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The Manager

**Australian Consumer Law Review:  
Clarification, simplification and modernisation of the consumer guarantee framework**

**1. Introduction**

**1.1** The Motor Trades Association Queensland (MTA Queensland or the Association) responds to the Legislative and Governance Forum on Consumer Affairs' (CAF) Regulatory Impact Statement (RIS) comprising five proposals and implementation options that relate to the consumer guarantees regime in the Australian Consumer Law (ACL). The MTA Queensland's comments are submitted on behalf of its constituent divisions and are confined to issues which relate to the interest of Queensland's automotive value chain which inter alia includes: franchised new car dealers, independent mechanical and motor body repairers, recyclers and other discrete automotive professions and service providers.

**2. Overview**

2.1 The MTA Queensland has evaluated the proposals and their implementation options at some length. The Association has closely followed the evolution of the statutory consumer and competition framework for the last decade, and considers that the ACL has made a substantial contribution to the balanced evolution of Australia's traditional and contemporary markets. This has allowed the economy to better accommodate the advent of intensive electronic and digital transactions that can be geographically disparate resulting in a need for mechanisms that can attend to and resolve disputation between consumers, suppliers and retailers.

2.2 Australia is a modern developed first world nation with a modest sized geographically decentralised population that represents a unique marketing challenge. In these circumstances, hybrid business models have been developed including the franchised dealership retailing structures that service automotive consumers. The RIS proposes options to ensure that effective statutory protections are provided for both consumers and traders operating in a modern globalised economy.

2.3 Incumbent on decision makers must be a mandatory requirement to minimise heavy handed regulatory regimes which have the potential to generate unintended consequences and hinder the attainment the policy objects of the RIS. The Institute of Public Affairs research on compliance costs indicates that 'red tape' imposed by all levels of government 'costs the economy an estimated \$176 billion per year' (Dr Mikayla Novak, 'Cut Red Tape to Unleash Prosperity', May 2016).

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### 3. Submission

3.1 The following views are submitted in respect of the proposals and their implementation options:

#### ***Increasing the threshold in the definition of 'consumer' from \$40,000 to \$100,000***

3.1.1 The RIS put forward three options for consideration for increasing the threshold in the definition of a 'consumer' from \$40,000 to \$100,000. The ultimate aim is to ensure 'that the monetary threshold remains fit for purpose, and that eligible consumers, including small businesses, remain protected by the ACL.' The Association notes that the definition of a 'consumer' has not been amended since the threshold was increased from \$15,000 to \$40,000 in 1986. Since then its real value continues to appreciate. In the instance of small business, certain purchases 'that were once protected by the ACL regime are no longer so protected.' The options are:

- (1) Maintain the status quo.
- (2) Increase the threshold in the definition of consumer from \$40,000 to \$100,000.
- (3) Increase the threshold in the definition of consumer from \$40,000 to \$100,000 and apply indexation.

3.1.2 The Association in its November 14 2016 *New Car Retailing Industry - a market study by the Australian Competition and Consumer Competition (ACCC)* submission, suggested a threshold of \$50,000 and an annual automatic adjustment based on CPI – that was derived from the perspective of a generalised value of a commercial vehicle. Considering the threshold options in the context of member' views and the three case studies and the impact analyses of each in the RIS, the MTA Queensland's position is to support the increase in the threshold for the purposes of defining a 'consumer' from \$40,000 to \$100,000 and that automatic indexation based on CPI apply annually. We are of the view that the benefits of this option outweigh the modest costs it may impose.

3.1.3 There is the possibility that some consumers and small businesses could be disadvantaged unfairly by the threshold (even with indexation); for example, purchasers of vehicles valued over \$100,000. Some small businesses such as owner operated prime movers for hauling articulated road transport would be excluded in most instances. In these circumstances it may be equitable for the Chair of the Australian Competition and Consumer Commission to be delegated the power to declare the purchaser of a good exceeding the threshold a 'consumer' for the purposes of the ACL where special circumstances warrant such action.

#### ***Clarifying the consumer guarantees***

3.2.1 The RIS put forward three options for consideration for clarifying the consumer guarantees. The policy objective is 'to simplify and clarify what remedies are available to consumers when they buy goods that do not meet the consumer guarantees.' The options are:

- (1) Status quo.
- (2) Specify a short period of time during which a consumer is entitled to a refund or replacement without needing to prove major failure. The proposed period is 30 days.
- (3) Option 2 but specify a different time period for high value goods, such as motor vehicles and white goods, based on a monetary threshold, during which a consumer is entitled to a refund or replacement without needing to prove a major failure.

- within Option 3, there is consideration of two approaches: A longer period of time for high value goods and an exemption (status quo) for high value goods.

3.2.2 The proposed options seek ‘to improve the accessibility of remedies and better align these remedies with consumer expectations, rather than change the law to add extra layers of complexity or create unnecessary regulatory burden for businesses.’

3.2.3 The MTA Queensland is supportive of Option 2, and notes that the ACL already sets a ‘rejection period, on when goods can be rejected by the consumer for a refund or replacement.’ Option 2 suggests a 30-day timeline which ‘would bring the law in line with what is already accepted as good practice by many retailers and is a reasonable period of time for most problems to emerge and be identified.’ This aligns generally with the experience of the automotive value chain parts suppliers in instances where non-major failures occur and become evident within a short period after purchase. It is accepted that with Option 2 there will be costs for businesses to become conversant with the new regulatory framework; adjust practices to ensure the shorter periodisation is comprehended and applied correctly by appropriately staff trained.

3.2.4 Option 3 incorporates Option 2 with the addition of a different specified period of time for high value goods in circumstances in which any failure entitles the consumer to a refund or a replacement. Two approaches have been proposed to address how any proposed changes to the consumer guarantees would apply to high value goods such as new motor vehicles and white goods. It is noted that a number of stakeholders requested that there be specific consumer guarantees relating to new motor vehicles.

3.2.5 Under this option, the first approach is to implement ‘a longer period of time’; and the second is for ‘an exemption for high value goods’.

3.2.6 The first approach - ‘a longer period of time’ – according to the RIS could be achieved ‘by setting a monetary value threshold. If goods are above this value, consumers purchasing those goods will be eligible for a longer period during which they can more easily access a refund or replacement’ (para 69). The Association is of the view that although the 2016 Australian Consumer Survey indicated that 74 per cent of problems in the motor vehicles’ category were recognised by consumers in the first six months after purchase, a statutory timeline would create definitional problems, and may not be in the best interest of the consumer or the supplier – particularly in terms of technologically advanced and high value motor vehicles.

3.2.7 The second approach provides for specific predetermined exemption thresholds for individual categories for high value goods. The MTA Queensland is supportive of this approach and requests that consultations be held with automotive value chain representatives and the ACCC to establish mutually agreed thresholds in respect of various categories of motor vehicle equipment.

### ***Enhance disclosure for extended warranties***

3.3 The RIS put forward three options for enhancing disclosure for extended warranties. The policy objective is ‘to ensure that consumers are able to make more informed decisions about whether to purchase a warranty.’ To make informed decisions about an extended warranty, consumers need to be aware of their existing rights under the ACL and under any manufacturer’s warranty and understand the particulars of the product disclosure statement in respect of the extended warranty. The options are:

- (1) Maintain the status quo.
- (2) A legislative amendment comprising a cooling off right, oral disclosure and written disclosure.
- (3) Oral and written disclosure with an opt-in process.

3.3.1 The MTA Queensland considered the options to enhance disclosure for extended warranties. After extensive evaluation an alternative proposal is submitted with particular reference to the automotive value chain.

3.3.2 The Association submits that with a comprehensive framework of manufacturer's warranties and statutory guarantees in place it would be appropriate for the ACCC to investigate the real value and contribution to the overall framework that 'extended warranties' offer in the market.

3.3.3 The MTA Queensland has formed a view that the clarification, simplification and modernisation of consumer product recourse on manufacturers and retailers is not advanced by the proliferation of supplementary products such as extended warranties. These may in certain circumstances act to disrupt the simplification and the modernisation process. The MTA Queensland considers that the consumer product recourse mechanism should simply consist of two components that are easily understood by both the supplier (manufacturer) and consumer (purchaser). These are the manufacturer's warranty and the statutory guarantee. Warranties and the guarantee should be transferable and not limited by geography within Australia.

3.3.4 The introduction of a third-party warranty into the consumer protection framework needs to be carefully evaluated. The origin of such guarantees should also be the subject of any evaluation and whether a third-party can effectively warrant a product to a consumer.

3.3.5 If the benefits of extended warranties are found to contribute less than the overall cost imposed on the consumer and the framework, there maybe a case to have these products excluded from supply in Australia in a similar manner to without merit insurance and financial products.

3.3.6 The consumer guarantee framework may benefit from being simplified by the deletion of extended warranties, clarified by requiring manufacturers to exclusively provide warranties on their own products and modernised by having two elements comprising the product recourse mechanism: a manufacturer's warranty and a statutory guarantee.

3.3.7 The evaluation of extended warranties should also consider the advantages for small businesses of imposing the obligation for product recourse warranty exclusively on the manufacturer. An exclusive manufacturer's warranty would absolve small business which simply retail product on behalf of manufacturers from the risks and costs associated with consumer product recourse. The risk would revert to the manufacturer.

#### ***Access to consumer guarantees for goods sold at auctions***

3.4 The RIS put forward four options for consideration for enhancing disclosure for goods sold at auction. The policy objective is 'to ensure that exemptions from the consumer guarantees framework in the ACL are facilitating the effective operation of the auction market by balancing the needs of businesses to efficiently dispose of a variety of goods and the needs of consumers to have confidence when purchasing those goods. The options proposed seek to improve the operation of the market for consumers who are purchasing through online auctions by ensuring that where they have no ability to inspect goods they will be able to have easy access to remedies in the event something goes wrong.' The options are:

- (1) Maintain the status quo.
- (2) Goods purchased through online auctions that are conducted entirely online, with no reasonable opportunity to inspect goods, receive access to the remainder of the consumer guarantees (that are available in the ACL for generic retail sales). The status quo remains if the auctioneer makes the goods reasonably available for the inspection.

- (3) Goods purchased through online auctions, regardless of the ability for a prior inspection (including traditional auctions that allow online bidding) receive access to the remainder of consumer guarantees (that are available in the ACL for generic retail sales). The status quo will remain for consumers who purchase from auctions in person; and
- (4) All goods purchased through auctions will receive access to the remainder of consumer guarantees (that are available in the ACL for generic retail sales).

3.4.1 In respect of the proposals for consumer guarantees sold at auctions the MTA Queensland notes the four options and requests consideration for a staged implementation initially adopting Option 2 for a period of 24 months which after or during there would be a transition to Option 4 where goods purchased through auction would be accorded the remainder of consumer guarantees available in the ACL.

## 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 15,500 automotive value chain businesses employing approximately 88,500 persons generating in excess of \$20 billion annually. It is an industrial association of employers incorporated pursuant to the *Fair Work Act* 2009. 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 technical, retail and the aftermarket phases of the motor trades industry through the MTA Institute - a registered training organisation. It is the largest automotive apprentice trainer in Queensland employing in excess of 35 trainers geographically dispersed from Cairns to the Gold Coast and Toowoomba and Emerald. The MTA Institute last financial year accredited courses to in excess of 1,600 apprentices and trainees.

Thank you for your deliberation.

Yours sincerely



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