



**FEDERAL CHAMBER
OF AUTOMOTIVE
INDUSTRIES**

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Submission- Motor Dealers and Repairers Amendment (Statutory Review) Bill 2022

The Federal Chamber of Automotive Industries (**FCAI**) is the peak industry organisation representing the importers and distributors of passenger vehicles, light commercial vehicles and motorcycles in Australia.

FCAI member organisations represent 60 brands offering over 400 different vehicle models, sold and serviced by almost 3,800 authorised dealers. Together, Australian new vehicle distributors and their authorised dealers employ more than 75,000 employees and contribute significantly to Australia's economy, lifestyle and communities big and small.

FCAI welcomes the opportunity to make a submission to the NSW Government's Department of Customer Service Explanatory Paper (**Paper**) in respect of the Motor Dealers and Repairers Amendment (Statutory Review) Bill 2022 (**Bill**).

Our submission focuses on the aspects of the Paper and provisions of the Bill dealing with online selling, as follows:

1. FCAI sees merit in allowing an exception for online motor dealers not being required to sell from licensed premises. However, we think that requiring online motor dealers to maintain a council approved location for the storage and inspection of motor vehicles is unduly restrictive and may limit the ability of online motor dealers to maximise the potential advantages of online selling. Some of those advantages include:
 - (a) Possibly disconnecting the backend office and administrative operations of the online motor dealer from the vehicle storage / preparation / logistics operations, including by outsourcing vehicle storage / preparation / logistics operations to 3rd party service providers / operators of large vehicle holding

yards, from where motor vehicles would be prepared for sale and then delivered direct to consumers.

- (b) FCAI understands that licensed premises / property / yard costs are very high and ever increasing. Removing the licensed premises requirement, in instances where vehicle storage / preparation / logistics operations are outsourced, could result in significant savings for online motor dealers.
 - (c) It seems to be against conventional wisdom to, in effect, require an online business to maintain (themselves) a physical location for storage and inspection of the product. The online sales revolution has demonstrated that products can be sold online and distributed to consumers directly from warehouses and other storage locations, and that consumers are more comfortable with purchasing products online that they have not seen or touched, so to speak. We expect online motor vehicle sales will increasingly follow this same trend.
2. FCAI's view is that restricting online end-to-end sales of motor vehicles to 'new' vehicles is unnecessary and that the sale of used vehicles should be permitted. Indeed, making it an offence carrying 1,000 penalty units (or imprisonment for the second or subsequent offences) to sell or even offer for sale a used vehicle online seems, with respect, highly unusual in an online sales era.

FCAI's members typically sell new vehicles via franchised new car dealers, and those dealers will also sell dealer demonstrator vehicles that, while 'near new' would be regarded as a used vehicle. With respect, we don't think it makes practical sense that a franchised new car dealer would be prohibited from selling 'near new' used vehicles online, or indeed any used vehicle at all. 'Near new' dealer demonstrators would generally be sold inclusive of remaining manufacturers warranties and, in any event, buyers would receive the benefit of the ACL consumer guarantees.

FCAI is concerned that prohibiting used vehicles from online selling might result in larger scale used vehicle dealers taking their operations interstate to jurisdictions where there is no such prohibition. Some large dealer groups already operate in multiple states and territories, and we expect could simply 'base' used vehicle online sales in a state or territory with no such prohibition on online used vehicle sales. We imagine that, for example, a used vehicle could be sold by an online motor dealer located in Victoria or Queensland and delivered to a consumer in New South Wales. FCAI expects online selling of motor vehicles, like most other products, will result in more intra-state sales than already occurs. We query whether this would be the best outcome for business investment in and the economy of New South Wales.

FCAI understands that both new and used vehicle sales *already* occur online, and in a hybrid fashion where the customer locates a vehicle advertised online, contacts the dealer directly and agreement is reached between dealer and customer either over the telephone or via email. We understand this trend has only accelerated since Covid-19 caused 'in person' trading restrictions. No special regulations appear to have been required to protect consumers with respect to sales occurring in these ways – rather, the ACL operates as intended.

Looking at the language in the proposed s66B, we think there may be a thin line between 'advertising' a vehicle for sale and 'offering' it for sale. If a dealer advertises a used vehicle for sale via a 3rd party website such as Carsales.com or their own website and a customer contacts them and enters into an agreement via email, the vehicle will

not have been 'offered' for sale or sold via a dealer's website. However, the sale may well have been 'online', and the difference is perhaps merely technical.

3. FCAI considers that the requirement proposed in the new draft s66F for online motor dealers to collect defective vehicles is inappropriate and unnecessary, for the following reasons:
 - (a) While we note that the draft s66F(3) envisages a time limitation, there does not appear to be any geography limitation. As we've mentioned, we expect that online motor vehicle sales are likely to result in more cross-border purchases, and so are concerned about impracticalities associated with this obligation.
 - (b) Comprehensive consumer protection in respect of manufacturing defects and products not complying with their description or specification is readily available for both new and used vehicles purchased online via the consumer guarantees in the Australian Consumer Law (ACL). The ACL entitles consumers to claim for substantiated reasonably foreseeable consequential losses in some circumstances. We think the consumer protection afforded by the ACL consumer guarantees is appropriate and adequate for motor vehicles purchased online, without specifically requiring an online seller to collect the vehicle.
 - (c) The proposed obligation doesn't account for the fact that, at least with respect to new vehicles, franchised new car dealers largely belong to branded dealer networks and another dealer in their network may be located closer to the consumer than the online motor dealer from which the consumer purchased.
 - (d) We anticipate that s66F may result in disputes in situations where consumers allege the vehicle is defective and the motor dealer disagrees. Another layer of consumer regulation in this regard on top of the ACL consumer guarantees may be unhelpful.
 - (d) There is no equivalent obligation imposed on traditional motor vehicle dealerships.
4. If our prediction is correct that online motor dealers may wish to outsource vehicle storage / preparation / logistics operations to 3rd party service providers / operators, we consider that the obligation in draft s66D (Opportunities to inspect motor vehicles) will be problematic. It may be impractical for the vehicle to be inspected at the place it is stored, if it is stored in a large holding yard, as these locations are typically unsuitable for consumers for safety and practicality reasons.

Also, agreeing on a place for an inspection to occur may be impractical where there is a large distance between the location of the vehicle and buyer. As mentioned, we expect online sales are likely to result in greater distances between buyer and vehicle, and situations where the buyer doesn't physically inspect the vehicle before purchase. Potentially, the proposed change could limit choice for NSW consumers due to the proposed inspection requirement.

In addition, FCAI members are concerned with how the obligation in s66D might be fulfilled in circumstances where the online sale is an order for a vehicle that has yet to be built or is built but is enroute to Australia, or is a special order. Buyers of new vehicles are already able to order from physical dealerships vehicles that have yet to be built or are in the process of being shipped to Australia, or are a special order built to the customer's personal and unique specifications. If such sales were to occur

online (and we see no reason why such sales should not be permitted online), it will not be possible for the new car dealer to fulfil the obligation in s66D.

As we have already canvassed in respect of other online selling provisions in the Bill, FCAI is concerned that this obligation might motivate some traders to base their online motor vehicle sales businesses in jurisdictions that do not carry such obligations, and transport vehicles direct to consumers in New South Wales.

5. With respect to draft s66E (Payment of purchase price – maximum deposit), it is not clear why the amount of deposit for the purchase of a vehicle online would need to be regulated, when to the best of our knowledge it is not presently regulated for physical sales. Particularly with respect to online vehicle sales for a new vehicle that is yet to be built or is a special order, we anticipate that the dealer may want to obtain, and should be entitled to receive from the customer, a substantial deposit.
6. Schedule 1(26) New section 66D(2) requires an online motor dealer to give the purchaser the opportunity to carry out an inspection on delivery or collection. It would be helpful if the Bill specified what constitutes an inspection, how long the inspection period is (i.e., is it long enough to have a qualified mechanic conduct the inspection) and what the consequences are if the purchaser decides, on the basis of the inspection, that they no longer want the vehicle. For the purposes of new section 66E, does the purchaser take possession after the inspection?

Again, we query whether s66D(2) is required at all in view of the consumer protection afforded by the ACL consumer guarantees, and how such an inspection may occur where there is a long distance between online dealer and the customer (in which case the dealer would arrange for the vehicle to be trucked to the customer by a transport contractor).

7. Schedule 1(35) provides for the Minister to specify the form in which dealers must keep records. FCAI thinks that, due to the move to digitisation, it would be most practical to specify the *type* of information that is required to be maintained, and a requirement that it be produced on demand, but not the actual *form*.
8. In respect of Schedule 1(36) of the Bill, we query why the Secretary should have the power to give a rectification order. Whether an act, matter or thing has or has not been done, is incomplete or defective, or even needs to be done to comply with the ACL or dealer guarantee may be in dispute. We are concerned that this section may result in the Secretary being a finder of fact, which is a judicial function that is more appropriately dealt with via NCAT, at the very least.

In summary, FCAI queries whether New South Wales may miss out on business investment in this emerging area, if motor dealers considering commencing online sales regard the regulatory settings in New South Wales as adverse. We also query whether some of the online selling obligations discussed above might place online motor dealers in New South Wales at a competitive disadvantage as against online motor dealers in other jurisdictions, particularly given that cross-border purchases are more likely with online sales.

Accordingly, FCAI respectfully recommends that the online selling provisions in the draft Bill be reconsidered so as to address the issues we have raised, before being tabled before the NSW Parliament.

Given the potential significant commercial and consumer ramifications that could result from the current proposal, we would welcome an opportunity to address the above matters with you in person. I will contact you separately to seek a mutually agreeable time to meet.

In the meantime, please contact me on 0410 451342 if you have any questions.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Tony McDonald', is written above the printed name.

Tony McDonald

Director, Industry Operations