



Motor Trades Association of Australia

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

Via email: economics.sen@aph.gov.au

Dear Sir/Madam

Thank you for providing the Motor Trades Association of Australia (MTAA) with the opportunity to provide a submission to the Senate Economics Legislation Committee's Inquiry into the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010 (the Bill).

MTAA is a federation of the various state and territory motor trades associations as well as the New South Wales based Service Station Association Ltd (SSA) and the Australian Automobile Dealers Association (AADA). MTAA also has a number of Affiliated Trade Associations (ATAs), which represent particular sub-sectors of the retail motor trades, ranging from automotive parts recycling to motor vehicle body repair.

In principle, MTAA supports and encourages Trade Practices Act reform and the Association has previously indicated to your Committee its in-principle support for the introduction of the national consumer law; notwithstanding the Association's concerns about the exclusion of business to business contracts in the new unfair contract terms regime. The Association believes that for the many businesses now operating across borders, there are likely to be significant benefits from the introduction of a national consumer law.

It should be noted that the Bill and Explanatory Memorandum together total nearly 1000 pages and the Association does not have the legal resources to conduct a detailed analysis of such lengthy documents. MTAA's comments therefore are confined to a small number of matters which have been identified as raising issues for retail motor traders.

However, while the Association supports, in principle, the guiding principles and overarching policy intent of the suite of consumer and product safety law amendments outlined in this No. 2 Bill, it nevertheless remains concerned about aspects of the Bill and the operation and resulting compliance burden for retail motor traders.

MTAA is of the view that businesses that act as consumers should be afforded the same protections at law when purchasing or acquiring goods and services, as a private consumer. Of most concern in the Bill as currently drafted, however, are the practical and operational implications of section 131. The term "supplier" as used in that section means that the entire

\$160 billion retail motor trades sector will be under reporting obligations when a product is “associated” with death or serious injury.

Warranties and Guarantees

Under the law as it currently stands in relation to warranties, small businesses are captured within the definition of “consumer” under certain circumstances. Those circumstances are where the purchase price of the good is under \$40,000-00 and the good is of a kind ordinarily used for personal, domestic or household use or consumption or in relation to the purchase of a vehicle, where it is for use in the transport of goods on public roads, and provided the goods are not for re-supply or have not been transformed.

However, under the proposed Australian Consumer Law package, the “ordinarily acquired” test will apply to any purchase, regardless of its value. This will substantially impact on the retail motor trades and all other small businesses and eliminate any redress in relation to warranties and guarantees that were previously available to them as consumers. Even if the purchase is under \$40,000-00, the purchase must be ordinarily acquired for personal, domestic or household use or consumption. This effectively means that if a “consumer” and a small business purchase an identical product, such as IT equipment, the “consumer” is protected under the proposed warranties and guarantees law, yet the small business is not. It is the Association’s view that if a product is purchased in good faith, it should always come with the same warranty protection, regardless of who purchases it.

It seems to MTAA that the proposed changes, as outlined in the Bill, significantly weaken the position of small business as consumers and remove substantial protections that it had against faulty equipment purchased by it. Many small business retailers will buy display and other equipment for their businesses for which under these proposed provisions they will have no warranty protections at all. This is an entirely inequitable and unsatisfactory situation.

The Bill provides for the introduction of a more onerous warranty/guarantee regime for retailers (many of whom are small businesses) which could see retailers having the warranty liability for all issues arising post-manufacture; even where such matters are not within the retailers’ control.

MTAA believes that the issue of small business rights under the warranty provisions needs to be revisited by the Government with a view to restoring the arrangements currently set out in the Trade Practices Act.

MTAA is also disappointed with the level of consultation undertaken by the Government in relation to these changes. The Government appears to have adopted the report of the Commonwealth Consumer Affairs Advisory Council (CCAAC) without any discussion with business about the impact of the views contained in the CCAAC report.

Section 131 – Mandatory Reporting of Goods Associated with Serious Injury or Death

MTAA understands and accepts entirely that there needs, within our society, to be adequate and appropriate arrangements in place for the recall of faulty and dangerous goods and for consumers, retailers and manufacturers/importers to have the ability to report faulty and dangerous goods to the relevant authorities. Currently the Federal Chamber of Automotive Industries (FCAI) in conjunction with its member companies operates a voluntary recall code of practice for motor vehicles.

MTAA is most concerned about the operation of the proposed section 131 of the Bill which will impose new reporting requirements on retailers in relation to potentially faulty and dangerous goods. As far as the Association is able to ascertain, it would appear that section 131, as it is presently drafted, would potentially operate such as “suppliers” will be required to, “. . . report consumer goods associated with the death or serious injury or illness of any person.” MTAA understands that the Bill defines “supplier” as the supplying of goods including by way of exchange, lease, hire or hire-purchase and providing, granting or conferring a service. The draft legislation provides also that a ‘consumer good’ means “. . . goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption . . .”

The definition of “supplier”, according to section 2, therefore captures all car and motorcycle dealers, motor vehicle repairers, engine reconditioners and repairers, tyre retailers and tyre retreaders, rental vehicle providers and service station operators.

It seems to MTAA, in this instance, that the broad definition of ‘supplier’ and the widely drafted phrase ‘associated with the death or serious inquiry or illness of any person’ casts a very broad net in terms of reporting compliance and indeed a very wide net in terms of what is required to be reported. This is particularly so for motor vehicles, where the cause of serious injury or death is most often not related to a manufacturing defect in the vehicle. There is no requirement in the legislation for there to be any casual link between the death or serious injury and a manufacturing defect. The draft legislation seems to ignore the fact that there are many causes of motor vehicle accidents; the majority of which will not be related to any manufacturing fault.

The Association is aware that motor vehicle manufacturers and suppliers in Australia voluntarily submit to recall and safety procedures as outlined in their Recall Code.

Overwhelmingly, those in the retail motor trade consider matters of safety as a priority. Those same retail motor traders take very seriously, and gladly comply with, any existing obligations imposed to ensure the vehicles that they sell or service comply -- even through their actions -- with the Australian Road Rules, the Australian Design Rules, the Motor Vehicle Standards Act and, the various state and territory regulatory and registration regimes. New motor vehicle dealers invariably operate, in conjunction with their suppliers’, monitoring and reporting mechanisms that, by their very operation, alert vehicle suppliers and manufacturers to any emerging or unforeseen engineering or safety issues resulting from on-going vehicle usage. Those mechanisms are typically an automatically occurring component of the routine servicing of vehicles. It would, therefore, be MTAA’s assertion that sufficient mechanisms exist in the automotive sector to adequately protect consumers from harm that could be directly attributable to a specific motor vehicle.

It might also be persuasively argued that vehicles, on their own, are rarely, singularly and wholly responsible for death and / or serious injury. Section 131 requires all “suppliers” to report consumer goods that have been “associated” with the death or serious injury or illness of any person to the relevant Commonwealth Minister. Given that “supply” is defined as a sale, exchange, lease, hire or hire-purchase of a good or the provider, granter or conferrer of a service, this places an enormous burden on the retail motor trades.

Consider a scenario within that construct. A person is driving a car and encounters a distracted person who steps off a footpath and onto the roadway. The driver takes avoidance action that causes the vehicle to strike a telegraph post; the impact resulting in catastrophic injuries to the driver. Section 131 clearly stipulates that any supplier of a good or service must report consumer goods which are “associated” with this accident, within two days, to the relevant Commonwealth Minister. The supplier of such a good or service, must report the type of car, when the car was sold,

the circumstances of the death and/or serious injury, the nature of the injuries and action which the supplier will take in response.

Therefore, even though this scenario was jointly caused by the pedestrian who walked onto the road and the driver who swerved to miss that person, all suppliers of “associated” goods and services must report to the Minister. Given there are 1509 deaths and 25,000 serious injuries per year from car accidents, it is self-evident that the Minister may have many Reports to read.

MTAA believes that this issue of mandatory reporting by suppliers of goods associated with serious injury or death needs to be reconsidered. There needs to be some causal link between the serious injury and death and a manufacturing fault. The Bill as currently drafted in that respect is far too widely drafted and imposes an unreasonable burden on retailers.

Summary

The Association fails to see any compelling reason why the small businesses it represents ought to be faced with the prospect of enjoying a lower standard of product protection than other members of the community. A purchase in good faith with the anticipation of specific performance for a product or service ought to be universally available.

Additionally, the Association understands that government has a certain responsibility and role to play in protecting citizens from unforeseen hazards to health and wellbeing arising from the innocent and appropriate use of a product. The Association would agree that mechanisms need to be in place whereby goods identified as dangerous need to be recalled, removed from sale or prohibited for sale. The Association would contend, however, that in the automotive sphere those mechanisms already exist and function adequately. The Association sees no palpable benefit that can be derived from the imposition upon that sphere of section 131 of the Bill and its attendant sections.

Please do not hesitate to contact us to discuss any aspect of those comments or to seek more information at any time of your convenience.

Yours sincerely

(...)

MICHAEL DELANEY
Executive Director

20 April 2010