



Motor Trades Association of Australia

Consumer Protection Penalties Review
Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

The Motor Trades Association of Australia (MTAA) welcomes the opportunity to comment on the Ministerial Council on Consumer Affairs' Discussion Paper on Civil Penalties for Australia's Consumer Protection Provisions.

MTAA is the peak national representative organisation for the retail, service and repair sectors of the automotive industry in Australia. The Association's interest in this review arises because many of the retail motor traders that MTAA represents, including motor vehicle dealers and motor vehicle repairers, are subject to a variety of consumer protection laws. An effective consumer protection regime also assists law-abiding retail motor traders by deterring rogue traders from entering, or remaining in, the industry.

MTAA understands that under the current consumer protection law regime, there may be some circumstances in which it is not possible for enforcement agencies to pursue criminal penalties even while the available civil remedies are inadequate punishment and also insufficient to deter future breaches of the consumer protection law. MTAA considers that in those circumstances a civil penalty, such as a banning order or a pecuniary penalty, may be a more effective and appropriate punishment. MTAA also notes that in some circumstances a civil penalty such as a banning order may be a considerably more effective deterrent than monetary fines or civil remedies. MTAA therefore considers that the introduction of civil penalties may improve the current enforcement options available to enforcement agencies and provide enforcement agencies with greater flexibility in relation to their enforcement strategies. Such an outcome would enable enforcement agencies to respond more effectively to breaches of the consumer protection law and would also help to ensure that punishment imposed is commensurate with the gravity of the breach.

MTAA notes that the introduction of civil remedies would enable enforcement agencies to seek an appropriate penalty, consumer redress and cessation of the relevant conduct in the one legal proceeding. As such, civil penalties may enable enforcement agencies to respond more effectively and efficiently to breaches of the consumer protection law. MTAA therefore considers that the introduction of a civil penalties regime for breaches of Part IV of the *Trade Practices 1974* (Cth) and the equivalent state and territory legislation would be a positive development, as such a regime would provide more consumer protection agencies with more effective, efficient and flexible enforcement options.

The Association considers that any civil penalty regime should be introduced in parallel to the existing criminal penalty regime, as there will always be some breaches of the consumer protection law which are more appropriately dealt with under the criminal penalty regime. While MTAA acknowledges that parallel civil and criminal penalty regimes may give rise to double jeopardy concerns, the Association notes that the Corporations Act 2001 imposes parallel civil and criminal penalty regimes and that concerns about double jeopardy appear to have been adequately addressed in that context by the inclusion of rules which limit the circumstances in which a person can be exposed to both penalties for the same, or a substantially similar, breach of the law. The Australian Government has also provided guidance to enforcement agencies on which penalties are more appropriate for particular contraventions of the law. MTAA considers that the adoption of a similar approach may help to address the double jeopardy issues associated with the introduction of a parallel civil penalty regime for Australia's consumer protection law.

The Association also considers that it may be appropriate for civil penalties to apply to a wider range of provisions than those to which criminal penalties currently apply. For example, a civil penalty may be an appropriate punishment in circumstances where an individual has committed repeated breaches of a particular provision of the consumer protection law to which criminal penalties do not apply. In light of the more serious nature of civil penalties relative to civil remedies (such as injunctions or restitution orders), it is important however that civil penalties only apply to provisions which clearly state the elements of the contravention, as individuals must be able to easily determine how to avoid contravening the provision.

MTAA understands that the *Motor Car Traders Act 1986* (Vic) enables the Court to place restrictions on the ability of individuals who have been found guilty of particular offences under the Act to carry on the business of trading motor vehicles (similar to banning orders). The Association also understands that those provisions have proved to be an effective deterrent against illegal trading in motor vehicles and that the provisions are apparently well regarded by motor vehicle traders in Victoria.

I trust that these comments have been of assistance in your consideration of this matter.

Yours faithfully


for **MICHAEL DELANEY**
Executive Director

2 December 2005