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Summary

The Motor Trades Association of Queensland (MTAQ) responds to the request for a submission following the appearance of Chief Executive Officer Aivars Blums at the 26 March 2007, Brisbane round table meeting.

In the 21st century the multiplicities of State and Territory legislation and regulations with their inconsistencies applying to motor dealers and consumers have out-used their usefulness.

Our preference would be for a harmonisation of consumer legislation including a national licensing system across State and Territory jurisdictions that is cost efficient, enforceable and responsive to changes in the market and the industry particularly for the motor vehicle retailing sector

It is the MTAQ's preference for specific and common motor dealer laws incorporating consumer protection as the alternative to the current generic approach. The CPF process provides the springboard for a robust national review of the motor vehicle retail sector which would lead to a balance between the supply side and the demand side that reflects the current market and operation.

Referring specifically to motor dealers, we encourage the Productivity Commission under the aegis of the CPF to consider a consultative review process to:

- establish the case for legislative and regulatory consistency and action in the motor retailing/consumer sector;
- identify legislative and regulative relevancy, net benefit to consumers, costs and benefits including compliance costs and inefficiencies;
- examine the dynamics of the market including the statutory requirement for dealers to provide a warranty on motor vehicles up to 20 years old which distorts the market in favour of "backyarders" and if sold for restoration can be sold without warranty; and
- examine feasible policy options such as self-regulation and co-regulation for the new motor vehicle sector including the roles of franchising and new car manufacturer's warranties.

The purpose would be to achieve for the motor car retailing industry a national system of accreditation and consumer protection applying to all jurisdictions supported by a comprehensive educative process.

The MTAQ considers that consumer legislation should have the competency to protect both the demand and supply sides of the transactions and be cost efficient, enforceable and responsive to changes in the market and the industry.

There is a case for considering the supply side especially where the supplier either does not have direct contact with the consumer or is a distributor or a retail intermediary on behalf of the manufacturer

The CPF should ideally incorporate cost effective readily accessible and timely mechanisms for both the demand side and supply side redress.

MOTOR TRADES ASSOCIATION OF QUEENSLAND
Submission
Productivity Commission
Review of Consumer Policy Framework

BACKGROUND:

The Motor Trades Association of Queensland (MTAQ) is the peak organisation in the State representing the interests of 2500 businesses in the retail, repair and service sector of the Australian Motor Industry value chain. The Association represents and promotes the issues of the automotive industries to all levels of government and within Queensland's economic structure.

The MTAQ comprises 14 separate divisions, each representative of a specialist area of the State's auto-industry. They are - Automobile Dealers' Association; Farm and Industrial Machinery Dealers; Auto Electrical Specialists; Motorcycle Industry; Combined Mechanical Repairer Specialists; Tyre Dealers & Retreaders; Engine Re-conditioners; Rental Vehicle Industry; Independent Tow Truck Operators; Service Station & Convenience Store Association; National Auto Collision Alliance; Used Car; Automotive Under Car and Auto Parts Recyclers.

Introduction

The MTAQ responds to the request for a submission following the appearance of Chief Executive Officer Aivars Blums at the 26 March 2007, Brisbane round table meeting.

The Consumer Policy Framework (CPF) is of direct relevance to the motor trade's value chain. Productivity outcomes and the economic performance and consumer satisfaction levels are influenced by the architecture of the CPF.

ISSUES

Legislation and Regulation

Nationally, the motor vehicle industry involves over 100,000 retail motor trade businesses with a combined annual turnover of over \$120 billion employing over 316,000 people. Each state has their own system for licensing and regulating persons in the property and motor vehicle markets to achieve a balance between protection of consumers and the freedom of the enterprise in the market place.

In Western Australia and Victoria for example there is specific legislation for motor dealers (*Motor Dealers Act*) and (*Motor Car Traders Act*) governing motor dealer and consumer transactions. In Queensland, motor dealers are under the umbrella legislation - *Property Agents and Motor Dealers Act (PAMD)* - with real estate agents, property developers, commercial agents, pastoral houses, auctioneers and sales people.

Each of the state and territory legislative measures is substantial. For example the PAMD has close to 650 sections, 2 schedules, 58 regulations, and schedules for fees, commission charges and licensing qualifications including 6 separate Codes of Conduct for the regulated occupations.

Mutual Recognition Act 1992 (Cwth) provides that persons with an occupational licence issued in a State or Territory of the Commonwealth is entitled to have that licence recognised in (for example) Queensland under most, but not all, circumstances. Under the *Trans-Tasman Mutual Recognition (Qld) Act 2003*, people registered in New Zealand have the same rights. Applicants are deemed to be licensed in (for example) Queensland once they possess a receipt for the applicable fee and hold a current, equivalent licence at time of lodgement.

Extrapolated across the federation and coupled with State and Territory *Fair Trading Acts* - and leaving aside related Commonwealth provisions - there is a plethora of laws applying to motor dealer and consumer actions.

In the 21st century the multiplicities of State and Territory legislation and regulations with their inconsistencies applying to motor dealers and consumers have out-used their usefulness.

It seems incongruous that a motor vehicle sale transacted in Queensland requires a contract which is approximately three (3) times as long as that for a similar transaction in Western Australia, yet the level of consumer protection is deemed to be similar in both jurisdictions.

Our preference would be for a harmonisation of consumer legislation including a national licensing system across State and Territory jurisdictions that is cost efficient, enforceable and responsive to changes in the market and the industry particularly for the motor vehicle retailing sector.

It is noted the Small Business Coalition¹ has urged the Coalition of Australian Governments to progress commitments that will harmonise a number of problematic areas.ⁱ The MTAQ is of the view that motor dealers should have been included in that list.

Warranties

We urge the Productivity Commission to consider the role of warranties and franchising as mechanisms to determine a structure for the motor vehicle retail market from which would flow the inputs to the CPF.

Warranties are nationally recognised legal and enforceable documents designed to protect the consumer imposing direct obligations on the motor vehicle dealer. Warranties are not bound by jurisdictional boundaries.

There are three types of warranties applying to motor vehicles:

1. New car statutory warranty

New car statutory warranties cover for 12 months or 20,000 km, whichever reached first. This warranty in most cases covers all defective items on a car.

¹ Coalition of Small Business consists of: ACT & Region Chamber of Commerce and Industry; Association of Consulting Engineers Australia; Australian Chamber of Commerce and Industry; Australian Hotels Association; Australian Newsagents' Federation Limited; Australian Petroleum Agents and Distributors Association; Business Enterprise Centres Australia; Chamber of Commerce and Industry Western Australia; Commerce QLD; Council of Small Business Organisations of Australia; CPA Australia; Franchise Council of Australia; Institute of Chartered Accountants; Masters Builders Australia; Master Plumbers & Mechanical Services Association of Australia; Motor Trades Association of Australia; National Electrical and Communications Association; National Farmers Federation; National Institute of Accountants; NSW Business Chamber; Pharmacy Guild of Australia; Real Estate Institute of Australia; Restaurant & Catering Australia; Small Enterprise Telecommunications Centre Limited; Tasmanian Chamber of Commerce and Industry; Victorian Automobile Chamber of Commerce.

2. New car manufacturer's warranty

This generally exceeds the statutory warranty. Generally it will be two-year/40,000 km or three-year /60,000 km.

3. Used car statutory warranty

This applies to all dealer-sold passenger cars with less than 160,000 km and under 10 years old. The warranty is valid for three months or 5,000 km from date of purchase. This warranty will cover most items on a car relating to safety, reliability and roadworthiness.

In some jurisdictions a one-month or 1000 km warranty applies to vehicles older than 10 years or with more than 160,000 kms on the clock. It should be noted that Australia has the most dated inventory of personal transport vehicles of any of the first world nations and Queensland the oldest stock of motor vehicles in the commonwealth.

New car statutory warranties and new car manufacturer's warranties coupled with franchise arrangements tie motor dealers to agreed standards of consumer service and protection. Dealer breach of a new car warranty may be the subject of a dispute resolution process engaging owner, the manufacturer and dealer in discussions or alternatively legal enforcement governed by the consumer law of the particular state or territory.

Breach of a used car warranty is similar excepting the role of the manufacturer.

Review

It is noted that the Australian Government has a consultative process with the franchising industry underway on the implementation of the Australian Government's response to a review of the disclosure provisions of the Franchising Code of Conduct, with changes likely to be made law after the Budget.

The use of overarching industry legislation such as Queensland's PAMD which provides consumer protection for both the real estate and motor vehicle sectors is difficult to change because any review involves both the industries making it a complex and drawn out process such as the 2006 review by the Queensland Office of Fair Trading.

It is the MTAQ's preference for specific and common motor dealer laws incorporating consumer protection as the alternative to the current generic approach. The CPF process provides the springboard for a robust national review of the motor vehicle retail sector which would lead to a balance between the supply side and the demand side that reflects the current market and operation.

Referring specifically to motor dealers, we encourage the Productivity Commission under the aegis of the CPF to consider a consultative review process to:

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- examine feasible policy options such as self-regulation and co-regulation for the new motor vehicle sector including the roles of franchising and new car manufacturer’s warranties.

The purpose would be to achieve for the motor car retailing industry a national system of accreditation and consumer protection applying to all jurisdictions supported by a comprehensive educative process.

As pointed out in the Issues Paper many actions associated with the motor vehicle retail market (and others) access centralised services such as national credit and vehicle and driver information checks.
