



## Motor Trades Association of Australia

Mr Christian Mikula  
Manager, Consumer Credit Unit  
Corporations and Financial Services Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Mr Mikula

I am writing to you on behalf of the Motor Trades Association of Australia (MTAA). MTAA is the peak national representative organisation for the retail, service and repair sector of the Australian automotive industry. The Association is a federation of various state and territory motor trades associations as well as the Australian Automobile Dealers Association (AADA).

The purpose of my writing to you is in connection with the draft Regulation Impact Statement: Regulation of Point of Sale Vendor Introducers (RIS) that has been circulated by the Treasury to Point of Sale Working Group. I thank you for both the opportunity to be represented on that Group and to provide you with comments on that draft RIS.

In the first instance I wish to comment upon aspects of the draft RIS that, of themselves, may have a bearing as to the manner in which the retail motor trades – and motor vehicle dealers in particular – are considered and understood within the RIS. Given that it is likely that the RIS will be employed to provide guidance to decision makers as to prospective regulation affecting the retail motor trades, it is important that there is an accurate understanding of the characteristics of that sector of the economy. I would argue that this is not necessarily presented as being the case in the draft RIS at present; rather that the range of functions, summations and conclusions drawn of motor vehicle dealers within Annex A (at page 23) of the draft RIS evidence a view at odds with the practical reality that can be demonstrated in dealerships daily.

For example, while it is somewhat accurate to say that, “*The first choice arrangement is commonly with the lender who provides finance to the dealership for the purchase of stock or to underwrite their floorplan.*”, it is less than accurate to say that, “. . . *this is an arrangement under which the vendor introducer will **negotiate credit for a consumer** with that financier . . .*” The implication to be drawn from that statement being that the conduct represents a quasi brokering set of circumstances. It would be more accurate to say that, in the case of those first choice situations as outlined in the draft RIS, that they represent an arrangement whereby a vendor introducer facilitates the provision of credit to a consumer on behalf of the dealership’s financier(s).

I would also argue that it is inaccurate to make the statement that, “*The dealership can exercise **significant control** over the terms on which credit is likely to be provided, with the financier typically agreeing to the terms proposed by the vendor introducer in the application.*” While acknowledging that statement is followed by a disclaimer in reference to the proposed transaction needing to “. . . *satisfy the financier’s ‘parameter matrix’ . . .*”, the subtext therein is that the

vendor introducer has significant discretion and decision-making mechanisms at their disposal. That simply is not the case. I would suggest it to be a more accurate portrayal of typical dealership operations if the RIS were to reflect the reality that vendor introducers have imposed upon them, by the dealership's financier, a clearly bounded matrix of criteria, within which they facilitate that financier's efforts to secure the financing business of that dealership's customer.

At this point it is worth noting that dealership operations are unique in character. There can be little in the way of comparison that can be made between the manner in which a typical dealership operates and the operation of the more 'generic' retail businesses considered in the RIS. Dealerships need to provide complete support for the products they sell through servicing and the supply of spare parts. Dealerships may have both a floor plan / bailment financing arrangement for their new vehicle stock and a capital loan for their premises. In any event, the very existence of a dealership is evidence of a significant capital investment, typically in the millions of dollars.

The retail motor trades are comprised of some 100,000 businesses, employing over 308,000 people with an aggregated turnover in the vicinity of \$160 billion. The recently released *Franchising Australia 2010 Report*<sup>1</sup> estimates that motor vehicle sales alone represent some \$29 billion annually, while dealership fixed operations (parts and servicing) I would estimate to represent that same amount more than twice over<sup>2</sup>.

The sale of motor vehicles in Australia is a highly competitive business. There are 44 or so suppliers of passenger vehicles alone in the Australian market; most suppliers with, at the very least, four models in their product line up. Dealership operations are low margin – there is little margin in the sale of a vehicle – and are heavily reliant on after sales customer support for their ongoing viability. A typical medium sized metropolitan dealership might be characterised as representing a capital outlay for its establishment in the order of seven million dollars, have an annual turnover in the order of 80 million dollars, yet only yield a profit before tax in the order of 1.0 – 1.4 per cent<sup>3</sup>. It is understandable, therefore, that these are businesses that are highly sensitive to fluctuations in cash flow or other inputs.

All dealerships for new motor vehicles are franchised businesses. The terms of those franchises are rigorously controlled and the franchise must be operated in accordance with the franchisor's guidelines, instructions and procedures. The stock levels and mix to be held by the dealer are invariably ordained by the franchisor and can be irrespective of a dealership's physical location. For instance, a motorcycle dealer in an exclusively rural location will be compelled by its franchisor to hold stock of a range of road motorcycles (with low prospects for their eventual sale). The practical reality is that dealers have little scope to be masters of their own destiny.

Dealers are also heavily reliant on the availability and cost to them of bailment finance arrangements. The cost to them for the provision of that service is a calculation of a variety of factors and, as such, varies month to month. The variables in that calculation include factors such as the vehicle mix on hand (that is, which models and what specification are they that the financier 'owns'), how long each of those vehicles has been in stock (that is, 'owned' by the financier), what

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<sup>1</sup> See: <http://www.franchise.edu.au/franchise-research--franchising-australia.html>

<sup>2</sup> See: [http://www.deloitte.com/assets/DcomAustralia/Local%20Assets/Documents/Industries/MIS\\_Industry\\_Overview\\_Final.pdf](http://www.deloitte.com/assets/DcomAustralia/Local%20Assets/Documents/Industries/MIS_Industry_Overview_Final.pdf) (page 42)

<sup>3</sup> Ibid

number of vehicles are in stock (that is, how many vehicles does the financier 'own'). Financiers conduct regular audits of dealership's stock and factor the results of those audits into their calculations of cost to the dealer. In many respects, the financier might be thought of as a de-facto supplier.

It is understandable, therefore, that financiers will seek to minimise their capital exposure through offering dealers incentives to 'move' specific stock (or stock 'units' generally). More often those incentives operate in the form of adjustments, or concessions, made with respect to the monthly cost of the provision of the bailment arrangement to the dealership. It needs to be recognised, however, that the quantum of any concession – or 'commission' as it might be put in the draft RIS – that may be derived by a dealership will be unknown to that dealer until the conclusion of any given month. Furthermore, that quantum will vary according to a range of factors not limited to those mentioned above.

It is not accurate to suggest, then, that, "*The dealership may have arrangements with the financier in which the higher the interest rate (above a base rate) the greater the commission earned by the dealership.*" as it is an incomplete and selective statement and fails to recognise a myriad other factors at play. The reality, as MTAA understands matters, is that the very competitiveness of the market places, as the priority, the desire 'to get the deal done' or, in other words, to secure the sale by the dealership.

To suggest that vendor introducers in a dealership setting are, ". . . *more involved in arranging the provision of credit or a consumer lease*" is also a value-laden statement. The subtext therein relates back to the notion, or erroneous validation, that the vendor introducer in the dealership setting has a considerable amount of discretion and decision making capacity at their disposal. Are those staff knowledgeable as to the products they offer on behalf of the dealership's financiers? Indeed they are, or there would be no need for 'specialist' finance and insurance (F & I) or business managers in a dealership setting.

While it may well be that a larger deposit than originally considered by a dealership's customer might be suggested by the financier to reduce its exposure, the statement in Annexure A, page 24, about the capability of a dealer to, ". . . *lower the price of the motor vehicle . . .*" demonstrates a lack of understanding about motor vehicle retailing. Certainly, 'the deal' may need re-evaluation, but any reduction in price will invariably be as a result of option deletion, or even a change in the model of vehicle under consideration. In short, price reduction is not a matter of discretion or margin, rather it is a question of vehicle specification.

I would suggest, therefore, that it would be more accurate for the RIS to say that F & I staff generally have a high-level awareness of the eligibility matrix proscribed by the dealership's financier and within which they need to operate in order to secure business for that financier. In the conduct of that business they are merely 'best fitting' a product to a client, not a client to a product.

It is true that F & I staff perform an important role in a dealership. So, too, though, do sales staff, sales managers, business managers, dealer principals and service managers. But it is not entirely accurate to assert that, "*The individual person therefore has a greater involvement in the financing process than in the retail context and requires greater expertise and experience to perform their duties.*" Yes, they require specialist knowledge of the motor vehicle sales context. Yes, that requires of them to have particular experience and expertise. But, in a sector that is heavily regulated by licensing and other compliance obligations – as distinct from generic retailing – the

reality is that the F & I staff member has no more discretion at their disposal than that available in the generic retail finance context.

I would also suggest that the table on page 20 of the RIS be altered to reflect MTAA as either representing vendor introducers, or in recognition of its status as an industry association. MTAA certainly does not represent car financiers, even though, in a dealership context, the operation of finance mechanisms is something of the life blood of those enterprises. I would be disappointed if it was thought by Treasury, in concert with the subtext in Annex A, that MTAA was considered as representing financiers.

In relation to the balance of the draft RIS and the matters it canvasses, MTAA would make its position clear that its preference, and certainly that of retail motor traders, is for the current exemptions to remain in force. MTAA takes some exception to the statement made on page 6 of the draft RIS that, “. . . *the current exemption allows dealers to operate as brokers in direct competition with finance brokers who are subject to regulation.*”

It would be my contention that in the event of a compliance audit being conducted of dealers under the current arrangements that little, if any, persuasive and supporting evidence of that would be discovered. More likely is that those dealers that *are* operating as brokers are doing so in accordance with any and all compliance obligations imposed by the operation of the *Credit Act*. Those otherwise are more likely operating in a manner alluded to in my earlier comments.

MTAA understands, however, the need for meeting the policy objectives of the reforms of which the Credit Act is a part to provide protection and remedies for consumers and in the promotion of consistency and competitive neutrality in the regulatory regime. The Association understands those objectives would not be attainable without government mandate and, as such, it recognises that some level of regulation is inevitable.

In light of that, MTAA would support, in principle, proposals for the application of a modified function-based regulation of vendor introducers as outlined in section 3 of the draft RIS (pages 9 – 19). Given the comments made earlier with respect to the realities of typical dealership operations, MTAA rejects Option 2 in the draft RIS (pages 6 – 9) as unwarranted and overly prescriptive. Indeed, Option 2 – if adopted – has the potential to inflict upon dealerships a significant compliance cost potential that could potentially negatively impact on the ongoing viability of many dealership operations.

As the Association understands the proposals as outlined in the draft RIS at section 3, however, the circumstances described therein mirror the differing ‘intensities’ of point of sale activities evident throughout the retail motor trades (and dealership operations in particular). Those proposals also best represent the circumstances for those dealers able to enjoy the benefit of the current exemption, thus realising – if adopted – continuity and certainty around their present compliance obligations. Those proposals also reflect and acknowledge those retail motor traders whose business activities required them to undertake licensing and other activities to ensure their compliance with the new *Credit Act*.

In other words, MTAA understands the proposals outlined in section 3 of the draft RIS to be such that, if adopted, they would minimise the impact, from an increased compliance burden perspective, upon retail motor traders and motor vehicle dealers in particular. Further, that the adoption of those measures support the policy objectives of the reforms.

MTAA has no real difficulties with Option A outlined in section 3 (page 12). Option B as outlined on page 13 of the draft RIS would certainly place an increased compliance burden on vendor introducers; which is acknowledged. In terms of dealership operations, such information would possibly be easily obtainable and able to be provided. MTAA would have concerns, however, if the adoption of Option B brought about circumstances whereby financiers were 'reluctant' to provide information to F & I staff in order to impede any comparative analysis to be undertaken by a customer.

MTAA has some concerns with respect to Option C (page 15) of the draft RIS. The Association would not wish to see circumstances arising in which F & I staff are required to conduct any level of preliminary assessment of a client's suitability for a given credit product. Any assessment in those terms ought to remain, quite rightly, the responsibility of financiers. MTAA would be loath to support any proposals that result in an increased regulatory responsibility being imposed upon F & I staff in addition to that already assumed by the dealership (and dealer principal).

The Association has no issues with Option D (page 16) and is indifferent to Option E (page 19), particularly in the context of the comments made earlier in relation to 'commissions'.

In summary, MTAA supports in principle the objectives of the credit reform process. The Association is concerned, though, that there exists something of an unclear understanding and acknowledgement of the precise nature of typical dealership, and other retail motor traders', operating characteristics in the draft RIS. The Association is also concerned that the description used in the draft RIS is value laded and contains an unhelpful or misleading subtext. This is particularly so given our long, and I thought productive, engagement with Treasury on these matters.

Given that Annex A is relied upon as establishing the context for, and basis for argument in favour of, a number of positions within the draft RIS, I would ask that my comments in connection with that section be particularly considered. Further, that the balance of the comments provided upon the draft RIS in the broad be reflected in the context of those earlier comments.

Again I thank you for the opportunity to provide Treasury with comments on the draft RIS and for the opportunity for MTAA to be represented on the Point of Sale Working Group. If there is any other assistance or clarification that you think I can provide you in relation to this matter, please contact me.

Yours sincerely



**SUE SCANLAN**  
**A/g Executive Director**

15 November 2010