



AUSTRALIAN
AUTOMOTIVE
DEALER
ASSOCIATION

SUBMISSION TO THE CONSULTATION ON THE MOTOR DEALERS AND REPAIRERS' AMENDMENT (STATUTORY REVIEW) BILL 2022

MARCH 2022



CONTENTS

Section 1: Foreword	3
Section 2: AADA Recommendations for the Bill	5
Section 3: Online selling	6
Restriction of Used Car Sales Online	7
Online Motor Dealers to Collect and Remedy Defective Vehicles	9
Disclosure Requirements	10
Opportunities to Inspect Motor Vehicles	10
Payment of Purchase Price—Maximum Deposit	10
Section 4: Motor Dealer Protections and National Reforms	11
Section 5: Prescribed Parts and Qualification Requirements	12
Section 6: Reducing Administration and Electronic Dealers' Notices	13
Section 7: Conclusion	14

FOREWORD

The AADA welcomes the opportunity to provide input to the Motor Dealers and Repairers (Statutory Review) Bill 2022.

The AADA is the peak automotive industry advocacy body and is the only industry association which exclusively represents new car Dealers in every Australian state and territory. There are approximately 1,500 new car Dealers in Australia that operate some 3,100 new vehicle Dealerships. Franchised new car Dealers employ more than 59,000 people directly and generate in excess of \$59 Billion in turnover and sales with a total economic contribution of over \$14 Billion.

In New South Wales there are almost 1,000 new vehicle outlets, employing over 17,000 people. Dealers across the state, generate \$4.12 billion in economic activity and more than \$800 million in taxes for both state and federal governments.

Franchised new car Dealers in New South Wales are staunchly opposed to some of the amendments contained in this Bill, particularly those pertaining to online sales. While we support attempts to “future-proof” the industry and respond to new business models and technologies, the effective ban on the sale of used cars online is a move that fails to meet the needs of an ever-changing market and will halt progress towards consumer driven arrangements. This will severely disadvantage both NSW consumers and NSW Dealers, making the state one of the most regressive automotive retail jurisdictions in the world.

The online used car sales ban will put NSW Dealers at a significant disadvantage to Dealers in other Australian states and territories. It will essentially outlaw practices many franchised new car Dealers in the state have been undertaking for some time, seriously disrupting their business, and constraining their ability to service their customers. Evidence has not been presented to show that consumers purchasing cars online from a licenced

Dealer are at greater risk. The Government should abandon the online used car sales ban and instead ensure that the other protections around disclosure, opportunities for inspection and maximum deposits apply equally to both new and used cars sold online.

We support the Government’s attempt to better align Dealer guarantees with the Australian Consumer Law, however, we believe the requirement for online motor Dealers to collect defective vehicles is unnecessary and in certain circumstances completely unreasonable. This change will create further distance between NSW consumer law and the ACL.



James Voortman
Chief Executive Officer



New South Wales

995 Dealerships



Economic Contribution



17,501

Dealer Employees



\$1.58 billion

Dealer Wages



\$804.13 million

Tax Contribution



\$4.12 billion

Total Economic Contribution

AADA RECOMENDATIONS FOR THE BILL

1

Remove the restriction on selling used cars online

2

Apply the new requirements for online motor Dealers equally to both new and used cars

3

Remove the requirement for online motor Dealers to collect defective vehicles

4

Retain and consider strengthening Part 6 of the Act

5

The AADA supports other elements of this Bill which reduce red tape and put in place common-sense consumer protections

ONLINE SELLING

The AADA strongly believes that the effect of the recommendations put forward around online selling will serve to have the opposite effects than those that the draft Bill sets out to achieve. The four key amendments outlined in the proposed Bill set out a noble intent that will be impossible to achieve when consumers are inexorably driven to private-to-private online sales channels that are less transparent, offer no statutory protections and have no regulatory oversight. Contrary to the intent of the amendments, these changes will give rise to NSW becoming one of the most regressive jurisdictions in the world for vehicle retailing. Used car sales volumes are greater than those of new cars and these changes will stifle the ability of consumers to transact online for used cars and put NSW Dealers at a competitive disadvantage compared to Dealers in other jurisdictions. There is little evidence that the changes will do anything to protect consumers who already enjoy significant protections.

The below definition of online motor Dealer in the Bill is incredibly broad and would essentially cover every franchised new car Dealer in Australia for the past 20 years.

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.

A very high proportion of vehicle transactions, new or used, now involve elements of the purchasing journey occurring online. Dealers have already been selling vehicles online under this definition and some of the changes being proposed will have a significant detrimental impact on their businesses.

Section 3

Restriction of Used Car Sales Online

The area of greatest concern to franchised new car Dealers in New South Wales is the proposal to restrict the online end-to-end sales to new cars only. The COVID-19 pandemic has seen Dealers find a range of innovative ways to service their customers, including by significantly improving their ability to sell vehicles, both new and used, online. These new ways of doing business are driven by strong consumer demand to transact in different ways and the move to cease online trading for used cars is counter to this trend and current consumer expectations. While most customers still prefer to complete the transaction in the Dealership, there is a fast-growing proportion of consumers who are now willing to and want to buy a vehicle online sight unseen. By not allowing the sale of used cars via the growing online channel the Government is effectively restricting a Dealer's ability to service their customers in a modern, efficient way and denying customers who choose to purchase in this way the convenience they now expect.

This prohibition on the online selling of used cars is also discriminatory and unfairly singles out automotive sales. Campervans, boats, bikes and many other used products which are regularly sold online are not subject to the same obfuscation.

NSW would be the only jurisdiction in Australia, if not the world, which has placed an effective ban on the sale of used cars online. Used cars have been sold across Australia for many years and they are a key part of the used car sales market in likeminded countries such as the United States and the UK.

An online used car sales ban would put New South Wales Dealers at a serious disadvantage to Dealers located in all other Australian jurisdictions which do not restrict online used car sales. There is nothing stopping a consumer from purchasing a used vehicle in another state and simply reregistering it in NSW. The changes will also have a negative impact on the revenue opportunities and employment levels offered by licensed Dealers who are currently striving to recover from the COVID pandemic.

Banning online used car sales will also benefit large national corporations which sell only used cars in an online only environment, distorting the market and potentially creating unfair competition among retailers. Several online only used car retailers have established themselves in Australia in recent times.^{1,2} These can be substantial multinational businesses with significant financial backing which can operate out of any jurisdiction in Australia but sell vehicles to consumers all over Australia.

Customers unable to purchase a used car online through a licenced Dealer will be more likely to purchase from a private individual through online platforms like Gumtree and Facebook. Consumers will lose out on the statutory guarantee and ACL protections they have when buying from a licenced Dealer. Furthermore, the ACCC has expressed concern over the growing number of car scams which occur in the private-to-private arena.³

While the Government should be commended for some of the measures it is taking to reduce red tape through the reform of this Act, the ban on online used car sales will increase the red tape in franchised new

¹ <https://www.afr.com/street-talk/cars24-secures-100-million-debt-facility-with-ifm-20211104-p595wr>

² <https://www.afr.com/technology/record-funding-for-virtual-car-yard-that-gets-rid-of-used-car-salesmen-20211202-p59ee4>

³ <https://www.accc.gov.au/media-release/losses-to-car-ad-scams-climbing>

Section 3

car Dealerships. Our members sell both new and used vehicles and this reform will create a dual system for the sale of new and used vehicles online, adding unnecessary complexity to their business operations.

In our consultations with the Government, the rationale for restricting the online end-to-end sales to new cars only was due to the higher number of complaints being received from purchasers of used cars. We would urge the Government to provide the detailed data informing their proposal to ban the sale of used cars online. It is important to understand the breakdown of what proportion of complaints stemmed from dealings of franchised new car Dealers selling used cars; what proportion of complaints stemmed from dealings with independent licenced car Dealers; and what proportion of complaints stemmed from dealings with private individuals. In addition, we need to understand how many of those complaints resulted in a finding against a licenced franchised new car Dealer. The AADA would argue that franchised new car Dealers have a good track record of adhering to the law and are in fact held to a higher standard due to the requirements placed on us by our prescriptive franchise agreements.

There are a host of current and forthcoming protections for consumers buying used cars. Consumers benefit from statutory warranties, Australian Consumer Law protections and annual vehicle inspection requirements among other protections. In addition, there are further online protections being put in place by this Bill, such as additional information on licence applications, motor Dealer licence numbers on the online materials, offering a purchaser opportunity for inspection and maximum deposits. It is unclear how these protections will be undermined by the mere fact that a used

vehicle will be sold online, rather than in the traditional manner.

Section 3

Online Motor Dealers to Collect and Remedy Defective Vehicles

Vehicles sold online should not have different Dealer Guarantee requirements to vehicles sold in the traditional manner. This Bill is seeking to better align the current Dealer guarantees under the Act, with consumer guarantees under Australian Consumer Law, but unfortunately the requirement for online motor Dealers to collect defective vehicles strays from the ACL causing more inconsistencies and confusion for consumers.

Car buyers have a range of options to ensure vehicles with faults can be transported to a Dealership. Often vehicles are covered by manufacturer roadside assistance or roadside assistance which forms part of a membership to a motoring club, an insurance firm, or a dedicated provider. Often defective vehicles can be safely driven to the Dealership by the customer. New car Dealers will always try and deliver the best service to their customers and when a customer needs assistance in having their vehicle collected and repaired, they will assist.

However, this requirement can potentially be unreasonable in certain circumstances. For example, an online purchaser buys a vehicle at a Dealership in Coffs Harbour and then relocates to Broken Hill. Does the Dealer need to arrange for the vehicle to be transported from Broken Hill to Coffs Harbour at the request of the online purchaser? An online purchaser on a four-wheel-drive holiday breaks down in rough, difficult to access terrain. Does the Dealer need to arrange for a very difficult evacuation exercise based on a determination by a consumer that the vehicle is defective as per the definition in the Act? These are two hypothetical examples however both would result in unnecessary cost and complexity for

both the Dealer and the customer. There are undoubtedly countless other examples that demonstrate the unsuitability of this requirement.

We also note that while the compliance obligations placed on Dealers under the Act and the consumer guarantee requirements of the ACL are specified in detail, there is no mention of the need for these requirements to also extend to motor vehicle manufacturers, who also play a key role in satisfying guarantees under the ACL. The explanatory paper provided, recognises the power imbalance that exists between franchised new car Dealers and manufacturers and that there are ongoing reforms of franchising laws and UCT provisions but fails to recognise the Australian Consumer Law places responsibility on manufacturers as well as suppliers.

Section 3

Disclosure Requirements

The AADA is supportive of the disclosure requirements required for the sale of cars online.

Opportunities to Inspect Motor Vehicles

The AADA acknowledges the right of purchasers to inspect the vehicle prior to purchase and at delivery. In relation to the regulations on places at which vehicles are to be inspected and collected, franchised new car Dealers offer state of the art facilities which are safe and secure for our customers, and we would support regulations which enshrine that requirement.

Payment of Purchase Price—Maximum Deposit

The AADA supports the intent of this recommendation provided the relevant percentage of the purchase price is reasonable. We believe 25 per cent is an appropriate amount for products such as motor vehicles that are ordered from overseas.

MOTOR DEALER PROTECTIONS AND NATIONAL REFORMS

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

However, these changes should in no way effect the protections afforded to New South Wales Dealers under Part 6 of the Act. Part 6 should be retained and potentially strengthened, given the recent examples of abuse by automotive manufacturers. Most Dealers will not be protected by the national unfair contract term protections, but in NSW they are protected.

PRESCRIBED PARTS AND QUALIFICATION REQUIREMENTS

The AADA supports moving the prescribed parts list and qualification requirements to a page available on the NSW Fair Trading website and approved by Ministerial Order. This is a far more efficient method of keeping these sections up to date and will improve transparency of the requirements.

REDUCING ADMINISTRATION AND ELECTRONIC DEALERS' NOTICES

Changes to the Act which allow Dealers to maintain records in a specified manner, rather than using separate registers, reduce the administration burden on Dealers and provides greater flexibility in record keeping.

Similarly, the AADA supports the amendment to allow the use of electronic Dealer notices. This amendment will create improved access by consumers and authorised officers while reducing the red tape burden on Dealers.

CONCLUSION

We would welcome the opportunity for the AADA and some of our members to meet with you to discuss our submission in more detail. If you require further information or clarification in respect of any matters raised, please do not hesitate to contact me.

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