



Motor Trades Association of Australia

Senator Annette Hurley
Chair
Senate Economics Legislation Committee
The Senate
Parliament House
CANBERRA ACT 2600

Dear Senator

I write following my appearance before your Committee on Friday, 21 August in relation to the Inquiry into the Trade Practices Amendment (Australian Consumer Law) Bill 2009. At that hearing Senator Bushby asked a question (at page 21 of the transcript) about the remedies in the Trade Practices Act being available *'under the COAG agreement through the mechanisms that provide for dispute resolution at state level. That may work even right down to the level, depending on what remedy you are seeking, of a small claims court. Are you aware of the wider fora that might be available to seek remedy under the Trade Practices Act that appear, from the evidence we received this morning, to be available as a result of the bill?'*

Senator Bushby went on to refer to the redress that would then be available for small business against big business (and later gave the example of unconscionable conduct). I understand that Senator Bushby raised the issue following some comments that had been made earlier in your hearing by Treasury Officials.

I have to say that my colleagues and I were a little confused by the question. We did not understand the Bill to be changing the current arrangements in the Trade Practices Act for remedies for small businesses seeking redress against their larger suppliers and acquirers for breaches of that Act. Our understanding is that where the states have drawn down the unconscionable conduct provisions of the Trade Practices Act then it is possible that remedies for breaches can be sought in state courts; mostly I understand in State Supreme Courts. Lower courts and tribunals often have limits as to their jurisdiction in terms of a monetary threshold and/or the range of remedies able to be provided. Those limitations often mean that the remedies available for breaches of the Trade Practices Act are not in practice able to be imposed by the lower courts and tribunals.

I therefore do not understand that the Australian Consumer Law will offer any additional redress for small business against their larger suppliers and acquirers. My understanding is the current avenues for redress in relation to business to business dealings will remain unchanged.

Should you or your Committee have any further questions on this matter please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink that reads "Michael Delaney". The signature is written in a cursive style with a long, sweeping tail on the final letter.

MICHAEL DELANEY
Executive Director

28 August 2009