



COMMISSIONER FOR  
BETTER REGULATION

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27 March 2018

Mr Simon Cohen  
Director  
Consumer Affairs Victoria  
121 Exhibition St  
Melbourne VIC 3000

Dear Mr Cohen

I would like to thank your staff for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the proposed *Motor Car Traders Regulations 2018* (the Regulations) which supports the operation of the *Motor Car Traders Act 1986* (the Act). The Regulations are proposed due to the sunsetting of current arrangements in 2018 and are split into:

- administrative regulations, which will prescribe exemptions, forms, prohibited conduct and conditions on licenses (not analysed in this RIS); and
- regulations prescribing fees (analysed in this RIS).

Under section 10 of the *Subordinate Legislation Act 1994*, the Commissioner for Better Regulation is required to provide independent advice on the adequacy of all RIS prepared in Victoria. The Commissioner's role is to advise on the adequacy of the analysis presented in the RIS, rather than the merits or otherwise of policy or regulatory proposals. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 28 March 2018 meets the adequacy requirements of the *Subordinate Legislation Act 1994*.

The costs of administering the Act can be broken into three broad categories:

- licensing – administration of registration and computer systems and associated staff costs;
- claims – made against the Motor Car Traders Guarantee Fund (the Fund) by a consumer when a motor trader is insolvent or operated in bad faith; and
- enforcement – costs incurred by Consumer Affairs Victoria (CAV) staff when undertaking enforcement activity e.g. onsite visits, court proceedings etc.

The number of licensed motor car traders in Victoria is around 2000. CAV has advised that the first two years of the regulations were abnormal and therefore data from the last eight years is used as the basis for CAV estimates. Claims against the Fund have averaged \$400,000 per year over the last eight years. Enforcement costs vary depending on CAV priorities and the time and effort to prosecute those who operated against the Act.

Four options are considered against the objectives of whether:

- the efficient costs of administering the Act are met;
- there are sufficient reserves in the Fund to pay out claims against the fund each year;
- incentives are created to encourage traders to act inconsistently with the aims of the Act; and
- the fees charged are fair and reasonable.

Four fee structures are analysed:

- equal licence fees for each licence;
- a proportional reduction in licence fees for low-risk licensees;
- a proportional reduction in licence fees for low-volume licensees; and
- incorporating a new fee for applications to remove certain conditions on a licence.

CAV's proposal would create a new fee to remove conditions on a licence. The conditions placed on a licence are already prescribed, with the removal provision remaining the same, now with an additional one off fee of \$638.

Annual fees per licensee are proposed to be \$1,466 with new applicants charged an additional application fee of \$975. This is the preferred option as CAV considers that it creates incentives to promote good practice and discourage high risk operators from entering and expanding in the market.

CAV estimates the total impact of the Regulations on the motor car traders sector is about \$3.4 million per year. This estimated impact only measures the cost of the payment of the fees themselves, and does not reflect any compliance costs such as time spent providing any prescribed information as part of an application for a licence.

Any such compliance costs would be attributable to the administrative regulations that are being remade separately.

The fees charged will recover the estimated costs of regulating motor car traders if the average cost of enforcement over the next ten years is around the same as the average cost of enforcement over the last eight years. Currently CAV is not undertaking enforcement activity at this level. CAV proposes to leave fees at their current level and to undertake a mid-term review to assess the extent of any over-recovery.

It is government practice that this letter be published with the RIS when it is released for public consultation.

Should you wish to discuss any issue raised in this letter, or the implications of new information or policy options identified through the public consultation process for your proposal, please do not hesitate to contact me on (03) 9092 5800.

Yours sincerely



Anna Cronin  
**Commissioner for Better Regulation**