



# MTAA



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Dear ACCC Agricultural Machinery Project Team

The Motor Trades Association of Australia Limited (MTAA) thanks the Australian Competition and Consumer Commission (ACCC) for the opportunity to provide a submission on the Discussion Paper on Agricultural Machinery Aftersales Markets.

MTAA is a peak automotive sector not-for-profit Federated organisation whose members are the State and Territory Motor Trades Associations and Automobile Chambers of Commerce. Under the MTAA umbrella there are also several discrete industry associations that provide an avenue for businesses in these industries to provide input, feedback and issues to national policy and regulatory matters impacting their industry and its operations. Specific to this submission are the Farm and Industrial Machinery Dealers Association of Australia (FIMDAA). These businesses are members of MTAA Member Associations.

FIMDAA member businesses were surveyed by some MTAA Member organisations. Some of MTAA's Member organisations have provided separate submissions to the ACCC, while other MTAA Members input is provided specifically in this overarching submission by the MTAA. Any submissions provided by MTAA Members should be read in conjunction with this submission.

Consultation processes employed by MTAA Member organisations have included member surveys, and teleconference forums.

Please contact Mr Richard Dudley, CEO MTAA, if any further information or clarity is required regarding this submission at [richard.dudley@mtaa.com.au](mailto:richard.dudley@mtaa.com.au) and / or 0412146828.

Yours Sincerely,

**Richard Dudley**  
CEO MTAA LIMITED

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## Introduction

- The Motor Trade Association of Australia Limited (MTAA) thanks the Australian Competition and Consumer Commission (ACCC) for the allocation of resources to investigate Agricultural Machinery After-sales Markets through the development and release of a discussion paper.
- MTAA welcomes these investigations and believe they will provide a valuable input into MTAA advocacy and representation activities to have farm and industrial machinery and motorcycle franchised dealers included in two important policy and regulatory works currently being prepared by the Australian Government. In part, these two parcels of work are in response to the ACCC’s Market Study in 2017 into New Car Retailing, which is referred to in the Discussion Paper. FIMDAA member businesses were also represented in MTAA submissions and testimony provided to the Commonwealth Government’s Joint Parliamentary Committee inquiry into Fairness in Franchising. The first are amendments to the Franchising Code of Conduct (FCC) within *Competition and Consumer Act* for motor vehicle dealers due to be enacted by 1 July 2020. The second is the development of legislation and regulations for access to motor vehicle service and repair information, which MTAA respectfully suggests is applicable to farm machinery dealers and independent mechanical service providers alike.
- It is MTAA’s national position that farm and industrial machinery and motorcycle franchisees must be included in the schedule of amendments to the FCC for franchised motor vehicle dealers as there is little, if any, differentiation between the experiences, issues and concerns of franchised farm and motorcycle dealers and new car dealers. Similarly, MTAA has also advocated strongly that issues impacting access to car manufacturers service and repair information by independent mechanical repair providers are also experienced by farm machinery dealers and independent mechanical service providers.
- MTAA notes that the Australian Competition and Consumer Commission (ACCC) has increased its focus on competition and fair-trading issues in the agriculture sector since 2015, when it established a dedicated Agriculture Unit.
- The MTAA notes that the ACCC is seeking further information and feedback from stakeholders to better understand the extent of the concerns identified in the discussion paper. Specifically, that:
  1. Access to independent agricultural machinery repairs is limited.
  2. Farmers may lack recourse in the event of a problem with their machinery.
  3. Agreements between manufacturers and dealers may limit access to repairs; and
  4. data ownership and management may raise privacy and competition issues.
- In developing this submission MTAA has sought information and input from its Members, the State and Territory Motor Trade Associations and Automobile Chambers of Commerce, and through them, direct input and feedback by farm and industrial machinery and motorcycle dealers who also sell agriculture sector products and services. These dealers through their membership of MTAA Member organisations are automatically members of the Farm and Industrial Machinery Dealers Association of Australia (FIMDAA) and the Australian Motorcycle Dealers Association (AMDA).

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## Executive Summary

- Broadly, Member business constituents are concerned that applying Australian Consumer Law to farm machinery will have a negative impact on the agricultural machinery sales industry.
- At the core of concerns raised by FIMDAA is that the ACCC appears to be focusing on transactions that are primarily business to business. That is, agricultural machinery dealer to farmer, both of whom are generally ABN holders and who should be treated as active business units. As such, questions have been raised by member businesses regarding the focus on Australian Consumer Law (ACL) in the discussion paper on the basis that this should only apply to business to consumer or consumer to consumers issues, and not business to business transactions.
- In addition, dealers have advised that customers often make purchase of farm and agricultural products without taking their obligations seriously in terms of taking the time to learn operator manuals and instructions or read and understand warranties. While dealers spend considerable time with customers at delivery, providing information and training, inappropriate operation and neglecting service requirements can and has caused serious issues.
- In particular, members have noted that there is little to no protection from the ACCC in the case of disputes between farm machinery dealerships and their suppliers, as they are also business to business, which is why MTAA raised these concerns in the ACCC Market Study into new car retailing and subsequent Government inquiries into franchising.
- MTAA is adamant that soon to be enacted amendments to the Franchising Code of Conduct to address a power imbalance between car manufacturers and car dealers should be extended to farm and industrial machinery and motorcycle dealers as a matter of urgency. MTAA respectfully suggests the ACCC has limited the scope in the discussion paper by only investigating after-market sales. The concerns and issues arising are in the view of MTAA interrelated.

## MTAA Responses to Discussion Paper topics

### Access to independent agricultural machinery repairs is limited

- MTAA Member organisation the Victorian Automobile Chamber of Commerce (VACC) has conducted research that indicates actions and practices of denying or restricting technical repair information to some consumers (including primary producers) is not widespread and the majority of agricultural machinery dealers are able to and do share technical repair information with other businesses and consumers in their location.
- An internal VACC survey conducted in 2016-2017 compiled an evidence-based portfolio of 432 instances where independent repairers could not access technical information that was required to complete a repair. Of the 432 instances a total of three cases (or 0.06 per cent) were attributable to farm machinery specific repairs.

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- This feedback is indicative of the fact that rural and regional communities have very close business and community networks and are reliant on each other for support, sponsorship of community events and other activities for their socio-economic well-being. Limiting access to technical information is not in the spirit of such civic mindedness and the evidence provided supports the fact that such cases are relatively isolated.
- There is a requirement that Authorised Dealers service machinery during the warranty period as dealers are held accountable as part of franchising agreements and under Australian Consumer Law for warranty repairs. MTAA has previously expressed concerns regarding the accountability of product manufacturers for fair and reasonable compensation for warranty work and warranty service provision with some manufacturers preferring to lay this accountability squarely with dealers, but then seek to argue about whether such work was covered by warranty or adequately compensating for work undertaken.
- There is clear evidence many consumers service their own machinery on a day to day basis outside of the warranty period. There is a high occurrence where primary producers have either undertaken a mechanical trade or have built up years of skill and expertise in the operation, maintenance and service of machinery and equipment. More recently this has raised some issues with the implementation of technology and computing systems in modern machinery.
- Genuine parts are used in all warranty repairs while under warranty and non-genuine replacement or substitute parts can cause serious problems.
- Like other parts of the automotive sector there is an aftermarket industry for the supply of parts, components and accessories to the agriculture machinery and equipment industry. Accordingly, customers are offered a choice outside of warranty.
- Independent repairers do not have the same overheads, obligations and requirements embedded in dealer franchise dealer agreements including specialised tools, equipment, and training costs. As per new car franchised dealers, farm and industrial machinery and motorcycle manufacturers / importers / distributors, prescribe specific and considerable demands and requirements through franchise or other agreements.
- MTAA, Members and FIMDAA supports a mandatory scheme for manufacturers to provide independent repairers with access to the same technical information, parts and diagnostic tools made available to dealers and preferred repairer networks. MTAA, Members and FIMDAA is working through consultation on draft legislation for access to service and repair information to extend the coverage to farm machinery and motorcycle manufacturers with emphasis on appropriate training and equipment to satisfactorily undertake repairs.
- Essential to this legislation will be the provision of security protocols for the protection and release of sensitive environmental, safety and security-related information and that manufacturer's information be provided to independent aftermarket businesses on commercially fair and reasonable terms. It is not MTAA's position that this information be provided free of charge or obligation to the safe and secure repair of the product.

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## Access to diagnostic, repair, and service information

- Repair and service information includes technical aspects such as component overhaul procedures, component specifications, collision repair methods and dimensions, maintenance specifications and adjustment procedures, safety instructions, wiring diagrams, diagnostic and testing procedures, and fault codes.
- A key difference between a dealer servicing an expensive agricultural product and a primary producer or third party conducting 'do it yourself' repairs in a field is that for the dealer, all diagnostic tools and parts are readily available. There are examples of third parties attempting to repair an agricultural machinery product, failing, and then having an expectation that the selling dealer will collect the machinery and repair it under warranty. What then eventuates is a considerable discourse between the primary producer or third party, the dealer, and the manufacturer. Many dealers, because of goodwill and their proximity to, and reliance on, relationships in the local community, may try to assist to a point. However increasingly product manufacturers will not 'entertain' nor compensate a dealer for a warranty repair on a product that has been subjected to an attempt to fix the problem by a third party before engaging the dealer.
- MTAA, Members and FIMDAA business constituents are aware of media coverage in the United States and Australia regarding frustration by primary producers and third parties with being able to access information in order to 'fix a problem' or repair machinery on farm. MTAA, Members and FIMDAA business constituents have no issue with suitably qualified and / or experienced primary producers or third parties repairing their own machinery, however, they do not believe it to be reasonable that the dealership network must then be subjected to warranty claims for rectification.
- VACC would urge the reviewers to not bundle statistics into any future research regarding alleged lack of recourse when the issue has been generated by misuse of the machinery or an attempt to modify or repair the machinery by a non-qualified person.
- Similarly, there are risks associated with this the information being used by a member of the public to repair an agricultural machine, who is not an appropriately qualified farm machinery specialist. This is an area where typically both the manufacturer and dealer come into dispute with a consumer.
- There is no evidence to suggest that farm machinery supplied by manufacturers or dealers must be serviced at a licensed dealer to maintain the owner's consumer guarantee rights. FIMDAA members, like all MTAA Member constituents are aware of obligations under Australian Consumer Law and the Competition and Consumer Act.
- MTAA and Members believe that awareness and education of consumer rights and obligations remains a constant need particularly when there are changes or amendments to legislation and regulations and that there is a need for education material to be tailored to specific industries addressing the nuances of those industries.

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- MTAA is of the view that education materials should also make it clear that clear that if a third party, be that a primary producer or independent repairer, cause a defect when repairing a vehicle, then that defect is unlikely to be covered by the manufacturer’s warranty. Education materials should include content that make it clear that in such situations then it is the consumer’s obligation to seek a remedy from the independent repairer at their own cost.
- MTAA and Members provided information to the ACCC Market Study into New Car Retailing in 2017 that access to diagnostic information, including fault codes and testing procedures, has been an increasing critical element of safely and securely repairing a vehicle. MTAA notes that the application of technology and interdependent systems are features of modern-day farm and industrial machinery with high dependence on integrated and Information Technology controlled systems and sub-systems.
- In some farm and industrial machinery products the interdependence of these systems and sub-systems can create further problems if attempts are made to rectify a fault without proper access to manufacturers service and repair information.
- MTAA and Members have succeeded as a result of its advocacy and representations to the ACCC market study and other reviews and investigations it obtaining a commitment of the Australian Government to legislate and mandate access to service and repair information for motor vehicles. It is the position of MTAA and FIMDAA that this access is also provided to suitably qualified and equipped independent farm and industrial machinery and motorcycle mechanics on fair and reasonable commercial terms by manufacturers on the same basis of the information provided to dealers.

### Farmers may lack recourse in the event of a problem with their machinery

- All new equipment comes with a Manufacturer’s Warranty for a prescribed period. Some is offered with extended warranty which is included in the transaction with no cost involved. In other cases, there is a cost to extend the warranty.
- Different manufacturers vary in warranty conditions and warranty period.
- All conditions are outlined in a warranty registration booklet that is signed by the customer acknowledging the warranty terms and conditions. The warranty book stays with the customer.
- Dealers report that they are working extended hours to meet the expectations of customers, particularly during sowing or harvesting seasons when any downtime due to machinery and equipment malfunction can have significant impacts on the primary producer and their farming operations.
- While dealers report long working hours during periods of heightened activity such as harvest, they are required to meet work health and safety responsibilities and it is unreasonable for them to be available on call 24/7.

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- Many agricultural machinery products can cost tens of thousands of dollars per product and are rarely used for personal use but are unlikely to be covered by ACL consumer guarantees. MTAA, Members and FIMDAA business constituents are of the view that there is a false presumption that in the event of a product fault, purchasers believe they are limited to the manufacturer warranty or they must pay for repairs themselves.
- MTAA has previously advocated that the current consumer guarantee threshold of \$40,000 should be indexed to 2020 prices with annual indexation thereafter tied to movements in the Consumer Price Index (CPI). This would help ensure that the real value of consumer guarantees on goods and services covered within the ACL are not eroded over time and remains relevant to prevailing economic and business conditions.
- As outlined in their separate submission to this inquiry, VACC research indicates that in over 80 per cent of cases, FIMDAA business constituents are supported by their manufacturer in the event of an ACL warranty claim by a consumer. FIMDAA dealers report that it is very rare for consumers to not be able to obtain recourse in the event of a problem with their machinery. In the event of any such occurrence, FIMDAA dealers advise that they will almost always make good on such issues. In such small rural communities, acts of goodwill and business reputation are of paramount importance. From this perspective, FIMDAA members follow the requirements contained within the ACL consumer guarantees. It is FIMDAA's view that farmers do not lack recourse in an event of a problem with their machinery.
- MTAA would dispute any notion that farmers lack recourse when encountering problems with their machinery. Farm machinery dealers articulate many options with their customers at the point of sale concerning warranty and repair work, customer rights and obligations, and often going beyond these requirements as a gesture of goodwill or maintaining a loyal customer base within their local community.
- As outlined by the MTAA and Members at hearings into the ACCC Market Study into new car retailing and subsequent franchising inquiries, the real lack of recourse occurs in the relationship between dealer and manufacturer. Many dealers do not have the will or resource to take action Under s274 of the ACL, Schedule 2 of the Competition and Consumer Act 2010, where it is mandated that if a consumer asks a supplier to deal with a problem under the Consumer Guarantees, (i.e. a manufacturing defect), then the manufacturer must reimburse the supplier for any such costs (where the problem is not the supplier's fault).
- MTAA is of the view that there is an inherent definition problem with dealers being regarded as 'distributors' of the product. It is the experience of MTAA that this definition often provides a 'loop-hole' for some manufacturers to obfuscate their accountabilities for consumer guarantees, placing the burden inappropriately on the dealer. This has also caused issues where a dealer has undertaken warranty work in good faith only for such warranty work to be not recognised by the manufacturer or their agent / distributor and a resulting failure to compensate the dealer for the warranty work undertaken in a fair and reasonable manner.

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## Agreements between manufacturers and dealers may limit access to repairs

- MTAA Member, VACC has highlighted in its submission survey data that indicates that 63 per cent of FIMDA members have experienced a scenario whereby they have repaired a consumer warranty claim and were not reimbursed by the manufacturer. This shortfall is often related to the payment of labour time, where it is reported that manufacturers do not always compensate the dealer with the actual costed labour time spent rectifying an issue in the event of a warranty claim. In some circumstances MTAA has received complaints that this behaviour has extended to disputes over cost of parts and components including freight and logistic costs. There have even been examples where a loan machine has been provided, but the costs of this service are refused by the manufacturer.
- MTAA has received similar reports from farm machinery dealers across the nation and echoes the exact same power imbalance when it comes to warranty work and adequate compensation as experienced in car, motorcycle, and heavy vehicle industries.
- It is important to note that this scenario is not indicative of all farm machinery manufacturer / distributor and dealer relationships, but like motor vehicle manufacturer / dealer relationships there are good examples of excellent relationships where all parties are respected and the consumer is ultimately the beneficiary.
- MTAA on behalf of FIMDAA members raised examples of these practices in investigations into franchising. As outlined in submissions to these inquiries and as VACC has raised in its submission to this discussion paper, farm machinery dealer franchise agreements include clauses that for any warranty work the dealer must obtain permission from the manufacturer before starting any work. This type of agreement is a painstaking and unreasonable encumbrance enforced upon both dealer and consumer.
- MTAA is aware some manufacturers / distributors allow for dealers to appoint sub-agents within their Primary Marketing Area that will allow for consumers in remote areas to be serviced by an independent repairer. However, responsibility for the independent repairer work is borne by the dealer.
- MTAA draws the ACCC team's attention to content in the VACC submission which details extended warranties and their role and impact on relationships.
- MTAA also refers to material provided by Member the Motor Trades Association of South Australia where its FIMDAA business constituents made it clear that it is a requirement of their franchise agreements that Authorised Dealers service machinery whilst the product is covered during the specified warranty period.
- MTA-SA FIMDAA members regarded repairs under warranty are a 'loss-making' exercise for dealers for the reasons outlined above. MTAA respectfully suggests this feedback further highlights the need to examine the topic holistically, rather than only under a dealer to customer lens.

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- South Australia like many parts of Australia has large and varied agricultural enterprises dispersed across a large geographic footprint. Like in most States intensive horticulture enterprises to broad hectare cropping and livestock enterprises found in all jurisdictions. FIMDAA members provided input that if a consumer makes a purchase from a dealer far away from their property, and subsequently requires warranty work, there is a reasonable expectation that there may be some delays due to geography in having the problem attended to.
- If the deal to purchase new machinery or equipment is done 'far away', there is high potential that the repairs will be done in another dealer's area of responsibility. It is not unrealistic to expect that another dealer may refuse to incur losses for something that is the responsibility of the original provider.
- Dealers advise that the investment to be a Machinery Dealer is extremely high due to:
  - Lengthy franchise arrangements spanning multiple years
  - The high value nature of the products
  - Specialised tools mandated by the manufacturer
  - The requirement to buy spare parts in sufficient quantities.
- As such, there is a concern that a failure to protect agricultural business via the method of manufacturer's 'allocating' an area of responsibility to support a business will result in unsustainable losses and business collapses.

### Data ownership and management may raise privacy and competition issues

- Dealers are of the view that farm production data belongs to the owner, and that machine data 'stays' with the machine.
- Purchasers of farm and agricultural machinery have access to this data and often have not invested their time to digest operator manuals and instructions available to them.
- Many manufacturers have produced baseline ISO compatibility which can be used between brands.
- Owners can download and/or transcribe data from one brand to another.
- Dealers advise that they only utilise the machine data for diagnostic purposes.
- As the VACC highlighted in its submission, and MTAA has previously advocated in other inquiries, agricultural machinery is becoming increasingly complex in its use of computer systems and data, and most modern machinery now has extensive data collection capabilities. One of the consequences of this is uncertainty in the market around data ownership and control, and rights to data in certain circumstances.
- As VACC highlighted a key development is Consumer Data Right (CDR). Whilst the CDR is initially being implemented in the banking sector, with the energy sector to follow, MTAA and Members including VACC believe that, in future, automotive sector industries including agricultural machinery may be ideal candidates for CDR.

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- CDR represents a significant reform that provides consumers with greater choice and control over how their data is used and disclosed. It also aims to allow consumers to safely access their own data in a useable form and to direct a business to securely transfer that data to an accredited, trusted data recipient of their choice.
- In primary production data is increasingly valuable as a planning tool, risk mitigator and information provider. Like motor vehicles, heavy and commercial vehicles there are significant benefits as well as considerable cautions in the collection and use of data collected. Ownership will be a critical factor and access and use equally critical considerations.
- There will need to be appropriate systems and processes to ensure privacy and security of information. Compliance and enforcement will be critical during a period of heightened cyber security attacks.
- MTAA agrees with members views that access to data generated by computerised systems embedded in modern agricultural machinery that informs the end user of productivity and other key farm production data, should not be restricted when primary producers decide to change brands.
- MTAA also agrees that there will be an increasing need for awareness and education on the impacts of data and use.

## Personal imports and the consumer

- MTAA believes it appropriate to again advocate against the impost and impact of personal or parallel imports of farm and industrial machinery. MTAA in submissions to various inquiries into the ACL and Government investigations into personal importation for passenger vehicles, raised the real issue that there are gaping holes in existing legislation and regulation that allow the parallel or personal importation of machinery and equipment that does not meet Australian Standards and pose a serious risk to consumer safety.
- MTAA has previously highlighted that parallel imports of branded tractors are being sold through auction houses (that do not have the same licensing or accreditation or regulatory requirements as dealers) at cheaper prices than their seemingly identical Australian market delivered counterparts. Some manufacturers are also exasperated that the legal and regulatory regime permits these products to enter the Australian Market 'thru the back door' by importers at a lesser price point because while they may have been produced by the same manufacture, in the same factory, are actually designed and produced for a different market that down not have the same safety and compliance demands as Australia.
- Often Dealers are requested to provide warrant repairs on these products even though they bypassed the normal supply chain. This situation provides problems for consumers, manufacturers, and dealers. Often consumers have not been able to be satisfied because the importer of these cheaper equivalents have little to no regard for legal and regulatory compliance and refer the consumer to the product manufacturer.

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- Farm machinery dealerships are also unlikely to accept such vehicles as trade-ins due to the inherent risks involved with ACL, thereby causing further detriment amongst consumers. VACC has clearly articulated this position to government, including the notion that consumers should adopt a 'buyer beware' stance before purchasing a personally imported vehicle

## MTAA and Member organisations in context

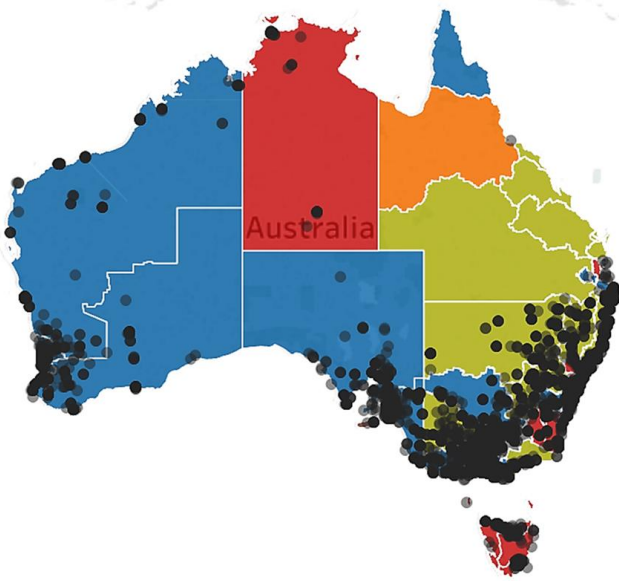
- The Automotive sector and the multiple industries within it, are undergoing unprecedented structural adjustment brought about by external global influences including automation, the rapid application of advanced technology, increasing influence of increasingly larger and consolidated market participants, and changes to consumer purchasing behaviours.
- 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.
- MTAA Limited is the national association of participating State and Territory Motor Trades Associations and Automobile Chambers of Commerce Members, and discrete national industry associations that exist under the MTAA umbrella providing unparalleled coverage and access to the nation's automotive and related businesses.
- MTAA and members represents and is the national voice of the 69,365 retail motor trades businesses which employ over 379,365 Australians that contributed \$37.1 billion to the Australian economy in 2015/16, which equates to 2.2% of Australia's GDP. Most of these businesses are small, and family owned and operated enterprises.
- MTAA member constituents include automotive retail, service, maintenance, repair, dismantling recycling and associated businesses, that provide essential services to a growing Australian fleet of vehicles fast approaching 20 million (expected by 2020) that has rapidly advancing technological systems and capabilities.
- MTAA Limited Members have almost all industries (more than 95%) of the automotive sector represented as business member constituents. This allows MTAA Limited Members the ability to understand the operations, issues, concerns, and risks of participating automotive industries including but not limited to:
  - New car retailing (including service)
  - Used car retailing (including some who service)
  - New and used motorcycle retailing (including service and recycling / dismantling)
  - Vehicle body repair (smash repair)
  - Independent automotive servicing
  - Service station and convenience stores (franchise and independent)
  - Auto recyclers, dismantlers, and part suppliers

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- Farm and industrial machinery retailing (including service and in some cases dismantling and recycling)
  - Tyre retailing, retreading, and recycling
  - Towing
  - Bus and coach
  - Heavy vehicle
  - Specific service professions including glass, transmission, engine replacement and reconditioning, brakes, steering, automotive electrical and air- conditioning
  - Vehicle Rental
- Most MTAA Limited members are also automotive sector training providers and possess extensive operations and facilities in apprenticeship training and skills development and post trade qualifications. In many jurisdictions MTAA Members are the largest employers of automotive apprentices and trainees.



**MTAA Member business constituents**

**Conclusion:**

MTAA thanks the ACCC for the opportunity to present this submission and for consideration and the allowance of extra time for members and their constituents during the unprecedented impact of COVID 19. MTAA remains available to provide any additional information and feedback as required and looks forward to continuing to work with the ACCC in its endeavours. Please contact Mr Richard Dudley, MTAA CEO, if any further assistance is required.

MTAA Secretariat

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