

17 January 2014

Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Motor Dealers & Chattel
Auctioneers Bill 2013
Submission 003

Re: Motor Dealers and Chattels Auctioneers Bill 2013

The purpose of this submission is to provide RACQ's comments on the *Motor Dealers and Chattels Auctioneers Bill 2013*

RACQ commends the Government for its attempts at making the current, very complex, *Property Agents and Motor Dealers Act 2000* more user friendly by splitting it into smaller and more industry relevant and focussed parts.

RACQ notes the Government's desire to reduce red tape and regulatory burden for the industry. However we believe the changes outlined in the proposed *Bill* will have limited real impact in achieving this objective, though we note the suggestion that further reforms will be implemented in the future. Regulatory burden and red tape reduction, while desirable should not in our view come at the expense of consumer protection or increased financial burden for consumers.

RACQ is very concerned that the removal of Statutory Warranty provisions for vehicles more than ten years old or that have travelled more than 160,000 km is a significant reduction in the level of consumer protection the existing *Act* provides, and appears to be counter to the original *Act's* intent that the cover afforded would reflect reasonable expectations of a vehicle's reliability based on its age and distance travelled.

The existing *Act* already significantly limits a dealer's exposure to such claims by restricting the coverage to one month or 1,000km and excludes a number of the components or systems that are currently covered by the class A Statutory Warranty.

While we understand that providing Statutory Warranty cover on an older vehicle adds to a Motor Dealer's costs, and that these vehicles, due to their age and distance travelled, are more likely to have issues, the fact is that the removal of this protection will merely, in the event of a failure, move the cost burden from the dealer, who has the ability to amortise the costs over a larger number of sales, to the vehicle buyer who has to absorb the entire cost.

This change has the potential to increase the cost of motoring to buyers of this type of vehicle without, we believe, a corresponding reduction in the asking price of these vehicles to off-set it.



We could not support a suggestion that commercially available used vehicle warranties, which are commonly sold or provided with used cars by Motor Dealers, provide a substitute for this level of Statutory Warranty cover. Quite simply, it is our experience that the limitations and exclusions placed on the majority of these products would prevent many issues that arise with second hand vehicles from being covered. The current arrangements may be unwieldy and provide only limited benefit; however elimination of this provision will remove any protection these buyers had, with no corresponding compensation.

We would also point out that while an older vehicle may have limited value, one that is relatively new can, due to its usage patterns, have travelled more than 160,000km and still retain a relatively high value, yet under the provisions of this *Bill*, the buyer of such a vehicle will be offered no protection, even though they have expended a considerable amount on its purchase.

Rather than reducing the protection afforded to buyers, as this *Bill* proposes, it is in the interests of both consumers and the industry to enhance the motivation to deal with licensed Motor Dealers. Without the perceived protection of the class B Statutory Warranty, there is even less reason to encourage a consumer to buy from a licensed Motor Dealer, and this could result in buyers being further disadvantaged due to the lack of regulation relating to non-dealer sales.

Part 3. Section 106 *Consideration for cooling off period* and 107 *Consideration for option*

Clause (1) of both sections refer to the *non-refundable deposit which is the amount prescribed or worked out under a regulation*. There is no reference to this regulation and therefore there is no indication as to the dollar value of the non-refundable deposit.

Schedule 1 Section 3 *Meaning of warranted vehicle*

(3) *Subject to subsection (4), for subsection (1) (b), the built date of a motor vehicle is-*

(a) if the words built or built date and a date are stamped on a metal component of the vehicle or a metal plate, other than the vehicle's compliance plate or identification plate, affixed to the vehicles – that date.....

Based on information provided by the federal Department of Infrastructure and Regional Development, the term *compliance plate* has not been officially used since 13 May 1996 when an amendment to the Motor Vehicle Standards Act 1989 was applied. At that time the term *compliance plate* was replaced by *identification plate*. We do however acknowledge that the term *compliance plate* still appears in *ADR 61/02 vehicle marking* and in many other places in legislation and other documents and that this appears to be inconsistent with the *Act*.

We are aware that the term *compliance plate* is still in common usage however we have confirmed that it is no longer referenced in the *Motor Vehicle Standards Act 1989*. Additionally, we believe the term *identification plate* is commonly, though incorrectly, applied to the plate fitted by the vehicle manufacturer at the time the vehicle is assembled to record pertinent information about the vehicle.



While the references to *compliance plates* and *identification plates* in (3) (a) may have been intended to address the common usage issue, the two terms are in effect officially the old and new terms for the same thing. We find this confusing and believe other readers will as well, particularly given the common usage applications of these terms.

We suggest this *Bill* be altered to make it consistent with the terminology used in the *Motor Vehicle Safety Act 1989*, which is referenced in the explanatory notes, and that the term *compliance plate* be removed and replaced with *identification plate* and that the term *maker's plate* be used to describe the plate fitted by the vehicle manufacturer at the time of production. Appropriate explanatory statements should also be included which would provide an opportunity to clarify the meaning and evolution of the terminology.

We would also point out that rather than stamping the built date into a metal component of the vehicle or a metal plate, it is common, and permitted, practice to use self-adhesive labels in place of metal *identification plates* and *maker's plates*. In this case the details are printed rather than stamped.

As it stands, for a vehicle fitted with a printed label rather than a stamped plate, the requirements of (3) (a) would mean that the vehicle's built date would have to be taken from its *identification (compliance) plate* as outlined in (3) (b), as the requirement for a built date stamped on a metal plate or component has not been satisfied.

This issue could be overcome by referring to dates stamped on metal plates and those printed on *identification or maker's labels*.

Schedule 1 (8) *Defects not covered by statutory warranty*

(c) *a defect in something else prescribed by regulation.*

It isn't clear if this is intended to refer to a regulation, and if so which one.

Part 3 Motor dealers

Division 5 *Sale of motor vehicles by motor dealer* Section 96 *Obligation to give clear title*

Section 96 (2) requires buyers purchasing a vehicle from a dealer to be provided with clear title to the motor vehicle they've purchased, and outlines who is responsible for this.

However, Section 96 (5) could be read as suggesting that a security interest registered under the *Personal Property Securities Act 2009* overrides the buyer's right to clear title to the vehicle sold to them by the Motor Dealer.

This is only one of a number of possible interpretations that can be applied to Section 96(5), and based on the fact that it appears to be counter to providing the consumer protection this *Bill* is intended to deliver, is likely to be wrong. Given that we were able to come up with a number of possible interpretations, none of which we felt confident with, we consider that the underlying intent of this section needs to be clarified, either by rewriting it in plain English or by the provision of an explanatory statement.



We note that the content of this section is broadly the same, with some deletions, as that shown in the current *Property Agents and Motor Dealers Act* and that these provisions are similarly unclear and open to interpretation / misinterpretation.

Part 4

Division 5 *Sale of motor vehicles by auction* Section 142 *Obligation to give clear title*

The content of this section is similar to that of Section 96 referred to above. We have the same concerns about its interpretation and similar comments are applicable to those discussed in relation to Section 96.

For further discussion or clarification please contact Russell Manning at Russell.manning@racq.com.au or telephone 07 3666 9708.

Yours sincerely

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