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**Submission to the  
Ministerial Council on Consumers Affairs**

**POSSIBLE REGULATION OF THE CAR RENTAL INDUSTRY**

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## **About The Groups Making This Submission**

### **The Australian Consumers' Association**

The Australian Consumers' Association is a not-for-profit, non-party political consumer organisation established in 1959 to provide consumers with information and advice on goods, services, health and personal finances, and to help maintain and enhance the quality of life for consumers. Independent from government and industry, it lobbies and campaigns on behalf of consumers to advance their interests.

ACA is funded primarily through subscriptions to its magazines (including Choice), books and website, fee-for-service testing and related expert services. There is no government funding for the normal running expenses of ACA and no commercial sponsorship or advertising.

### **The Consumers' Federation of Australia (CFA):**

The CFA was established in 1974 and is the peak body for consumer advocacy organisations in Australia. Currently the CFA has 95 member groups around Australia including legal centres, health rights groups, local consumer organisations and public interest bodies.

CFA's role is to put the view of its member organisations to government and industry and advocate on behalf of consumers. The organisation's primary focus is on advancing the interests of low income and vulnerable consumers.

CFA is unfunded and its executive serve in a purely voluntary capacity.

### **Why a joint submission?**

The work of CFA and ACA is complementary and our organisations are in frequent contact. On issues such as this, we believe it is helpful if the two major consumer organisations in Australia present a united submission, reinforcing the unanimity of views across the consumer movement about the importance of adequate regulation of the car hire industry.

Both ACA, and to a lesser extent some member groups within the CFA, receive complaints from consumers who have had poor experiences with car rental companies. This direct experience, together with our policy and law reform work, underpins this submission.

The acronym ACA/CFA is used to refer to the two organisations throughout this submission.

## Executive Summary

This submission is a joint one, made on behalf of the two major consumer organisations in Australia: the Australian Consumers' Association and the Consumers' Federation of Australia (ACA/CFA).

### *Is there a problem?*

The problems in the vehicle hire industry cause significant consumer detriment. They include misleading advertising, unlimited access to consumers' credit cards, unjust contracts, unfair insurance arrangements and the lack of adequate internal and external dispute resolution processes.

It is fallacious to argue, as the industry does, that the relatively small number of complaints about vehicle hire contracts to fair trading agencies, indicates consumer satisfaction. It is more likely to indicate the inherent unfairness of the contracts in this industry and the difficulty consumers have in complaining.

### *Does the current regulatory environment address the problems?*

With the exception of Tasmania, current regulatory instruments do not satisfactorily address the identified problems. For example, there are no requirements for mandatory pre and post hire vehicle inspections. Similarly, in the absence of Australia-wide unjust contracts legislation, the industry continues to benefit from biased contractual terms.

Remedies available under the general consumer protection provisions of the Trade Practices Act and various state Fair Trading Acts are expensive to access for individual consumers and in any event, are unlikely to impact on the industry as a whole.

### *What is the best option for regulatory reform?*

Of the five regulatory options described in the discussion paper, the most effective will be negative licensing, combined with access for consumers to an External Dispute Resolution scheme.

The 'no change' or status quo option is patently unacceptable. Similarly, the industry does not meet the pre-conditions for either self or co-regulation. These include the presence of a viable industry association with adequate coverage and the ability for the industry body to apply sanctions.

A mandatory code is unlikely to be a practical option, given the difficulties in mandating codes through some states. In the case of positive licensing, there are no cogent reasons for introducing any barriers to entry.

Negative licensing must include a number of key reforms. These include: ensuring advertising of prices is not misleading, mandatory pre and post vehicle inspections; standard and fair contracts; insurance arrangements similar to those consumers enjoy for their own private vehicle; limits on the amount of money that can be deducted from a consumer's credit card without their authorisation; periodic vehicle safety checks and dispute resolution.

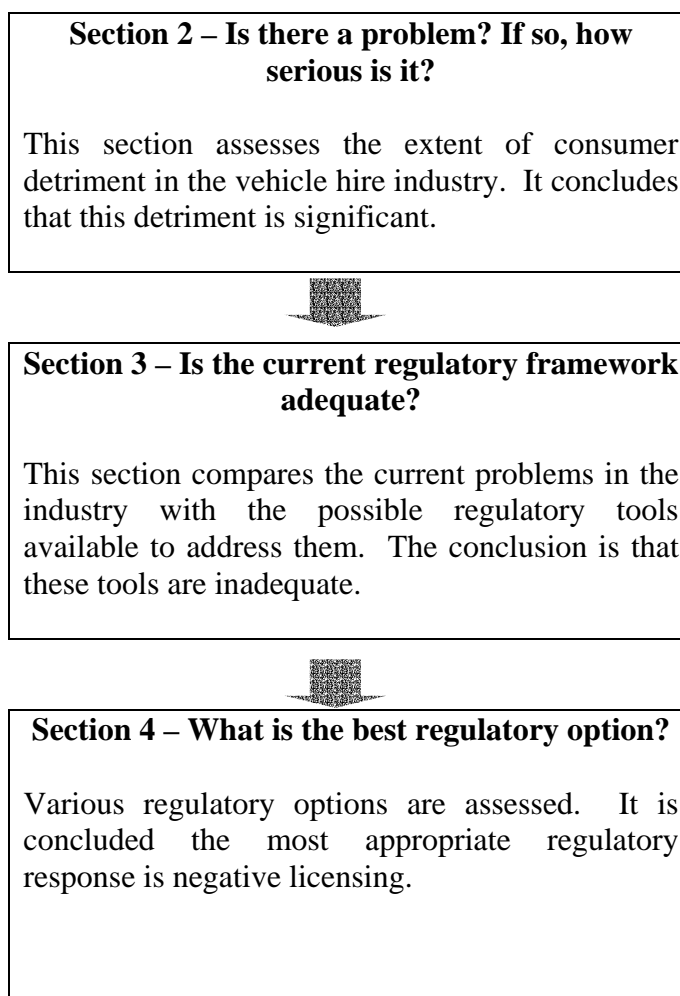
# Table of Contents

<b>1. OUR APPROACH</b> .....	1
<b>2. IS THERE A PROBLEM?</b> .....	2
2.1 Number of Complaints .....	2
2.2 Nature of Complaints .....	3
2.3 Industry Operating Practices.....	4
2.4 Dispute Resolution .....	6
2.5 Severity of Consumer Detriment and the Extent of Market Failure .....	9
2.6 Industry Response.....	9
2.7 Key Points and Conclusion.....	10
<b>3. IS THE CURRENT REGULATORY FRAMEWORK ADEQUATE?</b> .....	11
<b>4. WHAT IS THE BEST REGULATORY OPTION?</b> .....	13
4.1 Form of Regulation.....	13
4.1.1 <i>Self-Regulation</i> .....	14
4.1.2 <i>Co-Regulation</i> .....	14
4.1.3 <i>'Light-Touch' Regulation</i> .....	15
4.1.4 <i>Black Letter Law</i> .....	15
4.1.5 <i>Summary</i> .....	16
4.2 Optimum Regulatory Intervention.....	17
4.2.1 <i>Key Elements for Effective Reform</i> .....	17
4.2.2 <i>Options in the MCCA Paper</i> .....	18
4.2.2 <i>The Best Option – Negative Licensing and EDR</i> .....	19
4.3 Key Points and Conclusion.....	22
<b>APPENDIX 1 – RESPONSES TO QUESTIONS IN THE MCCA DISCUSSION PAPER</b> .....	23
<b>APPENDIX 2 – ACA/CFA CASE STUDIES</b> .....	33

## 1. OUR APPROACH

ACA/CFA congratulate MCCA on the release of the discussion paper. The document is extremely helpful, clearly describing how the car industry operates, the current regulatory environment, the consumer issues in the industry and possible regulatory options. The MCCA paper sets out a range of questions for each topic. We have addressed these in Appendix 1.

The overall structure of our submission is based on the logic set out below. In our view this reflects an ‘evidence-based’ approach to regulation, and is a sensible way to address issues of this type.



## 2. IS THERE A PROBLEM?

Is there a problem? In the view of ACA/CFA, the answer is 'yes'. We have come to this conclusion for the following reasons:

- data about the number of complaints in the industry (section 2.1);
- the nature of these complaints (section 2.2)
- the way in which the industry operates (section 2.3); and,
- the lack of either adequate internal or external dispute resolution processes (section 2.4).

Each of these issues is discussed in turn.

This section of our response then concludes with some observations about the marketplace impacts of the problem and the response of the industry.

### 2.1 Number of Complaints

*"Ubi jus ubi remedium." (There is no right without a remedy.)*

Both the MCCA discussion paper and the previous paper released by MCCA/SCOCA on this issue in 2001<sup>1</sup>, included data on the number of complaints received by fair trading agencies around Australia. As a proportion of all rental contracts, the percentages are low.

As undoubtedly a number of other submissions have pointed out however, it is misleading to argue that this is evidence of few problems. This seems to be the interpretation of industry. As the quote at the beginning of this sub-section illustrates, it is more likely to reflect the difficulties consumers have in making complaints, for the following reasons:

- by their very nature, a large proportion of rental contracts are entered into by visitors either from interstate or overseas. For example, this proportion was 50% of the total number of complaints in the 2001 MCCA/SCOCA paper<sup>2</sup>. Clearly it is more difficult to both make and pursue a complaint from a distance. This would be particularly the case where the hirer was from overseas, possibly compounded by speaking a different language;
- consumers are likely to realise that they have very few rights anyway, given the way in which contracts in this industry are structured (see Section 2.4 as well). There is nothing to be gained by making a complaint in such cases.

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<sup>1</sup> Preliminary National Review of the Car Rental Industry, MCCA/SCOCA Car Rental Industry Working Party, June 2001.

<sup>2</sup> *ibid*, p4.

Similar non-reporting of complaints occurs in other industries, where consumer protection is very weak. A good example is the boarding house industry, where residents in a number of states have much weaker protection than tenants. Community workers frequently report that this group of people is too fearful to complain about poor treatment, and in any event, have few remedies.

In Victoria, Household Finance Corporation is also a case in point. The objection against their licence application as a credit provider heard in the Victorian Credit Licensing Authority in the early 90s was originally based on nine complaints. After investigation, systemic breaches of the credit law were uncovered that affected thousands of consumers. HFC lost its licence.

It is fallacious and simplistic to assess consumer detriment on the basis of numbers of complaints as the only measure.

## **2.2 Nature of Complaints**

The MCCA paper includes a number of case studies from their complaints database. Appendix 2 are additional case studies from ACA files and via CFA member groups. We have no doubt that it would be possible to obtain hundreds more case studies should we ask our subscribers (in the case of ACA), or our member groups (in the case of CFA), to contact us.

The case studies indicate significant consumer detriment is occurring. Examples include:

- large amounts of money being charged to credit cards after accidents, where the consumer disputes the amount of the charge;
- disputes about whether damage was pre-existing or not;
- consumers being given rental vehicles that were unsafe;
- misleading advertising so that the true cost of hiring the vehicle is not stated;
- unfair insurance clauses, that leave consumers with little protection.

We conclude that the nature of the complaints themselves are cause for concern.

## 2.3 Industry Operating Practices

What is considered ‘normal’ operating practices in this industry would constitute egregious conduct in many others. Unacceptable and unfair operating practices are rife at all points of a car hire transaction as set out below:

### Industry practice

#### *Pre-transaction comparison*

Some car hire companies refuse to provide copies of the contract other than prior to the immediate rental of the vehicle.

#### *Advertising*

Some car hire companies advertise low rates, which in reality they are unable to provide. This is because the car advertised is not available, or the rate is artificially low because it excludes other charges.

#### *Pre-hire vehicle inspection*

Whether pre-hire vehicle inspection occurs or not appears to be arbitrary, depending on the operator.

#### *Contracts*

Contracts are often written in obtuse and complex language and/or are literally full of ‘fine print’, that is, in small font sizes.

Contract clauses are manifestly unfair. Examples include clauses that: remove the liability of the operator even where they are negligent; exclude the liability of the operator for any misrepresentation, require the renter to bear the costs of all repairs or damage but do not provide for mandatory inspections; allow the operator to repossess the vehicle at any time for no reason, allow the operator to deduct monies from a credit card with little or no reason given. Some contracts attempt to remove the basic legal rights of consumers as set out in various Fair Trading Acts.

### Problems

Consumers are unable to ‘shop around’ and are not clear about the terms of the contract before they enter into it.

Price is a critical determinant when a consumer is choosing between competing car hire companies. If a consumer is unable to compare ‘apples with apples’, competition in the marketplace is distorted.

This leads to later disputes about the state the vehicle was in when hired. There are allegations that disreputable hire companies engage in this practice deliberately – they then charge successive consumers for the same damage.

Consumers cannot be expected to understand contracts of this nature. The inequality of bargaining power is manifest.

Contracts are clearly biased in favour of operators, indicating their superior bargaining power in the car hire transaction.

## **Industry practice**

### *Insurance*

Car hire insurance policies are unfair. Examples include: unreasonable exclusions and high excesses.

Car hire insurance policies are complex. Consumers are required to choose between various forms of insurance, offering differing levels of cover, for example, partial cover, ‘full’ cover or combinations. The inclusions and exclusions are difficult to follow. Details are not provided on websites when bookings are made, consumers are told to “check at the rental pick-up”.

Many insurance contracts are in the name of the car hire company, not the consumer, even though the consumer pays the premium.

### *Form of payment*

The terms of hire allow the operator to debit the credit card at their discretion should there be any damage to the vehicle.

Many operators will only allow consumers to pay for a rental using a credit card.

### *Post-hire vehicle inspection*

See comments under pre-hire.

## **Problems**

Consumers cannot be expected to understand that the way in which car hire insurance policies operate is completely different to domestic car insurance.

These choices are made usually at point-of-sale. As such, most consumers would find it difficult to make an informed choice.

These policies are not regulated by the Insurance Contracts Act, and as such, protection for consumers is considerably reduced. Consumers do not understand that the policies are quite different in nature to the car insurance they have for their own personal vehicles.

Consumers often do not realise that the terms of the contract with the car hire company allow the company to later deduct amounts from their credit card. It is unfair and unusual that a consumer is required to provide access to their credit card, without knowing the limit of their liability, or that this liability is potentially unlimited.

This reduces consumer choice.

*Credit card chargeback*

See form of payment.

Consumers can find themselves liable for large amounts of money, with these amounts often not verified independently.

The practice also works against consumers who have a dispute with the operator, as the operator is in a far stronger bargaining position.

In our view, the Australian Banking Industry Ombudsman should be asked for his view on the application of chargeback rules to these transactions.

*No External Dispute Resolution*

There is no independent form of External Dispute Resolution as is the case for a number of other industries, including banking, insurance, financial planning and credit unions<sup>3</sup>. Small Claims Tribunals are not adequate.

The lack of EDR means consumers are at the mercy of operators. Small Claims Tribunals are not adequate, given the unfair contracts that are rife in this industry as well as the difficulty interstate and overseas consumers have in accessing these fora.

## **2.4 Dispute Resolution**

The issue of dispute resolution, briefly discussed above, is one that requires specific mention, as it is only briefly touched upon in the MCCA discussion paper. EDR is now common in a number of industries. These schemes have proven to be of benefit to both industry and consumers, and provide a low-cost, effective alternative to the courts. Of particular relevance is the way in which they decide cases: this is on the basis of the law, good industry practice and what is fair and reasonable in the circumstances.

In the view of ACA/CFA, if an independent body were to handle disputes between car hire companies and consumers, based on both the law and what is fair in the circumstances, a number of current industry practices would cease. As an example, Insurance Enquiries and Complaints Ltd recently handled a dispute where a consumer argued that they should not be liable for damage to a car hire vehicle that had occurred when the consumer was reversing. The contract/insurance policy specifically provided that they would be liable in these circumstances. The IEC determined the matter in the consumer’s favour, on the basis that the exclusion constituted an “unusual term” within the meaning of s37 of the Insurance Contracts Act. In these circumstances, the insurer was faced with an obligation to bring the term to the notice of the consumer, which it failed to do.

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<sup>3</sup> The respective EDR bodies are: Australian Banking Industry Ombudsman, Insurance Enquiries and Complaints Ltd, Financial Industry Complaints Service, Credit Union

Independent external dispute resolution would at least require car hire companies to prove their claims – at the moment they act as judge and jury – and loss assessor.

On the other hand, Internal Dispute Resolution (IDR) within the industry is also inadequate. This is illustrated by both case studies in the MCCA paper and in Appendix 2 of this submission. The relevant guide here is Australian Standard 4269-1995 ‘Complaints Handling’. A brief summary of the standard’s requirements are set out below:

- Commitment**                      There should be commitment to IDR procedures at all levels of an organisation, particularly the higher levels. Such commitment can be demonstrated by:
- a) ensuring all relevant staff are aware of, and educated about, IDR procedures;
  - b) ensuring that adequate resources are allocated to IDR; and
  - c) implementing management systems and reporting procedures to ensure timely and effective complaints handling and monitoring.
- Fairness**                              IDR procedures should allow adequate opportunity for both parties to make their case. Wherever possible, a complaint should be investigated by staff not involved in the subject matter of the complaint. In responding to complaints, organisations should give reasons for reaching a decision and adequately address the issues that were raised in the initial complaint.
- Resources**                            Adequate resources should be allocated to IDR. For example, for larger organisations with a large retail client base, ensuring adequate resources might include such matters as providing a toll-free/local call facility where complaints can be logged and appointing sufficient staff to deal with complaints.
- Visibility**                              Organisations should take reasonable steps to ensure that consumers know about the existence of IDR procedures and how to make a complaint. This information should be readily available, not just at the time a consumer wishes to make a complaint.
- Access**                                      Organisations should have simple and accessible arrangements for making complaints. Complaints do not need to be in writing and, in some cases, insisting that complaints are in writing can be a disincentive to the complainant, e.g. if the complainant has poor writing skills. The IDR procedure should enable complainants to make a complaint by any reasonable means, e.g. letter, telephone, in person or email.
- Organisations should have the resources to offer complainants some assistance with making their complaint if required.

**Responsiveness** The IDR process should include clear response times for dealing with a complaint and the complainant should be made aware of these response times.

It is important that consumers are kept informed of the progress of their complaints.

**Remedies** As a general rule, remedies should be fair and may be non-financial as well as, or instead of, financial. Where a financial remedy is considered appropriate, the aim should be to provide fair compensation. As a minimum, compensation should be given for any direct loss or damage caused as a result of a breach of the organisation’s obligations.

**Data Collection** The organisation’s procedures and management systems should include provisions for keeping details about the complaints received. Complaints handling data is a useful means of tracking compliance issues or risks.

**Systemic and recurring problems** Organisations should ensure that the IDR procedures enable them to address systemic issues or recurring complaints identified in the complaints data. This will encourage the identification of compliance issues or risks, which can be investigated to determine their causes and then rectified.

**Accountability** Reports about complaints should be prepared for the senior management of the organisation.

**Reviews** Organisations should review their IDR procedures at least every 2–3 years to ensure that the complaints systems are operating effectively. A larger organisation might benefit from an independent review

None of the websites of Avis, Budget or Hertz included information about making a complaint. Interaction was based on ‘customer service’ links, where consumers could request information or comment on their rental. There was no visibility of IDR.

In the view of ACA/CFA, the lack of effective IDR and EDR in this industry is unacceptable and leaves consumers vulnerable to exploitation.

Finally, it is worth noting that the ‘right to redress’ is one of the eight consumer rights recognised by the United Nations General Assembly<sup>4</sup>. It is not present in the vehicle hire industry.

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<sup>4</sup> Originally set out by President John F. Kennedy.

## **2.5 Severity of Consumer Detriment and the Extent of Market Failure**

When things go wrong in a vehicle hire contract, the impact on consumers can be severe. In a financial sense, consumers can find themselves out of pocket to the tune of many thousands of dollars. In a non-financial sense, the stress of trying to resolve these matters can be high. This is exacerbated by the lack of fair and independent dispute resolution processes in the industry.

The severity of consumer detriment is an indicator of market failure. Overall, a sub-set of consumers end up paying extraordinarily high charges, due usually to damage to a vehicle. This has the effect of artificially reducing prices in the marketplace as a whole. It is probable however, that the benefits of this small reduction in prices, is not outweighed by the detriment to the sub-set who experience problems.

This market failure also impacts negatively on all industry players as well as consumers. In marketplace terms, the industry’s development has been characterised by strong price competition, little direct regulation and the inability of buyers to objectively compare offers and products (information asymmetry). In such an environment, one operator can potentially get a ‘free ride’, when they realise they can get away with certain unfair practices; this gives them a competitive advantage. Other, possibly more scrupulous operators, find they cannot compete. Their only option is to engage in similar behaviours if they are to remain viable. As such, these initially unfair practices become standard across the industry and ‘the way we do things’. In the long run, competition still occurs, but within a framework that is inherently biased against consumers.

## **2.6 Industry Response**

The response of the industry to calls for change has been to argue for the status quo, presumably on the basis that there are few problems. Whilst this may be unsurprising given the way the industry has developed as described above, it is not a defensible position. The vehicle hire industry operates in an inherently unfair manner and the consumer detriment is significant.

We have witnessed similar responses from other industries in the past – banking and insurance are good examples. Ten to fifteen years ago, these industries too ignored consumer dissatisfaction with the way they operated. Such a position is eventually unsustainable. Both industries have now demonstrably moved to improve their operating practices, through initiatives such as codes of conduct and the establishment of external dispute resolution bodies.

We expect that the vehicle hire industry will eventually come to this conclusion and recognise that change is necessary. The debate should concentrate on the form of change.

## **2.7 Key Points and Conclusion**

- It is fallacious to argue that the relatively small number of complaints about vehicle hire contracts indicates there are few problems. It is more likely to indicate the inherent unfairness of the contracts in this industry and the difficulty consumers have in complaining;
- In any event, the nature of many of these complaints are serious. Many consumers end up thousands of dollars out-of-pocket or receive appalling service. They are unable to resolve their complaints satisfactorily;
- A cursory examination of the client pathway through the vehicle hire industry indicates that unfair practices are rife at every point. These range from a refusal to provide contracts prior to hire, the lack of mandatory vehicle inspections, blatantly one-sided contracts and insurance terms and the ability of vehicle hire companies to unilaterally decide to deduct monies from a client's credit card;
- Unlike other industries, there is a complete lack of adequate internal or external dispute resolution processes in the vehicle hire industry. Coupled with unfair contracts, this effectively leaves consumers with no form of redress.

We conclude that the vehicle hire industry operates in a manifestly unfair manner and that consumers face significant detriment, when a contract does not run smoothly. We are disappointed that the industry appears to fail to recognise this fact.

### 3. IS THE CURRENT REGULATORY FRAMEWORK ADEQUATE?

Both the MCCA discussion paper and the previous paper released by MCCA/SCOCA on this issue in 2001<sup>5</sup>, describe the current regulatory framework. It is clear that the current framework does not adequately address the problems in this industry.

The table below sets out the ‘key issues’ as described in the MCCA discussion paper, assessing them against the current regulatory environment. In all cases, the current regulatory environment simply does not adequately address the problems in the industry.

Key Issue in MCCA Paper	Current Regulatory Environment
Transparency of dealings (complex and small print contracts)	<p>Unlike the United Kingdom, Australia does not have unjust contracts legislation. Contracts are not required to be written in plain English nor in a reasonable size font.</p> <p>Hire companies are under no legal obligation to engage in any form of pre-contractual disclosure.</p>
Vehicle insurance (renters held fully liable, excess reduction, single vehicle accidents)	<p>Again, the lack of unjust contracts legislation, means that inequities in contracts are not addressed.</p> <p>Hire companies are under no legal obligation to engage in any form of pre-contractual disclosure.</p>
Verification of responsibility for vehicle damage	<p>With the exception of the Passenger Transport Act in Tasmania, mandatory inspections are not required under any legislation.</p>
Credit card transactions	<p>There are no limits on the amounts that can be deducted from a consumer’s credit card. There is no dispute resolution process or independent verification of damage.</p>
Harsh or unfair contracts	<p>Unlike the United Kingdom, Australia does not have unjust contracts legislation. Consumers would need to attempt to redress an inequitable contract through common law. This is, at best, a piece-meal remedy and is almost certainly costly.</p>

<sup>5</sup> op cit, Preliminary National Review of the Car Rental Industry, MCCA/SCOCA Car Rental Industry Working Party, June 2001.

<b>Key Issue in MCCA Paper</b>	<b>Current Regulatory Environment</b>
Advertising	Apart from general prohibitions in the Trade Practices Act and various Fair Trading Acts, there is no legislation requiring uniform advertising of vehicle hire rates.
Vehicle safety	In theory, product safety laws should address this issue. In reality, it appears that lack of enforcement means that vehicle safety continues to be a concern.

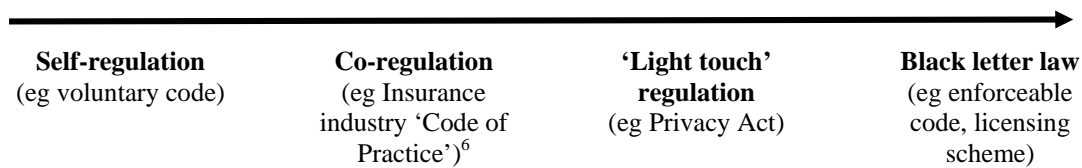
Overall, remedies under the Trade Practices Act and various state Fair Trading Acts are difficult to access for individual consumers, given they require court appearances. They are also ‘one-offs’ and the impact on practices in the industry as a whole may be minimal.

In the view of CFA/ACA regulatory improvements are required. This is the subject of the next section.

## 4. WHAT IS THE BEST REGULATORY OPTION?

### 4.1 Form of Regulation

The following diagram sets out the broad range of regulatory options that are generally available to address market failure and/or consumer detriment. The continuum is based on the degree of government and industry involvement. Possible interventions range from self-regulation at one end, to black letter law at the other.



All options will nearly always include some kind of industry or consumer education strategy.

In recent years there has been extensive research and analysis about choosing the most appropriate regulatory response, from across the continuum. The submission has already addressed the threshold question in making this choice: is there a problem, and is it significant? The answer was ‘yes’.

The ‘right’ choice of response is therefore the option that will best address the problem, by:

1. ensuring the industry is competitive and innovative;
2. protecting consumers from unfair practices and providing them with a means of redress.

Overall the benefits of the regulation must outweigh the costs.

Each of the regulatory options above is assessed against these criteria in the following sections.

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<sup>6</sup> The Financial Services Reform Act requires insurance companies to belong to an approved External Dispute Resolution (EDR) scheme. In turn, the appropriate EDR scheme - Insurance Enquiries and Complaints Ltd - requires its members to abide by the Code of Practice. The IEC is governed by a board comprised of industry and consumer representatives.

#### *4.1.1 Self-Regulation*

Self-regulation is extremely unlikely in this industry for a number of reasons – not the least of which is that the industry is showing no inclination to address the issues raised. In any event, the pre-conditions for successful self-regulation are not present. These are set out in a number of publications, the most relevant of which is the recent report of the ‘Taskforce on Industry Self-regulation’. The taskforce agreed with the assessment of the Commonwealth Office of Regulation Review’s Regulatory Impact Statement that self-regulation requires:

- ‘the presence of a viable industry association;
- adequate coverage of the industry by the industry association;
- cohesive industry with like-minded/motivated participants committed to achieving the goals;
- voluntary participation – effective sanctions and incentives can be applied, with low scope for the benefits being shared with non-participants; and
- cost advantages from tailor-made solutions and less formal mechanisms such as access to quick complaints handling and redress mechanisms.’<sup>7</sup>

None of the above conditions are met in this industry. The lack of a viable industry association with wide coverage is the heart of the problem. The taskforce also noted that self-regulation is only an option where:

- ‘there is ... no major public health concern;
- the problem is a low risk event, of low impact/significance .... and,
- the problem can be fixed by the market itself.’

The problems in the vehicle hire industry do not fit into these categories. On the contrary, there are safety concerns, the problems are highly significant and the market is not fixing them.

#### *4.1.2 Co-Regulation*

To be successful, co-regulation presupposes a similar industry maturity to that required for effective self-regulation. In other words, for ‘industry’ to play its part in the partnership it needs to have a unified voice and industry members must be prepared to sanction non-compliance.

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<sup>7</sup> ‘Industry Self-regulation in Consumer Markets’, Report prepared by the Taskforce on Industry Self-regulation, for the then Minister for Financial Services and Regulation, the Hon. Joe Hockey, August 2000, p43-44.

For the reasons outlined in the section immediately above, this type of option is highly unlikely to succeed.

#### *4.1.3 ‘Light-Touch’ Regulation*

Recent regulatory developments have seen governments regulate in more innovative ways, for example, through ‘performance-based’ regulation. This ‘light-handed’ approach describes situations where the law sets out the standards an organisation must achieve, but does not prescribe the exact mechanism. The recent amendments to the Privacy Act extending it to the private sector are an example – six principles are described and organisations can then develop their own codes if they wish to implement them based on the principles, or alternatively, rely on the ‘default’ provisions of the Act.

This form of regulation however is unlikely to adequately address the consumer detriment in the vehicle hire industry. There are clear, specific problems in this industry, such as a lack of mandatory vehicle inspections or unfair contracts; these require clear, unambiguous remedies.

#### *4.1.4 Black Letter Law*

In a sense, black letter law is a tool of last resort. It should be used where there is significant consumer detriment and there are no other options. This is the case for the vehicle hire industry.

In a broader sense however, black letter law can deliver significant benefits to industry and consumers. As discussed in section 2.5, unchecked competition in this industry has institutionalised a number of unfair practices. There would be significant benefits to industry if competition were on a fair and level playing field. It is likely for example that real, rather than misleading, price competition would occur. Competition around service innovation is also more likely.

For consumers, regulatory change would increase consumer confidence in this industry. Egregious breaches of consumer rights – such as unilateral debiting of credit cards without redress – would cease. Consumers could expect a fairer deal.

#### 4.1.5 Summary

The table below summarises the analysis from the above sections, against the criteria in choosing the most appropriate regulatory response across the regulatory continuum.

<b>Regulatory Option</b>	<b>Will this ensure the industry is competitive and innovative?</b>	<b>Will consumers be protected from detriment?</b>
1. Self-regulation	Status quo. Competition is currently based on imbalance between the rights of consumers and industry.	No. Current problems will continue.
	Costs: Some consumers bear disproportionately high costs due to current industry operating practices continuing.	
2. Co-regulation	As above. Current unfair competition will continue. Industry does not demonstrate sufficient maturity for co-regulation.	No.
	Costs: As above.	
3. Light-touch regulation	May ‘lift’ competition so that it is on fairer conditions.	Will not address consumer detriment, unless there is a more prescriptive approach.
	Costs: As this approach is unlikely to address specific problems, some classes of consumers likely to continue to bear significant costs.	
4. Black letter law	Yes. Competition on a ‘level’ playing field – assuming it is based on fair contracts.	Yes.
	Costs: Difficult to estimate. But there may be a small increase in prices over all contracts, in order to reduce the unfair burden currently falling on a few unlucky consumers.	

Based on the above analysis, ACA/CFA have concluded that some form of black letter regulation is required in the vehicle hire industry.

## 4.2 Optimum Regulatory Intervention

### 4.2.1 Key Elements for Effective Reform

In choosing the best regulatory framework, there are a number of key elements that need to be included in any reforms (these points are similar, but not identical, to Appendix D in the MCCA paper). These elements would collectively address problems with the way in which the industry operates:

- |                          |  |
|--------------------------|--|
| Advertising              | <ul style="list-style-type: none"><li>• Adequate descriptions of vehicles – age and class of vehicle</li><li>• Rental price plus all other typical additional charges, for example, insurance to be included</li><li>• Advertised vehicles or equivalent to be available at the same price, or a better car is provided at the same price.</li></ul>   |
| Vehicle inspections      | <ul style="list-style-type: none"><li>• Mandatory pre and post hire inspections<sup>8</sup> These must be signed by the consumer and be undertaken in good light and with adequate time.</li></ul>   |
| Contracts                | <ul style="list-style-type: none"><li>• Available to consumers prior to rental on request, as well as websites</li><li>• Standard contract</li><li>• Clear, prominent and unambiguous pre-contractual disclosure of important terms</li></ul>  |
| Insurance                | <ul style="list-style-type: none"><li>• The consumer should be the policy-holder, and the policy subject to the principle of utmost good faith.</li><li>• Insurance on similar terms to that for consumers when driving their own vehicles - including no-fault coverage, single vehicle accident coverage</li><li>• Maximum loss or damage capped at \$500</li><li>• Clear, prominent and unambiguous pre-contractual disclosure of important terms</li></ul> |
| Credit card transactions | <ul style="list-style-type: none"><li>• Deduction from credit cards only after notification to the consumers, and only if there is an effective process allowing the consumer to dispute the charge</li><br/><li>• Deduction limited to the insurance excess of \$500 or for fuel expenses (where fuel costs are at market rates)</li></ul>  |

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<sup>8</sup> We acknowledge that this may be impractical in some circumstances – for example where a vehicle is returned to an airport late at night. These exceptions however could be addressed by specific exemptions, that still provided for some consumer protection.

- |                                |   |
|--------------------------------|---|
| Vehicle safety                 | <ul style="list-style-type: none"><li>• Periodic safety inspections for all vehicles (to meet the operator’s duty of care). These inspections should be more frequent for older vehicles or those with high kilometres.</li></ul>   |
| Dispute resolution and redress | <ul style="list-style-type: none"><li>• Adequate internal dispute resolution, as per the Australian Standard AS4269</li><li>• Use of an External Dispute Resolution body, consistent with the DIST benchmarks<sup>9</sup></li></ul> |

#### 4.2.2 Options in the MCCA Paper

The MCCA discussion paper describes five regulatory options:

- a) ‘Maintain the status quo;
- b) Develop an industry based voluntary code of conduct;
- c) Develop a mandatory code of conduct to be established under existing fair trading legislation;
- d) Develop a full licensing scheme to be established under new legislation; or
- e) Develop a negative licensing scheme to be established under new legislation.

As discussed in section 4.1, options (a) and (b) are not workable. Given the extent of the problems in this industry, option (a) - the status quo - is not defensible. Similarly, option (b) should be discarded since self-regulation in this industry is not viable (see section 4.1.1 specifically).

Options (c), (d) and (e) are all black letter law options and should be weighed up against each other. The subsequent discussion therefore focuses on these three choices.<sup>10</sup>

#### **Option (c) – Mandatory Code**

Although attractive in principle, mainly because a mandatory code is a relatively flexible form of regulation, we hold grave concerns about whether it could actually be implemented and whether it would provide national consistency.

The process for prescribing codes in each state’s fair trading acts is quite varied. In Victoria for example, the only way in which a code can be prescribed is after an existing voluntary

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<sup>9</sup> The DIST benchmarks refer to the (then) Department of Industry, Science and Technology publication *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*, 1997. The Benchmarks are: Accessibility, Independence, Fairness, Accountability, Efficiency and Effectiveness.

<sup>10</sup> We have not considered the possible introduction of unjust contracts legislation. It would not address all of the problems in the industry but could possibly be combined with other regulatory instruments as part of a wider package.

code is shown to be ineffective. The code can then be made mandatory. If the voluntary code is itself weak, this adds little value, other than mandating weak practices.

New South Wales is actually planning to remove the power in their fair trading legislation to provide for codes. Although in theory, they could perhaps still enact a regulation to the same effect, it seems unlikely and unwieldily.

Given the range of problems in this industry, it is probably more appropriate to use a primary form of regulation, rather than sub-ordinate regulation through a code.

#### **Option (d) – Positive Licensing**

Positive licensing is the best tool to use when the public interest requires there be barriers to entry to an industry. For example, a number of licensing regimes require applicants to demonstrate fitness and propriety, to be solvent, or to hold sufficient professional indemnity or public liability insurance.

In the view of ACA/CFA, there are no circumstances warranting the imposition of positive licensing conditions on industry participants.

#### *4.2.2 The Best Option – Negative Licensing and EDR*

ACA/CFA have come to the view that the best way to achieve the required reforms, is through a negative licensing scheme, coupled with access to an EDR scheme.

A negative licensing scheme would ideally be implemented by the Federal Government, with the states passing mirror legislation. Alternatively, a process similar to the Uniform Consumer Credit Code could be used, with one state passing template legislation, and the others, mirroring this law. Given current political realities, this approach is most likely.

Appropriate negative licensing would grasp the gamut of issues set out in Section 4.2. Each of these issues is set on the next page, together with some possible approaches for the way in which they could be addressed through a negative licensing scheme.

- |                                |  |
|--------------------------------|--|
| Advertising                    | <ul style="list-style-type: none"><li>• Appropriate controls prescribed directly in the legislation</li></ul>  |
| Vehicle inspections            | <ul style="list-style-type: none"><li>• Appropriate controls prescribed directly in the legislation</li></ul>  |
| Contracts                      | <ul style="list-style-type: none"><li>• Option 1 – our preference - is for a standard contract to be prescribed by regulation in the legislation</li><li>• Option 2 – for the legislation to include prescribed minimum terms</li><li>• Option 3 – for the legislation to include provisions against unjust contracts (assuming unjust contracts legislation is not introduced shortly)<sup>11</sup></li><li>• Option 4 – for the legislation to provide that an Industry Contract Review Panel be established by industry, with membership approved by the states. The panel would consist of an independent chair, an industry representative and a consumer representative. The panel would have the power to approve or amend as necessary car hire contracts.</li></ul> |
| Insurance                      | <ul style="list-style-type: none"><li>• Appropriate controls prescribed directly in the legislation, including pre-contractual disclosure (in the same way as a Schumer Box in the credit arena)</li><li>• Access to Insurance Enquiries and Complaints Ltd as the dispute resolution body regarding insurance claims (see below also).</li></ul>  |
| Credit card transactions       | <ul style="list-style-type: none"><li>• Appropriate controls prescribed directly in the legislation</li></ul>  |
| Vehicle safety                 | <ul style="list-style-type: none"><li>• Appropriate controls prescribed directly in the legislation</li></ul>  |
| Dispute resolution and redress | <ul style="list-style-type: none"><li>• We argued earlier that an EDR scheme is the best mechanism for this industry, but recognise that it would be costly to establish from scratch. Our recommendation is that EDR be provided by an existing scheme, such as Insurance Enquiries and Complaints Ltd or possibly the Australian Banking Industry Ombudsman.</li></ul>   |

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<sup>11</sup> The Victorian Fair Trading Act now covers unjust contracts, but this is a very recent amendment.

ACA/CFA recognise that these reforms are likely to increase the cost of renting a car. However, these costs will be smeared across thousands of transactions, rather than at present, where some consumers bear disproportionately high risks and are charged disproportionately large amounts of money when things go wrong.

The benefits to consumers will be:

- the ability to ‘shop around’ and actually compare contracts on the basis of like against like;
- agreement from the outset about the state of the vehicle;
- fair contracts;
- greater certainty about the transaction; and
- access to dispute resolution;

For industry, the benefits will include:

- fair competition on agreed ground rules;
- fewer disputes. Fewer complaints means fewer costs – cost savings that can be passed through to consumers;
- increased consumer confidence in their industry. This should lead to an increase in the numbers of consumers using the industry – potentially reducing the costs of rental; and
- consumers still bearing some risk, through the provision of an excess – moral hazard will be avoided.

### **4.3 Key Points and Conclusion**

- Of the four broad options available to regulate this industry - self-regulation, co-regulation, light touch regulation, and black letter law – the latter is the only real alternative.
- The industry does not meet the necessary pre-conditions for either self or co-regulation. These include the presence of a viable industry association with adequate coverage and the ability for the industry body to apply sanctions. The magnitude of the problems in this industry are also not appropriately handled in this format. Similarly, light-touch regulation will not address the key problems as they require explicit provisions.
- Whatever form black letter law takes it must provide for a number of key reforms. These include: ensuring advertising of prices is not misleading, mandatory pre and post vehicle inspections; standard and fair contracts; insurance arrangements similar to those a consumer enjoys for their own private vehicle; limits on the amount of money that can be deducted from a consumer’s credit card without their authorisation; periodic vehicle safety checks and dispute resolution through an appropriate External Dispute Resolution body.
- Of the three black letter law options in the discussion paper – a mandatory code, positive licensing or negative licensing – the best option is negative licensing.
- A mandatory code is unlikely to be a practical option, given the difficulties in mandating codes through some states. In the case of positive licensing, there are no cogent reasons for introducing any barriers to entry.
- Negative licensing does not introduce barriers to entry and could introduce the key reforms required. In practical terms, the best option is for one state to introduce specific legislation, with the other states passing mirror legislation.
- There will be benefits from this approach for both industry and consumers. Consumers will no longer bear disproportionately high risks due to unfair contracts and insurance arrangements. They will have access to dispute resolution and certainty about the transaction.
- For industry, competition, for the first time, will be on the basis of a fair marketplace. There will be fewer disputes with consumers and increased confidence in their industry.

## **APPENDIX 1 – RESPONSES TO QUESTIONS IN THE MCCA DISCUSSION PAPER**

### **1. Can you provide other information about the size and economic value of the vehicle rental industry?**

No. It is clearly an integral part of the Australian economy and one that particularly affects the tourism sector.

### **2. What proportion of owner operated vehicle rental franchise outlets, vehicle rental franchisees and independent operators are represented by industry bodies?**

Our understanding is that coverage is very low. The largest operators have formed a ‘lobby group’ but this is still a far cry from an industry body, attempting to lift standards in the industry.

Smaller operators appear to operate without the benefit of any umbrella organisation.

### **3. How many rental operators run quality assurance programs? If so, what are the key components? How do rental operators deal with complaints?**

Unable to comment on quality assurance programs. It seems clear from the complaint data, that none of the companies have effective internal dispute resolution schemes.

### **4. Should any sector of the passenger vehicle rental industry not be considered in this review? Give reasons.**

No.

### **5. What are your experiences with consumer complaints in the car rental industry? Are there other consumer concerns which should be addressed?**

See Appendix 2 for some selected case studies. The Australian Consumers’ Association have run articles in their flagship magazine ‘Choice’ on this issue and a number of consumer advocates in the Consumers’ Federation of Australia have commented on problems in this industry as a result of contact from television and newspaper media. CFA members have also taken on individual cases from time to time.

### **6. Do practices in the car rental industry cause problems for particular groups of consumers?**

Generally anyone can be at risk in this industry, given the nature of the unfair contracts and insurance arrangements. In particular however, those who will find it most difficult to resolve difficulties are those from interstate or overseas (the latter problems may be compounded by language difficulties).

**7. What advantages, if any, flow to the sector as a result of the types of rental contracts used by the industry?**

The ‘playing field’ tips in favour of industry. In the event of dispute, the contractual terms are significantly biased toward the vehicle hire company. The industry therefore enjoys significant advantages.

**8. What measures would improve transparency of rental contracts in the industry including providing consumers with a clear understanding of important terms and rights and responsibilities?**

Standard, fair contracts across the industry.

Pre-contractual disclosure may also assist, but should not be the only measure. Given the nature of the transaction, the ability of consumers to really ‘choose’ once at the counter, is extremely limited.

**9. Should rental contracts be required to be in plain language?**

Yes. Surely it is difficult to argue the contrary. It is disturbing the industry is making no moves to improve this at all.

**10. Should rental contracts be required to prominently disclose important terms for example, by using bold print, capital text and/or a minimum font size? Should there be standard wording for such terms?**

Yes. Pre-contractual disclosure is needed of important terms. But as noted under question 8, the most important reform would be to improve the contracts in the first place.

**11. Should industry-wide standard contracts be used by all operators?**

Yes.

**12. Should contracts be made available to consumers prior to the date of rental?**

Yes. Again, how could one possibly argue otherwise? The ‘right to choose’ is a basic consumer right, set down by the United Nations. Contracts should be on vehicle hire companies websites, and sent to consumers at their request.

**13. Do these issues have a significant impact on costs and/or benefits in the industry sector? What would be the costs to operators of amending rental contracts? What specific benefits would consumers gain from regulating contracts in this industry sector?**

There would be costs involved for government and industry in formulating a new, standard contract. There would be significant benefits to industry once the ‘standard’ contract was in place. Consumers would gain some protection – protection which is clearly missing at present.

**14. If contracts were regulated, what impacts, if any, would this have on competition in the market?**

Competition would occur on the basis of price (as it does now) – but prices that were not artificially impacted by biased contracts.

Overall, as section 2.5 argues, competition would be ‘fair’, rather than at present, where the lowest common denominator, has set the bar too low.

**15. What are the savings in insurance premiums to rental operators arising from the industry’s unique insurance arrangements and rental contracts establishing a range of restrictions on insurance coverage?**

This is impossible to assess from our viewpoint in absolute dollar terms, and we expect that the industry would have difficulty doing this as well – most of this information will be commercial-in-confidence and many of the large companies self-insure.

Prime facie however, the current insurance arrangements end up levying large amounts on a small sub-set of consumers. Another market outcome would be to ‘smear’ these costs across the complete rental marketplace.

**16. What mechanisms are available to rental operators to encourage consumers to take care of rental vehicles?**

The provision of a small excess.

Pre and post vehicle inspections would also be important as consumers would know that any damage would be verified in their presence.

**17. What processes do operators utilise to alert consumers about insurance provisions?**

This appears to be ad hoc. It seems as if operators may only pay this cursory attention.

**18. What problems do operators experience in trying to recover legitimate costs such as for vehicle loss or damage from consumers?**

With the ability to chargeback to credit cards, it appears that they have few problems.

**19. Would amending rental contracts to improve disclosure about insurance affect its availability?**

Why? The issue is not about disclosure of insurance terms, but having fair terms. Insurance premiums may or may not change, depending on the commercial decisions operators make about the way they proportion ‘rental’ charges and ‘insurance’ charges.

**20. Should the types of damage and circumstances attracting full liability be prominently displayed in bold and/or large type? Should there be standard wording?**

Yes. But more importantly, insurance should be fair. Consumers should be entitled to similar coverage they enjoy for their own private vehicle eg no fault, single vehicle etc.

**21. What are the costs and benefits if such disclosure requirements were introduced?**

Insurance premiums may or may not change, depending on the commercial decisions operators make about the way they proportion ‘rental’ charges and ‘insurance’ charges. It is difficult to provide any exact estimates.

**22. Should vehicle rental contracts prominently display the excess payable in the event of loss or damage to the vehicle and any excess reduction offer and the cost? If so, should this be in bold and/or large type? Should contracts prominently disclose whether excess reduction is available and, if so, provide for sign off on whether it was accepted or declined? Should there be standard wording?**

Yes – to all. These conditions should be positively acknowledged by consumers – for example using the Schumer Box approach of credit legislation – and not just displayed.

**23. What would be the costs and benefits to stakeholders if such requirements were introduced?**

Consumers would be more fully aware of their responsibilities. It is difficult to see what ‘costs’ there would be after those associated with the initial compliance.

**24. Should operator quotes and/or advertisements containing a daily vehicle rental rate state the amount of excess payable in the event of loss or damage to the vehicle?**

Yes. We are surprised the ACCC has not investigated industry practices in this area to date.

**25. If an advertisement includes an offer to reduce the excess, should it disclose that daily excess reduction charges are extra? Should it specify the additional daily charge for excess reduction and the reduced excess payable in the event of loss or accident?**

Yes. Current advertising practices are misleading.

**26. Should loss or damage liability excesses be capped for example, at \$500 so that there are no hidden charges to be added on to the quoted or advertised daily rates and thus enabling true cost comparisons?**

Yes.

**27. What would be the costs and benefits to stakeholders of introducing a cap on excesses? Would this affect the availability of insurance? Would there be other effects on the market?**

As with all questions of this nature, the industry would adapt its pricing structure and practices to suit. Everything is available at a price. The most likely effect is that either the ‘rental’ or ‘insurance’ components of vehicle hire would increase slightly across all contracts as a whole.

In the end this is simply an actuarial decision.

**28. Should all operators be required to insure the renter against a single vehicle accident and, if so, include it with any excess reduction facility offered in relation to other loss or collision damage insurance arrangements? How would this affect the availability of insurance and the vehicle rental market?**

Yes.

**29. If provision of single vehicle insurance is not a requirement and operators choose to not provide such coverage, should their contracts prominently state this and the extent of consumer liability together with the definition of single vehicle accidents in plain language in bold print and/or capital text? Should there be standard wording?**

Single vehicle insurance should be a requirement.

**30. If provision of single vehicle insurance is not a requirement and operators choose to provide such coverage, should their contracts prominently state this and the extent of any liabilities together with a definition of single vehicle accidents, in plain language in bold print and/or capital text, and in particular make a statement about:**

- liability for any excess payment in the event of loss or damage; and
- the availability and amount of excess reduction and, if so, any charges for excess reduction.

**Should there be standard wording?**

See above.

**31. What are the costs and benefits to stakeholders if such requirements were introduced?**

See above.

**32. Should consumers and rental operators participate in pre- and post rental inspections to ascertain the existence, type, location, and degree of any vehicle damage?**

Yes.

**33. Some rental contracts include a diagram of the vehicle for making a notation of any damage. Would there be benefit in requiring all rental contracts to include or attach two vehicle diagrams for making damage notations. One diagram could indicate the existence or absence of damage before the vehicle is driven away by the renter and the other would do so again on its return?**

Yes. This is a sensible suggestion.

**34. Would it be feasible for a copy of the ‘inspection out’ section of the diagrams to be signed by both parties and given to the renter before taking the vehicle and for the ‘inspection in’ section to be noted and again signed by both parties on completion of the rental (This approach has been used in the UK)?**

Yes – if possible.

**35. What are the costs and benefits to stakeholders if such requirements were introduced? Are there any other alternative ways of dealing with this issue?**

There will obviously be some costs for industry. But the benefits for consumers overall will include less disputes. We cannot suggest an alternative.

**36. What are the benefits of this practice to operators?**

Fewer disputes. Consumers more aware of the need to care for the vehicle.

**37. Do these contractual requirements unreasonably remove consumer rights? Should operators be prohibited from issuing contracts giving them permission to recover potential liabilities eg accident damage via the renter’s credit card before any such liability has occurred. Once such a liability has occurred, should access to a renter’s credit card be subject to their express permission?**

Yes. Access to a renter’s credit card should be subject to a dispute resolution process if the consumer disputes the damage.

**38. One approach used in the UK is an operator’s contract does not provide for credit card deductions for damages beyond a pre paid insurance excess. In other words, this is an up front deposit which is refundable if there are no damages and at the end of a rental, it can be set off against the actual rental charges. Would this practice be feasible for adoption by industry in Australia? Are there other alternatives?**

Worth considering.

- 39. If automatic deductions from customer credit card accounts should be allowed, should contracts include a prominent disclosure in bold and/or large print that a renter’s credit card may be used to pay for his or her potential liability even when liability may be in dispute? Should there be standard wording?**

They should not be allowed, unless there is a process for effective dispute resolution.

- 40. What are the costs and benefits to stakeholders if such requirements were introduced? What would be the effect on the market?**

Fairer, transparent competition would result – a good thing.

- 41. Should industry specific regulatory requirements prohibit such terms?**

Yes – or alternatively, unjust contracts legislation would address.

- 42. What are the costs and benefits to stakeholders if such requirements were introduced? Are there any alternatives?**

After implementation of fair, standard contracts, there would be overall benefits for industry.

- 43. When advertisements feature rental prices or capacity, quality or age of vehicles for rent, should operators be required to ensure they have reasonable stocks during the period of exposure of the advertisements? When advertisements feature just a price, should the age and model or class of the vehicles available at that price be distinguished? Should pricing advertisements as a minimum, simply distinguish when offers relate to ‘not new’ vehicles?**

Yes – to all.

- 44. What are the costs and benefits to stakeholders if such requirements were introduced? Are there other alternatives?**

Consumers would not be misled – this is a benefit. Industry should not be allowed to engage in ‘bait’ advertising.

- 45. Is there evidence indicating that consumers are at a greater risk of injury or death when driving rental vehicles compared with other modes of transport?**

We have insufficient knowledge to answer this question.

**46. Should vehicles over a particular age and/or having travelled a particular distance be subject to compulsory periodic safety inspections? If so, what should be the threshold? Also, should any such requirement include an exemption for operators who can demonstrate having a quality assurance program in place effectively addressing vehicle safety? Are there other measures which should be considered?**

Yes. More broadly however, we believe that all vehicles, should be subject to periodic inspections. Further consideration, based on any available data as to the exact age or kilometres that this should occur, is needed to make an informed judgment.

**47. How would such measures impact on costs and competition in the market?**

Again competition would be on a fair basis.

**48. Should the status quo be maintained? What are the costs and benefits?**

Absolutely, definitely not. See section 4.1.1 and 2.5

**49. Should a voluntary code be developed in the car rental industry? If so, should code subscribers be required to abide by conduct requirements such as those outlined in Appendix D? If so, which conduct requirements do you prefer? Are there alternative voluntary code requirements?**

Absolutely, definitely not. See section 4.1.1 and 2.5

**50. If developed, should such a code extend to all vehicle rental categories listed in Table 1 under Section 3.3?**

See question 49.

**51. If developed, would a voluntary code, which does not provide complete coverage of the car rental industry, adequately address consumer concerns?**

See question 49.

**52. Is a voluntary code the most efficient and effective means of addressing the issues discussed? What would be the costs and benefits to stakeholders?**

See question 49. A voluntary code would not work.

**53. Are there any implications for competition in the market? If so, what are they?**

See question 49. A voluntary code would not work.

**54. Should a mandatory code be developed in the car rental industry? If so, should it include conduct requirements such as those outlined in Appendix D? If so, which conduct requirements do you prefer? Are there alternative mandatory code requirements?**

In our view there are too many practical difficulties surrounding the implementation of a code across all jurisdictions.

**55. If developed, should a mandatory code extend to all vehicle rental categories listed in Table 1 under Section 3.3?**

Yes.

**56. Is a mandatory code the most efficient and effective means of addressing the issues discussed? What would be the costs and benefits to stakeholders?**

Not necessarily. See section 4.2.

**57. Would there be any implications for competition in the market? If so, what are they?**

See section 2.5. Competition would be on a fairer basis.

**58. If developed, which agency or agencies would best regulate a mandatory code?**

This is one of the difficulties with this option. The UCCC model is the only possible option.

**59. Should a full licensing scheme be developed and established under new legislation specific to the car rental industry? If so, what should be the entry requirements for operators? If so, should there be conduct requirements for operators such as those outlined in Appendix D? If so, which conduct requirements do you prefer? Are there alternatives?**

Positive licensing is not required, but negative licensing would address the important issues.

**60. If developed, should a full licensing scheme extend to all vehicle rental categories listed in Table 1 under Section 3.3?**

Yes.

**61. Is a full licensing scheme established in separate legislation the most efficient and effective means of addressing the issues discussed? What would be the costs and benefits to stakeholders?**

In our view, yes. See section 4.2

**62. Would there be any implications for competition in the market? If so, what are they?**

See section 4.2

**63. Should a negative licensing scheme be developed and established under new legislation specific to the car rental industry? If so, what criteria could be used to exclude undesirable operators? Should operators be required to notify fair trading authorities of their operation and possibly provide certification of no serious breaches of relevant law in recent years?**

Yes. The most important element of negative licensing will be to ensure fair contracts and insurance arrangements. States will then need to enforce the law.

**64. If negative licensing is desirable, should there be conduct requirements for operators such as those outlined in Appendix D? If so, which conduct requirements do you prefer? Are there alternatives?**

See section 4.2.

**65. If developed, should a negative licensing scheme extend to all vehicle rental categories listed in Table 1 under Section 3.3?**

Yes.

**66. Is a negative licensing scheme established in separate legislation the most efficient and effective means of addressing the issues discussed? What would be the costs and benefits to stakeholders?**

In our view, yes. See section 4.2 for a broad overview of benefits.

**67. Would there be any implications for competition in the market? If so, what are they?**

Black letter regulation, in any form, will impact on competition. In our view, it will mean a fairer marketplace with operators competing on reasonable conditions.

## APPENDIX 2 – ACA/CFA CASE STUDIES

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I hope you can help or point me in a direction where I can get some advice. I recently rented a car in Sydney. One night the car was bumped and the third party left without leaving their details - what they did leave was a reasonably large dent. I got a couple of quotes to repair the damage and my friend returned the car as I had to leave the country on business. The rental company told my friend that it would cost less to fix the car than the quotes we'd got and he let them get on with fixing the car. Since then my credit card has been debited for twice the amount of our quote. Do I have any way to get my money back?

Consumer sent a copy of a letter to the (xxx) car rental company asking for documents pertaining to a car accident he was in. They have invoiced him for a total of about \$7000 in damage/costs.

Two months ago, the consumer rented a ute. Had an accident with the ute. The accident wasn't his fault - company wanted \$1000 liability fee. They investigated whose fault it was and were to refund his \$1000 as it was found to not be his fault. Haven't received payment after two or so weeks, and the company aren't responding to calls from him.

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Hired a Car from xxx car rental:

"Keen to avoid the high volume of traffic leaving Sydney on Easter Weekend, I finished work early and was on the road South by 1.30 pm. Once I reached the Motorway and exceeded 50km/h I realised there was a problem with the front passenger wheel and had to continue driving at 30km/h to arrive safely at a point where NRMA could locate us. Several irrate calls to Baywater and NRMA mechanic arrived. He found the wheel was bent and stipulated that there was no sign of recent impact. The fact the car was not roadworthy is apparent.

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Consumer writing regarding a claim that I currently have with xxxx (the rental car company). I was involved in an accident while I was driving one of their rental vehicle (a one tone van). While I was exiting xx'x car park, the roof of the van touched the roof of the parking causing overhead damages to the vehicle. The incident happened in the exit ramp of the car park where the roof is very low due to a pipe running on the ceiling. I have claimed my innocence in this affair: I think the car park has insufficient signage. I believe I should not be held responsible for the incident. I have been told by one of xx representatives that this kind of incidents happened in the past at this exact location. I think it is xx's responsibility to warn their customers of the danger of exiting their car park or at least to put a warning sign on the dangerous spot.

Moreover, when I rented the car I paid for an extra insurance supposed to reduce the excess in case of an accident from \$2500 to \$500. After the accident I found out that the insurance policy was excluding overhead damages. Now xx is asking me to pay more than \$1000 for the repair -which I think is too high given the damage caused.

I have already paid x however I have told them my disappointment with their services and advised them that I would mentioned what happened to CHOICE.

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After renting a vehicle from xxx, I was charged an excess of \$80.00 for scratched hub caps. I was told that this price was for REPLACEMENT caps and I asked to keep the old ones. This proved that these were never actually replaced.

The Terms and Conditions state that renters are covered by normal wear and tear. Neither the company themselves nor Department of Fair Trading can explain to me what normal wear and tear is.

This is a scam!

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Hello, my name is xxx and I am Spanish. I am studying a Master at the University of Queensland, and this Christmas my family is coming to visit us. We decided that we wanted to go to Cairns and last Thursday I reserved an 8 seater van. Everything went just fine, I accepted their conditions and they took my Personal and Credit Card details, so I had a reservation. To my surprise, I receive a message on my mobile phone on Friday from the renting company saying that there had been a problem and that they could not give us the Toyota Tarago, and offered instead two cars (or some kind of arrangement), so I called them back and I said I would drop there on Saturday to see other alternatives. I spent the whole Friday afternoon calling all the car rental companies in the yellow pages and there were no other 8 seater (nor 12 seaters).

This morning I went to see them and the man I had made the reservation with was not there, so I talked with the receptionist (she knew about the problem) and said if we wanted a Ford wagon, so I took a look and decided this was not big enough for six adults. I then asked what the problem had been, and she replied that the people who were supposed to hand the van in wanted to rent it until February. I then asked why they made me a reservation and she said that at that time (Thursday) the van was "free". So I said that they were not "serious", trying to explain that if I had the reservation it is my right to use it.

There was no need for further explanation. The woman pointed at the door and just said "leave". And so I did, but I am really upset. Could you please help me telling me what my rights are in this case? Unfortunately I have no written contract or quotation, but I have the voice message of my mobile phone.

By the way, my parents arrive the 22nd of December, so the damage still is not done, but I have made reservations for our trip with "Best Westerns Hotels", and I do not know if I will have to cancel them.

The name of the car rental company is xxxx (xxxxx Fortitude Valley, Brisbane)

Contact person: xxx Phone number: 07 xxx

Thank you very, very much

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On holidays from New Zealand and rented car with xx for 18 days, one way Sydney to Brisbane. Contract Number XXXXXXXXXXXXX.

On the day returning the car, were stopped at a red light and hit from behind by a 6 tonne truck. The driver of truck admitted liability and police issued driving offence charge. The consumer telephoned xxx from the scene and was told the Insurance cover expired 45 minutes earlier. Consumer was also told if the offender was insured they would face no further charges from xxx. The consumer then received VISA statements with an additional \$1785 added. Contacted xxx and told \$546 was for towing charges and \$1239 was for demurrage from 31st July until 21st August. Never advised by xxx that they were to pay these costs and still have not received the cardholders charge copy. The contract they received when picking up the car was a photocopy and therefore they never got to read the terms and conditions. They accept that they are liable for the vehicle retrieval (surely from Caloundra to Brisbane, not Sydney) Feel that xxx has taken the easy option by levying these charges on the innocent party.

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