

Motor Trades Association of Australia

Commissioner Robert Fitzgerald
Commissioner Gary Potts
Commissioner Philip Weickhardt
Review of Australia's Consumer Policy Framework
Productivity Commission
PO Box 1428
CANBERRA CITY ACT 2616

By email: consumer@pc.gov.au

Dear Commissioners

The Motor Trades Association of Australia (MTAA) is the peak national representative organisation for the retail, service and repair sector of the Australian automotive industry. The Association represents the interests, at the national level, of over 100,000 retail motor trade businesses, which employ over 316,000 people and which have a combined turnover of over \$120 billion. MTAA is, therefore, the largest 'stand-alone' small business association in Australia.

MTAA has a strong interest in consumer policy and welcomes the opportunity to make a submission in connection with the Report of the Productivity Commission's Review of Australia's Consumer Policy Framework. The Association's interest in consumer policy is in relation to the impact of regulation compliance upon small business, and the need to provide rights and redress to small businesses during the undertaking of commercial transactions.

The Association is pleased, therefore, to see the Commission's acknowledgement of small business as a 'consumer' within the context of Australia's consumer policy framework. As consumers that often deal with larger businesses, small business can face many of the same issues as individual consumers. As such, the Association offers in principle support to a number of the recommendations made in the Commission's report.

For example, the Association considers that the removal of impediments to representative actions, so that any new national generic consumer law would grant regulators explicit powers to bring representative actions on behalf of consumers (whether or not they are party to the proceedings), could provide small businesses with better protective mechanisms and avenues of redress. This could particularly be the case, for example, in situations where small-business consumers have been subjected to a misuse of market power.

The Association supports the Commission's recommendation that Australian Governments need to improve small claims court and tribunal processes through the introduction of both greater consistency in key aspects of those processes across jurisdictions, and by allowing small claims courts and tribunals to make judgements about civil disputes based on written submissions. MTAA believes that avenues of remedy such as these need to be accessible by all small-business consumers, and not largely on the basis of their financial capacity to do so.

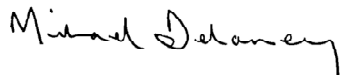
Similarly, MTAA can see merit in the Commission's recommendation that an appropriate legal authority be commissioned by the Australian Government to undertake a review of the benefits, or otherwise, of empowering consumer regulators to gather evidence after an injunctive relief has been granted to a consumer, but prior to substantive proceedings commencing. If adopted, such a change might carry with it the potential to address any imbalances that may exist in the relationships between small-business consumers and larger businesses in the event of a dispute.

The Association would also offer its in-principle support to the Commission's recommendation that a new provision be incorporated into any new national generic consumer law that voids unfair terms in standard contracts, where the term is established as; 'unfair'; evidencing a material detriment to consumers; not relating to the upfront price of a good or a service, and; providing an overall public benefit from remedial action.

Finally, while indicating in-principle support for a number of the Commission's recommendations and for the review of Australia's Consumer Policy Framework in the broad, MTAA's final position on any proposed national generic consumer law would need to be formed subject to a review of the compliance burden the adoption of such law might impose upon small-businesses.

I trust that these comments are of assistance in your consideration of this matter and I would be happy to discuss these matters further with you at your convenience.

Yours faithfully

A handwritten signature in black ink that reads "Michael Delaney". The signature is written in a cursive style with a long, sweeping tail on the final letter.

MICHAEL DELANEY
Executive Director

7 February 2008