



15 January 2019

Committee Secretary
Transport and Public Works Committee
Parliament House
George Street
Brisbane Qld 4000

To Committee Secretary

Re: Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill

1. Introduction

1.1 The Motor Trades Association Queensland (MTA Queensland or the Association) responds to the Queensland Parliamentary Transport and Public Works Committee's invitation for submissions to its *Queensland Civil and Administrative Tribunal (QCAT) and Other Legislation Amendment Bill* (the Bill). The Association's views are submitted on behalf of its constituent divisions and relate to issues and interests of Queensland's automotive value chain which inter alia includes: franchised new car dealers, licensed car dealers, independent mechanical and motor body repairers, recyclers and other discrete automotive technology and service providers.

1.2 The Association's comments are confined to amendments to the legislative framework intended to enhance the regulatory regime relating to Queensland's consumer rights and protections when buying a motor vehicle in this State.

1.3 In making this submission The Association is mindful that during the 2017 State General Election, the Government committed 'to *improving fairness and providing greater rights for Queenslanders buying a vehicle* by:

- lifting QCAT's jurisdictional limit on motor vehicles from \$25,000 to \$100,000;
- redefining the term 'vehicle' to include motorhomes and caravans;
- reinstating the statutory warranty for 'class B' older second-hand vehicles sold by motor dealers and chattel auctioneers; and
- continuing to advocate for national laws to specifically protect new car buyers, including purchases of 'lemon' vehicles Act (Queensland Civil and Administrative Tribunal and other Legislation Explanatory Notes p 4).

2. Policy context

2.1 The policy intent of the Bill is to amend the QCAT Act, *Fair Trading Act 1989* (FT Act) and *Motor Dealers and Chattel Auctioneers Act 2014* (MDCA Act) to implement the Government's commitment to improve fairness and provide greater rights for Queenslanders buying a vehicle and address recommendation 7 of the Report *Lemon Laws – An inquiry into consumer protections and remedies for buyers of new motor vehicles* (Lemon Laws Inquiry Report), prepared by the Legal Affairs and Community Safety Committee:

Recommendation 7 -

The committee recommends the government change the Queensland Civil and Administrative Tribunal (QCAT) jurisdictional limit of \$25,000, for matters involving new motor vehicles with major defects. Government committee members recommend the limit be removed, so no cap applies. Non-government committee members recommend the limit be increased to \$40,000.

Queensland Government response:

Support in-principle. The Queensland Government supports recommendation 7 in principle and will work with QCAT to determine how this recommendation can be appropriately implemented, having regard to financial and resource implications and the differing views regarding the setting of a jurisdictional limit for matters involving new motor vehicles with major defects.

2.2 Specifically the Bill:

- 'confers QCAT with jurisdiction for actions for an amount or value of other relief of not more than \$100,000 under the:
 - FT Act in relation to the ACL consumer guarantees for the supply of goods or services, where the action relates to a motor vehicle (including a caravan or a motorhome); and
 - MDCA Act in relation to statutory warranties for used motor vehicles (including motorhomes but not caravans);
- amends the FT Act to provide a definition for *motor vehicle*; and
- amends the MDCA Act to implement the commitment to reinstate the statutory warranty for 'class B' older second-hand vehicles that operated under the Property Agents and Motor Dealers (PAMD) Act (Queensland Civil and Administrative Tribunal and other Legislation Explanatory Notes pp 5,6).'

2.3 With reference to the last bullet point, the Department of Justice and Attorney General's Office of Regulatory Policy circulated draft amendments to the MDCA Act and the MDCA Regulation, to which the MTA Queensland provided written support.

2.4 'To ensure that QCAT has sufficient flexibility to deal with motor vehicle proceedings in a timely way, which reduces costs to QCAT and consumers, and ensures accessibility, it is proposed:

- that these proceedings will not form part of QCAT's minor civil disputes jurisdiction, but will be heard as part of QCAT's original 'other civil disputes' jurisdiction regardless of the amount of the claim or value of relief (i.e. not more than \$100,000); and
- to provide QCAT with flexibility in the way the tribunal hears motor vehicle disputes (e.g. having regard to the complexity of the proceeding and the amount of the claim).

The Bill will amend the FT Act and the MDCA Act to provide QCAT with express powers to conduct 'expedited hearings' for motor vehicle proceedings if the amount or value of other relief sought is not more than \$25,000; or the president considers it appropriate, having regard to a number of factors including the complexity of the issues relating to the proceeding. 'Adjudicators' will also be able to hear and decide matters if the amount or other relief sought is not more than \$25,000 or if the matter is conducted as an expedited hearing. Finally, the only 'costs' order QCAT can make for motor vehicle proceedings is to order a party who is a respondent to pay to the applicant an amount of the prescribed application fee paid by the applicant (Queensland Civil and Administrative Tribunal and other Legislation Explanatory Notes pp 6,7).'

2.5 The MTA Queensland in its 15th July 2015 submission to the Queensland Parliamentary Legal Affairs and Community Safety Committee's - Inquiry into consumer protections and remedies for buyers of new motor vehicles, (Lemon Laws) the following view was submitted:

3.1 It appears that if the consumer protection framework is understood by consumers, it is robust and has the competence to protect the interests of the private consumer. If there is however, a perception by the private consumer that new motor vehicles purchase risks are sufficiently mitigated in respect of a situation where a new vehicle is not fit for purpose (i.e. commonly known as a 'lemon' or a 'Friday car' then governments need to give this situation consideration. Any enhancements to the legislative framework need to be carefully considered

2.6 The MTA Queensland is generally supportive of the amendments to the QCAT Act and FT Act which relate to 'improving fairness and providing greater rights for Queenslanders buying a vehicle'.

3 Viewpoints

3.1 Amendments to the Bill are remedial. They focus on achieving improved fairness and providing greater protection for Queensland's consumers buying new or used vehicles by enabling access to QCAT for statutory resolution for disputed mechanical, technical or equipment defects or manufacturing failures not exceeding \$100,000.

3.2 It would also be appropriate that the remedial actions proposed to amend the legislative framework are accompanied by measures that raise the standard of the competencies required to hold a motor dealer's license or to comply with the requirements for registration as a motor dealer salesperson to further protect the consumer.

3.3 It is the view of the MTA Queensland that consumer protection could be enhanced by raising the standards of the current training requirements beyond the qualifications to obtain a motor dealer license or gain registration as a salesperson. Presently, these requirements may be fulfilled online or attendance at a short course.

3.4 Education in the Australian Consumer Law (ACL) obligations, responsibilities and remedies are the essential components of statutory consumer protection and fairness frameworks should be a stand-alone compulsory prerequisite to qualify for a motor vehicle dealer license or to obtain registration as a motor vehicle salesperson in the state of Queensland.

3.5 The MTA Queensland has also formed a view that a mandatory prerequisite for applicants seeking a motor dealer's licence is the completion of a traineeship/internship to be served as a registered salesperson under the supervision of a licensed motor dealer to develop competencies in all aspects of motor vehicle trading and enhance practical understanding of a motor dealer's obligations in relation to statutory consumer protection and fairness. Further, licensed motor vehicle dealers should be in a position to properly brief consumer's purchasing vehicles on their rights and opportunities to seek remedies and redress in respect of disputes arising from the purchase of a new or used motor vehicle.

3.6 The combination of increased standard of ACL education through the development of a separate AUR module for both motor dealer licensees and registered salespersons coupled with a traineeship/internship as a registered sales person prior to eligibility to obtain motor dealer's licence should mitigate the number of unresolved disputes that would require arbitration by QCAT.

3.7 The Association draws to the attention of the Committee the waiver of warranty on 20 year old restorable vehicles as an exception to Consumer Guarantees under the ACL; based on knowing or being made aware of the faults before you bought the product.

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 Australia's first automotive hub, the MTA/Q, has been established in specially prepared space at the corporate office. The hub is an eco-system that supports innovation for the automotive industry.

4.3 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 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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MTA Queensland