

NSW Fair Trading Review of the Regulation of Motor Vehicles
NSW Fair Trading
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20 July 2012

Dear Sir/Madam

Issues Paper: NSW Fair Trading Regulation of Motor Vehicles

The Insurance Council of Australia (ICA) is pleased to make this submission to NSW Fair Trading on the issue of motor vehicle regulation. We appreciate the extension that has been provided to the ICA for the delivery of this submission.

The ICA supports any initiative that will increase clarity and efficiency in the regulation governing the trade in motor vehicles, and motor vehicle repair.

The purpose of this submission is to provide feedback to NSW Fair Trading on the Issues Paper, from the perspective of the Australian general insurance industry. As a number of ICA members will provide individual submissions to this Review, the ICA will comment broadly on some of the topics raised.

Consolidation of the *Motor Dealers Act 1974* and *Motor Vehicle Repairs Act 1980*

The ICA supports the consolidation of the *Motor Dealers Act 1974* and *Motor Vehicle Repairs Act 1980*. We expect that this will enhance clarity and efficiency in the regulation of motor vehicles in NSW.

We would however recommend that, where this consolidation would potentially see regulation extend from the motor dealer to the motor repair sector, or from the motor repair sector to the motor dealer sector, these instances should be identified and opened up to stakeholders for specific consideration and comment.

The Extension of Unfair Contract Terms to Business-to-Business Contracts

The ICA does not support the extension of unfair contract terms to business-to-business contracts. We note that these provisions within Australian Consumer Law (ACL) are part of the recently established national consumer protection regime. The Productivity Commission addressed the issue of extending this protection to small business in 2008 as part of its review of the Australian Consumer Policy Framework, finding that there were no clear principles identified that could decide the extent to which small business should be covered by generic consumer protections. After vigorous debate, a conscious policy decision was taken by the Commonwealth Parliament not to apply the ACL's provisions to business-to-

business contracts. The ICA therefore submits that this issue should not be taken up as part of the proposed state-based consolidated Act.

Further, recent amendments to the *Competition and Consumer Act 2010* provide yet another layer of protection for small business, which, in our view, need not be replicated in a state-based consolidated Act.

Australian Consumer Law and a Consolidated Act

The ICA agrees that there should be greater education of the relevant provisions within ACL, in terms of how they apply to motor dealers and repairers. This could be provided by the NSW Government via relevant internet sites and other web-based applications.

In relation to where ACL and State legislation intersect on consumer guarantees for services, it is the view of the ICA that ACL is sufficient, and there is no need for replication of these provisions in a consolidated Act. Further, avoidance of unnecessary interaction between state and federal laws will prevent any potential issue that may arise under section 109 of the *Australian Commonwealth of Australia Constitution Act*.

The Definition of Repair

It is the view of the ICA that the definition of repair should remain as it is in the *Motor Vehicle Repairs Act 1980*; "repair" includes examine, detect faults in, adjust, carry out maintenance on, overhaul, replace, alter and paint."

Repairer Licensing

The ICA does not support a tiered licensing regime for repairers; such a system might prove to be difficult to maintain and monitor. As well as these implementation and compliance issues, there are concerns that grading would segment the market and lead to artificial barriers to entry, thereby reducing competition. There might also be a consolidation of repairers into the higher graded category leading to an increase in the cost of repair and subsequently insurance.

Implementation of tiered licensing in NSW would also result in a misalignment with existing licensing regimes in other states. This would place some repairers at a disadvantage where repair work could be carried out in other states. It might also create difficulties for repairers seeking work between states.

We do however agree that there are a number of duties for which a repair licence need not be required, and should be able to be carried out under the supervision of a licensed repairer. Such duties would include the fitting of non-safety related accessories including audio systems and wheel trims which do not affect the performance, safety or security of a vehicle.

Loss Assessor Licensing

The ICA has some concerns about the re-introduction of assessor licensing. As the Issues Paper notes, two forms of regulation already exist that address the competency of loss assessors; the Motor Vehicle Insurance and Repair Industry Code of Conduct, and the *Road Transport (Vehicle Registration) Act 1997*.

We would also like to note the possible flow-on effects that may be burdensome for business, including the administration and monitoring of the licensing system for employees and contractors that carry out loss assessment.

Should the Review recommend that loss assessor licensing be re-introduced, we suggest that businesses that employ loss assessors should be able to hold one licence to cover all staff that carry out loss assessment.

The Motor Vehicle Insurance and Repair Industry Code of Conduct

The Motor Vehicle Insurance and Repair Industry Code of Conduct (the Code), which is voluntary on a national basis but mandatory in NSW under the *Fair Trading Act 1987*, exists to, amongst other things, provide dispute resolution mechanisms and regulate the training of repairers and loss assessors. It has been subject to a number of reviews, and in 2008, NSW Fair Trading concluded in its review that the Code was operating satisfactorily, had the support of the motor vehicle repair and insurance industries, and did not need to change from its current form in NSW.

We submit that the Code is working well. It provides adequate dispute resolution mechanisms which to date have not been utilised beyond the mediation stage, and supports sufficient training requirements for repairers.

Reference to the NSW Written-off Vehicle Legislation

The Issues Paper questions whether a consolidated Act should include provisions that support the NSW Written-off Vehicle (WOV) legislation. It is the view of the ICA that this is unnecessary. The WOVL legislation is detailed and extensive, and there is no need for additional wording to supplement this legislation in a consolidated Act.

Conclusion

The ICA wishes NSW Fair Trading every success for the conduct of the current Review of motor vehicle regulation in NSW.

We see value in consolidating the *Motor Dealers Act 1974* and *Motor Vehicle Repairs Act 1980* for efficiency purposes, and are pleased to be able to make a contribution to the Review. We look forward to receiving the outcome of the Review in due course.

If you have any questions in relation to this submission, please don't hesitate to contact Amber Fitzpatrick, Policy Advisor within the Consumer Relations and Market Development Directorate via email afitzpatrick@insurancecouncil.com.au, or phone (02) 9253 5129.

Yours sincerely



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