

Motor Dealers and Chattel Auctioneers and Other Legislation Amendment Regulation 2019

Explanatory notes for SL 2019 No. 165

Made under the

Motor Dealers and Chattel Auctioneers Act 2014

Queensland Civil and Administrative Tribunal Act 2009

State Penalties Enforcement Act 1999

General Outline

Short title

Motor Dealers and Chattel Auctioneers and Other Legislation Amendment Regulation 2019

Authorising law

Section 236 of the *Motor Dealers and Chattel Auctioneers Act 2014*
Section 242 of the *Queensland Civil and Administrative Tribunal Act 2009*
Section 165 of the *State Penalties Enforcement Act 1999*

Policy objectives and the reasons for them

The main policy objective of the *Motor Dealers and Chattel Auctioneers and Other Legislation Amendment Regulation 2019* (Amendment Regulation) is to make consequential amendments to the *Motor Dealers and Chattel Auctioneers Regulation 2014* (MDCA Regulation), the *Queensland Civil and Administrative Tribunal Regulation 2019* (QCAT Regulation) and the *State Penalties Enforcement Regulation 2014* (SPE Regulation), arising from the passage of the *Queensland Civil and Administrative Tribunal and Other Legislation Amendment Act 2019* (Amendment Act). In addition, the Amendment Regulation also makes other minor amendments to improve the clarity and operation of the MDCA Regulation.

The Amendment Act amends the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act), the *Fair Trading Act 1989* (FT Act) and the *Motor Dealers and Chattel Auctioneers Act 2014* (MDCA Act), to implement the findings of the review of the QCAT Act, and to deliver the Government's commitment to improve fairness and provide greater rights to Queenslanders buying a vehicle.

Reinstatement of statutory 'class B' warranty under the MDCA Act

The Amendment Act increases the coverage of statutory warranties under the MDCA Act by reinstating a statutory warranty for older 'class B' used motor vehicles sold by motor dealers and chattel auctioneers, which existed under the repealed *Property Agents and Motor Dealers Act 2000* (PAMD Act).

In addition to amendments to the MDCA Act contained in the Amendment Act, the reinstatement of the 'class B' warranty requires amendments to the MDCA Regulation.

Expanded QCAT jurisdiction for motor vehicle proceedings

The Queensland Civil and Administrative Tribunal (QCAT) has original jurisdiction, for among other things, hearing and deciding disputes about:

- repairs of defects under the MDCA Act statutory warranty framework, for used motor vehicles sold by motor dealers and chattel auctioneers; and
- consumer guarantees under the Australian Consumer Law (ACL) for goods and services as defined under the ACL, which ordinarily include new and used motor vehicles and caravans.

The Amendment Act increases QCAT's jurisdiction to determine claims about used motor vehicles under the MDCA Act statutory warranty framework, and breaches of the consumer guarantees under the ACL involving motor vehicles and caravans, from \$25,000 to \$100,000.

Currently motor vehicle proceedings (for claims of up to \$25,000) are heard as part of QCAT's minor civil disputes (MCD) jurisdiction. The Amendment Act provides that all motor vehicle proceedings will now be heard in a new motor vehicle list within QCAT's 'other civil disputes' jurisdiction.

Accordingly, a new fee structure is required for QCAT's new motor vehicle jurisdiction.

Achievement of policy objectives

Reinstatement of statutory 'class B' warranty under the MDCA Act

The Amendment Regulation contains amendments to the MDCA Regulation to support the reinstatement of the 'class B' warranty under the MDCA Act by prescribing details of how motor dealers and chattel auctioneers must display for sale, and advertise for sale, used motor vehicles in certain circumstances. In addition, the Amendment Regulation excludes a vehicle's air-conditioning system from the 'class B' warranty, which is consistent with arrangements previously in place under the repealed PAMD Act.

The Amendment Regulation amends the SPE Regulation to allow infringement notice fines to be issued for particular offences related to the reinstatement of the 'class B' warranty under the Amendment Act.

The Amendment Regulation also makes other minor amendments to improve the clarity and operation of the MDCA Regulation. Specifically, the Amendment Regulation:

- clarifies that a licensee must notify the chief executive of a change of business address by using an approved form, under section 71 of the MDCA Act; and
- corrects a minor error to clarify that section 18(1) of the MDCA Regulation is not a penalty provision.

Expanded QCAT jurisdiction for motor vehicle proceedings

The Amendment Regulation will amend the QCAT Regulation to provide a fee structure for motor vehicle disputes.

The prescribed fees for motor vehicle proceedings will be those that currently apply to MCDs in QCAT. That is, where the claim is up to \$25,000 there is a sliding scale from \$26.95 to \$345.80 (depending on the value of the claim) and for claims over \$25,000, the standard fee of \$345.80 will apply.

This is to ensure the jurisdiction remains accessible to consumers, and that there will be no change to fees for consumers for claims less than \$25,000.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising laws.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

Reinstatement of statutory 'class B' warranty under the MDCA Act

The amendment of the MDCA Act (by the Amendment Act) and MDCA Regulation (by the Amendment Regulation) to reinstate the 'class B' statutory warranty for older used motor vehicles will provide greater consumer protection for buyers of older second-hand vehicles.

The reinstatement of the 'class B' warranty will have a regulatory impact on motor dealers and chattel auctioneers selling used motor vehicles. They will need to change some of their business practices to comply with the Amendment Act and Regulation.

However during consultation with stakeholders on the then Bill for the Amendment Act and the draft Regulation, the Motor Trades Association of Queensland (MTAQ) advised that it supported the reinstatement of the 'class B' statutory warranty.

Expanded QCAT jurisdiction for motor vehicle proceedings

The new fee structure for QCAT's expanded jurisdiction for motor vehicle proceedings will keep costs for consumers at the current rate for fees in QCAT's MCD jurisdiction. This will assist in ensuring the accessibility of this jurisdiction for consumers.

The expansion of QCAT's jurisdiction for motor vehicle proceedings will have an impact on QCAT. QCAT received an additional \$1.353 million over four years as part of the 2019-20 budget process to respond to this increased jurisdiction.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles.

Consultation

QCAT was consulted in relation to the Amendment Regulation.

From 24 September 2018 to 12 October 2018, the Department of Justice and Attorney-General conducted targeted stakeholder consultation on the proposed reinstatement of the 'class B' warranty. The MTAQ, Royal Automobile Club of Queensland, Caxton Legal Centre, Queensland Law Society, Queensland Consumers Association and Legal Aid Queensland were consulted on exposure drafts of the then Bill for the Amendment Act and the draft Regulation.

Consultation with stakeholders during the development of the then Bill and draft Regulation did not highlight any significant stakeholder concerns with the proposal to reinstate the 'class B' warranty.