

National Motor Vehicle
Theft Reduction Council

Modernising Regulatory Regimes to Optimise Compliance

Overview of draft model laws to consolidate motor car trading and second-hand dealing provisions and establish better compliance tools

Background

The report of the Victorian Inter-Agency Task Force (ITF) into compliance with local laws clearly demonstrates that the existing law, in respect of the management of separated vehicle parts and vehicle-related scrap, is in need of major reform.

The NMVTRC's 2013-14 work program indicated that we would build on the previous review of the 'modernity' of related laws, conducted by lawyers DLA Piper in 2012, by developing a proposal for the consolidation of relevant laws (under the LMCT Law of each jurisdiction) to remove ambiguities and gaps, and deal more effectively with enduring non-compliance.

The NMVTRC subsequently engaged Duncan Lawyers (Duncans) to develop an 'exposure draft' of a set of consolidated model provisions to illustrate the approach. The company principal, Campbell Duncan, is a former Victorian Parliamentary Counsel and internationally recognised expert in regulatory system design.

Key features of the model law

Duncans has prepared a model Act and Regulations using a working title of the *Motor Trade (Accreditation) Act*. The major features of the package are—

- the introduction of an accreditation requirement for a person who carries on business as a motor vehicle dealer, motor vehicle recycler (including a metal recycler) or motor vehicle repairer;
- the inclusion of a chain of responsibility model for related parties which requires prescribed persons to—
 - take all reasonable steps to ensure that stolen motor vehicles or parts are not traded by any party in the chain; and
 - report suspicious vehicles or parts, whether in their custody or offered to the person for sale;
- a broad range of search, seize and retention powers for authorised officers—with or without consent;
- a range of regulatory tools for the "Regulator" to promote or assure compliance including the power to publicise breaches or offences;
- the creation of separate commercial and general offences—the former allowing the profit made in an illegal transaction to be taken into account;
- the inclusion of civil penalty orders with daily penalties for continuing non-compliance; and
- improvement and exclusion orders, under which a person may be required to improve their performance or face exclusion from the industry.

The proposed accreditation system has three components—industry entry, maintenance of accreditation and termination of accreditation. For industry entry, the key issues are competence and specific criminal history.

Two categories of criminal offence are set out in the model Act. A conviction for a Category 1 offence, eg an offence involving theft, fraud or dishonesty would disqualify a person for ten years.

For maintenance of accreditation the principal requirements are adherence to minimum standards and a commitment to continuous improvement. The continuous improvement concept is central to the objective of accreditation—accreditation is intended to encourage industry participants to continuously improve their business practices, and not engage in a 'race to the bottom' in an attempt to reduce cost by meeting only minimum requirements.

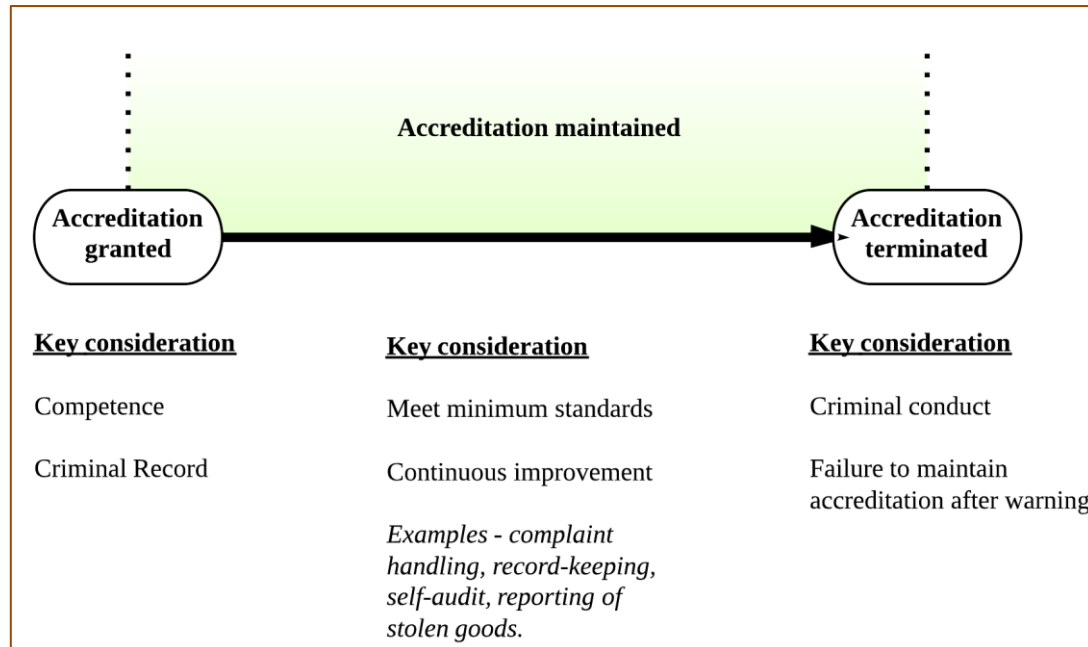
In order to maintain accreditation industry participants would be required to observe requirements about record keeping, complaint handling and self-audit.

The model Act provides for the setting of business standards by the responsible Minister, dealing with issues such as financial stability and customer service. The flexibility which this

offers (that is, standards can be set and modified without need to amend the Act) will enable industry standards to be refined and improved over time.

An accredited person's accreditation is subject to termination on grounds of criminal conduct (including breach of the Act) or failure to maintain accreditation after warning, for example in relation to self-audit or record-keeping.

The following graphic illustrates the three components of accreditation.



Importantly, the package provides the flexibility for the addition of appropriate local consumer protection elements, the identity of the Regulator, etc so as to optimise compatibility with differing regulators and administrative considerations.

The NMVTRC welcomes stakeholder comments on the model law package. In particular, the NMVTRC is interested in stakeholders' views on—

- the likely impact and effectiveness of such reforms if implemented nationally;
- any interdependencies that need to be taken into account in design of related reforms (including the extent to which success relies on national harmonisation or synchronisation, etc);
- the achievability of such a reform program; and
- any perceived constraints or downsides that the NMVTRC should consider.

It is requested that comments be lodged electronically in both PDF and MS Word format via email to info@carsafe.com.au using *Modernising Regulatory Regimes to Optimise Compliance* in the Subject line.

Comments should be forward to reach the NMVTRC by the close of business on **Friday 19 December 2014.**

All comments received will be treated as public documents and may be consolidated with the comments of others, or summarised, and published.

Related reading—

Victorian Inter-Agency Task Force into Compliance with Local Laws and Illicit Export Activity (Task Force Discover – Final Report, NMVTRC September 2014).

Review of Regulation of Separated Parts Markets In Australia Report (DLA Piper Australia for the NMVTRC, February 2013).