



MTAA Limited submission to the  
ACCC New Car Retailing Industry  
Market Study Issues Paper  
November 2016

November 2016

## *New Car Retailing Industry Summary*

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- New car retailing is often unfortunately portrayed as the pariah industry of the automotive sector. While any genuine consumer concern or problem is of paramount importance, focus on new car retailing is almost always unbalanced, adding fuel to the negative reputation fire.
- Rarely is the contribution of more than 1500 new car dealers operating from more than 2600 facilities nationwide; or the 66,000+ Australians employed by industry; or its economic contribution of 1% of nominal GDP; or the important community roles played by dealerships in cities and towns across the nation; given equal recognition.
- The purchase of a motor vehicle is still the second largest individual transaction a consumer will likely make after a home, even though they may now do this more frequently than 20 years ago. It is easily the most recognised industry in a highly fragmented automotive sector. It has presence (large prominent retail premises, hundreds of thousands of online sites, blogs, and references); it delivers highly complex products critical to the daily lives of most Australians; and is one of the few products where there is often a direct human emotional attachment.
- New car retailing also seemingly gets disproportionate attention from consumers, consumer representative groups, legislators, regulators, manufacturers / distributors, other sector industries, and other parts of the supply chain. In 2016 alone, new car retailing:
  - Has been subjected to further examination by separate Federal Government authorities looking into finance and insurance provision, vehicle standards, taxation and competition; and
  - Faces ongoing uncertainty created by the Commonwealth Government's consideration of a potential deliberate intervention in the new car retailing market with ill-conceived policy (personal imports) and lack of attention to other out of date and illogical policies including the Luxury Car Tax.
- New car retailing does not deserve the negative reputation, perception or the imputation it endures. More often than not the new car retailing industry and its dealer participants are the 'scapegoats' or the 'meat in the sandwich' for problems and issues created by other sector industries and supply chain participants who obfuscate their own obligations and relationships to, and with, consumers.
- These observations must not be misinterpreted. Like any industry, new car retailing will have businesses and individuals within those businesses whose behaviours, processes or actions may be found to be in breach of consumer laws, or not meet consumer expectations, requirements or protections, and as such they should, and must, be held accountable.

- Nor is the MTAA and members suggesting that there is not room for improvement; room for proactive solutions to emerging matters; room for greater collaboration with other supply chain participants; room for improved relationships; and most importantly room to reduce the incidence of consumer complaint or concern, raise levels of consumer comfort and satisfaction and improve the core reputation of the automotive sector and industries within it such as new car retailing.
- MTAA and Members genuinely welcome the ACCC's interest in the new car retailing industry and the wider automotive sector in undertaking this market study. It comes at a time of unprecedented change and considerable pressure.
- MTAA and Members firmly believe that for the study to be valuable the team must approach its task with an open mind and it must dig deeply into this highly complex industry. The ACCC Market Study Team needs to explore and properly understand highly complex relationships, and largely unseen or unknown interdependencies and interrelationships which are not readily apparent to external parties or consumers.
- The intricacies of the dealer and manufacturer / distributor relationship and their agreements should also be closely examined as imbalances in these relationships could and do impact consumers, but not necessarily at the fault of dealers.
- The Market Study Team should pay particular attention to notified imperfections of current legislation and regulation and not be swayed by populist and potentially 'easy' solutions such as 'lemon laws' which ultimately are, in the opinion of MTAA and Members a 'legislative sledgehammer' and a disproportionate response when the entire market is considered. These imperfections should be addressed - not just from a consumer perspective, but for business participants in the market so that more balanced outcomes are achieved.
- MTAA members are in a unique position. They represent the interests of all retail, service, repair recycling and associated industries in the automotive sector, including new car dealers, used car dealers, independent mechanical and motor body repairers, recyclers and other discrete automotive professions and services. Membership and structures allow the State and Territory representative organisations to have a thorough understanding of the critical issues and problems facing these industries most of which are undergoing unprecedented change and structural adjustment. It also provides opportunities for identifying commonality, potential for compromise, and to identify, facilitate and coordinate solutions, where possible.
- MTAA has addressed critical issues as far as practicable, and as far as shy and sometimes fearful business members will allow, but suggests the ACCC market study team, allocate enough time to independently access industry business members to support their investigations and analysis.
- MTAA and Members will offer every, and any, assistance required through the MTAA Secretariat.

## Automotive Industry in context

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- The Australian automotive sector consists of more than 65,000 businesses nationally. This figure is derived purely from Australian Bureau of Statistics (ABS) data. The vast majority of which are small and family owned and operated businesses. (*However it should be noted that not all automotive sector related businesses are necessarily included in ABS data gathering*). For the year ended June 2015, aggregate employment for the automotive sector was recorded at 362,000 Australians.
- In the automotive sector a significant proportion of employment, investment and taxation in its many layers retailing are reliant on the sales and service structures consequential to the manufacturing vehicles. Hundreds of thousands of staff and small and large businesses largely independently owned or operated form the heart, soul and force behind Australia's automotive industry, which assures the nation's continuing reliance on road transport.
- Modern motor vehicles are now highly complex, integrated, and increasingly inter-connected products. Increased safety, efficiency, environmental, mobility and connectivity outcomes are being achieved with increasing reliance on computerisation, often with multiple third party Original Equipment Manufacturers (OEMs) creating and supplying technologies particularly in advanced systems and sub-system integration. The commercial arrangements between suppliers in the manufacturing of vehicles have potential implications for the management and supply of information and data to other supply chain participants.
- The automotive sector, like many parts of the economy are facing a range of external influences including, globalisation, rapid technology change, application of that technology; changing consumer requirements, preferences, power and behaviours; the power (or lack of) of market participants; a lack of consistent and coordinated policy. In addition, the potential damaging implications of poor or ill thought policy proposals (such as personal importation of near new vehicles), are all driving unprecedented change and sector and industry consolidation.
- The provision (and in some cases the type) of services, the skills and qualifications required, and traditional business models needed, are resulting in structural adjustment to industries within the sector. Some industries within the sector are also contending with significant skills shortages, particularly in mechanical and body repair.
- The closure of the final two domestic vehicle manufacturers in 2017 will see approximately 18% of the total automotive sector disappear with thousands of jobs lost. The nation will for the first time since the late 1940's be solely reliant on imported motor vehicle products. These closures will also potentially add further dynamics to relationships and interfaces with consumers, as the sector as whole adjusts to this new environment and other emerging pressures and challenges.

## Motor Trades Association and Member Associations in context

- MTAA Limited is the national association of participating State and Territory Motor Trades Associations and Automobile Chambers of Commerce Members and is the voice of what will be more 95% of the automotive sector, when car manufacturing ceases, with largely key Commonwealth Government stakeholders and the community.
- MTAA Limited Members have almost all industries of the automotive sector represented as business member constituents. This allows MTAA Limited Members the unparalleled ability to understand the operations, issues, concerns and risks of new car retailers and other automotive participants. These industries include, but are not confined to:
  - *New Car retailing (including service)*
  - *Used car retailing (including some who service)*
  - *New and Used Motorcycle retailing (including service and recycling / dismantling)*
  - *Farm and Industrial Machinery retailing (including service and in some cases dismantling and recycling)*
  - *Tyre retailing and Tyre Retreading*
  - *Tyre recycling*
  - *Towing*
  - *Vehicle body Repair (smash repair)*
  - *Independent automotive servicing*
  - *Specific service professions including glass, transmission, engine replacement and reconditioning, brakes, steering, automotive electrical and air- conditioning.*
  - *Bus and Coach*
  - *Service Station and convenience stores (Franchise and Independent)*
  - *Auto Recyclers, dismantlers and part suppliers*
  - *Heavy Vehicle*
  - *Vehicle Rental*
- Many MTAA Limited members are also automotive industry training providers and have extensive operations and facilities in post trade and apprenticeship training and skills development.
- Some MTAA Members may have provided independent submissions reflecting specific views of their members. This submission supports any member representations that may have been made. Where there are differences of opinion or position between the members, this is an indicator of a healthy federated organisation and of an automotive sector with a wide variety of views and positions. MTAA recognises these differences where they occasionally occur and are reflected in this submission.
- On behalf of its State and Territory Association Members, the MTAA has been heavily involved in matters connected to and at the forefront of national policy development in regard to the automotive sector for more than 25 years and has been instrumental in obtaining improvements and benefits for consumers, sector participants, businesses and the social and economic wellbeing of the nation.

# 1. Structure and Operations of the new car retailing industry

## MTAA Recommendations

- The Franchising Code of Conduct requires either addendums or supplementary schedules to give prominence to the specific matters peculiar to the new car retailing industry and the 'Dealer Agreements' that are core to it.
- Equal prominence must be afforded to the 'complete picture' of the new car market supply chain particularly the existence of multiple profit centres and value contributions.
- Sanctioning out critical product offerings and profit centres such as insurance and finance risks undermining a complete understanding of the new car market.
- Dealer Agreements and the relationship between manufacturers / distributors and dealers require deep analysis to properly understand the operating environment of new car retailers.

## Overview

- With 67 brands, more than 400 model variants, 1500+ franchised dealers, operating from more than 2600 facilities, employing more than 66,000 Australians and serving a total population of just 23+ million; the new car retailing industry in Australia is the most competitive and volatile right hand drive, (if not total) market in the world.
- The Australian new car retailing industry is undergoing significant structural adjustment resulting from:
  - Globalisation
  - Impacts of the world's most competitive and volatile right hand drive market.
  - Rapidly changing and application of new and emerging technologies.
  - Changing consumer behaviours and requirements.
  - Emergence of ride sharing and levels of automation.
  - Consolidation of new car franchise dealerships by:
    - Traditional 'family owned and operated single brand' dealerships consolidating to larger multi-franchise, multi-site businesses, and
    - Acquisition of private dealerships by public owner dealership companies.
- Current estimates have the number of new and used car business establishments at 4,618.<sup>1</sup> Of these: more than 1500 new car dealer franchises operating from approximately 2600 new car retailing facilities.

<sup>1</sup> IBISWorld, July 2016, Industry Report G3911: *Motor Vehicle Dealers in Australia* viewed 19 October 2016.



- The ACCC to an extent has appropriately described the new car retailing supply chain. But this cannot be the start and finish of the industry's descriptor. Of equal if not greater importance are the profit centres and value components of the supply chain. These are important in the relationship between new car retailing and consumers and require a thorough analysis and understanding.
- New car sales are not a profit centre in their own right and a successful profitable dealership business model is reliant on the provision of other offerings including finance and insurance products, service and parts.

## The Franchise Code and Dealer Agreements

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- Vehicle manufacturers / distributors have traditionally used a franchise-like operation as the retail distribution mechanism for the localised stocking, display, demonstration, sale, pre-delivery, accessorising, service, parts supply, and warranty provision, safety recall, financing, and marketing, of their vehicles.
- New car retailers, or dealers, vary from family owned, independent, single brand, single location, dealerships to multiple brands, and multiple location dealerships in either private companies or public corporations. Increasing pressure is mounting particularly on the family owned single brand / facility dealerships. Acquisitions by public corporations continue to grow, but there is expected to be a 'natural ceiling' where this growth will slow and potentially plateau. There is no question that due to many influences, the market continues to and will continue to consolidate for the foreseeable future.
- Dealership agreements and operations are regulated by the Franchising Code and other instruments including the ACL and state and territory based legislation, regulations, and where applicable, licensing.
- As an industry directly impacted by the state of world and domestic economies, world car production, fuel price, and consumer financial health, new car retailing is cyclical.
- Almost all dealerships are lean, with little room for internal growth with three primary revenue sources including sales, service / repair / parts supply, and finance and insurance products. They are high cost businesses with considerable capital investment, fixed cost demands and extremely small margins on the actual sale of new vehicles.
- New car retailing is consolidating with growing business closures over the past five years and shifts from traditional models. The Australian new car retailing industry closely relates to the European market in terms of market concentration ratios and distributive structures and participants, recognising market shares are considerably different.
- Most importantly, new car retailers are in constant competition for customers, staff and used vehicles. The two-tier franchise distribution system that is the sole source of intra-brand competition, with inter and intra branding remaining critically important in underpinning a healthy competitive environment.

## Dealer Agreements – an imbalanced relationship foundation

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- “Dealer Agreements” which are core to the manufacturer /distributor /dealer relationship are, as the ACCC is aware, covered by the Franchise Code of Conduct. However it is important to note that new car retailing dealerships are not franchises in the sense of the wider accepted traits of businesses regulated by the Franchising Code of Conduct, and do not have a franchise agreement.
- The significant difference is that a franchise provides a structure and methodology to achieve a prescribed and known outcome and result. As an example a hamburger franchise provides a template that if followed exactly provides a clear standard result. This micro management is an assured recipe for success and is developed from known turnover, exact costs and clearly defined margins. Every burger is the same. Any risk is a risk shared by both franchisee and franchisor.
- The new car dealer on the other hand has a totally independent business. The dealer may represent one or more brands. No two new car dealers or dealerships are the same. Metropolitan, rural, regional, are all different. The buildings, staff, structure, marketing, financial structure are all individual and unique.
- It might be said that a dealer has access or limited rights to a brand for a prescribed period with the nature of access being regulated through a “dealer agreement”. This agreement intends to ‘standardise’ or compel uniformity on a dealer in respect to representation of manufacturer brands without consideration of the individual dealer and dealership. The consequence of this is both considerable risk and restriction to the dealer and the independence of the dealer businesses concerned.
- The term “Dealer Agreement” infers terms and conditions that are agreeable to the dealer.
- In reality the new car dealer has no choice but to agree, despite personal views or professional financial or legal advice. The dealer is rarely able to alter the agreement. If the dealer does not sign the agreement, then simply the dealer does not have access to the brand. If the dealer signs the agreement then the dealership will be granted access, but only subject to the agreement terms and any policy changes that are made during the period of that agreement.
- Two key provisions of the franchise code that require further consideration in respect to “Dealer Agreements” relate to balance of power and sound business modelling, when major capital investment is required.
- MTAA and Members have advocated hard regarding transparency in capital and other outlay requirements during the term of an agreement and in advance of the agreement being settled and welcomed the tranche of changes that were incorporated as amendments in the latest Code review. However for new car retailing even these changes are still not enough.



- Rather than a franchise agreement, Dealer Agreements are essentially an 'instruction manual coupled with the copious policies and procedures manuals' which detail the conditions under which a dealer will be granted access to the brand. The dealer's considerable obligations, performance, measurement and assessment processes dominate the agreements. Little attention in the agreement addresses manufacturing / distributor accountabilities, performance or provides mechanisms where there can be reciprocal assessment and / or accountability.
- The obligations and accountability of dealers are precise and clear. They include but are not limited to:
  - Market share
  - Target achievement (these targets are rarely agreed and usually reflect purely a manufacturer /distributor's ambition)
  - Customer satisfaction indices
  - Product sales mix by model
  - Accessory sales
  - Warranty repair
  - Trade and retail parts sales
  - Training and compliance
  - Policy compliance
  - Compliance with factory guidelines
  - Staff and structure
  - Tools and equipment
  - Stock levels and mix
  - Customer resources including service loan cars, evaluation and demonstrator vehicles, point of sale material.
- The balance of power lies clearly in favour of the manufacturer / distributor who have the capacity to dominate the dealer and dictate the terms of the relationship. It is important to point out that not all manufacturers choose this option, although it is available to them all.
- This imbalance can be clearly identified by examining manufacturer / distributor policies and procedures. The worst aspect of this being their right to amend or change any policy or procedure, at will, without discussion with dealers irrespective of the impact and consequence.  
This is evidenced in –
  - The process for performing warranty work
  - Reimbursement for warranty work carried out on behalf of the manufacturer
  - Factory audit processes
  - Mandatory tool requirements
  - Rationale and action relating to Prime Market Areas (PMAs) or other acronyms used to describe the market area assigned to a new car dealership in a geographic location.
  - Marketing and advertising including web based
  - Trading margins / bonus payments /campaigns
  - Stock policies
  - Plant, equipment, signage and facility investment.

## The interrelationship between Dealer Agreements and the Consumer

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- As Dealership Agreements are core to the relationship between dealers and manufacturers / distributors, they also directly or indirectly contribute to the relationship between dealers and consumers. Many of the areas of interest to the ACCC as detailed in the *Issue Paper* are matters that can be found in the requirements and processes stipulated in Dealer Agreements particularly in terms of warranty service provision and others highlighted in aforementioned points. Some of these are dealt with separately under other headings within this submission.

## A potential solution

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- MTAA and Members have long advocated for a separate Code of Conduct specific to the nuances of the new car retailing industry. However MTAA is acutely aware of reluctance of respective Governments to implement additional regulation by developing and implementing further additional ACCC oversighted Codes of Conduct.
- However, MTAA suggests that because of the nature of the relationship of dealers and manufacturers / distributors, and the critical role of Dealership Agreements, that further amendments or a specific schedule be considered for incorporation to the existing Code of Conduct to deal with these matters and may present as solution to any other outcomes which may arise from the market study. One of the most significant outcomes from the market study could and should be further improvements to the Franchising Code to reflect the matters canvassed in this submission and previous representations.
- A fair and workable dealer agreement should clearly lay down the role and responsibility of manufacturer / distributor and dealer. Not dissimilar to the outcome objectives of the Franchise Code, it should require a business plan of substance not an abstract volume expectation from a manufacturer/ distributor. The dealer in turn would develop a business plan supporting these detailed requirements and expectations. Such a process should be reasonably be expected to identify the overall objectives of each party in its own right including profitability, sustainability and clearly identify the areas of common ground and the process for mutual agreement in an area of joint responsibility.
- Such a process should identify risk and should provide a mechanism for measurement against performance and accountability for both parties. It would be fair and balanced, not provide one party with dominance over the other and it would require a sound business model for each party to commit to when investment is required. Some manufacturers are clearly moving toward this model, others are not.
- In reality, while any agreement can attempt to define the role of both parties, in the end it will always require each to act in good faith. It is this term, and always has been, ultimately at the heart of the relationship between a manufacturer / distributor and new car retailer. Even if a uniform Dealer Agreement across the industry was available it would still require both parties to truly commit to it. The role of Dealer Council would be a critical element in this process.

## The Consumer purchase process

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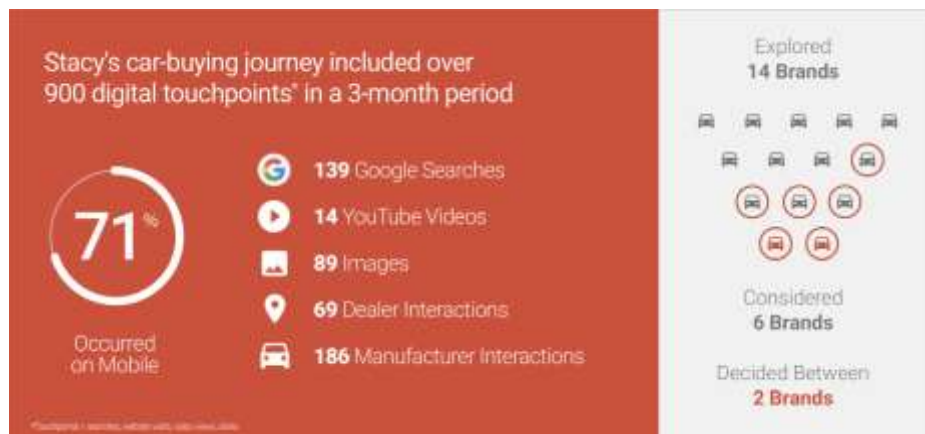
- Cars are highly complex products and consumers display equally complex purchasing behaviours and processes. These include:
  - **Initial driver to purchase** (First car, lease renewal, changed personal. family circumstances etc.) This stage usually also determines the type of motor vehicle requirement.
  - **Information search (in two stages)**
    - Heightened awareness – consumer is more attentive and receptive to advertisements, billboards, commentary from family and friends, etc.
    - Active information search involving online research, dealership visits, test drives etc. (see following section).
  - **Evaluation of shortlist** (usually online through review websites, manufacturer websites other references)
  - **Supplier (dealer) selection and comparison**
  - **Finance and Insurance costs**
  - **Purchase decision**
  - **Post purchase behaviours.**
- MTAA suggests that the time when consumers were disadvantaged in terms of access to information in regard to the purchase process and associated matters in regard to vehicles are long gone.
- It is well documented that most consumers will spend months investigating, analysing, researching pricing and comparing vehicles online before narrowing down requirements and arriving at a potential shortlist before any physical engagement with or visit to a dealer. Many studies have revealed this part of the purchase process can be between three and six months.
- Mobile access to information has fundamentally changed consumer behaviours. Google states the mobile information environment has *'fractured the consumer journey into hundreds of real-time, intent-driven micro-moments.'*<sup>2</sup>
- A March 2016 article by Lisa Gevelber for *'thinkwithGoogle'*<sup>3</sup> details what a typical consumer actually does online through those months of research for a new car. What actual 'micro-moments' in a car purchase journey look like. Google and Luth Research analysed searches, clicks, website visits and video views that made up one individuals path to purchasing or leasing a replacement and larger SUV to meet changing family needs.

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<sup>2</sup> [https://www.thinkwithgoogle.com/micromoments/intro.html?\\_ga=1.154406651.2109883926.1446673098](https://www.thinkwithgoogle.com/micromoments/intro.html?_ga=1.154406651.2109883926.1446673098)  
Accessed 11.00am 18 October 2016

<sup>3</sup> <https://www.thinkwithgoogle.com/articles/consumer-car-buying-process-reveals-auto-marketing-opportunities.html>; <https://luthresearch.com/digital-measurement/path-to-purchase/> Accessed 3.00pm 20 October 2016

- The example in the study conducted over 900 intentional digital interactions to seek information relevant to addressing her car purchase needs. *'These interactions—which took the form of searches, visits, video views, and clicks—were on Google, YouTube, manufacturer websites, dealer websites, and review websites.'* 71% of the digital interactions were on a mobile device.



Interactions defined as searches, website visits, video views, and clicks. "Brands explored" included at least five interactions; "brands considered" included at least 20 interactions, and "brands decided between" included at least 100 interactions.

The Car Buying Process - <https://www.thinkwithgoogle.com/articles/consumer-car-buying-process-reveals-auto-marketing-opportunities.html>

- While the information presented in this example is an advertorial for the services of Google, it is typical of consumer research analysed by MTAA and the knowledge base of MTAA Members and their new car retailing constituents.
- While many studies reflect the rise and rise of consumer activism online in the purchase of a new car, all reflect the continuing importance of face-to-face interaction with a dealer either through the research process of at the end when a decision to buy is imminent.
- Nielson Market Research identified in 2013 that face to face interactions are the primary source of information that drive consumer preferences for new cars for 76 per cent of consumers, followed by online resources for 73 per cent and print publications for 61 per cent of consumers.<sup>4</sup>
- What is clear is the majority of consumers when presenting at a dealership are well informed, generally know what they want, know the basis for financing and other matters and generally feel well equipped to negotiate a purchase or lease.
- What is more difficult to ascertain is how much time consumers spend investigating their rights as consumers, warranty information, and other relevant material in this area? MTAA analysis found most on-line resources worldwide were provided by Departments and Agencies similar in scope and accountability as the ACCC.

<sup>4</sup> <http://www.nielsen.com/content/dam/corporate/au/en/reports/2013/nielsen-au-australian-automotive-report-flyer-march-2013.pdf>

- The potential exists that many consumers do not necessarily place enough emphasis on exploring these matters. Parallels could be drawn with known consumer behaviours in not reading thoroughly or understanding Insurance Policy Product Disclosure Statements and other similar materials.
- A contrary view and seemingly backed by analysis of other customer research<sup>5</sup> that it would be unlikely consumers do not investigate warranty, warranty coverage and consumer recourse, as part of these comprehensive online research activities.
- Even the number of contacts to the ACCC and consumer affairs and fair trading departments and matters raised through other avenues, (including vexatious complaints experienced by MTAA member business constituents) when compared to the size and quantum of the overall new car market, could be equally interpreted that there is a generally a good knowledge by consumers of warranty and consumer guarantees.
- It is believed, based on some feedback from new car retailers that more and more consumers are taking time to analyse the provisions contained in warranties particularly as manufacturers increasingly seek to differentiate their products and increase brand reputation and loyalty by providing once unheard of warranty protections. Kia for example became the first manufacturer to provide a 7 year factory warranty on its products in the domestic market.
- Desktop research also confirms:
  - There is consumer awareness of marketplace competition and they actively take advantage of it.
  - Brand reputation and brand loyalty are influences, but becoming less important against purpose of vehicle, price points, demographic specifics (younger purchasers are less driven by brand loyalty) and other attractants such as extended warranties.
  - A car is a financial and major emotional investment which also includes safety, security, environmental considerations.
  - Competition within the automotive sector is perceived as strong by consumers

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<sup>5</sup> <https://www.bdo.com.au/getattachment/Industries/Automotive/News-Resources/BDO-Motor-150-Report-2015.pdf.aspx>  
<http://www.consumerreports.org/cro/2014/02/2014-car-brand-perception-survey/index.htm>;  
<https://www.eprofitfocus.com/market-intelligence/motor-industry-update>  
[https://www.eprofitfocus.com/media/233268/052535\\_Motor-Industry-Services-Benchmark-2016\\_Cars\\_Final-Art.pdf](https://www.eprofitfocus.com/media/233268/052535_Motor-Industry-Services-Benchmark-2016_Cars_Final-Art.pdf) Please note this is a selection and other research included survey work and reports from McKinsey (Worldwide), Ernst and Young, and PWC. All were accessed between 19 and 26 October 2016

## 2. Consumer Guarantees, Warranties and New Cars

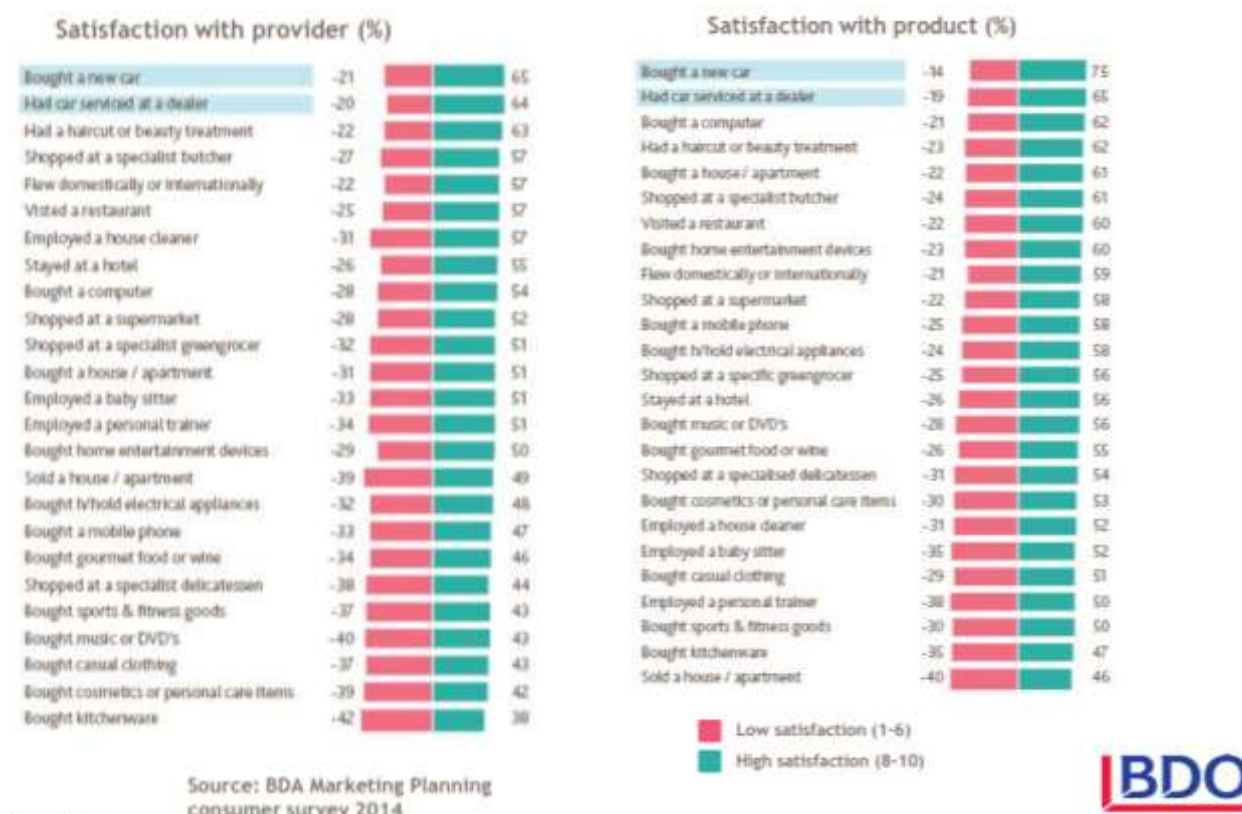
### MTAA Observations and Recommendations

- There is no change to the ACL in terms of broad consumer protections and guarantees.
- Action is taken to address the language of ACL in regard to complex products of motor vehicles.
- Improved consistency between ACL and related legislation / regulation in other jurisdictions.
- Action is taken to provide definitions in the ACL in relation to complex products such as motor vehicles.  
Specifically, the *Australian Competition and Consumer Act 2010* should:
  - define a major fault;
  - define a minor fault;
  - define what constitutes reasonable time;
  - include businesses that purchase goods and services in the course of trading,
  - including where they are held liable for the fault of a product supplied by a
  - manufacturer, in the definition of consumers;
  - define the terms 'unconscionable conduct' and 'misleading' and 'deceptive' conduct ,
  - and 'reasonable person'; and
  - require plain English guidance for consumers, businesses, regulators and mediation and arbitration providers that are consistent and a common point of reference for all parties.
- The obligations and responsibilities and roles of various actors within ACL are also defined and an awareness and education program be developed and implemented nationwide to enhance the understanding and application of the ACL in relation to complex products such as new motor vehicles.
- Lemon Laws are not pursued as a national policy, regulation, position, or solution to potential problems with an extremely small component of a market of over 1 million sales per annum or in addition to protections and guarantees already available in the ACL.
- The introduction of 'Lemon' laws will create an unrealistic expectations of the types of claims that can be redressed and add to the level of grievance and agitation being experienced by those few consumers who are having difficulties, when compared to the overall market.
- Further consideration is given to the potential for enhanced awareness and education of the provisions of the ACL including requested clarity and definition and their application from a consumer perspective.
- The proper role and accountability of manufacturers and distributors in the delivery of effective warranty provisions and service work associated with warranties be investigated and better defined and included in any changes to the ACL and / or Franchising Code.
- The role and accountabilities of Dealers in undertaking warranty work for a manufacturer / distributor be better defined and included in any changes to the ACL and / or Franchising Code.
- The role and accountabilities of any other service provider in undertaking warranty work for a manufacturer / distributor be better defined and included in any changes to the ACL and / or Franchising Code.



## Overview

- MTAA welcomes ACCC Market Study focusing on the automotive industry's compliance with consumer guarantee requirements, as opposed to just the new car retailer. The significance of this differentiation is at the core of several related matters in this submission.
- At the outset MTAA suggests that the market study team take the necessary time to thoroughly unpack elements of this issue.
- MTAA notes the number of consumer contacts relating to consumer guarantees and motor vehicles warranty concerns received by the ACCC during 2014/15 and 2015/16 to date and as mentioned in the issues paper. While not diminishing the importance and the need to address these consumer concerns, MTAA suggests that in a market of over 1.1million sales per annum the level of complaint at 0.16% and should therefore not be over stated.
- This view is supported in other market research indicating levels of consumer satisfaction including this recent research by BDO Automotive presented in September 2016.



## Problems and concerns with interpretation and application of consumer guarantees and warranties

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- MTAA and Members maintain that new car retailing participants are disadvantaged and endure detriment as a result:
  - Inadequate provisions and definitions in the ACL.
  - Lack of consistent interpretation and sometimes contradictory behaviours by and between Federal and State jurisdictions.
  - Excessive bias to consumer rights particularly in cases where vexatious or frivolous claims are made against small and medium sized businesses, who have limited capacity and financial resource to defend litigation.
  - Greater specificity and delineation is required with a suggestion that matters specific to the automotive sector be a schedule or similar to relevant legislation and regulation.
- MTAA and Members are of the view interpretation of the ACL by regulatory bodies such as the ACCC and State based agencies such as the Victorian Civil and Administrative Tribunal (VCAT) and Consumer Affairs Victoria (CAV), and similar agencies and departments in each jurisdiction are inconsistent and often contradictory in delivery of national policy objectives.
- There is a belief by MTAA and Members and their business constituents these regulatory bodies are excessively biased towards the rights of consumers and that the objectives of the ACL are not being appropriately dealt with.
- The objectives of the ACL do not assign specific weighting to as to which elements are more important than any other. Consumer protection, effective competition and fair trading have all equal value and importance under the law and MTAA and Members believe that this balance should be effectively and consistently observed and reinforced by regulatory authorities.
- Consumers and businesses both need the confidence and belief that the ACL's objectives are fair and impartial, providing protection where necessary, along with promoting effective competition and fair trading in a manner that sees neither party being disadvantaged.
- MTAA and Members also believe that whilst there are advantages in having a one generic Australian Consumer Law that is applicable across all goods and services in the economy, in the case of motor vehicles and parts, there are issues concerning product liability that warrant greater specificity and delineation within the legal framework of the ACL. In particular, automotive retail businesses that are at or near the end of the supply chain receive an unfair burden under the ACL through having to shoulder the liabilities and responsibilities for consumer guarantees on products originally supplied from vehicle manufacturers and where the faults occurred are manufacturing faults. This is both unfair and a source of detriment and financial hardship for the members of MTAA's Members, particularly small and independently-owned vehicle retailers.

- Reports received by MTAA from its Members who all conducted surveys with their membership as part of fact finding for submissions to the ACL Review indicate that there is a considerable level of misunderstanding among both consumers and motor car traders with respect to the provisions contained in the ACL regarding motor vehicle sales and repairs. Specifically, a lack of clarity within the law has contributed towards grievances amongst consumers and traders leading to unnecessary litigation in many cases.
- Some of this lack of clarity includes:
  - What constitutes a 'minor failure' and a 'major failure' under section 259 of the ACL?
  - Provision of 'reasonable time' for conducting vehicle repairs.
  - Expectations relating to 'fit for purpose', 'acceptable quality' and expected product life span.
  - Misunderstandings concerning the time length of consumer guarantees for particularly types of vehicles.
  - Consumers concerning the statutory warranties as applicable under the Motor Car Traders Act and their rights under the ACL.
  - Disputes surrounding the liability and responsibilities associated with product failures between vehicle manufacturers and the application of the ACL.
- MTAA and Members have also previously advised the reviews into Australian Consumer Law and the Competition and Consumer Act that the current consumer guarantee threshold (\$40,000) needs to be indexed to 2016 prices with annual indexation thereafter tied to movements in the Consumer Price Index (CPI). This would help ensure that consumer guarantees on the real value of goods and services covered within the ACL is not eroded over time and remains relevant to prevailing economic and business conditions.
- MTAA has provides some case studies of how this lack of clarity and inconsistent interpretation and consumer bias has translated into cases which are arguably not the fault of new car retailers.

## **Inconsistent interpretation of Consumer Guarantees**

### **Case Study 1:**

- A Mercedes Benz had experienced balance shaft failures within the engine. The car would not run. It was taken to a workshop where the failure was confirmed and work undertaken to rectify the fault.
- A short time later the engine warning light displayed indicating the presence of fault codes. These turned out to relate to worn cam phasers. This had no relevance with the original work carried out.
- An ACL claim was made and the Victorian Civil and Administrative Tribunal (VCAT) awarded full compensation to the car's owner because the workshop 'should have known' that these components were going to be faulty in the future.

### **Case Study 2:**

- A 2004 Toyota Prado with 324,000 kilometres on the odometer developed a coolant leak four months after purchase whilst towing a heavy trailer on the highway.
- The temperature gauge was functional however the driver failed to stop and the result was that the engine was destroyed. The coolant leak was a minor defect, however the trader refused to repair the consequential damage.
- The VCAT proceedings were initiated and the Tribunal ruled that the vehicle was not 'fit for purpose' and the consumer was awarded a full refund along with associated costs for damages, despite the consumer having contributed to the damage through failure in their duty to stop and minimise loss.

### **Case Study 3:**

- A 2004 Volvo XC90 aged more than 10 years and with 163,040 kilometres on the clock was purchased for \$13,875.00.
- 4 months and approximately 7,000 km after purchase, the vehicle failed. The applicant was awarded \$4,000.00 at VCAT for the cost of a new transmission along with \$8,200.00 for additional costs claimed to have been incurred.
- VCAT did not provide reasons for its decision.
- The car was sold with a roadworthy certificate. It was examined by mechanics and considered to be in good condition for its age and level of use.

#### Case Study 4:

- A southern regional New South Wales consumer buys two new identical model vehicles (brand and model available on request) from a dealership in neighbouring Australian Capital Territory.
- Vehicles arrive, are 'pre-delivered' and collected by purchaser, who then drives vehicles home to a country location about 1.5 hours' drive from the dealership.
- Days pass . . . purchaser inspects under bonnet of vehicles. Notices white, crystalline 'precipitant' visible on alloy components.
- Purchaser takes vehicles to local mechanic.
- Local mechanic (not a brand dealer / agent) writes a report to the effect that precipitant is evidence of excess salt water exposure and corrosive. Writes of concerns with respect to electronic components. Furnishes report to purchaser.
- Purchaser presents at dealership with report, demands refund.
- Dealer assures customer of real explanation of residue cause and informs, "No" . . . we don't give refunds for 'change of mind'.
- Two weeks pass.
- The dealer receives a visit from two officers from the accountable ACT Government Department administering ACL / consumer affairs matters.
- Dealer subsequently receives letter of demand from purchaser's legal representation.
- Dealer – feeling intimidated and bullied by Departmental Officers and threat of legal action – issues refund cheques for vehicles.

#### Issues

- First and foremost this example is not a 'major failure'.
  - Vehicle would have been delivered to dealer with protective (often naphthenic-base) protective coating sprayed in engine bay / undersides.
  - Removal of coating is required before long-term operation of vehicle.
  - Difficulty in using petroleum based 'degreasers' for coating removal due to environmental considerations/ requirements, so water-based, alkaline solutions preferred.
  - Alkaline solutions based on alkaline salts and causation of residue.
  - Use of alkaline-based degreasers commonly attended to by alkaline salt residue, which is largely inert.
  - Failure of independent repairer to seek information and inform consumer.
- 
- These examples illustrate the unfair and highly subjective application of the ACL by regulatory authorities. It is clear in all cases that the objectives of the ACL were not served.
  - In all likelihood, the litigation and financial losses suffered by the businesses in these examples could have been ameliorated or even possibly avoided had there been more explicit information and better clarity surrounding the particular provisions and guarantees contained in the ACL in regard to motor vehicle sales and repairs.

- A significant contributing factor in this regard is the blurring of the rights of businesses and consumers through the existence of both the Motor Car Traders Act and similar jurisdictional legislation in the States and Territories as well as the ACL. This has also been reported as a cause of major confusion and disputes.
- Statutory warranties provide clear benchmarks for vehicle age and kilometres driven. By contrast, the ACL makes only the following vague statement: 'as a reasonable consumer fully acquainted with the state and condition of the goods would regard as acceptable having regard to the nature of the goods, price, any statement made about the goods and any other relevant circumstances.'
- MTAA and Members raised these concerns from the outset of consultation on the creation of the ACL and since, including the current review. It has never been acceptable that case law is the provider of clarity regarding major versus minor faults and other provisions and MTAA suggests one of the outcomes of the ACCC market study is rectifying these genuine concerns.

## Dealership Vs Manufacturer / Distributor warranty relationships

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- All dealers understand their obligations to manufacturers / distributors to comply with dealership agreements and provisions within or supplementary to those agreements relating to warranty provision requirements. This includes providing reasonable levels of detail for warranty work and reimbursement.
- Too often however the new car retailer is left to confront the consumer over matters which are not the dealers fault or issue, even when taking into account the relationship with the manufacturer or distributor and dealer obligations to them. Too often delays in parts supply, lack of information, lack of support, unrealistic processes and procedures in undertaking warranty work, disputes over whether the required repair is a warranty problem or not, clear faults with the product (already demonstrated, but not sufficient for a full recall; are outside the control of dealers and not their accountability, but are nonetheless forced to be the intermediary with the consumer.
- MTAA and Members have been fielding increasing verbal reports regarding manufacturers and distributors further tightening this area in order to reduce costs. Of course like almost all things in this particular relationship there is a clear reluctance to provide written material because of fear of retribution and the absence of a 'good enough' safe harbor.
- A constant complaint to MTAA Members is that many dealers do not receive adequate or any compensation for some elements of an approved warranty repair. Matters often not included in the cost of warranty repairs can include:
  - Initial and potential ongoing diagnostic work (particular when often a problem is presented which is previously unknown)
  - Unrealistic times for carrying out the repair
  - Administration including reimbursement of time taken to assist customers
  - Freight costs
  - Reimbursement of loan vehicles supplied to customers whilst warranty is being performed



### **Case Study: The influence of manufacturer requirements on dealers in relation to warranty work (2016)**

- In April 2016 Dealerships of a prominent brand received advice regarding changes to 'a warranty audit process'.
- The internal correspondence to Dealers outlined revised requirements of the manufacturer / distributor to substantiate a dealer claim for warranty work performed, and future 'audit' processes outlining levels of charge back and rights of appeal.
- Of critical concern was the inclusion of changed policy indicating that any warranty claim would be rejected if it failed to meet '12 mandatory steps' outlined in the correspondence and required by the manufacturer / distributor.
- It is understood that failure to meet one of the '12 mandatory steps' would trigger rejection of the claim with no right of appeal. This would force the Dealer either to satisfy consumer requirements by absorbing the costs or alternatively not undertake the repair exposing the consumer to lengthy delays to a resolution sought because of the 'rules' of the manufacturer.
- The '12 mandatory steps' along with other requirements it is understood would require a total of 31 different processes to support one (1) warranty claim.
- There is usually no consideration of reimbursement of administrative costs in dealing with this process, nor the potential time impost on the consumer and the business.

## **Lemon Laws**

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- Lemon Laws are touted as being a solution for a perceived problem of significant numbers of motor vehicles that potentially present with reoccurring problems or the same problems on numerous occasions.
- MTAA Members do not support the introduction of lemon laws or cooling off periods.
- Existing provisions within the ACL relating to motor vehicle sales and repairs more than adequately meet consumer expectations for redress without the need for 'lemon' laws
- Given the very low levels of disputation, it is perplexing as to why Government would even consider the introduction of 'lemon' laws.
- There is no common or agreeable definition as to what constitutes a 'lemon'. Even in countries that have had 'lemon' laws over a considerable period of time such as the United States, there are widespread discrepancies between States in the U.S both in the definition of a 'lemon' and the application of respective laws.

- In Australia, there is little empirical evidence in existence that supports the conclusion that there is a need for a legislative response.
  - The recent 2016 'Turning Lemons into Lemonade' survey from consumer advocate Choice, and Treasury's 2016 Australian Consumer Survey are both unable to offer valid substantiation of reported motor vehicle faults as being a major consumer problem warranting 'lemon' laws. Similarly,
  - the 2015 Queensland Government 'Lemon' laws inquiry found complaints to the Office of Fair Trading over the previous four years about 'lemons' represented less than 1% of complaints regarding motor vehicles.
  - In Western Australia that Motor Trades Association of WA noted that of total 33 formal complaints received by the WA Department of Commerce in relation to change of mind or cooling off periods. When one considers that over the 43 months that these complaints were received, the industry sold approximately 350,000 new cars alone. A complaint rate of 0.009% does not demonstrate a significant failure in the market. It also must be remembered that this figure refers to new car sales alone and does not include the several hundred thousand used vehicles traded in the same period.
- The ACL is a broad regulatory framework and is not designed to apply industry specific interventions. If Lemon Laws were to be introduced it would effectively single out the retail automotive sector undermining both small business confidence and growth within the sector. Additionally, there is a risk with 'lemon laws' that unscrupulous consumers could tamper or sabotage a vehicle in an attempt to obtain a refund or exchange for personal reasons or to gain a financial advantage at the expense of legitimate business operators.
- The issue of a cooling off period is not as simple as the consumer changing their mind and the contract being torn up. Vehicle transactions can be complex and most commonly involve a vehicle trade-in and financing. All factors of the transaction must be considered when looking at the potential introduction of a cooling off period. There are also the additional costs incurred by the dealer such as marketing costs, fees to web based sales sites, costs associated with holding stock, and a myriad of other requirements usually specified by manufacturers / distributors in the Dealer Agreement.
- The Market Study Team should seek to answer a question of: 'Does a vehicle that has multiple, separate faults constitute a lemon or does the vehicle that has the same fault fail repeatedly constitute a 'lemon'?
- MTAA would suggest it is entirely unreasonable to legislate against the former, and there are already existing protections from Statutory Warranties that address the latter.
- Additionally, the issue of whether a fault occurs because of product failure or because of poor use; unreasonable expectation; natural wear and tear or inappropriate vehicle selection for a given task is highly subjective and has a material impact on the performance of a vehicle and on the efficacy of any repairs.

## Post- Sale Service Arrangements

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### Overview

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- **Original Equipment Manufacturer (OEM)** car parts are usually produced by the car manufacturer and are identical in every way to the part included on the vehicle when it rolled off the production line. Some OEM parts are also manufactured and provided by contracted companies to the car manufacturer. The parts are usually branded with the car manufacturers brand even to the point where it is 'stamped' into the part for easier recognition as a genuine part by the dealer, smash repairer, insurers and independent mechanics where appropriate. Manufacturers provide parts to dealer networks and in most circumstances this is the primary pathway to access them. However OEM parts are also available through other channels including third party parts suppliers and on- line. OEM parts usually include a warranty, are generally of high quality and usually more expensive than parallel or aftermarket parts.
- **Parallel parts** are usually manufactured by the same contracted companies supplying the car manufacturers with their genuine parts. Car manufacturers can 'permit' the manufacture of 'extra' parts without the car manufacturers branding or packaging . They are branded differently and sold through other supply chains and online. Generally cheaper than the OEM part, they provide competition to the OEM part. Parallel parts are usually of the same quality. MTAA and members do not have sufficient information or details on these relationships.
- **Aftermarket parts** are any car part that is not sourced from the car manufacturer. There are hundreds of companies worldwide producing aftermarket parts and in many cases the parts are 'reverse engineered' or in other words an OEM part is taken apart, analysed, and depending on the part new moulds, etc. are produced to deliver a fit for purpose part. One of the arguments of aftermarket industry is that reverse engineering allows for any identified weaknesses to be rectified making the part potentially even better than the genuine part. Of course OEMs do not agree and cannot agree because to do so would mean that the original OEM part is not the best it could be. Aftermarket parts can also improve performance such as high performance brake components. An analysis of literature suggests that up to 80% of the independent mechanical businesses in the United States use aftermarket parts. Costs are usually the lowest, often greater variety and improved availability. Negatives can include the lack of a warranty, varying quality (including in some cases better than OEM quality, but equally some genuinely dangerous parts).
- There are multiple reasons why these three forms of parts exist and the purpose they serve. They exist at different price points. They can arguably be used at different life stages of a vehicle, the can be used on new or near new vehicles because the service offering is potentially cheaper. They can contribute to a more competitive landscape and underpin different service offerings.

- There are as many conflicting positions on consumer benefit and / or detriment these types of parts, and their supply and availability may provide. For every argument about their benefit – and these can be absolutely correct – there will be equally compelling arguments regarding detriment and even death, if the part is of such poor quality that it contributes to an accident or causes one. Clearly the ACCC will receive submissions advocating each.
- MTAA and Members believe there is room for all, but suggests real questions remain regarding quality assurance frameworks to ensure consumer protection – a fundamental requirement of the ACL. There are also significant questions regarding whether the ACL adequately identifies these supply chain participants and the important role regulations provide for their governance and for consumer protection.
- Imagine a motor body repairer fitting a front quarter panel to a damaged late model vehicle, but not the panel specified for Australian delivered vehicles of the same make and model. Not the genuine panel but one that looks the same, feels the same and is bonded to the car sub-frame exactly the same way. It may even meet certain international standards. But it is one of at least 5 quarter panels produced for the same make and model and available in different markets around the world (real case example).
- What happens when the same vehicle is involved in another accident and the part does not perform to manufacturers' original specifications or standards, and damage is far more excessive and harms the occupants of the vehicle, than if the right part been used?
- Imagine the fitment of a new front bonnet to a popular European sedan – just not the manufacturers' recommended genuine bonnet? Who does the consumer seek recourse from (assuming they are able to) when the car is involved in another accident and the in-built safety features of the recommended bonnet did not deploy because the wrong bonnet was fitted. The crumple zones are absent, the pedestrian protections are absent and because the fitted bonnet was not made of the same alloy, it actually created further damage and potential injury to the occupants of the car (and potentially anyone else involved) because it performed differently in an accident than the originally product was designed to.
- Some further case studies follow.

## Case Study of problems parts can pose:

### Potential consumer risk (Safety) versus supposed consumer benefit (price differentiation)



Figure 1

*This figure shows rims that have not had the stud holes drilled to enable fitment to a vehicle. Currently, this work can be done by anybody and is unregulated, when in reality, this work should be undertaken in consultation with a qualified engineer or metallurgist to ensure the rim is not weakened by the alteration through cracking, bending or distortion.*



Figure 2 & 3

*These figures shows stud holes that have been elongated to enable fitment to multiple stud patterns on a vehicle rather than being fit for purpose. This is evident through the partial eclipse like drill pattern on the rim. A vehicle travelling at speed would be at risk when moving over undulating surfaces, causing slippage, and would cause impact damage on the stud hole perimeter, and potentially, damage the studs themselves, making the vehicle unstable.*

- These products figured above pose a real safety risk for consumers. Rim and tyres not made to Australian Standards that are imported from overseas and deteriorate faster and at lower impact speeds than the certified Australian equivalent.
- The justification for this from regulators is improving consumer choice and because the Australian standard equivalent cost versus the cost of the example typically places the consumer at some level of financial disadvantage. Such cost saving are a pyrrhic victory for consumers. The initial cost differential in these circumstances is more than offset by the cost of replacement of affected parts, repair costs to damaged vehicles and the potential for physical harm in the event of product failure.
- Additionally, the theoretical cost saving realised by the consumer during the initial purchase is brought about precisely because those products and practices, which do not go through regulated and accredited imports channels are not subject to the same vigorous standards and are generally of poorer quality.
- The ACL should be amended to ensure Australian levels of quality and safety are reflected in international standards in line with our international trading partners and source markets.
- The use of parallel import and aftermarket parts can create issues when the vehicle is under a manufacturer's warranty. When a fault occurs in a vehicle under warranty and that fault can be attributed to the use parallel import or aftermarket parts then the dealer / manufacture are not obligated to repair the vehicle. Responsibility for the failure returns to the repairer who claims through the parts manufacturer, this can led to extended repair times and consequential loss for the customer. Aftermarket parts should be provided with assurances they meet or exceed manufacturer's specification for vehicle models they suit.
- Further Case Studies follow:



## Case Studies of problems experienced when repairers unwittingly get it wrong

### Example 1

- A qualified independent repairer destroys the transmission of a popular European passenger sedan because the wrong oil was used during a manufacturers log book service. This is despite the qualified independent repair relying on a large oil supply company, who develops and supplies oil for manufacturer, recommending the use of a type of oil as suitable for that brand and model that was ultimately the cause of destruction of the transmission.
- The matter was taken to the oil supply company with no resolution offered and ultimately was a \$27,000 payout by the repairers' insurance company. When do insurers tighten their business insurance product disclosures to minimise risk if these example were to rise or become commonplace?

### Example 2

- A high performance domestic sedan had an aftermarket oil filter fitted by a qualified independent repairer, who using information supplied by the parts company, fitted what was recommended for that brand, that model and that engine.
- 3,000kms later the engine oil pressure light illuminated indicating the engine was experiencing low oil pressure; the vehicle was towed to the nearest dealer for warranty repair.
- The dealer inspected the vehicle and believed the low oil pressure was caused by the aftermarket oil filter fitted by the independent repairer and therefore rejected the warranty claim.
- The independent repairer was denied warranty from the filter manufacturer after they had the filter inspected by a third party and it was found to be serviceable.
- This situation has left the owner with a faulty engine and no one accepting responsibility. The independent repairer is left investigating the cause of the low oil pressure and left confused with who to charge for the repairs.

## Logbooks, Online Logbooks and Dealer Stamps

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- Log books are an important part of a vehicles life-history and will be required in vehicles for the foreseeable future. Log books not only provide detailed information on the service background of a vehicle they also provide an important point of historic data when a vehicle is being traded.
- Given the periodic nature of servicing, and the recording of vehicles kilometres travelled at each service point, log books serve an important function in establishing the authenticity of a vehicle, including where kilometres travelled tampering may be suspected.
- The issues of log books has been raised by MTAA members and it has been raised that a prominent vehicle brand, Land Rover, provides an example of the application of electronic log books for new vehicles.
- While Land Rover advise consumers that their vehicle's service history can be provided as a printed copy, it does not describe how, if a consumer chose to have their vehicle serviced at an independent repairer, how the repairer would electronically access these records or add to them following the servicing or repair of the vehicle.

- Text from Land Rover website:

*... 'Paper log books? How very quaint. All new Land Rovers built from 1 July 2013 have their full service history online. Pre-delivery inspection, all scheduled services, related service items and body inspections, the lot. All updated each time you visit an Approved Service Centre. Need to access your records? Just ask any Land Rover Retailer for an instant print out or electronic copy or access your Online Service History now.'*<sup>6</sup>

- There is a view, amongst many independent repairers, that electronic log books will be adopted by other manufacturers and this should be expected given the general trend toward electronic and cloud based data storage. However, this situation further impinges on independent repairers who cannot gain access to vehicle data and more importantly the service history of a vehicle. Without access to the electronic log book independent repairers will be limited in their knowledge of a vehicles service history and the repairer will not be able to add to the service history of the vehicle.
- Unless manufacturers provide consumers with access to their vehicles electronic log book history, and the capacity for independent repairers to engage with the electronic log book the vehicles data may be inaccurate and potentially misleading. If independent repairers are not able to record the service work they perform on the vehicle the service history will be incomplete. In terms of vehicle safety, this situation could have the potential to leave gaps in the service data of a vehicle, including matters related to brake servicing and other safety related service items.

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<sup>6</sup> <http://www.landrover.com.au/ownership/service-and-maintenance/online-service-history.html>

- MTAA has concerns that as trends in the restriction of vehicle service data, via electronic log books, becomes more pronounced, it will form a data access barrier for consumer's independent repairers. Non accessible electronic log books have the capacity to reduce a consumer's choice of repair options and will limit a consumer's capacity to genuinely seek value for money in the market through the achievement of competing quotes.
- The purpose of a logbook is to collect service history on vehicles and equipment and guide repairers on service requirements based on time (months) or distance travelled (kilometers) since purchase. Log books are vital for good resale value as majority of dealers would not trade a vehicle without service history. Private buyers would also look for a service history when purchasing a vehicle privately.
- More and more manufacturers are moving towards an electronic or online logbook system and doing away with the tradition paper based logbook. Some online logbook servicing is dealer network specific which ultimately prevents anyone else from viewing the service history unless a request is made to the previous servicing dealer network. Some manufacturers have developed a connected system with the vehicle to the servicing dealer/manufacturer providing details on service requirements and worn components providing real time data to the manufacture/dealer and consumer on the vehicles service requirements and condition.
- This information could extend service requirements depending on how the vehicle is used and provides a real advantage to the dealer/manufacturer. When a vehicle is sold the purchaser may not know who the service history is held with or how to access this information, similarly when trying to sell a vehicle that has an online or electronic logbook, proof of service history becomes difficult to produce. Independent repairers have difficulties with viewing and adding online/electronic logbook service information. Who owns this information the manufacturer the Dealer or the vehicle owner?

#### **Log Book Case Study 1:**

- MTAA and a member are currently investigating an issue for a professional, single-brand qualified, independent repairer who cannot upload information that a regular service has been performed on a customer's vehicle.
- The repairer is qualified, equipped, trained in the particular brand and has the right tools and generally able access most information. The business is entitled to undertake the service and any necessary repair, in fulfilling the owner's choice of repairer.
- Is entitled to update the vehicles systems so that the manufacturer / distributor records that the service has been undertaken and the consumer's records are properly maintained.
- After lengthy delays and inquiries to the Brand's domestic call centre and then international call centre, the repairer was advised they cannot update the system or upload information and neither can the consumer elect to have this action completed as 'this action was not available in this market (Australia) at the request of the market' i.e. at the request of the Australian office or distributorship of the brand.
- This can only be interpreted that in other markets the updating and recording of service information, even by the consumer, is permitted, but at the request of the Australian Office of the manufacturer / distributor it has been denied in the Australian market – why?
- If a satisfactory response is not obtained then this particular example will be elevated for investigation to the Access to Repair Agreement processes for resolution and the ACCC as a standalone matter.

## *Access to Repair Information and data for new cars*

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### **MTAA Recommendations**

- The ACCC afford the automotive sector a further (and potentially final) opportunity to deliver a balanced, industry-led, solution that guarantees access to repair and maintenance information within a specific timeframe.
- Such a solution should include the development and implementation of a process, mechanism or scheme for the accreditation, approval and authorisation to access all Repair and Maintenance Information (RMI) including security related information.
- If the automotive sector cannot deliver such a solution within the specified timeframe then further consideration is given to the development and implementation of a Voluntary Code of Conduct oversighted by the ACCC.

## **Overview**

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- Among the nine consumer guarantees that form the basis of the ACL, number 9 states that 'manufacturers or importers guarantee they will take reasonable steps to provide spare parts and repair facilities for a reasonable time after purchase.' However, this consumer guarantee is insufficient in its scope of coverage, as it does not stipulate the fair distribution of vehicle service information to independent vehicle repairers. As such, vehicle manufacturers and importers providing vehicles into the Australian market have limited obligations in ensuring their repair information is made widely available to the automotive industry.
- Not providing such information to independent vehicle repair businesses can disadvantage vehicle owners who are not able to access a vehicle dealership in their region or where a vehicle repairer cannot fairly access repair information. This is particularly true for vehicle owners that reside in rural regions where they do not have ready access to a nearby dealership. Consequently, this detracts regional consumers as it may result in the need to travel long distances to dealerships for vehicle repairs.

- Internationally, there have been changes to legislation in the UK, EU and the US regarding the supply of service and repair information on the basis that this would, among other points, improve competition, limit disadvantage and reduce repair costs. This is exemplified in the EU with the introduction of the Regulation 715/2007 (the “Euro 5” Regulation), the Right to Repair Act that was implemented in a number of US states, and the UK’s Block Exception Regulation BER 2012. The current arrangement in Australia regarding the fair access to vehicle repair information is currently embodied in an industry Agreement (Access to Service and Repair Information for Motor Vehicles).
- MTAA and members have taken a leadership role in facilitating and coordinating potential solutions to increase competition and enhance consumers right to access a repairer (mechanical or body) of their choice, be they authorised (usually a dealership) or independent. This has become increasingly important in regional and rural Australia where the consolidation of dealerships and the closure of independent repairer businesses are likely to cause consumer detriment because of a lack of service options.
- For consumers to be able to make this choice and exercise their right, repairers of all persuasions, must be able to access essential repair information, parts, equipment and tools, to undertake repairs to the nation’s 18million strong vehicle fleet. To ensure consumer satisfaction, safety and security, repairers must be appropriately qualified, trained and skilled in the latest techniques to ensure safety and protection of the travelling public.

## The Current Heads of Agreement

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- MTAA and members understand through their members the differing characteristics of players in the repair market. Dealerships have considerable capital and ongoing investments demanded by manufacturers and are subject to a myriad of requirements through dealership agreements and provisions within those agreements. There are few if any components of a dealership service operation that are not governed by the agreements or supplemental demands of manufacturers / distributors. For example specific requirements need to be adhered to for parts procurement and supply, repair times, training and skills development, specialist tools and equipment, and information access, to name but a few. It is not widely understood that new car retailers have significant costs paid to manufacturers / distributors for the right to be an authorised service / repair agent including costs associated with accessing repair information.
- These are important considerations. At a minimum, independent mechanical repairers should be equivalently qualified, trained, have access to the tools and equipment, be trained in their use and be able to satisfactorily complete a service or repair to requirements.
- Dealers however cannot service on their own the entire national car park of some 18 million vehicles and there has been, is, and will be, room for independent mechanical service technicians and businesses in a competitive market.

- On the other side of the equation progressive independent repairers - even if they can source repair information, and access necessary equipment and tools, and train their people - still endure difficulties in successfully completing a repair.
- During the Commonwealth Consumer Affairs Advisory Council (CCAAC) inquiry into sharing of repair information during 2011 and 2012, insufficient evidence could be produced to illustrate the significance or size of the access to repair information problem or any consumer detriment of a level that required Government intervention.
- The CCAAC could not find sufficient cause to recommend any change stating *'There does not appear to be any evidence of systemic consumer detriment at present. However, the accessibility of repair information has the potential to become a barrier to entry in this market going forward.'*<sup>7</sup> and urged the industry to develop processes to ensure access to repair information.
- Negotiations between peak representative organisations throughout 2013 failed to secure a sector wide Voluntary Code of Conduct. Government intervened in terms of urging parties to identify a solution and a Heads of Agreement was negotiated and signed by all relevant parties at the end of 2014. The MTAA played a significant facilitation and coordination role in assisting Government broker the agreement on behalf of members.
- Signatory parties completed required enabling processes and documentation by May 2015 and the agreement was operationalized. Several signatories, including MTAA, as part of their enabling processes created online portals to enable members to be able to report any issue with accessing information. MTAA processes then further investigate reports to ascertain whether the problem reported is systemic, systematic or potentially breaches the agreement.
- Within months, one signatory elected to pursue its own agenda pre-dating the agreement including calling for legislated outcomes and essentially 'walked away' from the Agreement, declaring it a failure. This disappointing development was despite the fact that no evidence from any signatory party had been provided for investigation and if appropriate rectification. Indeed no reports were provided until March 2016. FCAI and its affected members undertook investigations into these supplied reports of problems and concluded there was no evidence of systemic breach.
- MTAA and Members have been notified of numerous anecdotal and actual problems, issues and concerns, but most are individual incidents of problems specific to an actual repair task. It has been difficult to provide sufficient case material to illustrate systemic or systematic breaches of the Agreement or its provisions.
- But a trend is emerging of a core consistent problem and one which MTAA and Members has been actively seeking a potential solution for, and will be further detailed later in this section.

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<sup>7</sup> Sharing of repair information in the automotive industry final report, 27 November 2012



## What has been achieved since the signing of the agreement?

- Since the operationalisation of the Heads of Agreement. MTAA Members now provide access to Members and Non-Members alike (albeit on differing subscription costs) access to two aggregated repair information products - Tech Online and OEM Online. In addition a centralised call centre backs up these online information portals with real time advice and service to MTAA Members business constituents on specific inquiries relating to repair information.
- The service is particularly useful for inquiries relating to older vehicles with satisfactory outcomes to more than 90% of inquiries. The service has access to thousands of volumes of repair information and is the largest collection in the Southern Hemisphere. Increasingly some manufacturers are also providing access to information through these portals.
- Since the signing of the Heads of Agreement there has been a number of manufacturer / distributors who have provided portals through the FCAI website to their repair information. A list of most brands and their information provision status is detailed in the following pages.
- It is important to make the observation that even with the provision of the information, whether it is the right information, whether it contains the required detail, whether it addresses a specific requirement at a specific time, or whether it is complete, are matters which can only be assessed by gathering data on the types of problems being experienced and reports of participants.

No	Brand	Associated Brand (distinct, recognised brand)	Parent Company, Distributor	Member of FCAI	Providing information portal through FCAI
2					
2					
2					
2					
2					
2					

2		<b>Jeep</b>	<b>FCA</b> <small>FILAT CHRYSLER RW AUTOMOTIVE RW</small>		
2			<b>Sime Darby Motors AUSTRALIA</b>		
2			<b>FCA</b> <small>FILAT CHRYSLER RW AUTOMOTIVE RW</small>		
2					
2			<b>FCA</b> <small>FILAT CHRYSLER RW AUTOMOTIVE RW</small>		
2					
2			<b>ATECO AUTOMOTIVE PVT. LTD.</b>		
2					
2		<b>HAVAL</b>	<b>ATECO AUTOMOTIVE PVT. LTD.</b>		
2					
2					
2					
2			 Part of Nissan Group		

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2		RANGE ROVER	JAGUAR Part of JLR Australia		
2			ATECO AUTOMOTIVE PTY. LTD. 		
2			TOYOTA Part of Toyota Australia		
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2			ATECO AUTOMOTIVE PTY. LTD.		
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2			 Part of BMW Group		
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			<b>ATECO</b> <b>AUTOMOTIVE</b> PTY. LTD.		
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## Current Concerns

### Codes, a central theme

- The common thread to the majority of reported matters from independent mechanical repairers to MTAA members centre on codes. Many independent repairers say they get through the repair satisfactorily, have obtained the necessary information and have, for all intent and purpose, completed the repair, but cannot reset the error codes and re-initialise the vehicle. This necessitates either utilization of existing relationships with a dealer, online and other searches for the information to reset the Code all adding time and complexity to the repair.
- Many of the reported problems of MTAA member business constituents are made verbally through attendance at industry committee meetings, or to Board Directors or other avenues, but not through the provided portal or written reports. Business owners say that as the difficulties are experienced during the course of undertaking a repair, all effort is directed at sourcing the information and finding a solution, to get the repair completed, rather than writing reports or filling in forms to highlight the issues after the event.
- The table following represents the type of matters raised through the portals of MTAA and Members. Some of these problems have been resolved or ameliorated with manufacturers making available further repair information, or with the matter being addressed through the technical information call centre provided by MTAA Members, but others have not.

MAKE	MODEL	YEAR	Description of repairs your unable to perform	Description of information not available, e.g. diagnostic information, body repair procedures, general servicing and periodic maintenance procedures, access to reinitialisation of components, general repair information you would expect to find at an authorised dealer.
Mercedes	Sprinter	2012	Vehicle requires the engine ECU replacing for an ABS concern. Mercedes do not sell ECU's to independent workshops.	
HOLDEN	AH ASTRA	2005	REINITIALIZE INDICATOR SWITCH TO BCM	NEED DEALER TO PERFORM OR ACCESS TO AC DELCO IN USA TO OBTAIN CODE
Mahindra	Pick Up	2007	Repair Stop light circuit	STOP LIGHTS Wiring Diagram
MAKE	MODEL	YEAR	Description of repairs your unable to perform	Description of information not available, e.g. diagnostic information, body repair procedures, general servicing and periodic maintenance procedures, access to reinitialisation of components, general repair information you would expect to find at an authorised dealer.
Mazda	CX5	2013	Repair radio circuit	RADIO & INFOTAINMENT W/D
KIA	CERATO	2011	Repair CAN circuit	CAN BUS DATA COMMUNICATIONS W/D



Suzuki	Swift	2014	Repair vehicle according to OEM Specifications	BODY DIMENSIONS
Mercedes	VITO	2011	P2012-00 THROTTLE VALVE ACTUATOR DIAGNOSIS	Testing procedure for fault code P2012-00
Hyundai	Elantra	2008	Collision repair on the rear end of vehicle, cannot perform repair according to manufacturer's specification	1/4 PANEL REPLACEMENT repair method
TATA	XZENON	2014	Repair front wheel axle bearing according to manufacturer's specifications	FRONT WHEEL BEARING REPLACEMENT Procedure
IVECO	DAILY	2006	Diagnose Fuel pressure issue	FUEL SYSTEM OVERVIEW AND PRESSURE DIAGNOSTIC PROCEDURES
Mercedes Benz	A250	2014	Wheel alignment on vehicle	Wheel alignment specifications
Suzuki	Jimny	2008	Repair vehicle according to manufacturer's specifications	Body repair 1/4 panel procedure
LDV	G10	2016	Reset Service light on dash	Service light reset procedure
IVECO	DAILY	2005	Repair windscreen wiper circuit	WIPERS WIRING DIAGRAM
Mitsubishi	Triton	2016	Fitting Trailer	ABS WIRING DIAGRAM
Suzuki	Swift	2010	Quote for removal and installation of the engine	Engine removal and installation procedure and repair time
CHERRY	J10	2013	Repair headlights	Headlight wiring diagram
Kia	Carnival	2012	Collision repair according to manufacturer's specification	HIGH STRENGTH STEEL I.D AND SKIRT REPLACEMENT PROCEDURE
Mercedes Benz	Actros	2013	NA	NA
Hyundai	Getz	2008	Repair electric mirror fault	Power mirror wiring diagram
Hyundai	i30	2010	Unable to repair vehicle according to manufacturer's specifications	1/4 PANEL REPLACEMENT PROCEDURE
Alfa Romeo	156	1999	Could not quote a customer for a repair due to no repair times available	Repair Time for alternator removal and refit
Mercedes Benz	ML250	2015	Diagnose engine electrical fault	Engine Management wiring diagram
Hyundai	i30	2015	Diagnose fault in headlight circuit	Headlight wiring diagram
Hyundai	i20	2015	Unable to repair vehicle according to manufacturer's specification	Body repair dimensions
Mercedes	ML320	2005	Repair central locking system	Central locking wiring diagram
Hyundai	Elantra	2014	Unable to repair rear 1/4 panel according to manufacturer specifications	1/4 panel replacement procedure
Hyundai	iX35	2014	Unable to repair vehicle according to manufacturer's specification	Rear 1/4 panel replacement procedure
MAKE	MODEL	YEAR	Description of repairs your unable to perform	Description of information not available, e.g. diagnostic information, body repair procedures, general servicing and periodic maintenance procedures, access to reinitialisation of components, general repair information you would expect to find at an authorised dealer.
Kia	Soul	2010	Diagnose BCM fault	BCM wiring diagram as well as pinout and voltage specifications
Hyundai	i30	2010	Repair vehicle according to manufacturer	Collision repair information, A pillar and

			specifications	sill replacement procedure
Hyundai	i30	2013	Unable to repair vehicle according to manufactures specifications	Roof trim replacement procedure
Mercedes	Valente	2014	Complete wheel alignment	Could not get access to correct wheel alignment specifications
Mercedes	Vito	2011	Diagnose instrument cluster and central locking fault	Central locking and instrument cluster wiring diagram
Iveco	Daily	2009	Could not diagnose and repair central locking fault	Central locking wiring diagram
Ssangyong	Korando	2010	Repair Faults in ABS system and SRS system, Codes C1513, B1150, B115A	Fault code testing procedures
Mercedes	Vito	2016	Repair headlight fault	Headlight wiring diagram and component location
Foton	Tunland	2014	Wheel Alignment	Wheel Alignment specifications
Honda	Jazz	2015	Repair vehicle according to manufacturer specifications	Rear 1/4 panel replacement procedure
Mazda	Mazda3	2015	Could not repair vehicle according to manufacturer's specifications	Centre pillar and sill panel replacement procedure
Mercedes	Vito	2008	Repair faulty temperature sensor	AMBIENT AIR TEMPERATURE SENSOR TESTING, WIRING AND COMPONENT LOCATIONS
Mercedes Benz	CLK320	2001	Could not repair vehicle according to manufacturer specification	RADIATOR SUPPORT AND FRONT RAIL REPAIR PROCEDURES
Mazda	CX-5	2013	Repair headlight wiring	HID HEADLIGHT WIRING DIAGRAM
Mercedes Benz	Vito	2011	Repair coolant leak	EGR COOLER LEAK R&R PROCEDURE
Hyundai	i30	2010	Repair vehicle according to manufacturer's specifications	1/4 PANEL REPLACEMENT
Porsche	Boxster	2005	Repair headlight wiring	HEAD LIGHT AND FOG LIGHT WIRING
Mercedes Benz	B180	2006	Tracing a wiring loom fault	FRONT SAM MODULE AND FUSES BOX POWER DISTRIBUTION WIRING
Hyundai	iLoad	2010	Repair vehicle according to manufacturer specifications	Rear 1/4 panel replacement procedure
Kia	Rio	2015	Unable to repair vehicle according to manufacturer's specification	SILL PANEL REPLACEMENT Procedure
Mercedes Benz	ML500	2005	Repair ABS system	ABS PUMP RELAY LOCATION AND WIRING DIAGRAM
Fiat	Scudo	2010	Repair vehicle according to manufacturer's specification	SIL PANEL REPLACEMENT PROCEDURE
Range Rover	Sport	2012	Repair vehicle according to manufacturer's specifications	Removal and installation of engine
MAKE	MODEL	YEAR	Description of repairs your unable to perform	Description of information not available, e.g. diagnostic information, body repair procedures, general servicing and periodic maintenance procedures, access to reinitialisation of components, general repair information you would expect to find at an authorised dealer.
Mazda	CX-5	2012	Repair vehicle according to manufacturer's specifications	DIESEL INJECTOR SEALS, REPLACEMENT AND OIL PICK UP REMOVAL Procedure

Land Rover	Freelander	2008	Could not diagnose and repair vehicle due to lack of information	SPEEDOMETER TESTING, LOCATIONS AND WIRING Diagram
Mazda	Mazda3	2010	Could not repair vehicle according to manufacturer's procedure	AIR-CONDITIONING AND CLIMATE CONTROL WIRING Diagram
Nissan	Navara	D23	Repair headlight wiring circuit	Head light wiring diagram
Hyundai	i30	2014	Could not repair vehicle according to manufacturer's specification	SIL PANEL REPLACEMENT & B PILLAR REPLACEMENT PROCEDURE
Mercedes	Sprinter	2009	Could not repair park light system	PARK LIGHT WIRING DIAGRAM
Alfa Romeo	Guilietta	2015	Could not repair vehicle according to manufacturer's specification	Rear 1/4 panel replacement procedure
Suzuki	Swift	2006	Unable to repair vehicle according to manufacturer's specification	Rear 1/4 panel replacement procedure
Mercedes Benz	C200	2015	Could not perform wheel alignment according to manufacturer's specifications	Wheel alignment specifications
Suzuki	Vitara	2015	Unable to repair vehicle according to manufacturer's specification	Front skirt removal procedure
Suzuki	Kizashi	2010	Unable to repair audio system	Audio system wiring diagram and component location
Suzuki	Swift	2007	Could not repair vehicle according to manufacturer's specification	CLUTCH FORK VIEWS AND GEARBOX REMOVAL Procedure
Suzuki	Swift	2010	Unable to repair vehicle according to manufacturer's specification	Rear 1/4 panel removal procedure
Iveco	Daily	2010	Correctly repair vehicle according to manufacturer's specifications	AUTO SHIFTING MAUNAL DIAGNOSIS AND BLEEDING PROCEDURE
Mitsubishi	Pajero	2016	Repair vehicle according to manufacturer's specification	INDICATORS WIRING DIAGRAM
Volvo	V40	2015	Adjust wheel alignment according to manufacturer specifications	Manufacturer wheel alignment specifications
Nissan	X-Trail	2016	Repair vehicle according to manufacturer's specifications	Body dimensions specifications
Subaru	Impreza	2012	Repair vehicle according to manufacturer's instructions	EFI WIRING DIAGRAM AND ECU PIN OUT
Hino	XZU24	2007	Unable to repair engine according to manufacturer's specifications	TURBO, CRANK SEAL AND FRONT COVER SEALS REMOVAL AND TIMES
Iveco	Daily	2007	Unable to quote and repair vehicle according to manufacturer's specifications	ENGINE REMOVAL AND TIMES
Fiat	Ducato	2009	Repair rear lighting system	REAR LIGHTING WIRING DIAGRAM
Hyundai	Getz	2009	Repair vehicle according to manufacturer's specification	BEAVER PANEL REPLACEMENT PROCEDURE
Nissan	Pulsar SSS	2016	Repair vehicle according to manufacturer's specification	Rear 1/4 panel repair procedure
Hyundai	i30	2013	Unable to repair vehicle according to manufacturer's specifications	SIL PANEL REPLACEMENT PROCEDURE
MAKE	MODEL	YEAR	Description of repairs your unable to perform	Description of information not available, e.g. diagnostic information, body repair procedures, general servicing and periodic maintenance procedures, access to reinitialisation of components, general repair information you would expect to find at an authorised dealer.
Hyundai	i30	2013	Unable to repair vehicle according to manufacturer specifications	1/4 PANEL REPLACEMENT PROCEDURE
Hyundai	iX35	2010	Repair air-conditioning system	AIR-CONDITIONING AND CLIMATE

				CONTROL WIRING
Mitsubishi	Triton	2014	Replace heater core according to manufacturer's procedures	HEATER CORE & DASH REPLACEMENT PROCEDURE
Suzuki	APV	2012	Repair vehicle according to manufacturer's specification	1/4 PANEL REPLACEMENT PROCEDURE
Bentley	Brooklands	1993	Unable to rewire power distribution circuit according to manufacturer specifications	FUSES BOX LAYOUTS
Daihatsu	Cuore	2002	Repair ignition wiring according to manufacturer's specification	Ignition wiring diagram
Toyota	Surf	1991	Diagnose and repair engine fault according to manufacturer's specifications	Engine Diagnostics procedures and wiring diagram
Daihatsu	Sirion	2005	Repair power steering fault	Electric power steering diagnosis and testing procedures and wiring diagram
Kia	Sorento	2010	Unable to repair engine according to manufacturer's specifications	Engine overhaul procedures and specifications
Kia	Rio	2010	Unable to repair vehicle according to manufacturer's specification	Body repair procedures
Renault	Trafic	2015	Fitting Trailer wiring	TRAILER MODULE WIRING
Land Rover	Discovery	2015	Update service records due to Land Rover restricting access to online records	Access to Land Rover online scheduled servicing reporting portal

- An analysis of these reports indicates a range of experienced difficulties with motor body repairers highlighting problems accessing repair information for late model vehicles; while other common issues are engine diagnostics, wiring diagrams, and being able to complete a repair in accordance with manufacturers' specifications.
- Not evident in this download, but increasing in terms of calls and feedback to MTAA Members are reports of lack of access to code information including reset and re-initialisation procedures. Invariably error codes in contemporary modern day vehicles are usually linked to vehicle security, safety or environment systems and information cannot be accessed unless the repairer is a dealer service centre or an authorised repairer. Some examples of the types of problems being experienced by qualified and suitably equipped dealers follow.

### **Case Study 1 – an example of consumer problems experienced in regional / rural Australia**

- An MTA member in the Pilbara Western Australia had a customer tow a 2008 European vehicle in for repair. The repairer is experienced in diagnostic procedures and has the latest tooling and information available.
- The vehicle was connected to a scan tool and data trouble codes extracted.
- The information he required was not available through his tooling and information for that make and model.
- The repairer contacted the dealer for more information around the data trouble code and repair procedure.
- The dealer would not assist the repairer with any information.
- The customer was forced to have the vehicle towed some 1,700kms to Perth for repair.

### **Case Study 2 –where a simple job becomes impossible because of connection to security systems and code unavailability**

- An example of this type of problem is where an independent repairer was fixing a notified problem (the car provided an alert to an issue) as well as the obvious nature of the problem with a windscreen wiper on a 6 year old vehicle not working.
- Diagnostics undertaken by the repairer revealed that a wiper blade motor was unserviceable and required replacement.
- A relatively simple repair task. The part was ordered, fitted and tested. Problem satisfactorily rectified = right?
- Wrong! The repairer was unable reset the vehicle codes because the windscreen wiper operation (including rain sensing screen) was integrated with the vehicles locking, braking and steering systems and potentially others.
- Some of these systems, such as locking and steering, were designated by the manufacturer as security systems and therefore some information including reset codes were restricted to only authorised repairers. (It should be noted that there have been reported cases where even authorised repairers (dealers) cannot obtain information from the manufacturer).
- The repairer then spent hours trying to obtain the necessary information to complete the repair, before finally being forced to take the vehicle to an authorised repairer for that brand to have the codes reset.

- The incidence of consumer complaint about apparent lack of access to choice or no access at all to service for some particular brands or models in regional and rural Australia is potentially increasing as dealerships continue to consolidate and with increasing closure or consolidation of independent repairers. While service intervals are increasing and reliability constantly improving, there nonetheless remains a risk that in certain areas consumers may be impacted by a lack of access to repair and service options.



- Take for example two prominent European brands and their exposure in the Victorian market through their established dealership network. Sales data confirm that both manufacturers are selling product to consumers in locations well away from dealership locations, in some cases hundreds of kilometres away. Some may argue that consumers' due diligence should include whether future servicing and repair requirements can be met in their home location, as part of their purchase decision. Others will equally argue that a consumer should be able to exercise a right to choose a suitable qualified repairer, equipped and skilled to perform routine servicing and repairs in their home location. MTAA notes that not all the locations of VACC Members as illustrated are businesses that will be able to meet consumer need or be necessarily equipped, skilled, qualified or tooled to conduct repairs for these two European brands; but there are businesses in strategic locations that can or could.
- This why MTAA and Members have been actively seeking enhancements to the current repair information agreement to provide a mechanism or process that is acceptable to all parties to address this increasing potential problem and resolve a central issue to the information and data provision quandary.

#### Case Study 1 –

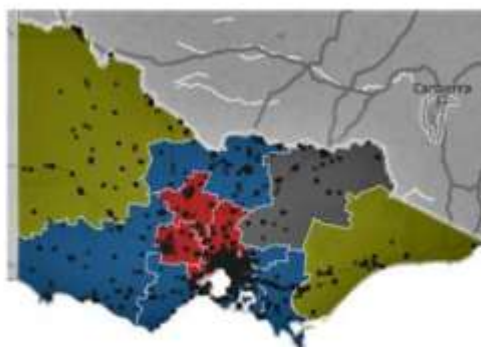
##### Prominent European Brand 1

Victorian Service (dealer locations - 4 Melbourne metro, 3 Regional (Glenelg))



##### Prominent European Brand 2

Victorian Service (dealer locations)



VACC member automotive businesses including mechanical repair, dealerships, motor body repair and specific professional automotive services.



- In addition some manufacturers are now moving to removing access to parts for 'security reasons'. Based on correspondence between MTAA Member, VACC and a European manufacturer, the manufacturer has confirmed selective 'security parts' will not be available outside the authorised repairer network. VACC in consultation with mechanical experts has assembled the type of mechanical repairs that will be prevented as a result of this move. MTAA and some members are of the belief that other manufacturers are considering similar actions. Below is an example of 'security parts' that will no longer be provided and the repairs likely to be impacted as a result of this withdrawal.

**Popular European brand / model**  
**Limitations on service and repair, where parts are not supplied**

**Restricted Parts:** Electronic Vehicle Key, Locking Sets & Mechanical Keys, Emergency Keys, Infra-red / radio control keys

**Unable to perform following tasks:**

1. Open doors, bonnet, boot, windows
2. Start or drive vehicle
3. Change headlight globes
4. Change headlight globes
5. Service vehicle according to manufacturer's specifications
6. Record vehicle details
7. Inspect brakes
8. Inspect seat belts
9. Repair any major or minor faults
10. Inspect fuel condition

**Restricted Parts:** Electronic Steering Lock, Electronic Ignition Switch

**Unable to perform the following tasks:**

1. Access diagnostic system
2. Start or drive vehicle
3. Check Tyre pressure monitoring system
4. Reset Service indicator
5. Operate lighting system
6. Operate mirrors
7. Check operation of cooling & heating system
8. Check operation of Vehicle restraint system
9. Check operation of ABS system
10. Check operation of vehicle electrical system
11. Check engine temperature
12. Adjust passenger comfort systems

**Restricted Part:** 7 Speed Valve Body Control Unit

**Unable to perform the following tasks:**

1. Start or drive the vehicle
2. Complete an overhaul of transmission
3. Test shift pressure patterns
4. Check transmission oil level
5. Check operation of torque converter
6. Fix speed sensor faults
7. Perform SCN coding
8. Fit changeover transmission

**Restricted Parts:** Electronic Selector Lever, Direct Shift Module

**Unable to perform the following tasks**

1. Drive vehicle only in limp home mode
2. Shift transmission through gear range
3. Fail to start (under certain conditions)

**Restricted Parts:** Engine Control Unit, transmission Control Unit, Hybrid & E Drive Control Module

**Unable to perform the following tasks**

1. Start or drive vehicle
2. Diagnose other faults
3. Service vehicle according to manufacturer's specifications
4. Test ignition system
5. Test fuel system
6. Test engine compression
7. Test transmission operating pressures & shift patterns
8. Test vehicle communication network

**Restricted Part:** Belt Driven Starter - Alternator for DS4

**Unable to perform the following tasks:**

1. Repair faulty stop/start system
2. Check vehicle battery/ charging voltage
3. Program stop start system
4. Start or drive vehicle
5. Diagnose other faults

Sept 2016

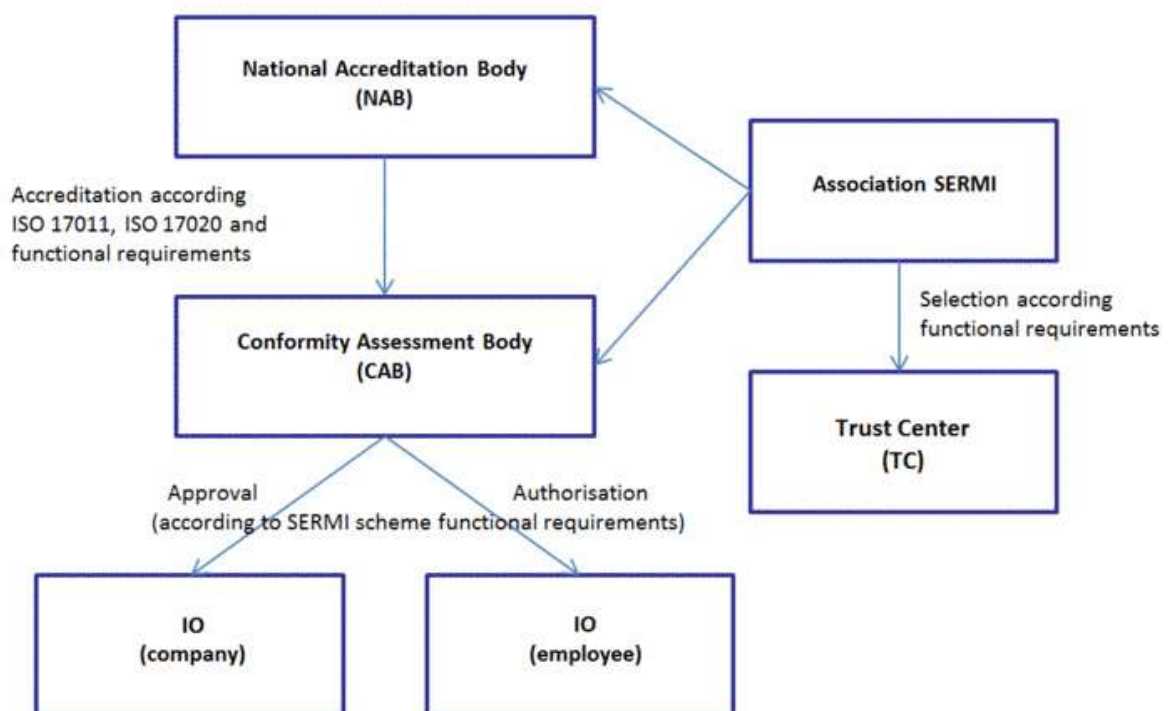
## Potential solutions to the information access impasse

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- The lack of sizeable amounts of concrete evidentiary material suggests a lack of a problem on a scale that has been presented by some organisations and individuals. Just as the CCAAC was not able to point to substantial consumer detriment and nor was it able to draw on enough case study materials to unequivocally substantiate the size of the problem, nor can MTAA and Members in this submission provide the amount of documented evidence that would justify a more strident government intervention.
- This creates two potential positions which it is suggested the ACCC Market Study Team should analyse and which will be evident across a range of differing submissions to the Market Study, including from its own members. Both positions have relevance.
- The first position is there is no problem of any greater or less magnitude than that investigated by the CCAAC. The reported issues brought to attention in this and in other submissions by other parties, represent a small portion of the total market. Such 'incidents' are 'to be expected' given the thousands of participating businesses and the variables of those participants, their operating environment and the millions of vehicles involved. That the existing agreement has not been thoroughly tested and no overwhelming case has been presented signaling a need for change. There is certainly no justification for government intervention.
- The second position is that overwhelming written evidence exists and is being increasingly provided by industry participants to representative organisations through online portals and in some cases presented in submissions to this study and separately in campaigns to politicians and bureaucracy in calling for change. There is a considerable and growing problem that can be demonstrated. This is supplemented with increasing anecdotal evidence and verbal complaints from participants suggesting an even larger problem than able to be demonstrated through evidentiary material. All of this is justification for government intervention and stronger legislative or regulatory oversight.
- MTAA suggests there is truth and sound reasoning in both positions and both contain valid and defensible assumptions and positions of fact. However MTAA also makes the observation that much of the evidentiary material and rationale for both positions are, as expected, industry participant sourced and participant driven, including from MTAA Limited.
- MTAA suggests the market study team needs to take the presented information from all submissions in relation to access to repair information and independently identify and verify any correlation or connection to known consumer concerns or complaints from around the Commonwealth and establish what, if any, level of consumer detriment is being experienced. Only then can the need for government intervention, and the level of intervention, if any, be determined.

- These statements should not be interpreted that MTAA is 'sitting on the fence' or does not believe there are real problems being experienced by participants in the market including its Members business constituents, and potentially consumers. There is sufficient evidence to show there are genuine concerns and fertile ground for these concerns to increase given other impacts and influences on the automotive sector.
- However, MTAA is also acutely aware that when calls are made for governments to intervene in a market then there can be unintended and unforeseen consequences that can ultimately negatively impact market participants and further impact consumers. It is for this reason MTAA has been examining alternative solutions outlined in the following paragraphs.
- MTAA believes there are solutions to this vexed issue that lie in enhanced collaboration, enhanced arrangements, enhanced undertakings, and indeed if necessary, with enhanced persuasion from Government; either by challenging industry to deliver improved solutions within a notified timeframe or ultimately creating a mechanism that will force an outcome such as an ACCC oversighted voluntary Code of Conduct.
- MTAA and Members have been exploring with some signatories of the Access to Repair Information Head of Agreement, options for enhancing the Agreement through the development and implementation of an Approved / Accredited repairer program, not dissimilar to mechanisms / processes found in other international jurisdictions.
- These consultations resulted in suggestions that a working group be formed to explore the development and implementation of such a process or mechanism that would identify, authorise / accredit an independent repairer to access, in a controlled manner, a full suite of all information including security, safety, and environment related material. Such a process would require agreement on the information and data to be provided, the standardised format, and accreditation process. Much of this preparatory work has already occurred internationally and can be drawn on to identify an Australian solution, consistent with international standards and determinations.
- Like the development of the Heads of Agreement, it is the preference of MTAA and Members that the industry itself; with guidance of existing overarching Commonwealth legislation and regulation; develop, implement, and administer, such a process or mechanism to the ultimate benefit of consumers. However the Federation and Members are becoming increasingly frustrated by an apparent lack of conviction and need to secure such a result. The differing aforementioned positions, active undermining of the existing agreement and pursuit of individual sector industry outcomes has proved problematic. Unfortunately despite best efforts, MTAA it appears has been unable to attract the support of some of the other signatory parties at the time of preparing this submission.
- MTAA suggests merely taking United States or European based legislation and or regulation and applying it unilaterally in Australia fails to take into account the nature of Australian consumers, unique Australian market variables, participants, the total vehicle market, and other factors.

- MTAA believes there is merit in developing and implementing a mechanism, process or scheme for the accreditation, approval and authorisation to access all Repair and Maintenance Information (RMI) including security related information.
- Such a scheme, mechanism or process could be based on a version of SERMI - the Association created to further develop, own, operate and maintain a scheme and process initially proposed by the EU Forum on Access to Vehicle RMI (Repair and Maintenance Information) to approve and authorise independent operators (IO's) working in the European automotive sector. Much of the structure and process has been determined as outlined in the following diagram.



- MTAA is of a view that the ACCC should instruct parties to provide a mechanism, process, scheme or methodology based on a similar structure as SERMI, in an Australian context, within a very specific timeframe.
- If industry is not capable of initiating and agreeing on such a solution then there will be little alternative than initiating a proper and stronger voluntary code over sighted by the ACCC, not dissimilar to the Grocery Code of Conduct.
- The latter may also be used to address any other identified behaviours or issues arising from the market study.

## Other Issues

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### ONLINE REVIEWS

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- MTAA believes there are issues relating to online reviews of car manufacturers, their products and dealers which may directly impact new car retailing and may be of interest to the Market Study.
- The UK's Competition and Markets Authority has identified that up to £23 billion of spending is influenced by online reviews each year.<sup>8</sup>
- Australian research has identified a similar consumer reliance on online reviews when making purchasing decisions and passing judgements on the quality of businesses they are considering transacting with. Nielsen surveyed over 5000 people and found that 71% of people read, discussed or commented on brands in the previous 12 months.<sup>9</sup>
- Similarly, a Sensis social media survey found around 67% of respondents reported reading online reviews or blogs before making a purchase decision, those aged 30 to 39 were most likely to do so and on average, and people expected to read 3 reviews before making a decision.<sup>10</sup>
- Evidence from the United Kingdom shows that malicious online reviews cost 20% of businesses of up to A\$60,000 annually.<sup>11</sup>
- Slater and Gordon<sup>12</sup> make the point those businesses with less than 10 employees (half than the Federal Government's definition of a small business) may be entitled to pursue defamation action against certain online reviews.

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<sup>8</sup> Oli Gross, *Protection needed against 'malicious' online reviews*, The Publican's Morning Advertiser, June 2015, [http://www.morningadvertiser.co.uk/Running-your-pub/Marketing/Protection-needed-against-malicious-online-reviews?utm\\_source=copyright&utm\\_medium=OnSite&utm\\_campaign=copyright](http://www.morningadvertiser.co.uk/Running-your-pub/Marketing/Protection-needed-against-malicious-online-reviews?utm_source=copyright&utm_medium=OnSite&utm_campaign=copyright)

<sup>9</sup> The Nielsen Company, *New Online activities, services and devices bringing Australians more choices and new ways of doing old things*, March 2012, [https://www.iabaaustralia.com.au/uploads/uploads/2013-10/1382457600\\_c1cbecde1fbbced6e44563f0dca379e9.pdf](https://www.iabaaustralia.com.au/uploads/uploads/2013-10/1382457600_c1cbecde1fbbced6e44563f0dca379e9.pdf)

<sup>10</sup> Sensis, *Yellow Social Media Report: What Australian People and Businesses are doing with social media*, May 2014, <https://www.sensis.com.au/content/dam/sas/PDFdirectory/Yellow-Social-Media-Report-2014.pdf>

<sup>11</sup> Rebecca Burn-Callander, *Bad reviews and online 'trolls' cost UK businesses up to £30,000 a year*, The Telegraph, May 2015, <http://www.telegraph.co.uk/finance/businessclub/11635195/Bad-reviews-and-online-trolls-cost-UK-businesses-up-to-30000-a-year.html>

<sup>12</sup> Jeremy Zimet, *Do Defamation laws apply to online reviews?* Slater and Gordon, March 2015, <https://www.slatergordon.com.au/blog/do-defamation-laws-apply-online-reviews>



- To be successful, such a business would need to prove that the online review was not the honestly held opinion of the reviewer or the review was malicious, i.e. damaging to the reputation of the business.
- Conversely, a business may be subject to ACL action if a business *“encourages family and friends to write reviews about your business without disclosing their personal connection with your business in that review, write reviews when you have not experienced the good or service reviewed or which do not reflect a genuinely held opinion, solicit others to write reviews about your business or a competitor’s business if they have not experienced the good or service. Businesses and review platforms that selectively remove or edit reviews, particularly negative reviews, for commercial or promotional reasons may be misleading consumers. If the total body of reviews doesn’t reflect the opinions of consumers who have submitted the reviews consumers may be misled.”*<sup>13</sup>
- The issue here is that once again there is an underlying assumption that a business will seek to do harm by the consumer and therefore must be afforded a greater level of protection than a businesses or business owner who can be subject to commentary that affects their livelihood because of a disgruntled customer who may or may not have a legitimate complaint.
- The consumer making the complaint can negatively review the product, and simply because it is their genuine opinion, be free to damage the reputation and sales of a business, regardless of whether the customer fully understands the capability of the product, the businesses obligations under ACL, if they are using it correctly or simply suffering buyer’s remorse.
- Even if a business felt strongly enough about particular commentary, engaging in online discussions, even if done privately, often perpetuate the dispute and private communications are often published as some kind of proof of the intransigence of the business in accepting the consumer’s opinion. This leads many businesses to simply forgo rectifying misleading statements made by consumers.
- ACL should be amended to include the same protections for businesses from misleading conduct by consumers, as consumers are parties to transactions covered by ACL and therefore should have similar obligations to act with integrity and with due regard to the impact of their conduct on fair trading and effective competition.
- Additionally, online review platforms can boost the placement of products and the influence the reputation of the brand. Unlike conventional advertising or even online advertising, these platforms purport to be independent assessors of products and companies acting in the consumer’s best interest.

<sup>13</sup> Australian Competition and Consumer Commission, Managing Online Reviews, May 2016,  
<https://www.accc.gov.au/business/advertising-promoting-your-business/managing-online-reviews>



- It is usually undisclosed that many of the rated businesses have commercial relationships with the review platforms and are either afforded a screening process prior to reviews being published, or act effectively as brand boosters to their commercial partners, or only include those with commercial relationships in their review spectrum.
- This creates obvious distortions in the consumer's preference for goods and is clearly misleading.
- Such relationships and methodologies should be disclosed prominently so consumers understand how ratings are awarded for brand and businesses. Equally, star rating systems should also identify how many reviews have been submitted that contribute to the determination of the star rating.

## Conclusion

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- MTAA thanks the ACCC for the opportunity to make comment on some of the matters arising in the issues paper.
- MTAA is continuing analysis on other key areas of interest including taxation reform, emissions testing and potential for a national end of life vehicle recycling program, which may have impacts on new car retailing and looks forward to potentially discussing these and other issues during the conduct of the market study.
- MTAA looks forward to providing any assistance to the market study team including any access it may require to Members of their business constituents.

MTAA National Secretariat  
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