



MTA  | LEADING AUTOMOTIVE INNOVATION

SUBMISSION

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Strengthening protections against unfair contract terms

The Motor Trades Association of Queensland (MTA Queensland) is pleased to provide further advice on proposed Unfair Contract Terms (UCTs) legislative reforms. UCTs have been particularly problematic in the automotive industry in Australia given the significant power imbalance between Original Equipment Manufacturers (OEMs) and dealers. The consequences of this imbalance and the associated entrenched conduct has prompted a number of recent legislative measures.

In its submission on the consultation Regulation Impact Statement (RIS) in March 2020, MTA Queensland indicated there needed to be significant strengthening of measures to protect automotive dealers including civil penalties, strong compliance and enforcement and the extension of the threshold to enable more businesses to be eligible for protection.

MTA Queensland's position reflects not only member concerns but the advice of the ACCC in its submission to a previous RIS that "mandatory solutions are required to overcome entrenched conduct in the new car retailing industry."

The proposed options mostly address advice provided in MTA Queensland's previous submission. Nonetheless, some further advice is provided on two matters that warrant further consideration.

Recommendations

- Legal remedies Option 2 – Strengthened compliance and enforcement activities, needs to be adopted alongside Legal remedies Option 3.
- The ACCC should be resourced to have a proactive, dedicated compliance, enforcement and education function across the automotive industry to ensure UCTs and other recent legislative measures are effective.
- The proposed headcount and turnover threshold (Definition of small business contract - Option 3) not apply to automotive sector retailers.
- There should be no headcount/turnover threshold for all automotive retail businesses. This includes farm machinery, truck and motorcycle retail businesses.

Legal remedies

The strengthening of the legal remedies, with the courts able to declare UCTs unlawful and impose civil penalties (Option 3 – the preferred option), is welcomed. MTA Queensland’s position remains, however, that implementation of this option and more broadly the suite of UCT proposals requires stronger compliance and enforcement measures. Option 3 is necessary but not sufficient.

Given the history of significant concerns with the operations of the automotive retail market and measures introduced to respond to them, including the first-time automotive provisions in the Franchising Code, enhanced legal protections is not enough. Option 2 – Strengthened compliance and enforcement activities, needs to be adopted alongside Option 3.

The effectiveness of Option 3 relies on small businesses impacted by UCTs taking legal action. As has been noted in recent reports, there has been a reluctance to take such action due to the risk of damaging the relationship with franchisors (not to mention the financial costs). To overcome this reluctance, there is a role for regulators to proactively support the introduction of the proposed UCTs measures, as well as other recent legislative measures.

MTA Queensland acknowledges this option involves regulators allocating additional resources to strengthen their compliance, enforcement and education activities. Whilst this cost would be prohibitive if adopted across all sectors of the economy, the ACCC should be resourced to have a proactive, dedicated compliance, enforcement and education function across the automotive industry to ensure these and other recent measures are effective.

A dedicated (perhaps time-limited) ACCC capacity would build on its expertise and understanding of the industry gained over the last five years, in particular. An enhanced education role would be particularly valuable in supporting awareness of the legislative measures introduced in recent years. An enhanced compliance capacity would enable early engagement with OEMs in regard to their existing and proposed dealer agreements, including a focus on potential UCTs. It would help address the understandable reluctance of dealers to challenge OEMs. Without a strong enforcement capacity, the entrenched conduct noted by the ACCC may not change.

Motor Trades Association of Queensland

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Definition of small business contract

The proposed expansion of the headcount/turnover threshold is welcome and appropriate, for most sectors of the economy. The automotive industry, however, is characterised by relatively high product prices that would see moderately sized dealerships still excluded from the expanded threshold. The threshold may be appropriate for smaller or single franchise automotive dealerships but not in an environment of consolidation and disruption where dealers have to negotiate with multiple OEMs.

Accordingly, it is recommended the proposed headcount and turnover threshold (Option 3) not apply to automotive sector retailers. That is, there should be no headcount/turnover threshold for automotive retail businesses. This should include farm machinery, truck and motorcycle retail businesses.

The lifting of the threshold would also enable a more integrated response with the other measures introduced recently to address concerns with the automotive retail market.

MTAQ Background

The Motor Trades Association of Queensland (MTA Queensland) is the peak body representing the interests of employers in the retail, repair, and service sectors of Queensland's automotive industry. MTA Queensland has been performing its vital representative role for the automotive industry since 1929. In Queensland there are some 15,500 automotive businesses employing more than 90,000 people, that generate more than \$20 billion annually. The Association represents and promotes issues of relevance to all levels of government. In 2019 MTA Queensland was announced as an ABA100 winner in The Australian Business Awards and a finalist in the Lord Mayor's Business Awards, for Business Innovation.

The MTA Institute (RTO 31529) is the leading automotive training provider in Queensland offering nationally recognised training, covering technical, retail and the aftermarket sectors of the automotive industry. The MTA Institute is the largest independent automotive training provider in Queensland, employing experienced trainers who are geographically dispersed from Cairns to the Gold Coast and Toowoomba to Emerald.

In the last year, the MTA Institute delivered accredited courses to more than 2,000 students. The MTA Institute is the first trade RTO in Australia to be approved under the ITECA Industry Certification Program and was the winner of the Small Training Provider of the Year at the 2019 Queensland Training Awards.

MTAiQ, Australia's first automotive innovation hub established by MTA Queensland in 2017, is an ecosystem that supports innovation and research for the motor trades. Thank you for your consideration.

Yours sincerely

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