



**Australian  
Automotive  
Dealers  
Association**

# **ACCC NEW CAR RETAILING INDUSTRY REPORT RECOMMENDATIONS SUMMARY**

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**14 DECEMBER 2017**

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# RECOMMENDATIONS ON PROPOSED AMENDMENTS TO ENHANCE THE ACL

## ***RECOMMENDATION 3.1:***

The ACCC supports the amendments proposed by Consumer Affairs Australia and New Zealand (CAANZ) in the recent ACL Review to enhance the ACL and address any uncertainties about the application of consumer guarantees. Of particular relevance to issues arising in this study, the ACCC supports proposals 1, 2 and 3 in the final report on the ACL Review:

*Proposal 1:* Where a good fails to meet the consumer guarantees within a short specified period of time, a consumer is entitled to a refund or replacement without needing to prove a 'major failure'.

Proposal 2: Clarify that multiple non-major failures can amount to a major failure.

Proposal 3: Enhance disclosure in relation to extended warranties by requiring:

- agreements for extended warranties to be clear and in writing
- additional information in writing about what the ACL offers in comparison to the extended warranties
- a cooling-off period of ten working days (or an unlimited time if the supplier has not met their disclosure obligations) that must be disclosed and in writing

Relevant stakeholders, including manufacturers, dealers and consumer representative bodies, are encouraged to participate in the further consultation process on the ACL reform proposals to be conducted by CAANZ to express their views on issues which may arise in the application of the ACL to a car related complaint.

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# ACCC ACTION ON CONSUMER UNDERSTANDING OF THEIR RIGHTS

## *ACCC ACTION 3.1:*

The ACCC will work with manufacturers and dealers to develop a concise and simple explanation of consumer guarantees and their interaction with warranties, which should, as industry best practice, be provided to consumers at the point of sale of a new car.

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# RECOMMENDATIONS ON COMMERCIAL ARRANGEMENTS BETWEEN MANUFACTURERS AND DEALERS

## ***RECOMMENDATION 3.2:***

Car manufacturers (the Australian or foreign distributor of the car brand) should transform their approach to the handling of consumer guarantee claims or risk action for non-compliance with the ACL. The ACCC recommends that car manufacturers:

- update their complaint handling systems to ensure that consideration of consumer guarantee rights are embedded in all relevant systems, policies and procedures with the objective of ensuring that a consumer's statutory rights under the ACL are given due consideration at the outset of responding to a claim
- update their dealer agreements and policies to expressly state that obligations under the manufacturer's warranty are in addition to, and do not exclude or limit, the manufacturer's obligations to indemnify the dealer under section 274 of the ACL
- review their dealer agreements, policies and procedures to ensure that these commercial arrangements:
  - do not contain unfair contract terms that go beyond what is reasonably necessary to protect their legitimate interests
  - place appropriate limits on any terms which enable manufacturers to unilaterally vary the agreement and/or operations manuals.

## ***RECOMMENDATION 3.2:***

Certain issues raised by dealers in relation to the imbalance of power in their commercial arrangements with manufacturers may require further examination.

Dealer agreements for the sale of motor vehicles are deemed by the Franchising Code of Conduct to be franchise agreements. One option for consideration of these issues is the next review of the Franchising Code of Conduct to occur from 2020.

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Issues which may be further considered include:

*Minimum tenure and capital investment requirements*

- a required minimum term for dealer agreements with the objective of allowing dealers a sufficient period in which to recoup capital investment required by the manufacturer
- limitations on the level of capital investment that a manufacturer can require of a dealer based on the tenure of the dealer agreement offered
- enhancing a dealer's rights to be compensated for capital investment required by the manufacturer in the event of non-renewal of the agreement

*Reasons for non-renewal*

- providing dealers with reasons for non-renewal of a dealer agreement to enable an assessment of whether non-renewal has been exercised by a manufacturer in good faith

*Changes to commercial arrangements*

- providing national dealer councils and/or dealers with a minimum period of prior notice of proposed amendments to dealer agreements, policies and procedures and the ability for national dealer councils and/or dealers to challenge proposed amendments
- exempting certain aspects of the commercial arrangements between manufacturers and dealers from unilateral variation by either party

*Reimbursement for remedies*

- enhancing a dealer's right to reimbursement to recover the costs of providing remedies where the manufacturer is responsible for the failure
- strengthening the accountabilities of manufacturers and dealers when providing remedies to consumers. The

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# ACCC ACTION ON CONSUMER UNDERSTANDING OF THEIR RIGHTS

## *ACCC ACTION 3.2:*

To assist consumers better understand their rights when it comes to new car defects and failures, the ACCC will work with other ACL regulators to publish an updated version of Motor vehicle sales & repairs – an industry guide to the Australian Consumer Law (August 2013)<sup>1</sup> to ensure that this publication addresses the issues identified in this study, including specific guidance on criteria for determining a ‘major failure’. Guidance may also be designed for use by businesses, including dealers, regarding their rights and obligations under the ACL.

## *ACCC ACTION 3.3:*

Instances of misleading or deceptive conduct, or misrepresentations, in relation to the use of independent repairers or non-OE spare parts will be targeted through action by the ACCC, including enforcement action where appropriate.

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# ACCC ACTION ON THE CONSUMER EXPERIENCE OF ENFORCING THEIR RIGHTS

The ACCC has recently instituted proceedings in the Federal Court against Ford, and it has also accepted a court enforceable undertaking from Holden, in relation to its concerns about alleged ACL non-compliance issues.

## ***ACCC ACTION 3.4:***

The ACCC will continue to actively monitor complaints and emerging issues in the sector, and take further compliance and enforcement action where necessary. Manufacturers' complaint handling systems, policies and practices that do not comply with the consumer guarantee requirements of the ACL will continue to be targeted through action by the ACCC and fair trading agencies, including enforcement action where appropriate.

Such action may also address any instances of non-compliance by dealers. The ACCC is particularly concerned about manufacturers and dealers engaging in conduct that may be misleading or unconscionable.

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# RECOMMENDATIONS ON ACCESS TO TECHNICAL INFORMATION FOR NEW CARS

## ***RECOMMENDATION 4.1:***

A mandatory scheme should be introduced for car manufacturers to share technical information with independent repairers, on commercially fair and reasonable terms. The mandatory scheme should provide independent repairers with access to the same technical information which car manufacturers make available to their authorised dealers and preferred repairer networks, including environmental, safety and security-related information (if it is made available to dealers).

The mandatory scheme should place an obligation on car manufacturers and other industry participants to achieve the underlying aims and principles of the Heads of Agreement (including those in relation to training and reinforcing existing statutory obligations on independent repairers to ensure repairs and servicing are carried out correctly to car manufacturers' specifications to assure the safety of consumers).

The mandatory scheme should, subject to the type of regulation used, address the following operational matters:

### *Real time access*

- Car manufacturers should make available to independent repairers, in real time, the same digital files and codes, such as software updates and reinitialisation codes, made available to dealers to repair or service new cars.

### *Coverage*

- Obligations on sharing technical information should apply to all car manufacturers in Australia.
- Relevant intermediaries should have options to access technical information from car manufacturers on commercially fair and reasonable terms.

### *Definitions*

- All relevant terms, conditions and exclusions should be defined in the regulation, for instance, defining diagnostic tools and their relevance to facilitating access to technical

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information, as well as defining environmental, safety and security-related information.

#### *Dispute resolution*

- Any dispute resolution processes should be timely and accessible by all relevant stakeholders.
- Any dispute resolution processes should be subject to compulsory mediation and binding arbitration by an independent external party.

#### *Governance/consultation*

- Key stakeholders should meet regularly to discuss the rapidly changing nature of repair and service information.

#### *Security-related information and data*

- Similar to the EU or US models, a process for the secure release of environmental, safety and security-related technical information should be established or authorised under the mandatory scheme.
- The mandatory scheme should also set out a process for vetting end users accessing environmental, safety and security-related technical information and for tracing the use of that information.

#### *Enforcement*

- If appropriate, options to enforce the terms of any regulation should be included (e.g. penalties).

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# RECOMMENDATIONS AND ACTIONS ON PARTS

## ***RECOMMENDATION 5.1:***

OE manufacturer-branded parts and accessories should be generally available to independent repairers on commercially fair and reasonable terms.

Car manufacturers should develop policies which clearly outline any parts subject to restricted access on security-related grounds. These policies should be publicly available.

There may be benefits to industry developing a standard definition and detailed classification system for 'security-related' parts to provide certainty to parts customers.

## ***ACCC ACTION 5.1***

Refusals by car manufacturers to supply security-related parts for repair and service will be monitored and addressed through action by the ACCC, including enforcement action where appropriate.

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# RECOMMENDATIONS ON FUEL CONSUMPTION AND CO2 EMISSIONS CLAIMS

## *RECOMMENDATION 6.1:*

Changes to the fuel consumption label affixed to new cars should be considered to improve the comparative use of the information supplied. Introducing a star-rating system or annual operating costs may minimise the extent to which consumers interpret an 'absolute' fuel consumption/emissions value as equivalent to what they would achieve in real-world driving conditions.

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# RECOMMENDATIONS ON THE FUEL CONSUMPTION AND EMISSIONS DISCREPANCY

## *RECOMMENDATION 6.2:*

The ACCC considers that real world testing of fuel consumption and emissions would significantly improve the quality of information provided to consumers.

The ACCC supports measures to enhance the quality of information supplied to consumers currently being considered by the Ministerial Forum into Vehicle Emissions, including the replacement of the current fuel consumption and emissions testing regime with the new Worldwide Harmonised Light Vehicles Test Procedure, a more realistic laboratory test, and the introduction of an on-road 'real driving emissions' test.

The ACCC also considers there may be additional benefits to consumers from an Australian real driving emissions test. The ACCC recommends that the Ministerial Forum consider the costs and benefits of an Australian real driving emissions testing program as proposed by the AAA.

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# RECOMMENDATIONS ON THE FUEL CONSUMPTION AND EMISSIONS DISCREPANCY

## *RECOMMENDATION 7.1:*

The ACCC supports the Australian Government's intention to legislate a Consumer Data Right sector-by-sector. If a Consumer Data Right was introduced into the new car retailing industry, it could address some of the concerns that were raised about the impacts of telematics technology on new car purchasers. For example, a Consumer Data Right could give consumers the right to access digitally held data about themselves, including the right to direct data custodians to copy that data to a nominated third party.