 bought a formerly Australian based Historic Car in the USA (for A\$57,725) and earlier this year imported it, only then discovering he had substantial LCT liability.

4. **Revenue Implications**

The LCT is so effective a block on Historic Car imports that it has only generated an average of \$1.1m pa over the last decade, or less than ¼ of 1% of total LCT receipts².

The survey AHVIG conducted in 2017 showed that were the exemption to be granted, the GST that would be generated from imports of Historic Cars would exceed the LCT foregone.

5. **Historically there was Free (or Eased) Movement of Historic Cars across borders**

- 5.1 There is a world wide view, to which Australia once subscribed, that there are good reasons to enable the free movement of Historic Cars across international borders, resulting in imports of 30+ year old cars receiving exemptions around the world, including Australia.

² Attachment 5 lists LCT raised on Historic Car Imports since 2007. Data from Dept of Home Affairs, who collect the LCT on Historic Cars on behalf of the ATO.

5.2 To that end, in 1976, Australia removed Customs Duty from imports of Historic Cars and the exemption continues, but the reasons for it were forgotten by the time the LCT Act³ was introduced. It makes no sense to provide an exemption from 5% Customs Duty to only then replace it with 33% LCT on the value above the LCT threshold.

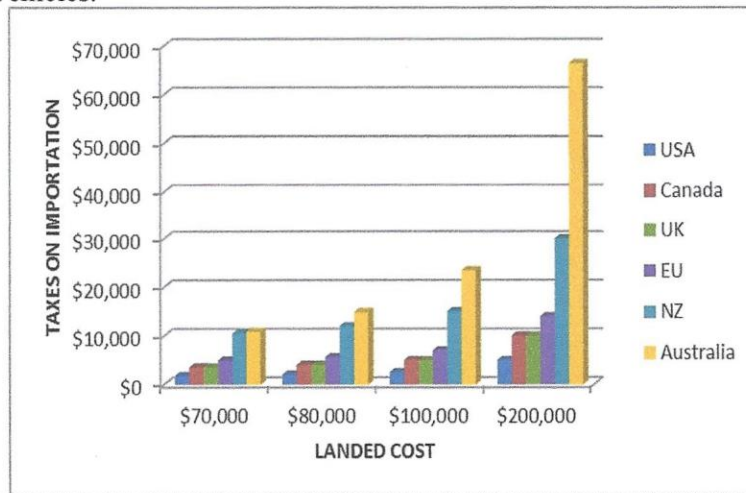
Customs Tariff Act 1995, Schedule 4 (Concessions) Item 36 prescribes that:

Goods relating to transport		
Item	Description of goods	Rate of Duty
36	<p>Vehicles aged 30 years or more that are:</p> <p>(a) utilities or pick-ups, having a g.v.w. (within the meaning of Additional Note 7 to Chapter 87 of Schedule 3) not exceeding 3.5 tonnes, classified under subheading 8704.21.10 or 8704.31.10 of Schedule 3; or</p> <p>(b) passenger motor vehicles</p>	Free

5.3 The EU and UK classify⁴ all motor vehicles in original condition, over 30 years of age and no longer in production as "...collectors' pieces....of historical interest" which are exempt from Customs Duty and attract a reduced rate of VAT – in the UK, it is reduced from 20% to 5%.

6. **Australia vs the rest of the world – Historic Car import taxes**

Australia is an outlier in terms of taxes (GST and LCT) paid on the importation of Historic Cars, as demonstrated by the graph below. The "Landed Cost" is the vehicle cost, including freight to bring it to Australia, and the insurance paid. The position is even more pronounced on more expensive vehicles.



³ A New Tax System (Luxury Car Tax) Act 1999 (LCT Act)

⁴ The European Commission's guidelines to national Customs Authorities, and the UK's HMRC Notes to Tariff Item 9705 stipulate that provided a vehicle is in original condition, over 30 years of age and no longer in production, then it satisfies the prerequisite conditions for importation as a collector's piece, and therefore reduced VAT from 20% to 5%. The leading case on which the guidance is based is *JD Classics Holdings Limited v. The Commissioners for Her Majesty's Revenue and Customs* LON-2009-7069⁴, which followed the 1985 case of *Erika Daiber v Hauptzollamt Reutlingen (Case 200/84)*

Before the LCT, Australia's Historic Car fleet was the envy of the rest of the world, with many wonderful cars imported here when new. There was a constant flow of vehicles in and out up until the advent of the LCT. Since then the LCT has operated as a one way valve, with cars able to leave freely, but preventing their re-importation, and the importation of similar vehicles. To illustrate, in 2000, Australia had 40% of the world's surviving Vauxhall 30/98s⁵ – now it has 17%.

7. Economic value of the Historic Car movement to the UK economy - £5.5bn in 2015

The Federation of British Historic Vehicle Clubs (FBHVC) commissions a professional survey of members every 5 years, with the last (2016) full report available here <https://www.fbhvc.co.uk/storage/downloads/page/11/FINAL%20FBHVC%20National%20Survey%20Report%202016.pdf>.

It discloses that there are just under 1.1m historic vehicles registered in the UK, owned by approx 500k people, with 34,900 people employed in the industry, and that the **total annual spending on historic vehicle related activity was £5.5bn**. The owners themselves spent £662m annually on their vehicles. A copy of the summary page is Attachment 1.

The £5.5bn figure is comprised of the following estimates:

Acquiring historic vehicles per annum	£2.1bn
Associated items including Maintenance, Fuel, Oil, Storage, Insurance Clothing etc	£2.05bn
Exports of parts and services to international clients	£662m
Indirect Items incl accommodation, event entry, magazines and books	<u>£414m</u>
Total	£5.5bn

7.1 Growth in UK Historic Vehicle economic activity

More interesting, however, has been the growth in this activity⁶, as shown in the table below:

UK	1997	2006	2011	2016
Expenditure associated with the historic vehicle movement	£1.6bn	£3.2bn	£4.3bn	£5.5bn

Australia has been prevented from participating in this growth because vehicles can easily leave Australia but the LCT prevents their, or similar vehicles', return. Those involved in owning old cars agree there has been no corresponding growth in Australian Historic Vehicle restoration etc businesses over the past 20 years.

It has also curtailed the number of Historic Vehicle events which attract substantial tourist revenue, from Australia and overseas.

In 2019, a further UK ownership survey was conducted, with a summary of the report here <https://www.fbhvc.co.uk/uploads/files/2019%20FBHVC%20Cost%20of%20Ownership%20Summary.pdf>.

It disclosed the annual owner spend per historic vehicle was £1489, or A\$2814.

⁵ A sought-after high quality sporting 5 seater car made in the UK from 1913 to 1927 .

⁶ 2016 Full Report p.18

8. **Size of the Historic Vehicle pool in Australia**

There are around 1.3m vehicles 30 or more years old still fully registered in Australia with most owned by enthusiasts. There are more such vehicles, again owned by enthusiasts, on some form of concessional registration. To illustrate, NSW has 350k Historic Vehicles on full registration, and a further 60k on some form of historic concessional (limited use) registration. This issue is well understood by those owners who are united in the view that this is a bad tax and should be removed.

9. **AHVIC Australian Survey 2017**

The AHVIC 2017 survey completed by 410 Australian Historic car owners found they spent on average \$4,838 per year per car. If one assumes a conservative number of 900,000 enthusiast-owned Historic Vehicles over 30 years old, even at the lower UK rate of spend, the annual spend would be A\$2.5bn.

The UK experience is telling as there is so much more spent on events and other things associated with Historic Cars – hence the 2016 annual spend of £5.5bn vs that spent by owners on their cars at that time of £662m – a multiplier of 8.

Applying just half that multiplier to Australia would see an annual spend in the Historic Vehicle sector of A\$10bn.

10. **Bi-partisan (and/or Opposition) support in Australia**

- (a) In 2008, a Senate Inquiry supported the same exemption we are seeking – see https://www.aph.gov.au/parliamentary_business/committees/senate/economics/Completed%20inquiries/2008-10/tlab_luxurycars_08/report/index . The ALP was in government and the Coalition in opposition. This was the one thing on which they agreed.
- (b) AHVIC members and other enthusiasts have made representations about this issue to their MPs and Senators for over 3 years now and support for this reform is growing on both sides of Parliament.

Many other countries have more formalised cross party support, the UK being just one – see below.

10.2 **UK All Party Parliamentary Historic Vehicles Group**

The website for the above Group (<http://www.historicvehicles.org.uk/index.php>) describes it thus:

The All Party Parliamentary Historic Vehicles Group is a Parliamentary Group comprising MPs and Peers of the main political parties in the United Kingdom.

The Group exists to promote and support the continued use of historic and classic motor vehicles in the UK.

The picture below depicts the then UK PM, Theresa May, inspecting a car on the Speakers Lawn at the House of Commons in 2018, where the cars were displayed following a run organised by the Group from Bicester Heritage, to Westminster:



11. Other benefits

As documented in our 2019 Submission there are other benefits that would flow were the exemption to be granted. The old car hobby is similar to the Men's Shed movement, with accepted health benefits.

It would also go some way towards replenishing Australia's once great Historic Car fleet and heritage.

12. Previous LCT Exemptions for Historic Car Imports

There have been only 2 since the LCT's introduction in 2000, both resulting from the LCT breaching Australia's international obligations.

- (a) The first⁷ allows museums and galleries to import vehicles which constitute "collectors pieces or works of art" under the *Agreement on the Importation of Educational, Scientific and Cultural Materials* done at Florence on 17 June 1950, and the *Protocol* to that *Agreement*, done at Nairobi on 26 November 1976. Imposing the LCT on those imports breached the *Agreement* and *Protocol*.
- (b) The second⁸ exempts from the LCT Australian-resident vehicles reimported after work done on them overseas. We understand from Treasury this was because imposing the LCT on such vehicles breached the A-US FTA.

13. Australia - WTO, GATT and other issues

For the reasons outlined in Attachment 4, it appears Australia is in breach of its WTO and GATT obligations by imposing the LCT on importations of Historic Cars (30 or more years old) as they should properly be classified as "collectors' pieces" and therefore be free of any import taxes. .

⁷ *Tax and Superannuation Laws Amendment (2016 Measures No. 2) Act 2017* exempts museums under Schedule 3 Item 1 and inserted a new subsection 7-10(3)(ba) into the LCT Act

⁸ *Treasury Laws Amendment (Making Sure Multinationals Pay Their Fair Share of Tax in Australia and Other Measures) Act 2019* inserted a new s.7-20(1A) into the LCT Act.

14. Legislative amendment proposed

There are 2 ways to effect the exemption – one complex, and one simple.

- (a) The complex method would be to tie the drafting to the existing exemption for museums to import “collectors’ pieces” or “works of art”, linking them to Item 7 of Schedule 4 to the *Customs Tariff Act*. The problem with this course is that the definitions of such items are not tied to the Harmonised System Codes – the definitions in Item 7 come from the *Florence Agreement* and the *Nairobi Protocol*⁹.
- (b) The simpler method would be to extend the customs duty concession which already exists for passenger vehicles 30 or more years old, under *Customs Tariff Act 1995* Schedule 4 Item 36 (reproduced at 5.2 above).

The drafting to effect this could not be easier – The LCT Act already exempts a number of Schedule 4 items from the LCT, in Section 7-10(3)(c) which reads as follows:

“(3) However, you do not make a *taxable importation of a luxury car* if:

(c) the car is covered by item 10, 11, 15, 18, 21 or 24 in Schedule 4 to the Customs Tariff;”

The amendment would be to delete “or”, replace with a comma, and after “24” insert “or 36”, so that it would then read:

.“(3) However, you do not make a *taxable importation of a luxury car* if:

(c) the car is covered by item 10, 11, 15, 18, 21, 24 or 36 in Schedule 4 to the Customs Tariff;”

15. Conclusion

The LCT on Historic Cars raises virtually no revenue, deprives Australians of jobs, and needlessly alienates the enormous number of Historic Car enthusiasts across the country. It was introduced to protect the new car manufacturing industry in this country and was anomalously applied to Historic Car imports as well, 20 years ago. All it has done with respect to Historic Cars is stifle the business opportunities that would otherwise have been created, while those in other countries have flourished.

Members of AHVIG are available to appear in person before any inquiry into the matters we have raised.

Please contact the Chairman, Doug Young, on 0418 719 430 or doug_young@iinet.net.au in the first instance should you require further information or clarification.

Yours sincerely,



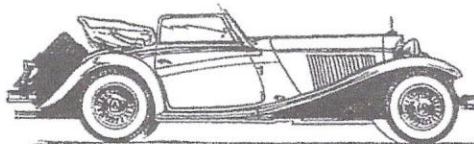
Douglas Young, Chair, AHVIG

⁹ United Nations Educational, Scientific and Cultural Organisation (UNESCO) Agreement on the Importation of Educational, Scientific and Cultural Materials (the *Florence Agreement*) (Florence, 1950) and the Protocol to the Agreement (the Protocol) (*Nairobi Protocol*, 1976) – these were designed to reduce tariff and trade obstacles for educational, scientific and cultural materials. Australia acceded to the Florence Agreement in 1990 and the Protocol in 1992 (from Customs By Law No. 1022040)

Att 1

Auto Art International Pty Ltd trading as

SLEEPING BEAUTIES



RESTORATION OF MERCEDES-BENZ AND OTHER FINE AUTOMOBILES

13 December 2017

Your ref:

Our Ref:

Doug Young
Chair
Australian Historic Vehicle Interest Group
C/- Association of Motoring Clubs
21 Rosalie Street,
Springvale
Vic 3171

P.O Box 391 Red Hill
Queensland. 4059
Australia
+61 (0)419 709 169
sleepingbeauties@bigpond.com.au
<http://sleepingbeauties.com.au>

By email only: doug_young@iinet.net.au , cc. daryl_meek@racv.com.au

Dear Doug,

Luxury Car Tax (LCT) on Classic Car Imports – Impact on Australian Businesses (and Heritage)

Thank you for your letter of 7 October 2017. I am pleased to provide the following information about the LCT.

I have a classic car restoration business in Brisbane. In 29 years we have restored over 400 cars for customers all over the world.

There is a one-way traffic of classic cars leaving Australia. Major dealers are running expensive adverts in overseas magazines selling to collectors in Europe and USA. That is unavoidable trading - but in the distant past, cars would enter this country or return in time. The LCT however is preventing this for some years now. Australia is slowly being drained of its motoring heritage.

Take this 1937 BMW, sold to Singapore 30 years ago, for \$55,000. [Att 1] Back on the market, now asking \$200,000. To bring it "home" would cost \$90,000 in taxes, so it went to UK.

This 1936 BMW [Att 2] won the Australian GP in 1949 at Point Cook. I sold it 40 years ago to a Sydney collector. It is now in Switzerland, valued at A\$1.3 mill. It should come "home", but that would now cost almost A\$2 mill.

Nowhere else is the tax on cars over 30 years old this savage. UK is 5%, that is where they are going.

We have many collector customers interested in restoration projects available overseas.

We have discovered a 1939 Mercedes 540K with significant history. [Attachments 3.1-3.3] Located in USA, it is offered for sale at US\$ 1.3 mill. or close to A\$ 1.8 mill. To bring this project into Australia would add a prohibitive \$750,000.

So that will not happen and our business is missing out on a one million dollar job. Yes, one million \$\$\$. That would employ 3 people for 4 years.

As classic cars and restoration projects are getting ever more scarce, Australian collectors are searching overseas for possible purchases. With the LCT applying to values above, I believe, \$65,000, only cheap imports are being considered.

The more collectable valuable cars and projects priced at \$100,000 and well above, are predictably passed over. That not only affects our classic car ownership (regularly requested by Government and charities for historic displays at official occasions) but the restoration businesses are disappearing, along with most other manufacturing.

I understand that the "business" of restoring, preserving and enjoying historic and classic cars is a £5.5 billion industry in UK. We are missing out.

Collectors would be quite prepared to add the 10% GST when purchasing an overseas classic, but not a further 33% on the value above the threshold. So the ATO is missing out as well.

Here are a 10 cars requested by local collectors, with the value estimates, LCT estimates, and GST which the ATO would receive were they to be imported¹. For completeness, I have included 2 other cars; the first being the Mercedes Benz 540K referred to above, and second, we have a customer who owns a €1m Mercedes 300SL in the UK since 1980. He used to reside in UK for some months each year, but he is now getting too old for that. He would love to bring his classic "home" to Melbourne. The tax alone would cost him \$635,000. So it will now be restored in the UK and sold there.

No	Car	Value	Value A\$	GST A\$ (incl freight and ins)	LCT A\$	Restoration cost in Australia A\$
1	1955 Mercedes 300SL [Att 4.1-4.2]	US\$1.3m	\$1.68m	169,000	538,172	300k
2	1939 German Horch [Att 5]	US\$400k	\$516k	52,600	154,052	400k
3	1949 Alfa Romeo Golden Arrow [Att 6]	€180k	\$272k	28,200	73,532	250k
4	1952 Mercedes 220 Cabriolet [Att 7]	€150k	\$227k	23,700	58,748	250k
5	1938 Mercedes 170V Cabriolet [Att 8]	US\$150k	\$194k	20,400	47,792	200k
6	The Lex Davidson Mercedes racer from the 40/50s, now in NZ (also subject to LCT to return to	A\$2m?	\$2m	201,000	643,772	750k

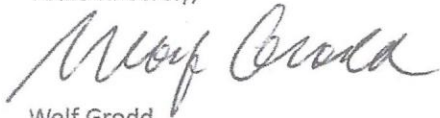
¹ Assuming A\$10k for freight and insurance, zero customs duty (as cars over 30 years old); exchange rates current as at 9 October 2017 as follows: 1 GBP = A\$1.68; 1 Euro = \$A1.51; 1 USD = A\$1.29. GST and LCT Calculation formulae appear at end of letter.

No	Car	Value	Value A\$	GST A\$ (incl freight and ins)	LCT A\$	Restoration cost in Australia A\$
	Australia) [Att 9]					
7	1936 Rolls Royce ex Queensland, now in Malaysia [Att 10]	A\$80k	\$80k	9,000	10,172	120k
8	1906 Locomobile available in US [Att 11]	US\$250k	\$323k	33,300	90,362	200k
9	1935 Alfa Romeo ex Victoria [Att 12]	€1m	\$1.51m	152,000	482,072	200k
10	1956 Mercedes 300SL ex Queensland [Att 13]	€800k	\$1.21m	122,000	383,072	350k
11	1936 Mercedes Benz 540K	US\$1.3m	\$1.68m	169,000	538,171	1m
12	1955 Mercedes 300SL in UK	€1m	\$1.51m	152,000	482,072	300k
	Totals		\$11.2m	\$1.132m	\$3.502m	\$4.32m

Because of the deterrent effect of the LCT on classic car imports, on these 12 cars alone, the ATO is missing out on \$1.13m in GST revenue and one local business is missing out on restoration expenditure of \$4.32m. Not to mention the flow on work for customs agents, transport companies, insurers, registration revenues for State and Territory governments, classic car storage facilities, and those involved in the expensive ongoing maintenance these vehicles will require post-restoration.

LCT on classic cars is an unfair tax, raising no funds for anyone and small business and the motoring history in this country are the poorer for it.

Yours sincerely,



Wolf Grodd

Sleeping Beauties, Restoration of Fine Automobiles since 1988

GST = 10% of value of taxable importation (VTI)

VTI = Customs value (assumed to be purchase price overseas) + Customs duty (nil in this case) + Freight to deliver to Australian destination + Insurance cost of transport (assumed to be A\$10k – will be less for some and more for others)

LCT value = VTI + GST

LCT = (LCT value – LCT threshold) x 10/11 x 33%

LCT threshold for 2017/18 = \$65,094

13 November 2019 Wolf Grodd (Sleeping Beauties) email to Doug Young, Chair, AHVIG

From: sleepingbeauties [mailto:sleepingbeauties@bigpond.com]
Sent: Wednesday, 13 November 2019 10:03 AM
To: Doug_Young@IINet.Net.Au
Cc: thenryhan@gmail.com
Subject: LCT

Hi Doug,

I FEEL SICK.

This 1936 Mercedes 500/540K engine (transition model, THE one to have, straight 8 supercharged and to stay in Australia), is in Germany ready to come here.

RHD, I know the seller well, he was most helpful with my 380 project, THE restorer of 8 cyl supercharged Mercedes on the planet. We became friends, many visits to him in Germany in the early 2000s, he visited here a few months ago on holidays. His son lives on the Gold Coast.

I HAVE A BUYER.

The car is all original, partly dismantled, body off, all complete in one piece. Engine, gearbox, blower, suspension, chassis all restored to the highest standard. Only the body to be done, piece of cake for S Beauties. Asking 600,000 euros (good value, I know), or A\$1mill. ATO would collect \$100 000 onimport, and GST on about \$350,000 work at Moorooka. Plus 33% income tax on \$200 000 labour, plus tax on parts and more.

But the buyer will not throw away a further \$400 000 on LCT.

I FEEL LIKE SCREAMING TO THE MEDIA.

I had a call from Germany last night asking for an answer after 8 months of negotiating. What can I tell the Germans? That we are totally stupid?

We will lose this one, and there are several similar projects I have been nursing for years.

What about supporting Small Business? I employ 8 professionals and workers, supporting many other small businesses. We generate some \$20 000 each month to the ATO.

It is near impossible to find staff that want to work. At 82 I am in my office 6 days a week to hold it all together.

As you are my first point of contact in this matter, I ask your permission to email this cry for some action to all of the many people involved in sorting this mess. Seems like it has barely even been presented to the treasurer. As you may remember, I contacted that office in February this year. I have never had a reply. My meeting with local member Ross Vasta in July also remains unanswered.

What should be my next move?

I CAN'T TAKE IT ANY MORE!

Regards,
Wolf Grodd
Sleeping Beauties Classic Car Restorations since 1988.
Brisbane, Australia

2.



[Letter from Jim Scammell 6 November 2019]

Dear Classic Car enthusiast,

I'm outraged and I want to hitch a bus straight to Canberra!

My outrage is a result of the supposed unintended Australian Luxury Car Tax (LCT) inclusion of veteran, vintage and classic cars under its mantle. The Hon. Josh Frydenberg (MP), "government of the people, by the people, for the people", Treasurer of Australia and Deputy Leader of the Liberal Party is the bloke who can put it right.

An online petition is now circulating and raising steam. My experience with this tax is as follows:

In 2012 I purchased an unrestored 1935 Railton Sports Tourer in the USA for AUD\$ 57,725. I've attached a photo of it below. The body was built new in Sydney and used there by its original owner until he returned to the UK in 1947, taking the car with him. In the early 1960s it was sold into the USA.

Earlier this year, I bought the car back to Australia via the Port of Melbourne and in February 2019 the Australian Government charged me the following taxes to re-import the vehicle:

GST	\$9,716.71
LCT	\$9,602.22
Total	\$19,319.93 (or 33.5% of the purchase price)

Whilst I purchased the Railton for \$57,725, the landed customs value includes freight, insurance, **GST** and other costs. As a result, the car now owes me almost \$90,000.00 before any restoration work starts on it here in Australia. (A fool and his money are soon parted).

I have just now signed the petition to Josh Frydenberg entitled: "Australia's Luxury Car Tax must be removed from Historic Cars" and want you to do the same. If you are able to help in this cause, please add your name and press the send button.

The goal is to reach at least 5,000 signatures and they now need your support. You can read more and sign the petition here by opening the internet link below. It is emphasised that there is no need to pay anything. Just skip over that bit if it pops up. It will take you less than a minute to complete the petition.

<http://chng.it/WnQMyndYZk>

Many classic motoring clubs have already sent messages inviting members to sign this on-line petition to our Federal Treasurer. The case for the abolishment has previously been published in motoring magazines and club newsletters. **This is a tax on our hobby** and it came into effect largely by way of a series of unintended bureaucratic events. It raises only a negligible amount of income for the federal government but makes it close to impossible for anyone to economically import a higher value historic vehicle into (or even back into) Australia. **It's a classic example of Canberra RED TAPE**. Your support for its abolition will be much appreciated and will help to ensure that the movement of historic cars in and out of Australia is not a one-way process.

You can find more on the Australian Historic Vehicle Interest Group (AHVIG) Facebook page.

Without remorse,
Jim Scammell
St Peters, SA, 5069



Attachment 4

Luxury Car Tax on imports of Historic Cars over 30 years old - WTO and GATT issues

1. Introduction

- (a) Australia became a signatory to the *International Convention on the Harmonized Commodity Description and Coding System* in 1987. This system allocates particular numbers to every type of good for import and export purposes.
- (b) Australia implements its obligations in domestic law through the *Customs Tariff Act 1995* (CTA).
- (c) In particular, Schedule 3 to the CTA lists all the classification numbers for all goods, and the applicable Customs Duty rates.
- (d) Schedule 4 to the CTA then lists concessional rates of duty that apply to some items. Hence, while a normal second hand car would attract a duty rate of 5% if imported under Code 8703 in Schedule 3, Item 36 of Schedule 4¹ provides a concessional rate of duty if a passenger vehicle is “aged 30 or more years” or “free”.
- (e) Section 7 of the CTA and Schedule 2 require that classification of goods should be determined according to the Notes to the various Chapters in Schedule 3.

2. Misclassification of Historic Cars

- (a) With only 2 known exceptions over the last 20 years, Historic Cars have been imported under Code 8703, as second hand cars.
- (b) Australia has already accepted that cars can constitute “collectors’ pieces” or “works of art”, one of those criteria being required for the Museums and Galleries LCT exemption² to apply.
- (c) There is a long line of EU and UK cases to the effect that all motor vehicles in original condition, over 30 years of age and no longer in production are to be classified³ as “...collectors’ pieces...of historical interest” (9705) as collectors’ pieces and not second hand cars (8703), which are now reflected in directions .
- (d) This should also inform the classifications for Australia. The Notes to CTA Chapter 97 (where 9705 lies) stipulate that “for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes” and the Notes say at 4(A): “...articles of this Chapter are to be classified in this Chapter and not in any other Chapter of this Schedule”.

¹ In 1976, the Australian government determined to allow duty free importation of vehicles 30 pr more years old. - Commercial Tariff Concession and By-law Systems INDUSTRY COMMISSION Report No. 9 8 March 1991
<https://www.pc.gov.au/inquiries/completed/commercial-tariff-concession/09ctc.pdf>

² *A New Tax System (Luxury Car Tax) Act 1999* (LCT Act) s.7-10(3)(ba)

³ The European Commission’s guidelines to national Customs Authorities, and the UK’s HMRC Notes to Tariff Item 9705 stipulate that provided a vehicle is in original condition, over 30 years of age and no longer in production, then it satisfies the prerequisite conditions for importation as a collector’s piece, and therefore reduced VAT from 20% to 5%. The leading case on which the guidance is based is *JD Classics Holdings Limited v. The Commissioners for Her Majesty’s Revenue and Customs* LON-2009-7069³, which followed the 1985 case of *Erika Daiber v Hauptzollamt Reutlingen (Case 200/84)*

2.

- (e) This may appear to be a distinction without a difference for practical purposes, as the Customs Duty in each case is zero (or “free”).
- (f) However, where the difference lies is that there are international treaty obligations that apply to 9705 items which do not apply to 8703 items.

3. WTO and GATT Obligations

- (a) Australia has agreed to limit the import tariff on Code 9705 items as listed in *The Schedule of Concessions on Goods*⁴ (being Australia’s commitments under the WTO/GATT) to a “Bound rate” of 0%. In particular, GATT Article II:1(b) says that their importation shall be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with the importation
- (b) Imposing the LCT on imported Historic Cars which constitute “collectors’ pieces”, when sales of identical cars in Australia are not subject to it, means the LCT is a duty or charge imposed on or in connection with the importation, and the imposition is in conflict with the undertaking to limit the duty rate to zero.

In short, this breaches Australia’s GATT and WTO International Obligations.

⁴ May be downloaded here: <https://dfat.gov.au/trade/organisations/wto/Documents/schedule.pdf>