

Recommendations

These recommendations are a combination of proposals for legislative and administrative change. These include proposed changes to both the Act and Regulations and changes to the way the legislation is administered and enforced by the Business Licensing Authority and Consumer Affairs Victoria. In addition, several recommendations relate to the activities of other areas of government outside the consumer affairs portfolio.

Recommendation 1 – page 8

Since it is not clear from the consultations what the benefits of a closed scheme would be to the public as a whole, an 'open' licensing scheme should be maintained.

Recommendation 2 – page 13

That the Act be extended to allow the Authority to consider associates who:

- have had a claim admitted against them (or a company or partnership in which they were involved)
- the Authority is satisfied are not fit and proper persons to hold a licence, if they were to apply for one.

Recommendation 3 – page 13

The impact on directors of companies against which a claim has been admitted on the Fund should be clarified in the legislation.

Recommendation 4 – page 16

That the Business Licensing Authority, in collaboration with Consumer Affairs Victoria, VicRoads, the VACC and possibly the Office of Small Business, develop an information package for new licensees containing information on the application of the law and general information on how to conduct a motor car trading business.

Recommendation 5 – page 16

That information on relevant legislation and other areas of interest be provided to licensees on a regular basis through a newsletter (for either a suitable format).

Recommendation 6 – page 17

That consideration be given to introducing different fees for different areas of the industry, having regard to the effects on the industry and the purposes of licence fees.

Recommendation 7 – page 18

That consideration be given to introducing additional fees for extra/additional premises held by a licensee, fees for permission applications and the exemption of partners from licence fees or the application process following dissolution of a partnership.

Recommendation 8 – page 19

The application of the above provision to brokers should be clarified, and if necessary to uphold the objectives of the Act, should be reconsidered.

Recommendation 9 – page 19

The definition of 'customer service capacity' should be extended to include aftermarket service and finance, unless evidence can be provided as to why they should not be added.

Recommendation 10 – page 21

Given that the introduction of some kind of licensing scheme or regulation of sales staff was raised at each of the focus groups, it is an area that requires further investigation. The benefits and costs of the different types of regulation should be further explored.

Recommendation 11 – page 24

That replacing the requirement of stipulating in red font whether there is statutory warranty, with a requirement to stipulate this in bold font, be given further consideration.

Motor Car Traders Act Consultations Report > xiii

Recommendation 12 – page 26

The inability of wholesalers and finance companies to provide previous owners' details for inclusion in the Form 7 due to restrictions under the Commonwealth Privacy Act should be further investigated.

Recommendation 13 – page 27

The benefits and costs of requiring the disclosure of previous owners' details in the Form 7 should be explored in further detail. In particular, options allowing previous owners to 'opt out' or to minimise the disclosure of personal information should be explored.

Recommendation 14 – page 28

Clarification of the application of this provision to traders advertising on the Internet is required. Also, an examination of whether internet advertisements by non-traders are captured by regulation 22(4) – that is, the restrictions on newspaper and magazine advertising – is required. If necessary, the Act and Regulations should be amended to ensure traders are required to include their LMCT number in all advertisements, regardless of whether the advertisements are published on the Internet.

Recommendation 15 – page 30

Most of the concerns regarding dealer charges could be alleviated by improved enforcement of the current Regulation and perhaps by extending this Regulation to require dealer charges to be disclosed in a minimum of 10 point font.

Recommendation 16 – page 31

The inability of traders to keep only an electronic version was often raised as a concern throughout the consultations. Given the prevalence of these concerns, the dealings book requirements should be revisited, both in terms of their rationale and whether the paperwork requirements can be improved. For example, a workshop involving traders, regulators and software companies could be organised.

There is no clear indication of the benefit of requiring a physical signature in the dealings book. Unless strong reasons can be provided as to why it should be maintained, this requirement should be removed.

Recommendation 17 – page 32

Traders should be required to provide a statutory warranty for commercial vehicles that are less than 10 years old and have travelled less than 160 000km, where such vehicles are purchased by private individuals.

Recommendation 18 – page 33

That options be examined regarding ways to improve consumers' awareness of the existence or otherwise of a statutory warranty and their rights and obligations in relation to such warranties. At a minimum, traders should be required to provide consumers with a statement of their rights and obligations under a warranty, where such warranty applies (similar to the standard form supplied by the VACC).

Recommendation 19 – page 35

That options be examined regarding ways to improve consumers' awareness of the existence or otherwise of a right to a cooling-off period and how to exercise such a right. In particular, a consumer's right (or otherwise) to a cooling-off period should be made a required particular in contracts for sale.

Also, the extension of the cooling-off period to new and commercial vehicles should be considered with regard to the objectives of the provision.

Recommendation 20 – page 38

The Chattel Securities Act should be amended to require financiers to cancel a security interest within 7 days of the financier having knowledge of the cancellation of the interest by the trader.

Should this recommendation not be adopted, consideration should be given to amending the Chattel Securities Act as proposed by the Australian Finance Conference.

Recommendation 21 – page 41

That section 37 be amended to reflect the repeal of section 8 of the Road Safety Act and to clarify the application of this provision.

Recommendation 22 – page 44

The Business Licensing Authority and Consumer Affairs Victoria should give consideration to use of the Authority's condition making power and possible enforcement activity under the Fair Trading Act to prevent use of the terms 'auction' and 'wholesale' where these would be misleading to consumers. If these options do not adequately address the concerns raised, consideration should then be given to legislative change.

xiv > Motor Car Traders Act Consultations Report

Recommendation 23 – page 46

Consumer Affairs Victoria should examine the effects of introducing such requirements, with consideration given to the objectives, and associated costs and benefits. In particular, the removal of the exemption from providing a roadworthy certificate where a registered vehicle is sold at public auction should be given serious consideration. However, regard must be had to the likely resulting effects on the auction system and the objectives designed to be achieved by the legislation.

Recommendation 24 – page 46

There should be clarification of the existing provisions in relation to auctions and an examination of whether these are achieving the objectives of the legislation. At a minimum, the legislation should require Form 7's on cars for sale at public auctions to include a price range, in the same way that real estate advertised for sale at auction indicates an anticipated price range. Also, if the vehicle fails to sell at auction, the passed in value should be displayed on the Form 7.

Recommendation 25 – page 47

Further consideration should be given to requiring auctions to record details of vendors and purchasers of vehicles sold through their auction business where this information would assist enforcement activity.

Recommendation 26 – page 47

Restricting the sale of written-off vehicles to trade-only auctions should be given further consideration, subject to a deeper analysis of who presently purchases these vehicles, what the risks are to consumers and what the impact would be on private purchasers.

Recommendation 27 – page 48

An investigation should be conducted into the benefits to be obtained from the introduction of dummy bidding restrictions at motor vehicle auctions, having regard to the differences between the motor vehicle and real estate industries.

Recommendation 28 – page 51

Given that so many participants raised the issue of brokers, and that this area of the industry appears to have emerged only recently, it is recommended that further work be carried out on the issue, including the following:

- a clarification of how the existing provisions apply to the various practices of brokers, and
- once the application of the existing provisions is clarified, the adequacy of the provisions in protecting consumers who deal with brokers should be assessed, and
- if found to be inadequate, options for legislative change should be identified and examined, including the possibility of restricting brokers to operating only as introduction agents.

Recommendation 29 – page 53

The inclusion of publishing an advertisement by electronic means should be clarified as constituting an offer to sell a motor car for the purposes of section 7A.

Recommendation 30 – page 54

That it be made clear that auto-recyclers and car removers who purchase vehicles from the public are required to hold a licence.

Recommendation 31 – page 55

Penalties for unlicensed trading should be increased.

Recommendation 32 – page 60

A central contact point for all matters relating to the regulatory scheme, including licensing, compliance and enforcement, should be established and promoted. This contact point could be within the Business Licensing Authority or within Consumer Affairs Victoria.

Recommendation 33 – page 61

That CAV examine its communications strategy with traders and identify ways in which communication might be improved.

Recommendation 34 – page 62

That the points raised in relation to VicRoads be forwarded to the Minister for Transport for his consideration.

Recommendation 35 – page 64

That the points raised in relation to stamp duty be forwarded to the Treasurer and Minister for Finance for consideration as appropriate. In particular, it is thought that the idea of establishing an assessment centre has some merit.

Motor Car Traders Act Consultations Report > xv

Recommendation 36 – page 68

That the purpose of the Fund be reviewed. If the intended purpose is only to compensate consumers, consideration should be given to the above amendments suggested by the Committee. However, if the intended purpose is to compensate all persons who suffer loss, then no legislative amendment is necessary but consideration will need to be given to increasing the amount in the Fund.

Recommendation 37 – page 74

The ways in which consumer and trader disputes are currently resolved should be examined to determine their effectiveness and adequacy, and options for improvement should be considered, including the establishment of an industry-specific dispute resolution scheme.

Recommendation 38 – page 75

Consumer protection in relation to new car warranties and 'lemons' is an area that requires further investigation, particularly given the large amounts of money involved and the unequal positions of consumers and vehicle manufacturers. Such an investigation could occur in the context of a broader examination of 'lemon laws' and their possible application to other types of products as well as cars.

xvi > Motor Car Traders Act Consultations Report