

INQUIRY INTO UNFAIR TERMS IN CONSUMER CONTRACTS

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Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

Submission to the Legislative Council Standing Committee on Law and Justice Inquiry into the incidence and impact of unfair terms in consumer contracts.

TTF Australia (Tourism and Transport Forum) welcomes the opportunity to provide the following comments to the Legislative Council Standing Committee on Law and Justice Inquiry into the incidence and impact of unfair terms in consumer contracts.

TTF Australia (Tourism & Transport Forum) is a national, member-funded CEO forum, advocating the public policy interests of the 200 most prestigious corporations and institutions in the Australian transport, property, tourism & infrastructure sectors. TTF's Membership includes the major operators and investors in Australia's tourism and transport industries.

TTF Australia does not support unfair contract terms, however we consider that additional regulation on organisations that already ensure the fairness of their contracts with consumers and businesses to be onerous and unwarranted.

Overview

TTF has a substantial interest in the vehicle rental industry, representing the six largest car rental vehicle operators in Australia, accounting for around 75 percent of total Australian car rental industry revenue.

TTF Australia has a number of key concerns in relation to the points raised at the Committee's public hearing on October 20 2006 and also in submissions made to the Inquiry. Primarily, these are concerns that the vehicle rental industry is unfairly targeted as an example of an industry where unfair contract terms are prevalent.

TTF Australia urges that the Committee consider that the majority of the vehicle rental industry endeavours to ensure that contracts are fair and easily comprehensible for consumers; and that with the imposition of further legislation the government risks inflicting significant compliance costs which would ultimately be passed onto the consumer.

TTF requests that you consider the issue of enacting NSW legislation to deal with unfair contracts from an industry perspective, and that the generalisations made about the vehicle rental industry be reviewed.

Unreasonable rental contracts

Due to the highly competitive nature of the vehicle rental industry, exceptional customer service is crucial to business viability. An integral dimension of customer service in this industry is ensuring that the customer experience is 'hassle free'. This includes the provision of fair and easily comprehensible contracts for consumers.

In response to criticism over the 'convoluted' format of rental contracts, TTF would like to inform you that a number of proactive measures have already been implemented by the major vehicle rental organisations to improve the comprehensibility of their rental agreements. These measures include:

- increasing the font size of terms and conditions on rental agreements
- offering simplified contracts in plain language
- a full explanation of damage and excess liabilities
- provision of plain language descriptions of all liability reduction options available
- provision of customer fact sheets aimed at better market education

These proactive measures taken by the rental vehicle industry have made mandatory regulation of the industry unnecessary, a point that is reconfirmed in comments made by Dr Lanyon during the Inquiry's recent public hearing.

In response to criticism that there is limited time for customers to adequately absorb the terms and conditions of rental contracts at the point of purchase TTF urges that you consider that efforts are made by the major rental organisations to ensure that customers are completely aware of the conditions of contracts. These include:

- verbal advice by the rental officer to read terms and conditions
- verbal explanation of the conditions of the contract
- full verbal explanation of damage and excess liabilities

The major vehicle rental organisations represented by TTF also have their contracts and standard terms and conditions available for citing and inspection on their company websites. Alternatively, contracts can be mailed out to prospective customers (if requested) prior to the rental period.

The above initiatives which have been implemented to improve the comprehensiveness of rental vehicle contracts have already been put into practice by approximately 75% of Australia's vehicle rental industry (i.e. Australia's six major operators, all of which are represented by TTF Australia). It is difficult to comment on the actions of smaller operators in the industry, however, it is clear that the majority of the industry is proactively addressing vehicle rental contracts.

Credit card transactions

TTF Australia supports the vehicle rental industry practice of debiting credit cards for insurance excesses or confirmed damage. This is a common practice for other service/hire industries, where charges cannot always be finalised when the customer returns the equipment or leaves the care of the service provider.

It is essential that vehicle rental operators have the ability to deduct any charges from a customer's credit card, particularly, given that a large number of customers reside interstate or overseas and without this measure it would be virtually impossible to recover any liabilities from customers.

TTF Australia also notes that it is important that consumers are fully aware that such deductions can occur and it is our understanding that the major operators within the industry do this.

Misleading Advertising of Vehicles

The major operators in the vehicle rental industry are highly competitive and ensure that they provide exceptional customer service to maintain their business viability.

In many instances some of these companies are operating side by side, particularly at major tourist hubs like airports, making their reputations a major differentiating point. Reputation is largely influenced by customer satisfaction from previous rental transactions and word of mouth, for these reasons the major companies take extensive measures to ensure customer satisfaction.

TTF acknowledges that some vehicle rental operators may engage in misleading or deceptive advertising and that some vehicle rental operators may not have the right vehicles or appropriate levels of stock to back up their advertisements. However, the number of vehicle rental operators engaging in such practice are minimal and do so at their own disadvantage given the intense competition in the industry.

The Trade Practices Act (TPA) is a sufficient mechanism to deal with the problem of misleading advertising. For example, where a business misleads consumers as to the cost of a rental vehicle by advertising without disclosing additional charges, then the business is in breach of section 52 of the TPA and is liable for prosecution.

Given the legislation already in place to combat misleading advertising there is no justification for further legislation on this front. Enforcement of the existing legislation should therefore be pursued.

TTF notes that most of the vehicles supplied to customers by the six major vehicle rental operators are approximately one year old and in perfect working order.

The competitive nature of the industry to provide exceptional customer service prevents larger operators from offering vehicles of inferior condition as it would impact negatively on their business reputation and levels of patronage.

Regulatory Options

There are already extensive legislative channels in place to protect Australian consumers and therefore TTF does not support moves to enact NSW legislation to deal with unfair contracts.

The industry view is that existing legislation which can be applied to the vehicle rental industry is sufficient to enable a high level of consumer protection, and ensuring compliance through existing legislation should be pursued.

TTF urges that any additional regulation imposed on the vehicle rental industry will result in increased costs to businesses. In reality these extra costs will be imposed on the major car rental organisations that are already dedicated to enhancing consumer protection, punishing them for the unscrupulous behaviour of a minority of operators in the market place and making it more difficult to ensure these unruly operators compliance.

Comments from Dr Lanyon in the public hearing regarding the actions taken by the major rental organisations in addressing their rental term agreements demonstrates that the major players in the industry have nothing to conceal and have shown positive intent to rectify any problems with the current contracts.

TTF understands that stakeholder consultation will be an integral element of the consultation process. I encourage you to involve TTF Australia in this process.

If you would like to discuss any of the issues raised in this submission further, please do not hesitate to contact me on (02) 9240 2000 or via email jhoysted@tff.org.au

Yours sincerely

A handwritten signature in black ink, reading "Jack Hoysted". The signature is written in a cursive style with a large initial 'J' and 'H'.

JACK HOYSTED
National Manager Transport