

CCIA lobbying delivers results – Motor Dealers and Repairers Act and Regulation 2014

On 26th September 2014 NSW Fair Trading released the final **Motor Dealers and Repairers Regulation 2014**, which will support the new Motor Dealers and Repairers Act developed in 2013 to replace the current *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980*. The new laws will start on 1st December 2014.

During the lengthy consultation process originally on the draft Bill and then on the draft Regulation, the Association allocated significant staff resources and made a detailed submission on behalf of our members. Shannon Lakic and Katie Israel formed part of the internal project team which was led by Lyndel and Bob.

Board members Theo Whitmont (President), Faye Watson (Vice President) Ben Binns and Alan Graham also played integral roles in the workshops to gather member issues and input. Lyndel, Bob, Theo and Faye also attended several meetings with the Fair Trading Commissioner for NSW, Rod Stowe, and his policy team to support our position and to urge that our solutions be adopted in this most important law reform that will affect recreational vehicle (RV) dealers and repairers in NSW.

We are pleased that most of our recommendations have been included in the Regulation, which is great news for members and a significant ‘win’ for the Association.

1. We now have a definition of “recreational vehicle” (RV) in the new laws

Highlighting that the caravan and camping industry is a significant contributor to tourism in Australia, the Association outlined how the popularity of RVs continues to grow rapidly. As such, the RV sector deserves appropriate recognition and we recommended the inclusion of our definition of “recreational vehicles” in the Regulation.

Fair Trading NSW initially rejected our request for a definition of *recreational vehicle*. They said that there wasn’t any precedent for it. We argued that it was an important issue that this sector should be recognised as a separate and viable contributor to the industry and to the economy of New South Wales. Now that RV’s have been recognised we now have a platform to argue in other jurisdictions that this is a defined industry component.

Positive Result:

Fair Trading accepted this recommendation and adopted our draft definition. Under Clause 3 (1) of the Regulation “towable recreation vehicle” is defined as meaning a trailer equipped with living space or sleeping facilities, or both, and includes a caravan, fifth wheeler, pop-top caravan, camper trailer or tent trailer.

2. Time to comply - A grace period has been provided for towable RV repairers and grandfathering for existing towable RV repairers

Given the new definitions of a “motor vehicle” and “trailer” in the Act the Association highlighted that unmotorised or towable RVs including caravans, camper trailers, tent trailers and fifth wheelers (with a tare weight over 250 kilograms), as well as motorhomes and campervans, would be subject to the new law.

Significantly, repairers of towable RVs would, for the first time ever, require a licence to perform certain repair work as prescribed by the Regulation.

Accordingly, we submitted that repairers of towable RVs should be allowed a grace period of at least 12 months to comply with the requirements of the Act and Regulation and that existing RV repairers should be allowed to continue doing business without interruption and, where appropriate, apply for and be granted an appropriate licence.

Positive Result:

Fair Trading accepted this recommendation. Schedule 4, Clause 13 of the Regulation provides existing RV repairers who undertake the work of a ‘trailer and caravan mechanic’ until 1 September 2015 to comply with the Act.

In other words, these RV repairers have until **1 September 2015** to apply for and obtain a licence from Fair Trading. For more information on how RV repairers will obtain such a licence see point 7 below.

3. A level playing field for NSW and interstate dealers at NSW trade shows

The Association highlighted that under the new Act any interstate dealer wishing to exhibit vehicles for sale at trade shows in NSW will be required to hold a NSW motor dealers licence issued by NSW Fair Trading.

NSW has a licensing regime that requires all motor vehicle dealers to be licensed. This requirement does not exist in other States, with the exception of WA.

The Regulatory Impact Statement on the draft Regulation, which was released as part of the consultation process, noted that some stakeholders had questioned this requirement to be licensed.

The Association argued that NSW law should not allow interstate dealers a special permit or general exemption from the legislation. To do so would provide them with an unfair advantage over licensed NSW dealers. Essentially, we advocated for a level playing field for NSW businesses.

Positive Result:

The Regulation does not provide any special permit or general exemption from the NSW law for interstate dealers. Accordingly, from 1st December 2014 **interstate dealers who want to display motor vehicles at trade shows in NSW will have to comply with the same requirements as NSW dealers**. This means NSW and interstate dealers must:

- ✓ obtain and maintain a NSW motor dealer’s licence,

- ✓ operate from a council approved business premises based in NSW to which the NSW motor dealers licence relates,
- ✓ have sufficient financial resources to be involved in the business of a motor dealer, and
- ✓ comply with the requirements for signs showing license details as set out in Clause 7 of the Regulation.

[Click here](#) for further information on applying for a NSW motor dealers license. Note, forms and information will update when the new laws come into force.

4. Suitable motor dealer and repairers notices for RVs

Under the Regulation, motor dealers are required to provide or attach approved notices to motor vehicles before offering or displaying a motor vehicle for sale. Motor vehicle repairers are required to keep a register of certain repairs. These notices are prescribed Forms in the Regulation.

The Association identified those Forms that were relevant to our members and proposed several amendments to make them more relevant to, and easier to use by, motor dealers and repairers in the caravan and camping industry.

Positive Result:

Fair Trading has accepted most of our amendments and the following Forms have been developed specifically for trailers and towable recreational vehicles:

- *Form 4 Motor Vehicle Repairer's Register (Trailers and Towable Recreation Vehicles)*
- *Form 9 Motor Dealer's Notice for Motor Vehicle (Caravans and Trailers)*
- *Form 10 Motor Dealer's Notice – Damaged Vehicle (Trailers and Towable Recreation vehicles)*

To access a copy of these Forms [click here](#).

5. RVs with a mass over 4.5 tonnes used, or likely to be used, for personal, domestic or household use or consumption are not included in the Act

In relation to the exemption of vehicles with a mass of 4.5 tonnes or greater from the Act the Regulatory Impact Statement provided that these vehicles are “predominately acquired for business purposes, rather than for household or domestic use. Additionally, these vehicles are regulated by the national heavy vehicle regulator.”

The Association pointed out that this assessment is not entirely correct in relation to RVs in the caravan and camping industry - that is, large motorhomes, caravans and fifth wheelers can have a mass of 4.5 tonnes or greater and are purchased and used by consumers for private holiday and touring purposes. Also, despite being regulated by the national heavy vehicle regulator, we argued that a licence under the Act should still be required to sell these vehicles to consumers or repair them.

The Association recommended drawing consistency with the Australian Consumer Law and proposed including vehicles with a mass of 4.5 tonnes or greater, where such vehicles are intended to be used, or is of a kind likely to be used, for personal, domestic or household use or consumption.

Fair Trading has decided to maintain this exemption in Clause 4 (b) of the Regulation because these vehicles are already controlled by the National Heavy Vehicle Regulator.

6. Disclosure requirements for “grey” imports

The Association supported amendments to the draft Regulation that would require motor dealers offering imported used vehicles for sale to provide potential purchasers with all import documentation for the vehicle and any vehicle information available online.

However, the Regulation does not contain any specific provisions relating to “grey” imports.

7. A separate and additional class of repair for RVs, restricted licensing for RV repairers, inclusion of MSA qualifications for RV repairs and inclusion of an “RV services” class

Although the Regulation does not include the MSA qualifications for RV repairs, restricted licensing or an “RV services” class of repair as requested in our submission, NSW Fair Trading has recognised the RV sector and created a separate class of repair work for underbody repairs on RVs.

For the purpose of section 6 (2) of the Act, which sets out the details of a motor vehicle repairer’s licence, a “trailer and caravan mechanic” licence will be required for work carried out by persons who repair the underbody of a trailer or towable recreational vehicle.

Work carried out on a trailer or towable recreational vehicle, other than the underbody, will be exempt. However, any specialist work, such as electrical, gasfitting, plumbing and air-conditioning work will come under the Home Building Act and the Australian Consumer Law.

From 1 September 2015, any repairs done on the chassis, suspension, brakes, or other components forming part of the underbody of a caravan, fifth wheeler, pop-top caravan, camper trailer or tent trailer, can only be done by a licenced RV repair business.

New requirements for trailer and caravan mechanics:

- From 1 September 2015 repair businesses performing work on the underbody of trailers or towable recreational vehicles must hold a licence as a ‘motor vehicle repairer’.
- An application for a business licence will be assessed by Fair Trading against the criteria of section 25 of the Act.
- For a business licence application, the application will have several items that the applicant will have to declare, including that the applicant is over 18, a fit and proper person, has approval from the relevant local council for the premises and sufficient financial resources to carry on the business. In some instances, an applicant may have to provide information during the application review process that supports the declarations made (e.g. provide a statement showing approval from the relevant local council)

- Existing businesses that only undertake work in the trailer and caravan mechanic repair class will have until 1 September 2015 to obtain a business licence as a repairer.
- A tradesperson's certificate will not be required by persons undertaking repair work under the 'caravan and trailer mechanic' class of repair, so long as the work being done is completed at the place or places of business of the repairer licence holder.

This is important recognition for the RV industry in NSW.

8. Removal of the exemption for repair work on the interior of a trailer

In the draft Regulation, repair work on the interior of a trailer was exempt from the Act but repair work on the **exterior** of a trailer seemed to remain covered.

As this would have caused more confusion for the industry than already existed under the old legislation, the Association advocated for this inconsistency to be removed and consideration be given to the inclusion of a 'recreational vehicle repairers' licence.

Positive Result:

Fortunately, Fair Trading acknowledged our submission and resolved this inconsistency. Under Clause 35 (a) work carried out on a trailer or towable recreational vehicle, other than the underbody, is not considered repair work.

9. Reasonable licence display obligations

The draft Regulation proposed that all licence holders include their name and licence number on a sign at each place of business and in any advertising promoting the business for which the licence is granted.

The Association suggested a more relaxed version of this proposal - that is, it was reasonable for all licence holders to be required to include their name and licence number on a sign at each place of business, at trade shows and on all legal contracts/documentation. However, Fair Trading has proceeded with the initial proposal.

Clause 7 of the Regulation requires a licence holder to include their name and the words "licence number". "Lic. No." or similar abbreviation followed by the licence holder's unique licence identifier:

- (a) on a sign at each place of business (other than a vehicle) for which the licence is granted that is readily visible to any persons approaching the place of business, and*
- (b) if the licence holder carries on business from a vehicle—on the outside of the vehicle, and*
- (c) in any advertisement of any kind relating to the carrying on of the business of dealing in motor vehicles or carrying out repair work on motor vehicles or carrying on the work of a motor vehicle recycler at the place of business of a specified licence holder.*

This requirement is designed to ensure that consumers know they are dealing with a business that is appropriately licenced.

10. Inclusion of demonstrator vehicles for the purpose of exhibiting RVs at trade shows

In submissions on the draft Regulation the Association highlighted how the production of RVs in the caravan and camping industry is very different to the automotive industry at large.

For the most part, manufacturers of RVs do not mass produce RVs. Rather, RVs are built to order with custom features requested – i.e. layout, finishes, upholstery, fittings, appliances, etc. Due to their sophistication, RVs are often built from scratch over months rather than weeks and can cost significantly more than the average car. Unlike the motor car industry, RV manufacturers and dealers do not carry high levels of new stock.

As a result of these factors, the current limitation of exhibiting only new RVs at trade shows places an unreasonable burden on RV dealers and manufacturers in terms of time and finances.

The Association strongly advocated for ‘demonstrator motor vehicle’ to be excluded from the definition of a ‘second-hand motor vehicle’ for the purpose of exhibiting RVs at trade shows, thus allowing consumers a better chance to touch and feel a sample of their future RV before placing an order.

However, the Regulation does not contain any specific provisions relating to demonstrator vehicles. We will continue to work with Fair Trading to resolve this issue which is specific to our industry.

The Way Forward

The new Motor Dealers and Repairers Act 2013 and Motor Dealers and Repairers Regulation 2014 will start on **1st December 2014**. Despite that, existing RV repair businesses that undertake work in the new ‘trailer and caravan mechanic’ repair class will have until 1 September 2015 to obtain a business licence as a repairer.

The Association will be publishing updated Q&A factsheets and other resources in the coming weeks to help members get up to speed with the changes and any new obligations.

Fair Trading will also be running a series of information sessions throughout the State in coming weeks to explain the changes and we will let members know the dates and locations of these sessions as soon as they are available. The Association will be participating in those information sessions.

If members have any questions, please get in contact with Bob Browne on (02) 9615 9920 or email bob.browne@cciansw.com.au.

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