



Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

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Dear Sir / Madam

Re Inquiry into the provisions of the Treasury Legislation Amendment
(Small Business and Unfair Contract Terms) Bill 2015

1. Introduction

1.1 The Motor Trades Association Queensland (MTA Queensland) responds to the Senate Economics Legislation Committee's invitation for submissions to its inquiry into the *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Bill 2015* (the Bill). The MTA Queensland's comments are on behalf of its constituent Divisions and are confined to issues which relate to the interests of the Queensland automotive value chain.

2 Context

2.1 The MTA Queensland supports the Bill's provisions having done so through each of the consultation phases commencing with our 2007 contribution to the Productivity Commission's *National Framework for Consumer Policy*. The Association has the view that the Bill to extend the existing unfair contract term provisions to small business provides essential policy solutions.

3. The submission

3.1 In previous submissions, we have stated that the use of standard form contracts has introduced benefits to the economic environment that operates in Australia. Amongst the benefits are cost savings, efficiencies and consistency in the management of commercial risk in transactions. It has allowed for transactions to comply with statutory provisions, safety requirements, and consumer warranties in respect of specific goods and services that are transacted.

3.2 The downside of the standard form contract is that there is anecdotal evidence that it can be misused to impose market power on small to medium enterprises through unfair clauses. In transactions where one party is dominate; there is greater propensity for market power to manifest through the inclusion of unfair terms in standard form contracts. Further, small medium businesses (SMEs), because of their lack of market status through small scale or lower velocity of transactions do not have an ability to defend themselves against such unfair contractual terms and conditions.

3.3 It appears inconsistent that standard form contracts involving final demand and personal use goods and services that contain unfair terms can be challenged yet those that involve SMEs in business

to business transactions with similar contract clauses where the SMEs are in fact quasi-consumers are excluded from similar recourse. The Bill addresses this inconsistency and the unequal bargaining power providing a regimen of fairness to a sector that may not afford justice remedies. The MTA Queensland supports the Bill.

3.4 Concerns have been enunciated within the business community about the additional regulatory burden and compliance costs and changes to business processes as a consequence of applying unfair contract protections to standard form contracts between business to business interactions. The MTA Queensland recognises that medium to large businesses “offering standard form contracts may incur costs to ensure compliance with the legislation” (Decision Regulatory Impact Statement (RIS) p.30) and notes that “... businesses will not incur ongoing costs, as the cost of compliance for new contracts will be ‘business as usual’ costs incurred through their routine update of standard form contracts” (RIS p.30). It would seem too that new efficiencies would apply that over the longer term, would reduce compliance costs.

3.5 The MTA Queensland supports the RIS statement that the effectiveness of the policy measure “in protecting small businesses against unfair terms in standard form contracts will in part depend on business’ awareness of the protections and their willingness to comply” (RIS p.44). Essentially, this ‘awareness’ will be the responsibility of the Australian Securities and Investments Commission and the Australian Consumer and Competition Council (ACCC) through the ‘education and compliance program’ with assistance from the new Commonwealth Family and Enterprise Ombudsman and state and territory small business commissioners and consumer affairs agencies.

3.6 Anecdotally, at this point of time, consumer awareness of their rights under the Australian Consumer Law is ‘patchy’ despite the promotional efforts of the ACCC and the state consumer affairs agencies. To ensure that this measure - extending contract term protections to small business - connects and has traction with small business, the ACCC’s engagement with the relevant industry associations and groups must be a priority. The MTA Queensland will act as a conduit to our diverse and decentralised membership on the benefits of extending contract term protections to small business.

3.7 We appreciate that there are industry groups other than medium to large businesses which have indicated concerns with extending unfair contract protections to small business. For this reason, MTA Queensland has the view that it would be fair and reasonable for a review of the legislation be undertaken in two or three years time to determine its effectiveness and the extent - if any - of the impact of underlying negatives on the concerned groupings and medium to large business.

3.8 The MTA Queensland supports the Bill and will advocate to our diverse and decentralised membership the benefits that accrue from the extension of unfair contract protections to small business within the context of the legislation.

4 MTA Queensland Background

4.1 The MTA Queensland is the peak organisation in the State representing the specific interests of some 2,000 businesses in the retail, repair and service sector of Queensland’s automotive industry. In the State there are some 14,291 automotive value chain businesses employing in excess of 73,000 persons.

4.2 The Association is an industrial association of employers incorporated pursuant to the *Industrial Relations Act* of Queensland. It comprises 11 separate divisions of the motor trades representing and promoting the issues of the automotive industries to all levels of government and within Queensland's economic structure. There is a high propensity for the automotive value chain to comprise small to medium enterprises.

4.3 The Association is the leading automotive training organisation in Queensland offering nationally recognised training, covering all aspects of the retail motor trades industry. The Association's Motor Industry Training entity is the largest automotive apprentice trainer in Queensland employing 26 trainers based from Cairns to the Gold Coast and Toowoomba and Emerald. The MIT last financial year accredited courses to in excess of 1500 apprentices and trainees.

5 Conclusion

5.1 We would be please to provide further comment on any matters in our submission that may require further clarification or amplification.

Thank you for your consideration.

Yours sincerely

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