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Policy & Strategy
Better Regulation Division
Department of Customer Service
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Lodged online: <https://www.haveyoursay.nsw.gov.au/motor-dealers-amendment-bill>

Dear Policy & Strategy Team

**CCIA NSW SUBMISSION ON MOTOR DEALERS AND REPAIRERS AMENDMENT
(STATUTORY REVIEW) BILL 2022**

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) is the State's peak industry body representing the interests of over 500 holiday parks and residential land lease communities (residential parks, including caravan parks and manufactured home estates) and over 200 manufacturers, retailers and repairers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufacturers of relocatable homes and service providers to these businesses.

Since the consolidation of the law regulating motor dealers, recyclers, repairers and tradespersons in NSW in 2014, dealers and repairers of RVs (motorised and towable) have been subject to the licensing requirements and obligations under the *Motor Dealers and Repairers Act 2013* (MDR Act) and the *Motor Dealers and Repairers Regulation 2014* (MDR Regulation). Some dealers also offer RV hire services, as do other hire companies such as Apollo, Britz Maui, Cheapa Campa, Cruisin, Jucy, Let's Go and more.

As the caravan and camping industry continues to grow, we anticipate that more traders will enter the market to help meet growing consumer demand and we want to ensure that businesses within the industry are properly licensed and educated to provide an exceptional customer experience.

In representing these businesses, the Association is an important stakeholder in relation to the RV industry and we welcome the opportunity to provide our feedback on the draft *Motor Dealers and Repairers Amendment (Statutory Review) Bill 2022* (Draft Bill) and accompanying Explanatory Paper, February 2022.

Please see below our submissions as relevant to our industry, developed with feedback from our members and other industry stakeholders.

Creating Efficiencies in the Legislative Framework

We support the proposed changes to the MDR Act to create efficiencies in the legislation regarding record keeping. Reducing prescriptive requirements wherever possible would assist licence holders to manage compliance in a way best suited to their business operations and reduce the administrative burden.

We also support allowing the list of prescribed parts and licence/tradesperson qualifications requirements to be approved by Ministerial Order and published on the NSW Fair Trading website, provided there is opportunity for stakeholders to be involved in meaningful consultation prior to any changes.

Online Selling

We welcome changes to the legislation to permit and regulate the online sale of motor vehicles by licensed motor dealers. The rapid rise of e-commerce has been accelerated even further by the COVID-19 pandemic and more people have become comfortable with online shopping.

Members of our Association currently operating RV dealerships from fixed locations indicate a willingness to also make online purchasing an option, so the legislation needs to keep pace with changing market conditions.

There are, however, some issues in relation to online selling and the new provisions in the Draft Bill that require further consideration and clarification:

1. Definitions

Section 66A proposes:

‘online motor dealer means a motor dealer who carries on the business of a motor dealer wholly or partly using a website through which the online motor dealer offers for sale and sells motor vehicles.’

The words *‘wholly or partly’* should be removed from section 66A because an e-commerce website would either be used or not used to complete an online sale of a motor vehicle. This is our understanding of the purpose of the new provisions.

The words *‘offers for sale’* should also be removed from the definition. Like displaying motor vehicles in a dealership, displaying motor vehicles on a website is not an ‘offer to sell’ a motor vehicle, but rather an ‘invitation to treat.’

In the context of physical dealership, when a purchaser approaches the dealer identifying a vehicle they wish to buy it is the purchaser who is making the offer, and acceptance of that offer is when the dealer sells the motor vehicle to the purchaser.

For an online sale the offer would be made when the online purchaser approaches the online motor dealer, through the e-commerce platform, with an offer to buy the motor vehicle, and acceptance of that offer would be when the online motor dealer sells the motor vehicle to the online purchaser.

Today, most motor dealers (if not all) display motor vehicles on their business websites with prices as a form of advertising. They will need to be able to continue advertising this way as part of their overall marketing activities, regardless of whether they decide to embrace online

selling as part of their business. We are concerned that if the definition remains as currently drafted it could be interpreted to capture all these motor dealers, whether they are selling online or not.

This would be a major problem for motor dealers advertising demonstrator and used vehicles through their websites, considering section 66B (an offence provision) provides that '*an online motor dealer must not offer for sale or sell a motor vehicle, through the website used by the online motor dealer, unless the motor vehicle is of a kind prescribed by the regulations,*' and the Department has indicated the changes are intended to restrict online 'end-to-end sales' to new cars only.

We suggest the following amendments to sections 66A and 66B:

Division 3A Online motor dealer sales

66A Definitions

In this Division—

online motor dealer means a motor dealer who carries on the business of a motor dealer ~~wholly or partly~~ using a website through which the online motor dealer ~~offers for sale and~~ sells motor vehicles.

online purchaser means a purchaser of a motor vehicle from an online motor dealer through a website used by the online motor dealer to ~~offer for sale and~~ sell motor vehicles.

66B Motor vehicles that may be sold online

An online motor dealer must not ~~offer for sale or~~ sell a motor vehicle, through the website used by the online motor dealer, unless the motor vehicle is of a kind prescribed by the regulations.

Maximum penalty— 1,000 penalty units or, in the case of a second or subsequent offence, 1,000 penalty units or imprisonment for 12 months, or both.

2. Inspections

New section 66D provides:

(1) Before an online purchaser purchases a motor vehicle, the online motor dealer must give the prospective online purchaser the opportunity to carry out an inspection of the motor vehicle at—

- (a) the place at which the motor vehicle is ordinarily stored, or*
- (b) a place agreed by the prospective online purchaser and the online motor dealer.*

We understand the benefits of inspecting a vehicle prior to purchase, however if the MDR Act is to truly facilitate online selling, and take account of cross-border transactions, there needs to be an additional means of satisfying this requirement. For example, to assist prospective online purchasers who are located interstate the section could allow for someone, like a licensed motor mechanic or another trusted person, to inspect the motor vehicle on their behalf.

We suggest the following amendments to section 66D:

66D Opportunities to inspect motor vehicles

(1) Before an online purchaser purchases a motor vehicle, the online motor dealer must give the prospective online purchaser, or another person nominated by the prospective online purchaser, the opportunity to carry out an inspection of the motor vehicle at—

- (a) the place at which the motor vehicle is ordinarily stored, or*
- (b) a place agreed by the prospective online purchaser and the online motor dealer.*

(2) An online motor dealer must give an online purchaser, or another person nominated by the online purchaser, the opportunity to carry out an inspection of a motor vehicle purchased by the online purchaser—

- (a) on the delivery of the motor vehicle to the online purchaser, or the nominated person, or*
- (b) on the collection of the motor vehicle by the online purchaser, or the nominated person.*

(3) The regulations may make provision regarding—

- (a) places at which motor vehicles may be made available for inspection or collection, and*
- (b) requirements relating to the safety of ~~online purchasers and~~ prospective online purchasers, online purchasers, and nominees while at those places.*

3. Used Vehicles, including Demonstrator Vehicles

Feedback provided during the 7 March 2022 online stakeholder meeting indicated that consideration should be given to whether demonstrator vehicles could be sold online along with new vehicles. We support this position.

Stakeholders also indicated there is market demand from motor dealers and consumers for online sales of used vehicles. With appropriate consumer protections in place, we see no reason why this should not be facilitated under the MDR Act. To progress this, we suggest there be a requirement for the Minister to review the operation of the new provisions within two years to determine how well they are working and whether they can and should be extended to used vehicles.

4. Maximum Deposit for Purchase Price

Section 66E proposes that an online motor dealer '*must not require an online purchaser to pay more than the relevant percentage of the purchase price of a motor vehicle before the online purchaser takes possession of the motor vehicle*,' with the relevant percentage to be prescribed by the regulations. We request that further consultation with industry be undertaken on this issue when amending the MDR Regulation.

As raised during the 7 March 2022 online stakeholder meeting and in submissions below, RVs are largely built by hand and often custom-made based on client specifications. They can even be bespoke items. In these instances, if an online sale does not proceed after the time taken to build the RV the deposit amount should be sufficient to allow a motor dealer to minimise, as much as possible, losses they incur by having to try and sell the RV to another purchaser.

5. Collecting Defective Vehicles

We note section 66F proposes the following:

66F Online motor dealers to collect and remedy defective vehicles

- (1) This section applies to a motor vehicle that—
 - (a) is purchased by an online purchaser, and*
 - (b) is, or is suspected by an online purchaser to be, a defective vehicle.**
- (2) The online motor dealer must, if requested by an online purchaser, arrange for a motor vehicle—
 - (a) to be collected from the online purchaser for the purpose of—
 - (i) assessing liability for the dealer guarantee for the motor vehicle,*
 - or*
 - (ii) complying with the dealer guarantee for the motor vehicle, and**
 - (b) to be delivered to an online purchaser following the completion of an action referred to in paragraph (a).**
- (3) The motor vehicle must be collected from, or delivered to, the online purchaser within the period prescribed in the regulations, if any.*
- (4) If the motor vehicle is a defective vehicle, the online motor dealer must pay for the costs of collecting from, and delivering the motor vehicle to, the online purchaser.*
- (5) The online motor dealer is liable for all loss of or damage to the motor vehicle that occurs between the collection of the motor vehicle from the online purchaser and the delivery of the motor vehicle to the online purchaser.*
- (6) Subsection (5) applies whether the loss or damage occurred while the motor vehicle was in the possession of the online motor dealer or an employee or other person associated with the online motor dealer.*
- (7) An online motor dealer is not liable under subsection (5) if the online motor dealer proves that the motor dealer took all reasonably practicable measures to prevent the loss or damage.*
- (8) In this section—
defective vehicle has the same meaning as in Part 4, Division 4.*

To ensure a fair process for remedying defective vehicles purchased online and limit the potential for disputes, we request the following clarifications:

- a) Subsection 66F (2) should clarify that where a motor vehicle can be safely driven, the online purchaser should be required in the first instance to return the vehicle to the place where it was collected upon purchase, or another place agreed by the online purchaser and online motor dealer (such as a local dealer or repair workshop, particularly if the online purchaser is situated in another state).

The subsection should also clarify that where a motor vehicle cannot be safely driven, or an online purchaser makes a request for collection, the online motor dealer can charge a reasonable fee for the collection and delivery of the motor vehicle for the purpose of assessing liability for the dealer guarantee or complying with the dealer

guarantee. This may help to guard against potential abuses of the process, particularly in cross-border situations.

In the alternative, an online purchaser can make their own arrangements for collection and delivery of the motor vehicle, so long as the fee for this is less than the motor dealer's fee.

Subsection 66F (4) already provides that if the motor vehicle is defective the online motor dealer must pay for the costs of collecting from, and delivering the motor vehicle to, the online purchaser. If the motor vehicle is not defective, then the purchaser should be required to pay these costs.

It is also worth noting that several RV manufacturers provide customers with an emergency roadside assistance service as part of new RV sales.

- b) In relation to subsection 66F (3), which provides that the motor vehicle must be collected from, or delivered to, the online purchaser '*within the period prescribed in the regulations, if any,*' we request that further consultation with industry be undertaken on this issue when amending the MDR Regulation.

The nature of the RV industry can create delays in repairs beyond the control of motor dealers – something the COVID-19 pandemic has compounded. There can be weeks, even months lead-in time to get repairs carried out on RVs. This is because it is a niche industry with a limited number of repairers. The smaller size of the industry can also replacement parts can be more difficult to obtain. Repairers often have to 'hunt' around for certain parts.

Certain problems can also be more difficult to diagnose because of the way RVs are built. Repairers often need to remove entire side panels, or a number of internal fittings, to find the source of a particular problem. An effective repair can involve repeated attempts simply due to the nature of a more sophisticated product and difficulties in diagnoses.

Without specific recognition of these issues, we are concerned that inappropriate timeframes in the MDR Regulation will place unrealistic economic and legal expectations on these businesses.

Strengthening Consumer Guarantees

We note that licensed RV dealers in NSW are required to comply with the dealer guarantee when selling motorhomes and campervans. Under clause 59 of the MDR Regulation trailers and towable RVs are exempt from the dealer guarantee (which should be maintained), but all RVs are covered by the consumer guarantees under the Australian Consumer Law (ACL).

In previous submissions to the Department regarding motor industry laws, we have supported the position that the dealer guarantee should rely on the consumer guarantees under the ACL for the purpose of consistency, reducing confusion and reducing duplication and red tape for businesses.

The ACL is sufficiently robust and flexible enough to deal with issues of defective vehicles and does not impose limitation periods on the consumer guarantees. However, distinct from the ACL, the limitation periods in the dealer guarantee can help foster a level of certainty for consumers and dealers when defects in motor vehicles become apparent within the relevant timeframes.

We note the dealer guarantee is to be maintained but expanded to provide more remedy options for the consumer, including obtaining a refund or a replacement vehicle where there is a defective vehicle (in addition to the current remedy of having the vehicle repaired), in line with those remedies already available under the consumer guarantees.

The amendments to section 68 (1) of the MDR Act provide that a motor dealer must, for the purposes of the dealer guarantee for defective vehicles, either arrange for the repair or replacement of a defective vehicle, at the motor dealer's own cost, or refund the purchase price paid by the person having the benefit of the dealer guarantee.¹

It would assist to provide further clarification, either within the MDR Act or in industry guidance materials, on the determination of the appropriate remedy for a defect rectified under the dealer guarantee compared with those a customer can expect or request for 'minor' and 'major' failures under the consumer guarantees.

Where an identified defect is minor in nature, the ability for dealers to choose to provide a free repair instead of a replacement or refund under the dealer guarantee must be preserved and made clear for the industry and consumers.

In relation to our sector, RVs (motorised and towable) are complex and sophisticated units much like modern motor vehicles. However, it is inappropriate to liken motorised RVs to motor vehicles completely. Motor vehicles are mass-produced products, assembled in large scale factories through a combination of assembly line labour and robotics. Alternatively, motorised RVs are, in large part, custom built by hand to client specifications and can be bespoke.

Defects in a car can also be distinguishable to defects in custom built motorised RVs as follows:

- RVs are comprised of 'goods within a good' (i.e., air-conditioners, fridges, stoves and televisions) resulting in a product that is linked to multiple manufacturers of multiple, separate products.
- RVs are more akin to a 'house on wheels' than a motor vehicle. Subjecting any house to movement will result in some sort of imperfection and almost all newly built houses present minor defects within the first few weeks.
- RVs are likely to be subjected to more difficult Australian terrain and environmental conditions as they travel around Australia and consumers may not always use an RV for its intended purpose (e.g., taking an on-road RV off-road).
- Consumers may not 'service' their RVs in the same way as their vehicles, even though this is recommended by the manufacturer.
- As mentioned above, certain issues in RVs can be more difficult to diagnose because of the way they are built. Repairers often need to remove entire side panels, or a number of internal fittings, to find the source of a particular problem.
- Due to the small size of the industry replacement parts can also be more difficult to obtain, an issue that has been compounded by shortages caused by the COVID-19

¹ NSW Government, *Motor Dealers and Repairers Amendment (Statutory Review) Bill 2022*, Public Consultation Draft, 10 December 2021, p 3

pandemic. Repairers often have to 'hunt' around for certain parts, so the inconvenience experienced by consumers must be balanced with the practical constraints of providing a repair within a 'reasonable time.'

- RVs are often modified by consumers or serviced and repaired by a third party. As such, it can be difficult to ascertain whether an issue is an inherent defect or whether it is the result of a modification made since purchase.

Based on industry feedback, the very nature of RVs (how they are built and what they comprise) makes it likely that minor issues will inevitably arise in units shortly after purchase. This is why many RV dealers advise consumers to go on a short trip before travelling on an extended holiday, so that any issues that present while the RV bounces down a road or highway for 100kms or more can be rectified.

Minor issues that can occur shortly after purchase include:

- Internal cupboards requiring alignment adjustments or latches not working correctly,
- Faulty LED lights,
- Screw loose in tables,
- Faulty or 'sticky' winding mechanism on an awning,
- Laminate lifting on benches,
- Automatic entry step not fully extending,
- Minor leak from a window seal,
- Loose fridge vent,
- Leak under a vanity – a minor issue with plumbing,
- Kitchen splashback coming away,
- Shower hatch fan not working correctly,
- Hatches hard to open or windows hard to open,
- One side of a power point not working,
- Reversing camera not working,
- Shower not draining correctly,
- Low water pressure,
- Shower head needs tightening,
- Hot water service not working properly,
- TV not working,
- Oven won't light - minor issue with an igniter,
- GPS not working,
- Stereo faulty.

While some of these issues may, for example, breach the consumer guarantee of 'acceptable quality,' they should not necessarily warrant a replacement or refund simply because they have occurred within the dealer guarantee period.

A dealer's rights in this regard should be made clear in the alignment of the dealer guarantee and consumer guarantees, and reflected in the expanded power of the Secretary to issue a rectification order where there is a breach of the dealer guarantee or a consumer guarantee.

In addition, for the purpose of consistency with proposed amendments in the Draft Bill (shown in blue below) we suggest section 77 of the MDR Act should be further amended as shown in red:

77 Effect on Australian Consumer Law remedies

(1) A person who has enforced the dealer guarantee under this Division ~~in-respect-of the in relation to the~~ condition of or a defect in a motor vehicle is not, if the dealer guarantee is fully complied with, entitled to take action against the motor dealer under the Australian Consumer Law (NSW) ~~in-respect-of in relation to~~ any aspect of the motor vehicle that ~~is-made-good-or-repaired has been dealt with~~ under ~~this-Division the dealer guarantee~~.

(2) A person who has enforced a consumer guarantee in relation to the condition of or a defect in a motor vehicle is not, if the consumer guarantee is fully complied with, entitled to take action against the motor dealer under the dealer guarantee under this Division in relation to an aspect of the motor vehicle that has been dealt with under the consumer guarantee.

Grounds for Refusal of Licenses other than Tradespersons' Certificates

An amendment to subsection 25 (2) (e) of the MDR Act proposes that the Secretary must not grant a licence to an individual if the Secretary is satisfied that *'the applicant does not have the required qualifications or experience for the licence.'*

The existing section makes no reference to *'experience'* and there is no detailed explanation of this change in the Draft Bill or the explanatory paper. We therefore seek clarification from the Department on what exactly this means for the different types of licences and the impacts on individuals.

As noted above, we support the proposal for licence qualifications requirements to be approved by Ministerial Order and published on the NSW Fair Trading website, provided there is opportunity for stakeholders to be involved in meaningful consultation prior to any changes.

Conclusion

Thank you for considering our response to the Draft Bill and accompanying Explanatory Paper. As the peak industry body representing manufacturers, retailers and repairers of RVs in NSW, CCIA NSW is an important stakeholder in relation to the motor dealers and repairers legislation.

We look forward to our continued involvement in the consultation processes.

Yours sincerely

Lyndel Gray
Chief Executive Officer

About the Caravan & Camping Industry

The caravan and camping industry is one of the fastest growing domestic tourism sectors in Australia and NSW is Australia's favourite State for caravanning and camping, with 34% of all caravan and camping visitors to Australia heading to NSW or 4.7 million trips. This injects over \$2 billion in economic value to NSW.²

Caravanning and camping also accommodates over 30% of the visitor holiday nights in Regional NSW making it a vitally important part of the tourism infrastructure.

Part of the reason why caravan and camping in Australia is so popular is the many RV products and travel options that are available. Consumers have never before had so much choice and they can buy their own RV, rent one from an RV hire company or rent a privately-owned RV through a 'sharing' platform.

RVs can be any of the following:

Motorhome: a self-propelled RV driven from a cabin, offering living accommodation combined with a vehicle engine. A motorhome can sleep two or more people, with fixed or conversion berths and have kitchens with cupboards, an oven, grill, stovetop and sink. Luxury models can have a microwave and fridge with an icemaker. They have a bathroom with a toilet, shower and basin. There is a cab with driver and passenger seats that swivel to become part of the living space, a dining table and seating space and there can even be a lounge.

Campervan: smaller version of a motorhome.

Caravan: an RV that is not motorised but is designed to be registrable. Caravans are built on a trailer and have living accommodation similar to a motorhome. They are usually built using timber or aluminium frame, or sandwich panel, and can be anywhere from 3 metres to 10 metres long.

Fifth Wheeler: have all the features of a caravan but are generally larger, more luxurious and designed to be towed by utilities or trucks, connected with a turntable or 'wheel' allowing articulated motion.

Pop-top caravan: an RV that is not motorised but is designed to be registrable. Pop-tops feature a canvas, vinyl or fabric insert that connects the roof to the sides of the caravan.

Camper trailer: low profile caravan with a wind-up roof and extendable bed sections usually at either end of the trailer.

Tent trailer: a compact unit offering a lighter trailer with a swing-out or flip-over tent. They can have a sewn-in floor, windows with fly screens and sleeping accommodation above ground level, plus kitchen facilities, a reasonable amount of storage space, water tank, etc.

Slide-on camper: a caravan type body which slides on and is secured to the bed or tray of a utility motor vehicle. Features can include a kitchen, shower and toilet, dining area, storage compartments and heaters.

While many other areas of manufacturing in Australia are or have receded, the RV manufacturing industry continues to grow each year. There are currently over 740,000

² National Visitor Survey Results for the year ending December 2019 prior to the impacts of the COVID-19 pandemic

registered RVs in Australia, and there are new registrations of around 21,000 units every year, with an estimated 80,000 RV travellers on the road at any one time.

Total RV production for December 2019 (prior to the impacts of COVID-19) was 21,465 units. While lockdowns in 2020 and 2021 did impact production figures, the industry has since bounced back to pre-COVID levels with 21,946 units produced in the year ending November 2021. Traditional caravans represent nearly 63% of total RV production, followed by pop-tops at 17.5%, tent trailers and camper trailers at 14.5% and motorhomes and campervans at 5%.³

³ Caravan Industry Association of Australia RV production data