



28 February 2008

The Chairperson
Portfolio Committee on Safety and Security
Parliament of the Republic of South Africa
P O Box 15
Cape Town
8000

Attention: Ms M M Sotyu, ANC MP

Dear Ms Sotyu

WRITTEN SUBMISSIONS ON THE SECOND-HAND GOODS BILL [B2 - 2008]

Your letter dated 25 February 2008, received via email at 16h37 on 26 February 2008 in the aforementioned regard refers.

Firstly, we would like to thank you and the members of the Portfolio Committee on Safety and Security for affording the Retail Motor Industry Organisation the opportunity to make a written submission on the Secondhand Goods Bill (B2-2008).

For the record, the Retail Motor Industry Organisation (RMI), which is celebrating its Centenary during 2008, represents the interests of 8000 establishments in the retail and wholesale motor industry, which includes the interests of some 1600 new and pre-owned motor vehicle and motorcycle dealerships (herein after referred to as motor vehicle dealership).

Before making comment on the Second-hand Goods Bill (B2 - 2008), we respectfully wish to draw the Portfolio Committee's attention to the fact that the business and operational processes within motor vehicle dealership are already highly regulated via other legislation:

1. All establishments operating in the retail motor industry are obligated to register with the Motor Industry Bargaining Council and operate in terms of the Main Agreement for the Motor Industry. This collective Agreement stipulates the minimum prescribed wages and working conditions in the industry which are to be adhered to by both the employers and employees alike;
2. In terms of the Financial Advisory & Intermediary Services Act No. 37 of 2002 dealerships that provide financial advice and / or sell insurance related products in respect of motor vehicle sales have to register with the Financial Services Board as financial service providers and meet various onerous compliance requirements. In addition, every employee within motor vehicle dealerships who interact with the consumer and provide financial advice and or sell the insurance related products in respect of motor vehicle sales have to comply with the very strict qualification criteria and operational requirements;

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3. In terms of the Financial Intelligence Centre Act of 2001 motor vehicle and dealers are classified as “reporting institutions” and are obliged to report suspicious and / or unusual transactions to the Financial Intelligence Centre;
4. As recently, as 1 June 2007 the National Credit Act No 24 of 2005 became law and here again motor vehicle and motorcycle dealerships that have entered into agreements with the various financial institutions for the provision of finance for customers to purchase motor vehicles are obliged to comply with the requirements of the Act. The same employees as mentioned in paragraph 2, are required to pass a further examination before receiving accreditation by the financial institutions.
5. Motor vehicle dealerships are required to be registered and licensed in terms of the National Road Traffic Act of 1996 and the National Road Traffic Regulations of 1999 as amend. This all relates to the registration and licensing of vehicles in terms of the National Traffic Information System (eNaTIS).

It is important to note that motor vehicles are all registered assets in terms of the Act.

In addition, the following recent amendment ensures a more detailed audit trail via the eNaTIS of the sales and purchase history of a motor vehicle. Regulation 53A “No motor dealer shall display a motor vehicle for the purpose of sale on his or her premises unless such motor vehicle has been registered into his or her name as dealer stock”.

6. Most dealers are registered as VAT vendors and in terms of Section 20(8) and 16(3) of the VAT Act dealers when trading in a pre-owned vehicle have to complete a VAT declaration which records most of the detail relating to the vehicle and the seller as contemplated in the Secondhand Goods Bill (B2-2008).
7. The Access to Information Act and the laws relating to Privacy of Information also has a bearing on the industry.
8. Dealers also have to comply with the provision of the Companies Act and meet all corporate governance and accounting standards.
9. Dealers comply with the current Secondhand Goods Act, however many of the provisions which were drafted many years ago are out of date and do not conform to the changes that had taken place in business practices and market conditions. Dealers therefore find it costly and difficult to meet every requirement. It is for this reason that the Act needs to be amended. It should also be noted that for many years motor vehicle dealers were excluded from the Act, but were reinstated some 8 years ago without consultation.
10. The Consumer Protect Bill when promulgated later this year will also govern the relationship between dealers and their customers in terms of the disclosure of information and ethical trading.

11. New motor vehicle dealers who also have pre-owned vehicle departments and or stand alone facilities operate under extremely onerous franchise agreements and operating standards as stipulated by the motor manufacturer and or distributor.

As can be seen from the aforementioned motor vehicle and motorcycle dealers' business activities are highly regulated and the introduction of further legislation will further increase administration, record keeping and process costs.

There is once again much duplication of record keeping requirements, and we submit that the Secondhand Goods Bill (B2-2008) should be applied in complimentary fashion to FAIS, FICA etc and not in isolation.

The implementation of all legislation should be handled independently, but reporting and compliance should be consolidated as most dictate the same information for reporting just in different formats. This would cut costs for both business and government, as a single auditor can manage the process. If and when necessary the SA Police should be called in to take matters further.

In its current format the Bill will cause a huge increase iro administration and record keeping, with extremely punitive measures for non-compliance, and the potential offences are numerous.

We now wish to comment on the various clauses which either require further clarification and or are not practically implementable within the retail motor industry environment.

Definitions

"Premises" ***Previous definition included the provision "or any part thereof from which business is conducted". Current definition could be read for example to include all vehicle stock which was surely not the intention.***

Clause 3 "Obligation to register"

The extension of the entity obligations to the individual is best left regulated by the Companies Act which holds the respective members of management liable for acts of non-compliance as a business.

Clause 4 "Application for registration"

(2) It is suggested that the wording be amended to indicate that these additional premises must be listed as part of the application for registration ie. no separate registration for every individual premises. Furthermore, in the latter part of the Bill, the wording suggests that these premises form part of a single registration, and simply have their own copies of the registration certificate (see comments under 6. below).

Clause 5 (2) & 6 (2) "Information on application by natural person" *The National Commissioner may require the applicant to furnish additional information or particulars, and may require that the applicant's Fingerprints be taken.*

What will the impact be on registration processing times, where fingerprinting is required? We have instances where the Criminal Bureau has taken 8 months to complete a criminal check requiring fingerprinting. I assume that the purpose for taking the fingerprints would be to check for previous criminal history and not simply to have these on record for future use.

Perhaps one could consider placing the onus on the dealer to ensure that the relevant requirements are met as is the practice under the FAIS legislation.

Clause 6 (c) “the street addresses of all the premises that the applicant intends to use or uses for business purposes;” ***Implies that there is a single registration with multiple premises, not separate registrations for each premises. This appears to conflict with the wording under Section 4.***

Clause 6 (1) (d) “The full name and identity number of every person involved in the management of the applicant” ***This is impractical and will be an administrative nightmare as most dealerships have a number of managers in the business such as Dealer Principals, new and pre-owned sales managers, parts and workshop managers etc. We do not believe that it is relevant to include all these people? The responsible people should be the Dealer Principal and Pre-owned Sale Manager at the dealership, as they would be the people who would be directly responsible for this portfolio.***

It is also not practical for the management of the big motoring groups to each give the full name and identity number of each of their employees.

Can the registration procedure for large Groups not be simplified i.e. provision to allow for a single group registration with multiple premises listed as was done with FAIS and the National Credit Act and registers be maintained and updated with the relevant authority within a legislated timeframe?

Clause 6 (1) (f) requires “any other prescribed information” ***The Bill does not define what the “prescribed information” is. This in our opinion is to open ended and ultimately could lead to confusion in the industry. We suggest that the detail of this information be defined, failing which the clause be removed.***

Clause 8 (3) “If a person other than a natural person carries on business as a dealer, the certificate must be issued in the name of the person contemplated in section 3(2). ***Having certificates issued in the name of the relevant manager would be problematic in industries where there is high management turnover – each time there is a resignation a new certificate would have to be requested. Suggest that the registration certificate purely provides registered entity and premises details, and that register be updated.***

Clause 8 (5) “Registration remains valid for a period of five years from the date the certificate is issued.” ***Although 5 years appears to be a reasonable length of time, we would prefer that registration be for an indefinite period to reduce administration time and costs for both business and the SAPS. In the event that details of the applicant change, section 9 caters for an amendment to the certificate of registration.***

If the fees are the issue, then annual levies could be introduced as per FAIS.

Clause 9 (1) (b) ***Some of the listed Motor Groups change ownership on a daily basis as their shares trade on the Stock Exchange.***

Clause 9 (4) *Logistical issues would exist with regard to the return of all existing certificates before the new ones can be issued eg. where you have 100 dealerships. It is suggested that the requirement be amended to make provision for the return of the old certificates within 30 days.*

Is there no way the same process can be followed as with FAIS to avoid issuing certificates for all changes, rather that changes are affected on a register basis, and all registered dealers be on a website for consumers to see.

Clause 11 (3) *It is suggested that the wording be amended to indicate that the Commissioner may cancel the registration as opposed to must cancel the registration.*

Clause 11 (c) *“Is convicted of an offence of which dishonesty is an element” **We are of the opinion that the dealer should not be cancelled, but that the individual who committed the offence be suspended / barred as set out in FAIS in terms of Fit and Proper criteria.***

Clause 11 (3)(d) *The wording suggests that regardless of the nature of the breach of the Act, the commissioner must cancel the registration (see previous comments in this regard). This statement implies that in most cases a breach would result in fines, prison terms and the cancellation of registration. Suggest this is reviewed and expanded upon for clarification purposes if necessary.*

It is also suggested that Act be amended to make provision for the closure of specific premises as opposed to the complete cancellation of registration where a breach has occurred and the nature of the offence is severe enough.

Clause 13 *“Transfer of Certificate” **No transfer of certificates is allowed, and the Bill does not mention whether or not you can continue to trade while waiting for the application of the transferred business to go through, or does it only become effective on conclusion of the transaction? What is the lead time when purchasing a business to deregister under the original owner’s license and re-apply as the new owner?***

Clause 13 (3) *“The certificate of the dealer transferring the business must be surrendered to the National Commissioner upon the issue of a new certificate” **This clause should clearly clarify that the surrendering of the certificate should be the obligation of the selling dealer and not the purchasing one.***

Clause 14 (1) *“Subject to section 15, the National Commissioner may grant temporary registration to a person” **14 (1) (a) (b) relates to the prescribed period and conditions but does not state what they are, and then 14.(2) has a retraction clause referring to the conditions. Surely these must be defined so that it is not broad based and biased. Industry also needs to be consulted to ensure that they are practically implementable.***

Clause 15 (1) (b) *“Has in the preceding 10 years been convicted of an offence in terms of this Act or the previous Act, irrespective of the sentence imposed, and was within five years after the conviction again convicted of an offence in terms of any of the said Acts and sentenced to a fine exceeding R200;” **We are of the opinion that this clause is***

extremely punitive and makes no distinction between minor administrative transgress (do to an oversight) as opposed to blatant and willful transgressions of the Act. The time scale of 10 years in our opinion should not be reduced to a more acceptable period of say 5 years.

Clause 15 (2) (b) *What about individuals who hold share options or shares in a listed Corporation or in a private entity? You cannot disqualify the Company on this basis.*

Requirements should only be applied to new management as currently there may well be staff who do not meet this criteria but fulfill the anticipated role, failing which companies may have to retrench numerous individuals.

Clause 16. *“Display and maintenance of certificates” Will the current regulatory standards apply with regard to a certified copy of the original being considered as “original” ?*

Clause 22. (1) *“Unless otherwise provided in this Act, a dealer must keep a register in the prescribed form and record in the register the prescribed particulars regarding every acquisition or disposal of goods.” Will separate registers be required in the event that other registers are already maintained under existing legislation?*

An exact sample of the layout of the manual registers must be part of the addendums to the Act. Everyone can interpret the layout of the information required differently.

Clause 22 (4) *Should consideration not be given to setting a threshold for items that need to be included in the register and for which copies of IDs have to be obtained (note this extends to not only the person disposing of the goods, but also the person acquiring the goods).*

Clause 22 (8) *“Where a dealer keeps registers electronically, printouts must be made on a daily basis and retained subject to subsection (6).” Having to print and store paper lists on a daily basis is extremely onerous and costly and not very useful. This opens the door to error which will result in unnecessary punitive measures being taken against “guilty parties”. Electronic detail is far more accurate, controllable, cost effective, and retrievable if the need arises, it also provides for a more robust audit trail. The majority of dealers have computerised dealer management systems in place.*

Having to printout the registers effectively nullifies part of the reasoning for having electronic records and will result in unnecessary costs and environmental damage.

If there are dealers who do not have systems in place then they must use the manual system.

Clause 24.1(b) *“Store goods elsewhere than on the premises for which a certificate has been issued in terms of this Act;” This is not practical in the motor vehicle dealer environment as dealers during the normal course of their business recondition*

and consign stock outward, inward and between dealers. Dealers also drive them as demonstration vehicles and assign them to customers for their use for various reasons such as courtesy vehicles while their vehicles are being repaired etc.

Certain manufacturers in terms of their operating standards do not permit dealers who have traded in a vehicle of another brand to display and or store those vehicles with the other brand. This means vehicles need to be stored elsewhere and or immediately wholesaled to another dealer.

Legislation requires that dealer premises must be extended to include any other premises where goods may be stored. There does not appear to be any value to listing these additional premises as these are usually not client facing premises (which if listed would need to have a registration certificate and a responsible person allocated, which hardly seems appropriate for a storage building).

Perhaps this could be reviewed and reworded.

Clause 24.1(d) “Deliver goods acquired by him or her to a person or change the form or alter the appearance thereof until after the expiration date of a period of seven days from the date of acquisition thereof;” *This provision is not practical in the motor vehicle dealer environment and will have an extremely negative financial impact on the business. We are of the firm opinion that, provided the goods are properly recorded in the prescribed register, and the necessary audit trails are in place there should be no restriction. This clause also in effect restricts dealers from disposing (selling) of the vehicle until the seven day period is up. This restriction will add unnecessary costs into the system and many dealers will not be able to afford the additional holding and interest costs thus making them financial non-viable.*

Clause 24 (2) “During the period contemplated in subsection (1)(d) or during any period that any pawned goods are subject to a pledge, the articles must be kept separate from all other goods of the same or similar kind and description.” *This is onerous as motor vehicles cannot fit onto another shelf, so storage is problematical (many dealers are already experiencing space problems) and there is already a control mechanism in place in terms of eNaTIS. Regulation 53A “No motor dealer shall display a motor vehicle for the purpose of sale on his or her premises unless such motor vehicle has been registered into his or her name as dealer stock”*

In addition, certain manufacturers in terms of their operating standards do not permit dealers who have traded in a vehicle of another brand to display and or store those vehicles with the other brand. This means vehicles need to be stored elsewhere and or immediately wholesaled to another dealer.

This should be reworded as the implication that all other goods of the same or similar kind and description may not be “housed” together in itself has serious implications if directly translated i.e. every time a vehicle is traded or bought, each one is going to have to be stored in a separate place, surely this is not the intention?

Clauses 28, 29, 30, 31 and 32 “Dealing with the Powers of Police” *FICA in particular and FAIS are both aimed at enforcing the law, and cleaning up the relevant*

industries whilst at the same time protecting the consumer where the risk is substantially higher than used goods. The method applied is far more sensible in respect of good business practice. In some instances the police will be justified in a search without a warrant if they believe it will defeat the purpose of the search. Is this Constitutional? What happened to innocent before proven guilty? The jurisdiction of the Bill is very wide. No other legislation to our knowledge has provided such a wide blanket of power to the regulating authority. It seems in principal the SA Police can walk into any business, at any time and make demands that if you fail to comply with immediately will be deemed as an offence. All other legislation has a process that has to be followed in the event of a real or perceived transgression and the people that have to audit (investigate) ensure compliance are qualified and skilled in this respect (auditing). The same should be applicable in respect of the Secondhand Goods Bill (B2-2008).

Clause 33 “Penalties” *The penalties are extremely punitive. We are concerned about the suspension or cancellation for the transgression of one dealership within a larger Group of dealerships. Question: Will the whole Group be cancelled? If so that would effectively put the Group out of business with the resultant loss of jobs and wealth creation in the economy. Is this fair or practical? In terms of clause 33(d) the forfeiture of the assets – do this mean the illegal goods or does this mean all assets of the business? Industry requires clarity in this regard.*

Clause 34 “Appeals” *We are of the opinion that should a dealer still feel aggrieved by any decisions even after appealing to the Minister the dealer should have the right of recourse to the Courts. Is that not a Constitutional Right?*

Clause 39 (1) “The Minister may in writing delegate any function conferred upon the Minister under this Act, except a function referred to in section 34 or 42, to the National Commissioner or any other police official.” *We are concerned that if the Minister delegates function to any police official who is not adequately trained in terms of this Act, the said official might take certain inappropriate action which could have serious consequences for the dealers. We believe that as with FIAS there should be Fit and Proper criteria which a police official needs to comply with before delegated functions be conferred on him/her.*

Clause 42 “Regulations” *Industry at this point in time have not had the benefit of perusing the draft regulations and therefore are not familiar with the content thereof. We are of the opinion that the regulations must not be contradictory with the content of the Act and further request that the Secondhand Goods Bill (B2-2008) only comes into effect once there has been time to make comment and reach agreement in terms of the content of regulations.*

Clause 43 “Transitional provisions” *We are of the opinion that if you are already registered as dealer in terms of the existing dispensation then you should only have the obligation to register in terms of the new dispensation at the expiration of the period of one year in terms of old Act.*

General Comment *In the various clause dealing with the fines and imprisonment of offenders, there is no indication of monetary value of the fines and we are of*

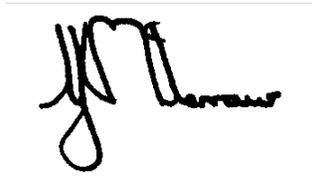
the opinion that these must be fully set out and listed in the Act, as one then knows what the fine is and how it is calculated and what for.

We sincerely trust that the Portfolio Committee will take our comments into account when reviewing the Secondhand Goods Bill (B2-2008) and should the Committee require any additional information please feel free to contact the writer at any time who will address your requests accordingly.

In closing, we would also appeal to the Portfolio Committee to extend an invitation to the Retail Motor Industry Organization to make oral representation as there are certain issues we believe would be better explained in person.

We await your positive response.

Yours faithfully

A handwritten signature in black ink, appearing to read 'GARY McCRAW', enclosed in a thin black rectangular border.

GARY McCRAW
DIRECTOR: NADA / MDA