



23 January 2017

Consumer Law Enforcement and Administration

Productivity Commission

GPO Box 1428

CANBERRA CITY ACT 2601

**FEDERAL CHAMBER
OF AUTOMOTIVE
INDUSTRIES**

ABN 59 008 550 347

LEVEL 1

59 WENTWORTH AVENUE

KINGSTON ACT 2604

AUSTRALIA

PHONE: 02 6247 3811

FAX: 02 6248 7673

Dear Commissioner,

DRAFT REPORT – CONSUMER LAW ENFORCEMENT AND ADMINISTRATION

The Federal Chamber of Automotive Industries (FCAI) has considered the abovementioned draft report and while in general FCAI agrees with the findings of the Commission there are a few areas where we would like to offer further comment.

The first of these is in respect of the interaction of the specialist regulators and the ACCC in the enforcement of consumer safety aspects of the ACL. The FCAI is of the view, as mentioned in our initial submission, that the current system involving the specialist regulator in Department of Infrastructure and Regional Development, the ACCC and industry, works particularly well with respect to motor vehicles. FCAI also understands that the Department liaises with their international counterparts from time to time to further demonstrate the value of specialist regulators in instances where the products are highly complex and broadly produced to an international standard or share specific safety related components.

Put simply, our experience is that the interaction is regular, close and valuable. Poor interaction in the motor vehicle sector as intimated by some submissions is simply not the case as is known by all those actually involved in or with the industry.

FCAI supports the Commissions draft finding that the multiple regulator model appears to be operating reasonably effectively. It is important to note the wide support for a nationally consistent approach to consumer law and the FCAI holds this requirement as a core for efficiency and growth in consumer understanding of the ACL. Claims that difficulties arise in seeking consistent application of the law are in the view of the FCAI driven by the circumstances of particular cases rather than any particular approach or interpretation of the law. That said FCAI would support a coordinated and concerted effort by the respective agencies to ensure a nationally consistent approach.

FCAI would be particularly concerned if there was any attempt by state or territories to move away from the national approach or to introduce added features to their particular jurisdiction out of step with the wider ACL enforcement and administration community. FCAI reiterates the point made in

our earlier submission that the ACL is a relatively new law and it must be given time to bed down prior to any significant variations.

In this respect the FCAI also agrees with the Commissions view expressed on page 99 of the draft report suggesting that the most appropriate way to handle a real or perceived need to prioritise consumer outcomes in one geographic area over another are best dealt with through the "intensity of compliance or enforcement activity instead of applying different laws" (PC 2006, p.302). FCAI would add that this observation from the Commission could be extended to education activities and not limited to enforcement and compliance.

In respect of the discussion around the value of development of national datasets the FCAI is keen to reiterate the points that were made to the NSW Government during the development of the Department of Fair Trading Consumer Complaints Register. Firstly there must be a rigorous process to weed out vexatious complaints which can be a costly and time consuming activity, however a very necessary one given potential reputational damage to traders. Secondly where the business concerned is in fact a franchised business the potential damage done to other franchisees business and the overall brand through publication of the brand name are often not justifiable where there are multiple businesses operating in full compliance with consumer law requirements.

The FCAI does not agree with the comments referred to at page 113 of the Draft Report and attributed to Fair Trading NSW, stating that it is appropriate to list the Brand and the particular franchisee as the practices are likely set by the brands head office. FCAI would argue that it is very likely in fact quite the opposite. FCAI has also suggested that if the decision is to develop such a register then prior to publishing any reference to the brand (which are often incorporated into the franchisees trading name) it should be a requirement to advise the head office (franchisor) to enable immediate rectification where there may be a breach of the terms of the franchise agreement or loss of consumer confidence. Franchisors are not always immediately aware of each and every transaction with franchisees customers and the behaviours demonstrated in dealing with those customers.

FCAI also notes the discussion concerning the devolution of powers to the specialist regulators and the example given in respect of motor vehicles (p 158). The Department of Infrastructure and Regional Development administers the Motor Vehicle Standards Act and hence the link to vehicles for use on public roads. The ACCC may need to maintain their capacity to instigate a safety recall despite this proposed delegation, as many products imported and sold by FCAI members are not subject to the Motor Vehicle Standards Act (for example off road motorcycles). In the case of certain motor vehicles it may be necessary to have two organisations with the power to institute a recall. That said, in the history of motor vehicle recalls FCAI cannot point to any instance where a party other than the distributor has found it necessary to use their recall powers.

The consequences of serious breaches of the ACL can be significant. However, the FCAI does not support the concept of alignment of the penalties under the ACL with those applicable to breaches of the CCA. There is significantly greater scope for broad consumer harm as well as adverse impacts on industry arising from serious competition law contraventions (such as cartel conduct) when compared to ACL contraventions.

FCAI believes that the introduction of a 'supercomplaint' process is unnecessary and would be counterproductive. There is no evidence of significant institutional failures across the various consumer protection bodies that suggest such an empowering of special interest groups is necessary. Added to this, unlike a number of the overseas examples, the ACCC is a broadly based and empowered body with the capacity to institute its own prioritised investigations into matters that it deems to be of particular public interest.

FCAI also agrees with the Commissions observations that were such a system to be introduced it would add to costs, despite the contention from some submissions that this would not be the case.

We note that the Commission itself previously rejected the idea of a 'supercomplaint' in its Review of Australia's Consumer Policy Framework report in 2008 where it said:

"... given the existence of a myriad of alternative mechanisms for empowering consumers and identifying systemic consumer problems, the benefits of a supercomplaints mechanism are probably insufficient to outweigh its likely downsides....."

FCAI is of the view that the current circumstances would not support any change to the Commissions 2008 statement.

Please feel free to contact me if you have any questions on the above.

Yours faithfully,

Tony McDonald

Director Industry Operations