



MTAA



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31 January 2020

Mr Christian Mikula
Group Senior Specialist
Major Projects | Financial Services
Australian Securities and Investments Commission
Level 2
2 Allsop Street
Canberra ACT 2600

Via Email: Christian.Mikula@asic.gov.au

Ref: ASIC Proposal CP 324 and PIO on add-on products

Dear Mr Mikula,

The Motor Trades Association of Australia (MTAA) has been following the consultation on ASIC’s proposal in CP 324 and specifically supports matters raised individually by member associations and particularly the Motor Trade Association of South Australia and the Northern Territory in their separate submission and consultations.

While understanding the background including the findings of the Financial Services Royal Commission (FSRC), previous ASIC investigations, and other inputs that are driving ASIC’s detailed rationale for CP 324, MTAA nonetheless remains concerned about the tenor, implications and potential unintended consequences of the proposed draft intervention order. MTAA is of the view this will create an unfair playing field and significantly disadvantage one sector of the retail economy while failing to recognise similar if not identical issues in other sectors.

MTAA and members and their automotive business constituents fundamentally support consumer protection and the mitigation of any identified consumer detriment issue and actively works to ensure members are compliant and address any identified issues.

As ASIC is aware, MTAA Members and their constituents have worked hard to adopt and make change to business operations to accommodate a raft of changes and requirements through other actions and activities relating to matters raised and dealt with previously by ASIC and other regulators and authorities including commissions. Required timeframes for implementation have been met. These policy and regulatory changes come simultaneously to unprecedented change occurring in new car retailing and the impacts of a highly volatile market and changing consumer behaviours which are placing significant strain on this industry.

MTAA maintains the increased regulation outlined in CP324 is undesirable and could be better addressed in the first instance through a stronger partnership between the regulator and industry representative organisations as a first response. While intervention powers could still be exercised if warranted as a last resort, MTAA is puzzled why the imposition of intervention orders are required up front.

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MTAA on behalf of members and their constituents, is currently liaising with other Commonwealth Departments regarding other FSRC recommendations and their implementation as well as emerging policy and regulatory changes regarding access to service and repair information and franchising.

MTAA is acutely aware of the Commonwealth Government's commitment to adopt all the FSRC recommendations, including abolition of current exemptions of importance to the automotive sector and is assisting with the development of policy and regulatory work to ensure the intent of FSRC recommendations are fulfilled, with the minimisation of potential impacts and unintended consequences. MTAA is also acutely aware of the focus of ASIC in automotive over recent times and has worked diligently to address matters of concern with ASIC.

MTAA is currently working with the Treasury Department regarding potential structures and obligations on retail (including new car retailing) with the removal of the Point of Sale (PoS) exemption (FSRC recommendation 1.7) and is awaiting finalisation of these matters and Government's final decision. The ACL and CCA also provides significant provisions for consumer recourse and obligations on retailers above and beyond manufacturer and statutory warranty periods

It appears to MTAA that there may be disconnects or inconsistency between the matters ASIC is seeking to address through CP324 and potential intervention order and other policy and regulatory work to address the FSRC recommendations as well as existing compliance obligations and requirements of motor vehicle retailers with Australian Consumer Law, the Competition and Consumer Act, and other jurisdictional laws and licensing.

MTAA continues to have grave concerns about why the automotive retailing industry is being apparently singled out when the FSRC recommended an economy wide solution that would provide maximum clarity, consistency and approach for all sectors of the economy. MTAA believes discrete investigations of ASIC into automotive retailing should harmonise with the FSRC recommendation instead of disrupting or duplicating positive steps made. MTAA finds it interesting that on the one hand ASIC seemingly agrees with the broader remit being sought by the FSRC recommendation in saying that *'.... the harm they are addressing arises irrespective of the sales channel and is not limited to where these products are sold by caryard intermediaries'*, yet CP 324 and PIO only targets motor vehicle retailers who in many cases are not even the product designers.

Similarly, MTAA has considerable concerns regarding ASIC's apparent assumptions that *'....prima facie the changes are applicable to all MRPs and not sales- channel dependent'*, [mechanical risk products ('MRPs')] and *'...some providers are likely to extend any changes to all products, even if this is not mandated in the PIO...'*

MTAA fails to understand how marine, aviation, and other retail including whitegoods, electronic devices including televisions, computers, etc. are not classified MRPs. Even if these are not considered MRPs how are the extended warranty products offered with these consumer goods by prominent retailers and third-party providers be treated any differently that those proposed for automotive retailing? MTAA cannot locate any evidence or qualifying material to support ASIC's assumptions.

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MTAA, while recognising and respecting ASIC’s regulation powers, strongly believes the imposition of an intervention order at this time is unnecessary and not warranted given the industry has not had any opportunity to engage and address the stated concerns. MTAA seek an opportunity for this authority to be exercised as a last resort rather than an initial response.

MTAA strongly recommends:

1. ASIC and peak industry associations work collaboratively to address the matters raised in CP324, including awareness, education and implementation actions and timetable.
2. Development and inclusion of a whole of economy solution recognising extended warranty matters in other parts of retail and other industries consistent with the FSRC recommendation.
3. Temporary abandonment of the intervention order unless ASIC remains unsatisfied with industries response to addressing matters within an agreed timeframe.
4. Should ASIC proceed it should apply the obligations in clause 10 of the order to all mechanical risk products, irrespective of the sales channel.

MTAA and members believe the playing field should be level and fair and not single out an entire industry which in turn creates potential loopholes or competitive advantages.

While supporting and recognising the rights of consumers and the absolute need to ensure protection, MTAA impresses on ASIC many new car retailers particularly in regional and rural Australia are on the precipice and have almost no capacity to absorb additional regulatory burdens when they are not being applied across the economy.

Please do not hesitate to contact me should you require any additional clarity or further information.

Yours Sincerely

Richard Dudley
Chief Executive Officer
Motor Trades Association of Australia

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