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Dear Sir/Madam

**An Australian Consumer Law: Fair Markets – Confident Consumers**

The Motor Trades Association of Queensland (MTA-Queensland) responds to the Consultation Paper "*An Australian Consumer Law: Fair Markets – Confident Consumers*" request for information in relation to the likely compliance costs, impacts on competition, any other costs or benefits of amendments to Australia's Consumer Protection Framework. The MTA-Queensland has formed a view on issues in the Consultation Paper and our submission is attached.

We would be pleased to provide further comment on any matters in our submission that may require clarification.

Yours sincerely

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## Summary

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 the Australian'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.

The Consumer Protection Framework (CPF) has been a strategic policy matter that MTA-Queensland has participated in by way of contribution to the Productivity Commission's *National Framework for Consumer Policy* and by provision of submissions to harmonise laws or processes and codifications intended to maintain equity in competition.

MTA-Queensland's membership supports the concept of a uniform CPF that is harmonised across the Commonwealth and if possible extends under the *Closer Economic Relations Trade Agreement* to New Zealand. This uniformity would provide an efficiency dividend for the benefit of industry and consumers.

A seminal issue in reforming the CPF is the definition of a "Consumer". The importance of the definition of "Consumer" requires consistency across the annexed Codes to the *Trade Practices Act* (TPA) and in particular the *Franchise Code* and the treatment of Franchisees who for the purposes of this Code are the "Consumer".

The CPF should be broadened by either extending the definition of “Consumer” to include small business and franchisees who are consumers of inputs or goods from oligopolistic or monopolistic suppliers or extending the definition across the other Codes that form part of the TPA such as the *Franchise Code* or the *Oilcode* to ensure a consistent interpretation or preferably a simultaneous amendment in both regards.

MTA-Queensland supports the Federal Government’s move to a CPF that is based on generic legislation and regulation rather than sector specific legislation.

The resupply exclusion from MTA – Queensland’s perspective is equitable only if the other Codes, in particular the *Franchise Code* of the TPA are simultaneously strengthened to protect the rights of those who purchase goods for re-supply. (For example, the party securing the goods or services in the transaction even if it is an intermediate transaction is recognised as a “Consumer” and is accorded consumer protection.)

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.

As a general principle the MTA-Queensland considers that Australia’s Consumer Law in respect of the sale of new or preowned motor vehicles should be consistent across all the state jurisdictions of the Commonwealth.

The MTA- Queensland has formed a view that in regard to imported goods and services, Consumers can only be afforded real protection if there is an Australian resident natural or corporate person who can be held accountable under Australia’s TPA and on whom consumers can have recourse.

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## **MTA-Queensland Submission**

### ***An Australian Consumer Law: Fair Markets – Confident Consumers***

#### **1. Introduction**

- 1.1 The Motor Trades Association of Queensland (MTA-Queensland) responds to The Standing Committee of Officials of Consumer Affairs Consultation Paper *“An Australian Consumer Law: Fair Markets – Confident Consumers”*.
- 1.2 We note the proposed key changes to which comment is sought. Our responses reflect our membership who constitute a significant link in the automotive value chain and are enunciated below.
- 1.3 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:
  - *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.*
- 1.4 MTA-Queensland supports the Council of Australian Governments’ (COAG) agreement to introduce national consumer law that implements the recommendation of the Productivity Commission.
- 1.5 We consistently have submitted that the consumer and the suppliers should participate fairly and in good faith in competitive markets and which should be incorporated in a high level future policy framework. Small and medium businesses are both suppliers of goods and services and consumers in their own right.

#### **2. Motor Trades Association Queensland Background & Role**

- 2.1 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 the Australia's automotive industry. It is an industrial association of employers incorporated pursuant to the Industrial Relations Act of Queensland.
- 2.2 The Association represents and promotes the issues of the automotive industries to all levels of government and within Queensland's economic structure.
- 2.3 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.
- 2.4 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.
  - Provision of 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.

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

2.6.1 The Association's Motor Industry Training entity is the largest automotive apprentice trainer in Queensland and has trainers positioned in Papua New Guinea and Fiji to increase knowledge and skills base of the automotive industry and career opportunities in these countries.

2.7 In Queensland, the automotive trade's value chain generates in excess of an estimated \$16 billion annually, directly employing more than 60,000 people contributing significantly to both Queensland's and the nation's economy.

### **3. MTA-Queensland's Perspective**

3.1 Our comments are confined to issues that have direct relevance to the automotive value chain and the interest in Consumer Law of the MTA-Queensland member.

3.2 MTA-Queensland's membership supports the concept of a uniform CPF that is harmonised across the Commonwealth and if possible extends under the *Closer Economic Relations Trade Agreement* to New Zealand. This uniformity would provide an efficiency dividend for the benefit of industry and consumers.

3.3 It is noted that the proposed amendments to the *Trade Practices Act (TPA)* to reform Consumer Law, enforcements and harmonise it, is envisaged in the form of a schedule to the TPA. A national regulatory regime shall be achieved by mirror legislation in each of the states as agreed by COAG and the Ministerial Council of Consumer Affairs.

3.4 MTA-Queensland is of the view that there is need for consistency and an extension of the CPF by either extending the definition of "Consumer" to include small business and franchisees who are consumers of inputs or goods from oligopolistic or monopolistic suppliers or extending the definition across the other Codes that form part the TPA such as the *Franchise Code* or the *Oilcode* to ensure a consistent interpretation or preferably that simultaneous amendments to the definition are made across the entire legislative framework.

3.4.1 If the definition of "Consumer" is extended as proposed by MTA-Queensland, the "*Oilcode*" could be phased out as the protection afforded under the Code would be more effectively enforced under the generic provisions of the TPA.

3.4.2 Codes that extend the legislation must be reformed and brought into line with the CPF so that the Framework extends to protect the fairness of contracts for franchise agreements between persons who are commercial entities not just natural persons who act as final consumers.

3.5 MTA-Queensland supports the Federal Government's move to a CPF that is based on generic legislation and regulation rather than sector specific legislation.

3.5.1 We consider that ultimately, the automotive sector specific CPF should be dismantled and that generic legislation should have the competence to regulate the industry in a way that is consistent across the states of the Commonwealth and possibly New Zealand.

3.5.2 This eventually should extend to the abolition of the States' licensing of used car dealers as the effective method of protecting consumer interests. Consumer recourse to the seller of a motor vehicle whether a person natural or not under harmonised generic Consumer Protection Law should be the contemporary mode of recourse.

#### **4. Definition**

4.1 The seminal issue in reforming the CPF in the opinion of MTA-Queensland is the definition of a "Consumer". The importance of the definition of "Consumer" requires consistency across the annexed Codes to the TPA and in particular the *Franchise Code* and the treatment of Franchisees who for the purposes of this Code are the "Consumer".

4.1.1 This means that the definition of "Consumer" should not be restricted to a monetary value or capped by a threshold. Rather it should take account of the role the party performs in a transaction e.g. if a party is the recipient of a good or service in exchange for consideration in a transaction irrespective of the scale of the transaction or whether the transaction is for final consumption that party constitutes a "Consumer".

4.2 The resupply exclusion is equitable only if the other Codes, in particular the *Franchise Code* of the TPA are simultaneously strengthened to protect the rights of those who purchase goods for re-supply e.g. the party securing the goods or services in the transaction even if it is an intermediate transaction are recognised as "Consumers".

4.3 MTA-Queensland has formed the view that the TPA should ensure that the interests of small businesses and farm undertakings have equitable treatment with those of individual consumers.

4.4 There is no reason for including commercial vehicles as consumer goods and excluding other items such as agricultural equipment including farm machinery, tractors etc.

4.5 We do not favour a monetary value limiting the definition of "Consumers". There is no substantial reason why a cap of \$40,000 or inflated to \$54,000 in 2007 has any rationale. Should a monetary cap be imposed, it should be adjusted for Consumer Price Indexes on an annual basis.

4.5.1 We consider as incongruous with a concept of natural justice, a situation where a “Consumer’s” statutory rights are limited by a financial threshold. This is analogous to the inequitable concept that “if they can buy an expensive item they have enough money to look after themselves and don’t require legislation”.

4.6 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.

4.6.1 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.

4.6.2 This diminishes both the protection that the resupplier can warrant and the “real” warrant the ultimate consumer can claim against to protect their position.

4.6.3 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.

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

## **5. Other Issues**

5.1 As a general principle the MTA-Queensland considers that Australia’s Consumer Law in respect of the sale of new or preowned motor vehicles should be consistent across all the state jurisdictions of the Commonwealth.

5.2 Consumer and safety regulations applying to agricultural equipment sold by commercial treaty or transactions across the Commonwealth should be subjected to uniform or harmonised regulations and Consumer recourse should be through to the manufacturer or the original importer of the equipment and not limited to the resupplier or the dealer.

5.3 MTA-Queensland considers that the CPF should mitigate behaviour which involves transactions where goods and services that are offered for sale do not correspond with that supplied to the Consumer or where there is “unfair” or

“distorting” market intervention such as mock auctions or unavailable loss leaders or related undisclosed third party participation in public transactions.

5.4 MTA-Queensland has strong views in relation to the regulation of representations and advertising and requests that the ACCC issue clear and succinct guidelines so that legitimate media advertising can be clearly defined and is not used as a way of distorting the real price that a consumer ultimately pays for the goods in particular automobiles.

5.4.1 The increased use of electronic marketing across state jurisdictions that do not involve an opportunity to inspect the goods first hand demands that Consumers are not misled by inappropriate representations and the information is fairly representative of the goods or services offered for sale.

5.5 MTA-Queensland considers that for consumer protection to operate effectively in the automotive field there should be a minimum uniform standard of consumer disclosure documentation that applies across the Commonwealth in relation to the sale of motor vehicles.

5.5.1 This should be based on a set of prerequisite disclosure provisions that the sales contracts are mandated to incorporate and be acknowledged by the consumer for a transaction to be legitimate rather imposing proforma documentation.

5.6 To ensure that Consumer recourse is effective the instrument of sale must disclose the suppliers address or an address where the Consumer can obtain recourse in respect of goods purchased and where an agent representative or franchisee is the selling party the details of the primary supplier must be provided and the extent of recourse on the manufacturer detailed.

5.6.1 In the case where the primary origin of a good or service is an overseas “person” natural or other wise, there must be an Australian importer or representative that can be held responsible under Australia’s TPA for the goods or services offered for sale.

5.6.2 This party must have sufficient financial standing or maintained indemnities to satisfy any claims that may be made against it or its products. This is particularly the case in vehicle and truck tyres where reputable brands warrant their goods and a consumer can have recourse on the representative of the manufacturer. However, there are cheap end brands that are imported by third parties where recourse is not possible even in cases where personal injury and loss of life are involved.

5.7 Any contract or transaction relating to the servicing of equipment should be required to state a unique identification code and itemise the service or repairs

performed and parts supplied. The contract should separately state the warrants and guarantees that apply to the service work and those that apply to the parts supplied and the recourse on the manufacturer of those parts.

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