



31 July 2009

The Secretary  
Senate Economics Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

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Dear Secretary

## **Trade Practices Amendment (Australian Consumer Law) Bill 2009**

### **Introduction**

The Motor Trades Association Queensland (MTA Queensland) responds to the Senate Economics Legislation Committee's (the Committee) invitation for submissions to the Inquiry into the *Trade Practices Amendment (Australian Consumer Law) Bill 2009* (the Bill). Our responses reflect our membership who constitute a significant link in the automotive value chain and are enunciated below.

MTA - Queensland supports the Council of Australian Governments' (COAG) agreement to introduce national consumer law that implements the recommendations of the Productivity Commission.

We have been active in discussions pertaining to the Consumer Protection Framework (CPF) by way of participating in the Productivity Commission's Brisbane Roundtable *National Framework for Consumer Policy* and the provision of additional material and a submission on the matters under reference. We also contributed to:

- *An Australian Consumer Law: Fair Markets – Confident Consumers;*
- *Inquiry into the Franchising Code of Conduct and related matters;*
- *(Industry Codes – Oilcode) Regulations 2006 Review;*
- *Australian Business Names (ABN) Business Names Registration Project; and*
- *Personal Property Securities pertaining to Registration and Search Issue.*

### **Discussion**

The seminal issue for MTA Queensland is that small to medium businesses (SMEs) in the automotive value chain are experiencing difficulties in adopting behaviour consistent with the direction of changes to the Consumer Protection Framework. Supplier oligopolies and monopolies are using their market and economic power to impose unfair contract terms

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which the retailer, distributor, franchisee or representing agent are obliged to transmit to the consumer. Therefore abandonment of provisions in the Australian Consumer Law that afforded protection to SMEs from unfair contract terms in standard form contracts means that ultimately the same protection also is being denied to consumers.

The MTA Queensland is of the view that the proliferation of unfair contract terms in standard form contracts is symptomatic of market failure. The increasing concentration of economic and market power along the automotive value chain in sectors such as franchise car dealers, fuel retailing and automotive collision repair has resulted in a decline in competition. As a result oligopolistic and monopolistic suppliers have proliferated standard form contracts with provisions that limit the scope for product recourse by retailers and distributors on the original equipment manufacturer or product or service supplier.

The MTA Queensland has formed a view that the protection for SMEs from unfair terms and conditions in standard form contracts would be effective in regulating this market failure and is a necessary component of the national Consumer Protection Framework. We deprecate the claim that such regulation would damage the existing commercial framework by undermining the status of contracts. The “fair elements” of standard form contracts that is the substantial proportion of commercial treaties would remain inviolable but behaviour reflecting market failure that impacts SMEs as consumers would be effectively regulated.

We were supportive in our responses to the exposure draft of the Bill that foreshadowed the application of unfair contract term provisions to standard form business contracts. We were both surprised and disappointed that the Bill introduced into the House of Representatives on June 24 2009 omitted the application of the unfair contract term provisions to standard form business contracts and is limited to standard form “consumer contracts”.

MTA – Queensland supports the recommendation of the 2007 Productivity Commission’s Report *Review of Australia’s Consumer Policy Framework* that small businesses be regarded as consumers and protections for small business apply.

In our March 2009 submission in response to the Consultation Paper “*An Australian Consumer Law: Fair Markets – Confident Consumers*” we said:

*“We consider a definition of Consumer should include business consumers. They should be entitled to Consumer Law Protection particularly as it applies to the Codes that form part of the TPA and reflect implied conditions of supply and warranties.*

- *It seems incongruous that spare parts are items that are on sold to consumers either under warranty or to repair motor vehicles are without Consumer recourse through the resupplier back to the originating manufacturer, supplier or importer.*
- *This diminishes both the protection that the resupplier can warrant and the “real” warrant the ultimate consumer can claim against to protect their position.*
- *In most cases, Consumers envisage an implied right or guarantee particularly when items are branded by for example Holden or Ford that there is recourse to the*

*manufacturer and in buying the branded product they are simultaneously acquiring a warrant from the manufacturer not the intermediary.*

- *The brand represents a warrant and in most cases a higher price is paid for a branded item representing the value of the guarantee.”*

## **Recommendation**

We resubmit the same policy position to the Senate Economics Legislation for consideration and recommendation that business to business transactions form part of the unfair contract provisions in the Bill.

## **MTA – Queensland Background**

The Motor Trades Association – Queensland (MTA-Queensland) is the peak organisation in the State representing the specific interests of 2,500 businesses in the retail, repair and service sector of Australia’s automotive industry. It is an industrial association of employers incorporated pursuant to the Industrial Relations Act of Queensland.

The Association represents and promotes the issues of the automotive industries to all levels of government and within Queensland’s economic structure.

MTA-Queensland comprises 14 separate divisions, each representative of a specialist area of the State’s automotive industry. They are:

- Australian Automotive Dealers’ Association of Queensland;
- Queensland Farm and Industrial Machinery Dealers’ Division;
- Auto Electrical Specialists’ Division;
- Queensland Motorcycle Industry Division;
- Automotive Engineers’ Division;
- Queensland Tyre Dealers’ & Retreaders’ Division;
- Engine Re-conditioners’ Association of Queensland;
- Rental Vehicle Industry Division;
- Independent Tow Truck Operators;
- Service Station & Convenience Store Association of Queensland;
- National Auto Collision Alliance;
- Used Car Division;
- Automotive Under Car Division; and
- Auto Parts Recyclers’ Association of Queensland.

In Queensland, the automotive trade’s value chain generates in excess of an estimated \$11 billion annually, directly employing more than 50,000 people contributing significantly to both Queensland’s and the nation’s economy.

The Association is the leading automotive training organisation in Queensland offering nationally recognised training, covering all aspects of the retail motor trades industry.

The MTA-Queensland's role:

- Assist members with input into future productivity of their industries by the provision of advice, services and representation.
- Supply industry specific services—workplace relations advice and technology information.
- Provide nationally recognised training to all areas of the Retail Motor Trades.
- Cooperate with all level of Governments, Departments and Unions in the development and delivery of training programs.
- Promote the automotive trades and its value to the State and National economies.
- Represent the automotive value chain's issues and policies to all levels of Government.
- Engage with all levels of Government on policy proposals, legislative and regulatory matters and provide input where required.
- Create working relationships with peak bodies to present a unified approach to all levels of governments on matters of common interest.
- Establish business partners to assist member's business interests.

## **Conclusion**

We place on the record our strong support for the national unfair contract terms provisions contained in the draft Bill which included business to business transactions and seek the inclusion of that policy position in the Bill currently before the Parliament.

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

Yours sincerely

Richard Payne  
Principal Policy Director