



27 May 2016

Mr Garry Clements  
Chair  
Consumer Affairs Australia and New Zealand  
Australian Consumer Law Review

Email: Electronic lodgement on the Australian Consumer Law website: [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au)

Dear Chair

**Re: Response to the Australian Consumer Law Review Issues Paper March 2016**

**1. Introduction**

1.1 The Motor Trades Association of Queensland (MTA Queensland or the Association)) responds to the Chair of Consumer Affairs Australia and New Zealand's (CAANZ) invitation for submissions to the March 2016 Issues Paper *Australian Consumer Law Review* (the Issues Paper). The Association's comments are submitted on behalf of its constituent Divisions and are confined to issues which relate to the interests and fall within the competence of the Queensland automotive value chain.

**2. Context**

2.1 The MTA Queensland, from 2008 engaged in the consultative dialogue culminating in 2011 in a consolidated generic consumer protection framework harmonised across the Commonwealth. The Association was aware from anecdotal information from its Members, that monopoly and economic rent generated by the misuse of market and financial power was being extracted from both individual consumers and small to medium enterprises (SMEs).

2.2 The Association supports the extension of the consumer protection in the Australian Consumer Law (ACL) to SMEs e.g. the extension of the unfair contract terms protection to 'small business' contracts. These initiatives appear increasingly relevant, as the economy transitions from a resource base to a broader economy requiring SMEs to generate increased economic activity. These issues are of direct relevance to the automotive value chain and the MTA Queensland Members.

2.3 The MTA Queensland has carefully considered the issues documented in the Issues Paper and correlated these to the interests of its Members. There are five issues that the MTA Queensland brings to the attention of CAANZ for its consideration in this review process.

**MTA Queensland**

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### **3. Issues**

#### **(a) Raising the awareness of the ACL**

3.1 In 2015-16, a Consumer survey (EY Sweeney Ref No. 25364 - 5<sup>th</sup> May 2016) was undertaken to assess the impact of the ACL since its introduction corresponding with a similar survey in 2010-11 shortly before the law came into effect. It found across all categories positive improvements in consumer and business awareness of the ACL.

In 2016, around four in ten consumer respondents (44%) and two thirds of business respondents (66%) were aware of dispute resolution services provided by consumer protection agencies. Within the consumer sample, awareness of these services has decreased since 2011 (down 3 percentage points to 44%) and this decrease is predominantly due to a decrease in Victoria (down 6 percentage points to 43%).

3.2 Referring specifically to the motor vehicle category, the 2015 survey was expanded to include fuel e.g. motor vehicle and fuel. The Survey found incidences experiencing problems fell by half (16 per cent to 8 per cent) (p.40).

3.3 The MTA Queensland empirically and anecdotally has formed the view that in respect to the automotive value chain, there is a deficiency in consumers, many retailers and third party understanding of the market behaviour obligations of the supply side imposed by the current consumer protection framework. This deficiency is broad and extends from the point of sale of automotive goods to senior management where pricing and product guarantee policies are formulated or operational parameters are set. It could be appropriate to note that in respect of the automotive value chain, the deficiencies in awareness of the obligations imposed by the ACL appear to correlate to scale, where larger enterprises generally appear to have somewhat greater appreciation of the ACL but there appears to be some deficiencies at most levels of the value chain.

3.4 The obligations and behavioural norms imposed by the ACL in respect of pricing of goods, pricing advertisements and the publication of prices of goods is perhaps the most demanding operation from the consumer protection framework facing the automotive value chain. Competition in the automotive markets is intense and pricing sophisticated. It would appear important that obligations imposed by the ACL on pricing are understood at all levels along the value chain and in particular by consumers.

3.5 In every cohort there are vulnerable consumers and in particular those from non English speaking backgrounds. Australia is experiencing demographic change and the consumer market has a significant multicultural demographic. In cases where English is not the first language, consideration should be given to how these consumers may be informed of their consumer rights at the retail level. Disputes have the propensity to arise because of a missed understanding of products, specifications, features and guarantees rather than misinformation or inappropriate advice by the seller.

3.6 This view as it relates to the automotive value chain corresponds with the findings of the Survey in other industry sectors which found that 'Consumers who speak a language other than English at home were more likely to report cases of experiencing unclear or unfair contract terms (16% vs. 10% of English speaking consumers) and high pressure sales tactics (7% compared to 4% of English speaking consumers)' (p.7).

3.7 We would be pleased to partner with the Australian Competition and Consumer Commission and the Queensland Office of Fair Trading with whom we have a constructive and positive working relationship to undertake a program to educate manufacturers, distributors and retailers involved in the automotive value chain in Queensland so that they are cognisant of the rights and obligations of all the stakeholders involved as far as the ACL requirements are concerned.

## **(b) Equity**

3.8 The Issues Paper emphasises the extent of protection that is available to the consumer from the ACL framework. It highlights the obligations and behavioural norms that are imposed on manufacturers, suppliers and retailers including those that comprise the automotive value chain.

3.9 Legislative enhancements need to be symmetrical. Consumers are protected from unconscionable and unfair behaviour when purchasing goods. There is however, a distinct lack of reciprocal protection for the supplier of those goods who also should be protected from claims that are without merit or vexatious or frivolous or where a consumer conspires to gain an advantage by having a purchase enhanced or replaced on unfair or unconscionable behaviour.

3.10 Such legislative circumstances will require a cost effective dispute mechanism, because as much as the existing system is robust, the dispute mechanisms are cumbersome and costly in terms of representation and time. This in itself means that the system is not consumer friendly.

3.11 If the consumer protection framework is enhanced with consumer specific 'lemon' laws, these will need to establish precedence and ensure that the specific legislation and the generic legislation are mutually exclusive otherwise the manufacturers will be faced with the possibility of the same complaint under both legislative regulations.

3.12 If the 'lemon' laws are introduced and apply to imported new vehicles, and if authorisation is extended to the import of used motor vehicles on a commercial basis for resale to private owners then it appears appropriate that these laws should apply equitably.

3.13 It appears that the review is biased to evaluate remedies that are available to the consumer. There appears to be a lack of equity and no specific remedies available to the supplier of goods who is wrongly accused of behaviour that is prohibited by the ACL.

3.14 The MTA Queensland requests that as part of the review, the issue of equity for the supply side is addressed.

## **Lemon Laws**

3.15 The Association notes that the lemon laws sector has been included in this review even though at this stage they are a proposal between the States and the Commonwealth. The Association has participated in discussions in relation to this matter that have taken place through the Queensland Parliamentary Committee system. We maintain the view that this matter requires a harmonised approach with legislation that has federal competence because the automotive market in the 21<sup>st</sup> century is national and not localised consisting of franchised prime market areas (PMAs).

3.16 The MTA Queensland has and continues to support the evolution to generic consumer protection legislation rather than sector specific regulation. The Association notes the lemon laws are only intended to apply to the sale of new vehicles and questions why lemon laws should not be generic and apply to the whitegoods industry and major consumer items of significant value. This appears to be a reversal of contemporary trends in consumer protection framework legislation.

3.17 The first challenge of any specific 'lemon law' legislation involving new motor vehicles would be definitional. The question is: what constitutes a new motor vehicle? Technically, the industry always has taken the first registration of the motor vehicle as the defining event of a new motor vehicle. Any subsequent registrations define the car as a used motor vehicle. This would have to be clearly enunciated in the legislation.

3.18 The definition needs to have the competence to differentiate a new vehicle/product that is not fit for purpose from a good/product that requires a repair or a remedy which can be effected in reasonable time with reasonable inconvenience to restore its performance to that it would be reasonably be expected from a new vehicle or product at the same cycle of its life. This definition would essentially require distinguishing between vehicles that are irreparable within a defined chronology and repairs that are performed under new vehicle warranties in the usual course of business. A critical question to be resolved is for how long does the status of a lemon law exist when a new vehicle/product is purchased and when is it extinguished and by what events?

3.19 It would seem reasonable that there needs to be a chronological definition - how long would a motor vehicle remain new? This should include responsibilities on the consumer, including an obligation to advise of any deficiencies in the new motor vehicle at the earliest opportunity - and certainly advise before the deficiencies became chronic and the vehicle is rendered unfit for purpose. Any legislation or regulation would need to clearly define the obligations and the ultimate responsibility for any remedies under the legislation/regulation on both the consumer and supplier.

3.20 Our view is that that if lemon laws for motor vehicles are contemplated, consultations must be held with the manufacturers who ultimately will bear the responsibility of any obligations proposed in the regulatory regimes in a reasonable period within in which lemon law recourse can be triggered. This period may vary for different categories of vehicles and may depend on the classification of usage e.g. commercial versus private use; SUV 4X4 used in off-road circumstances versus SUVs that are confined to public roads.

#### **(d) Intellectual Property**

3.21 In the automotive value chain, the issue of access to 'auto-metrics' is important to the effective functioning of the motor vehicle market. Modern motor vehicles have vehicle performance data storage and transmission capabilities. The fundamental issue is the ownership of this data. Does the motor vehicle owner have proprietorship of the data (auto-metrics) generated by the motor vehicle he owns?

3.22 It appears to the Association that the ACL should have the competence to harness the advanced technology and data capabilities of new generation vehicles to help resolve disputations that arise in relation to consumer claims.

3.23 Most new generation vehicles have advanced computer systems which record directly or remotely data about the way in which the vehicle has been driven or used or any defects which may require remedies or may impact its future performance. It would appear logical that such information could be used to resolve claims by consumers in respect of vehicle performance and resolve grievances in relation to new vehicle performance.

3.24 The question then arises about the ownership of such data. Irrespective of whether the data belongs to the vehicle owner, the manufacturer, or the servicing entity, it maybe worthier for the ACL to have the competence to subpoena such data to resolve fairly consumer disputes in respect of any motor vehicles.

#### **(e) Online Purchasing**

3.25 Structural changes to the retailing sub sectors of the automotive value chain have evolved contiguously with the technological, communications, transportation and infrastructure modernisation over the past and current centuries breaking down the geographical barriers for the sourcing of products by consumers. E-commerce and internet shopping / online trading in conjunction with the concept of "globalisation" has replaced "localism".

3.26 It is the experience of those MTA Queensland Members who in the main are small to medium business operators, that e-commerce has introduced economic and administrative "productivity" benefits.

The emerging challenge is how to compete with on-line trading which thrives on the concept of the “global village” ignoring spatial retail or location specific competition. This also acts to appreciate the concept of economic nationalism. Anecdotally, Australian and State Government programs to buy locally or nationally are less effective.

3.27 The Association’s experience is primarily with specific Members inability to compete with spare parts purchases from overseas. Consumers “check out” the product and its catalogue number in store but actually purchase on-line from an off-shore source.

3.28 We appreciate that previous consideration to online purchasing was undertaken by a joint working group commissioned by the Coalition Government to prepare proposals for lowering the threshold for imposing the Goods and Services Tax (GST). The report either fell into abeyance or ‘was too hard to implement’. We encourage reconsideration of the proposal to have the GST applied to overseas purchases in excess of AUD \$1,000.

#### **4. Background**

4.1 The MTA Queensland is the peak organisation in the State representing the specific interests of businesses in the retail, repair and service sector of Queensland’s automotive industry located in the State. There are some 13,000 automotive value chain businesses employing in excess of 90,000 persons generating in excess of \$14.5 billion annually. It is an industrial association of employers incorporated pursuant to the *Industrial Relations Act* of Queensland. The Association represents and promotes issues of relevance to the automotive industries to all levels of Government and within Queensland’s economic structure.

4.2 The Association is the leading automotive training provider in Queensland offering nationally recognised training, covering all aspects of the retail motor trades industry through the MTA Institute (MTAI). It is the largest automotive apprentice trainer in Queensland employing 35 trainers geographically dispersed from Cairns to the Gold Coast and Toowoomba and Emerald. The MTAI last financial year accredited courses to in excess of 1,600 apprentices and trainees.

#### **5. Conclusion**

Thank you for your consideration. We would be pleased to provide further comment on any matters in our submission that may require further clarification or amplification.

Yours sincerely



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