



**MOTOR TRADERS'  
ASSOCIATION OF NSW**



# ***Motor Dealers and Repairers Act Amendments (Statutory Review) Bill 2022***

**Explanatory Paper - February 2020**

## **Submission**

**Motor Traders' Association of NSW**

## ***Background***

### **The Motor Traders' Association of NSW (MTA NSW) is one of the largest state-based industry associations in Australia.**

Founded in 1910, the MTA NSW represents the interests of over **3,000** owners and business principals and **30,000** employees in the automotive industry throughout NSW and ACT. The Association provides extensive industry information to its membership base and addresses issues through lobbying at local, State and Federal Government levels.

MTA NSW is held in high regard by industry stakeholders due to the longevity of its establishment, where it has been representing the automotive industry in NSW for more than 110 years. MTA NSW offers Members great value for their membership subscription with a range of services and products supplementing its traditional core services.

MTA's advertising and promotional activities over many years has developed a public recognition of the MTA NSW logo and catch phrase 'Deal with someone you can trust.' Both in NSW and the ACT, MTA NSW is strongly placed to represent the interests of Members. The MTA NSW is a registered Organisation under the Fair Work (Registered Organisations) Act 2009. In addition, MTA NSW is a Registered Training Organisation (RTO) and delivers on-site training at business premises, to approximately **2000** apprentices in the motor trade industry.

MTA NSW is in continual contact with politicians and Government officials and regularly provides advice to them on matters affecting the motor industry. The Association is the principal consultative party and a leader in employment relations issues impacting the Retail Motor Industry in the State.

MTA NSW is a founding member of the Motor Trades Association of Australia (MTAA), which is the National Body that draws together the MTA related organisations from other States and Territories to represent the industry at a Federal level.

Member and industry suppliers' support also adds greatly to the success of the Association and the activities it undertakes.

As a peak body, the MTA NSW represents the interests of the following automotive industry participants:

Auto Dismantlers; Auto Electrical Specialists; Auto and Marine Trimmers; Auto Mechanical Repairers; Auto Transmission and Rebuilders; Automobile Dealers – New and Used; Australian Heavy Vehicle Repairers; Body Repairers; Brake Repair Specialists; Caravan Industry; Commercial Vehicle Industry; Engine Reconditioners; Exhaust System; Farm Machinery Dealers; General Trades; Hire Car and Chauffeur Driven Limousines; Motor Bus; Motor Cycle Industry; Motor Vehicle Assessor and Inspector; Parts and Accessories; Radiator Specialists; Rental Vehicles; Rustproofing Specialists; Service Stations; Steering and Suspension Specialists; Tow Truck Operators; Tyre Dealers and Retreaders.

## Submissions

It is to be recognised and acknowledged that a strong and mutual working relationship has been developed with NSW Fair Trading and the MTA NSW, with several issues jointly addressed for the betterment of the industry.

MTANSW appreciates the opportunity to provide a submission regarding the **Statutory Review of the Motor Dealers and Repairers Act 2013 (the Act)**

To provide an appropriate balance between Regulation and our Members' requirements, MTA NSW makes the following submissions, recommendations and comments in relation to the proposed review. Adopting the same **headings** as outlined in the Explanatory Paper the MTA NSW make the following submissions:

### Prescribed Parts.

MTA supports the move to utilising "Ministerial Orders" to provide speed and efficiency. However, MTANSW submits that government should consult with Industry as to which parts need to be added (if any) due to their knowledge of the rapid changes in technology. MTANSW submits that the need to keep a physical register is now inefficient and antiquated.

In support of this submission MTANSW advises that the Prescribed Parts Register has had a huge impact on businesses across the industry. The **Form 2** is in effect a duplication of what is already accepted and enforced. All second-hand parts that are purchased from automotive recyclers are already recorded in a **Form 3a** (whole vehicle) and a **Form 3** (for individual parts) and must be kept for a period of 6 years as per the current legislation. Those details are then included on the tax invoice which must be kept for a period of 5 years under the current Australian Taxation Office (ATO) requirements.

In addition, there is no evidence that the existence of a physical register has reduced the number of stolen parts or re-births nor is there any evidence to suggest that the **Form 2** has any real use, except for recording consumer supplied parts.

### Qualification requirements.

MTA supports the move to Ministerial Order and agrees that it will make it easier to add new qualifications quickly. MTA NSW also recommends that as part of this process Government consult with industry Associations to discuss and formulate courses that are consistent with the changing environment of the industry. In this regard, MTANSW as a Registered Training Organisation is uniquely placed to assist Government with this decision making process.

An example of such courses is listed below

- Electric Vehicle Repair
- Hybrid Vehicle Repair
- Hydrogen Vehicle Repair

- Heavy Vehicle Mechanical and Body Repair
- Autonomous Vehicle Repair

In support for the need to have Industry Consultation MTANSW observes that there has presently been little consultation during the current review Policy on the issue of “classes of repair” By way of example, whilst there have been five “new classes of repair” introduced there was a shortfall of “classes of repair” which have now led to the removal of some courses such as Certificate III Drive Train Technology. The removal of this course by Government has inadvertently jeopardised the existence of a trade that currently has a licensing outcome.

In addition, the re-introduction of specialist repair classes (that were once a restricted licence) will in the view of MTANSW contribute to the reduction of the skill shortage that the motor industry faces today.

Such classes would include.

- Transmission Specialist
- Brake Specialist
- Service (lubrication) Technician
- Underbody Specialist
- Tyre Fitting (light vehicle)
- Tyre Fitting (heavy vehicle)

Further, MTANSW submits that to assist business with the skills shortage in the Motor Industry (Directions in Australia’s Automotive Industry Report 2021- NSW Skill Shortage 9,883), there is also the need to recognise overseas qualifications. This position previously existed under the Motor Repairers Act 1980, where qualifications which were “*equal to or equivalent*” enabled overseas qualified tradespeople to obtain the necessary licences to gain employment within NSW. Under the current Motor Dealers and Repairers Act 2013 and the regulations, this is not possible and places NSW at a disadvantage compared with all other States and Territories in Australia who do recognise these qualification. This discrepancy means that employment which should occur in New South Wales is being migrated to Victoria and Queensland.

## Online selling

MTANSW acknowledges the shift to an online sales environment and welcomes the necessary legislative changes. In relation to the proposed changes the MTANSW make the following observations:

- (a) Any legislative changes should incorporate both **new and used** vehicles

- (b) Any proposed amendment to Section 66E should be a change to reflect the business costs and risks associated with sales in an on-line environment. MTANSW submits that any regulation of the deposit which a business is able to require on a purchase of a motor vehicle should set a minimum of **ten percentum (10%)** with a maximum deposit of **twenty five percentum (25%)** MTANSW submits that this range is reflective of the industry costs associated with ordering and resourcing motor vehicle's from overseas manufacture's.

## **Administration**

MTANSW supports the position as adopted by the Government in the proposed Amendments.

## **Easing burden on businesses.**

MTA sees the need to move forward with changing business practices digitally and welcomes the premise of the proposed legislative changes. However, It is imperative of this transition that the same information as currently is provided in the paper form is also part of the online delivery. To do otherwise limits the ability of business to satisfy itself of the identity of a seller of a second hand vehicle. Therefore, the risk of fraudulent activity in relation to second hand vehicles is increased.

## **Protecting business and customers**

### **a) Cashless transactions to prevent fraud**

MTA supports the proposal for a move towards cashless transactions within the Recycling/Scrap industry. In addition, member feedback is that the industry also supports this proposal.

### **b) Strengthening consumer guarantees**

MTA NSW acknowledges that the dichotomy of the State and Federal Legislation in relation to Consumer and Dealer Guarantees is problematic for Industry and Consumers. However, MTANSW does not support the proposed amendments.

The proposed amendments of Sections 67,68 and 77 of the Act have two fundamental issues:

- (a) The proposed changes lessen the protections provided to business in relation to Consumer Claims, thereby expose business to greater liability for consumer claims:

- (b) The definition of “defective vehicle” is broad and unclear which will have the effect of exposing business to claims and ancillary costs which are disproportionate to any proper basis for protection of consumer rights

### **c) Motor dealer protections and national reforms**

MTA NSW acknowledges the recent legislative changes to the Australian Consumer Law Unfair Contract Terms and the fact that reform of the Act will await the legislative review of these changes.

However, MTANSW submits that the protections which are provided to New South Wales businesses under Part 6 of the Act should not be removed irrespective of any review as to the Federal Legislative framework. It is important for local business that these protections which assist in addressing the power imbalance between Manufacturer’s who are based overseas, and local businesses are maintained. In addition, the maintaining of local employment predicated upon the legal protection provided to local businesses under Part 6.

In circumstances where the business model of Motor Dealers is under constant change, as by way of example the implementation of an agency model, it is important that local Motor Dealers are provided with proper legislative protection in any negotiations and contractual agreement which may be imposed by Manufacturers. MTANSW looks forward to further discussion with Government when this issue is under consideration

## **Further Submissions**

In addition to the headings as provided in the Explanatory Paper, MTANSW submits that several areas of concern have not been addressed in the Explanatory Paper. MTANSW takes the opportunity to refer the Government to its submissions made on the **11<sup>th</sup> August, 2020** in respect to the **“Discussion Paper 2020”** and in particular to the following issues:

- (a) Licensing of Motor Vehicle Assessors
- (b) Repair Work undertaken on Heavy vehicles by untrained mechanics
- (c) Re-establishment of Automotive Unit at Department of Fair Trading
- (d) Strengthening of Part 6 of the Act.

MTANSW invites Government to include these issues in any review of the Act and to adopt the recommendations a provided by MTANSW in the earlier submissions. The safety of the community and the proper functioning of the Motor Industry will be enhanced if the Government adopts the recommendations as provided.

Based on Industry Feedback from members of MTANSW, the Association responds to the questions in the Explanatory Paper as follows:

### **Q1. Do the current amendments adequately recognise new online and emerging business models in the industry?**

- A. While the amendments recognise the change in business models the amendments need to reflect the sale of both New and Used vehicle's as well as providing suitable protection for business in sales via an online platform.

### **Q2. If you are currently operating a dealership from a fixed location, are you considering in the future to also make available the option for on-line purchasing?**

- A. MTA NSW feedback is that the majority of large new car Motor Dealer Franchised Groups will want the option to be able to sell online. Indeed, many are already participating in selling online currently and have done so for many years in both New and Used car retailing market. MTA NSW and its Motor dealers members believe an end to end online sales should also be considered and allowed to all Used Car Sales that have and operate from a **Dealer Management System (DMS)** provider such as (Pentana, Auto IT and or Titan). These DMS providers have digital software that can safely produce the required contractual and documents with a known digital trading platform such as Car Sales, Cars Guide and or Autotrader to name few.
- B. In addition, members are requesting legislative changes to permit new business models and changing agreements to allow retailing from a "Shop front" so making the Licence location available to sell from local shopping malls, shopping centre display, as well as pop up or permanent stalls, with the Motor Dealer Licence attached to the main Dealer location as the registered fixed place of business, for vehicles to be returned for warranty repairs or routine service maintenance, would be welcomed.

### **Q3. For online purchasing, how should vehicle returns be handled?**

- A.** MTA NSW members agree there should be amendments to the legislation and changing industry and new ways of conducting business. However, members do not agree with the proposed Section 66F. It is uneconomical and inefficient to impose changes that require the Motor Dealers to be expected to pay for all vehicle, with minor failures, to be returned in conditions of sale where it's been decided by the Consumer to purchase a vehicle from out of town and or even interstate. This change will have a disproportionate effect upon Regional and Rural members who have the greatest travel requirements.

Based on member feedback MTANSW suggest the amendment to allow the Dealer more scope and to be allowed more flexibility to have vehicle repairs inspected by a preferred licenced repairer of choice by the Dealer and or consumer in circumstances where the consumer resides or breaks down and is outside of limit of 150klm radius and or 1.5hrs travel time.

MTANSW submits that the Motor Dealer should only be responsible to collect the vehicle outside of these parameters where a failure is deemed a "major defect" and or non-driveable and or otherwise deemed not safe to use To require otherwise will impose and unnecessary cost impact to any used or new car dealership. Again, this costs impact would be especially felt in smaller regional business especially.

### **Q4. Would you support efforts to streamline the record-keeping process through digitalisation (online recording) for prescribed parts and dealer notices? Do these amendments fulfil this objective?**

- A.** MTANSW members would support the efforts to streamline record keeping through digitalisation but would also suggest that some form of physical register be kept for consumer supplied parts.

### **Q5. Does the proposed Bill adequately protect manufacturers and dealers?**

- A.** MTA NSW members believes more needs to be done with in Part 6 of the Act in regard to protecting Motor dealers across all retailing sectors of the Automotive Industry selling New Vehicles including Commercial Trucks, Motorcycle, Agricultural Machinery



and Tractors. All such businesses should have equal protections against manufacturers with unfair contract dealing. We draw Government's attention to the previous submissions of MTANSW made in 2020.

## **Q6. Should inspection reports be provided to consumers purchasing a vehicle prior to an auction.**

- A. MTA NSW and its members believes that Auction houses should be brought in-line with dealerships and that the inspection report should be given to the consumer *"at or before time of sale"*. MTA submits that as part of that auction process that the Auction house also provides a PPSR report that shows clear title. This would then provide the consumer with better protections.

## **Q7. Do the updated penalties provide sufficient deterrence to unlawful behaviour and practices?**

- A. MTA NSW does not believe that the updated penalties are a deterrent. MTANSW recommends that the proposed amended penalty fines be **tripled**. In addition, MTANSW recommends that disqualification periods for repeat offenders be established. MTANSW submits that if such deterrence was in place Government would start to see a significant drop in businesses who are ill qualified and trained to repair motor vehicle's with a consequent increase in safety for consumers."
- B. MTA NSW also suggest that as part of the deterrence of unethical behaviour in the industry there needs to be a fair, balanced and efficient management of the industry and recommends
- The re-establishment of the Automotive Unit of NSW Fair Trading as the overriding regulator of the automotive industry; and
  - That a separate body with industry experience be appointed to oversee the licencing of operators in the Automotive Industry

In support of the above submissions MTANSW has observed that there has been a growing trend for more and more consumers taking automotive businesses to NCAT on their interpretation of the Act and the Australian Consumer Law (ACL). Consumer's are also contacting NSW Fair Trading to make a complaint. MTANSW has assisted members in over 100 claims which have occurred in NCAT during 2021. This increase in claims supports the need for an Automotive Unit established within the Department of Fair Trading.

Further, the appointment of an independent body to be able to work hand in hand with the Automotive Unit will ensure that all legislative requirements surrounding licencing and operations are met by the automotive industry.

## **Summary**

The recommendations of MTA NSW on behalf of our Members going forward, would be to see the appropriate balance between the proposed changes to the Act, our Member's business requirements and the staff employed in these businesses and the community.

The Motor Traders' Association of NSW appreciates the opportunity provided New South Wales Government to provide a submission and looks forward to further dialogue regarding the feedback provided. MTA NSW also offers its services to participate in an education program with our Members, as appropriate.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Stavros Yallouridis', written in a cursive style.

Stavros Yallouridis  
Chief Executive Officer

