



Australian Automotive Dealer Association Ltd.

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Australian Competition & Consumer Commission
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AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION (AADA) NEW CAR RETAILING INDUSTRY – A MARKET STUDY BY THE ACCC

Introduction

AADA is responding to the ACCC's Issues Paper (Paper), October 2016 in respect of its market study into the new car retailing industry. We note that the market study is being undertaken under section 28(1)(c) of *the Competition and Consumer Act 2010* and the Paper covers:

- the scope of the market study
- consumer guarantees, warranties and new cars
- fuel consumption, carbon dioxide (CO₂), noxious emissions and car performance
- post-sale service arrangements, and
- access to repair and service information and data

In our submission, we have addressed the listed 55 questions but given the complexity of the automotive value chain and limited time to lodge a submission, we would appreciate a further opportunity to engage in discussions with you in respect of a range of issues, including an analysis of your database of consumer complaints.

AADA

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car dealers in Australia. There are over 1500 new car dealers in Australia that operate about 3500 new vehicle outlets. Dealerships range from family-owned small businesses to larger businesses including three public companies (AHG Ltd, AP Eagers Ltd and AutoSports Group Ltd)¹.

The franchised dealer network generates revenue in excess of \$66 billion, employs more than 66,000 people, pays wages in excess of \$4 billion annually and has invested around \$17 billion in facilities. Franchise agreements or dealership agreements are estimated to be in excess of 4,000².

Australian New Vehicle Industry

The Australian automotive retail sector is an important contributor to the Australian economy. Research commissioned by the Federal Chamber of Automotive Industries (FCAI) on the Economic Impact of Automotive Retailing in Australia³ identified over 3,500 dealership locations across Australia representing 67 different car brands. Dealerships across the nation employ in excess of 66,000 staff. Industry employment is boosted to 236,500 with employment from indirect sources (supply chain effect) at 94,700 and induced (income effect) employment at 75,400. This total employment supported by the industry represents 2%⁴ of the Australia's total employment.

The economic impact of the new vehicle industry to Australia is also significant. The estimated value added impact measures about \$17.5 billion and accounts for around 2% of the Australian economy. The industry also generates an estimated \$8.5 billion in wages and \$5.6 billion in tax revenue. In 2015 total vehicle sales reached 1.155 million units with an expected increase to 1.209 million units by 2023⁵.

STRUCTURE AND OPERATIONS OF THE NEW CAR RETAILING INDUSTRY

ACCC Question 1 - How well does ACCC's understanding of the new car retailing industry supply chain reflect market participants' understanding of the supply chain? Which key market participants does it not capture? How could the ACCC's definitions be improved?

1. AADA Response

1.1 Diagram 1 in the Paper indicates that the ACCC has an accurate understanding of the new car retailing industry supply chain.

¹ Listed on ASX Nov 2016

² Deloitte Australian Motor Industry Overview - 'Changing Lanes' – 2015

³ IHS report 'Economic Impact of Automotive Retailing in Australia' – Aug 2016

⁴ IBIS World Industry Report – G3911 Nov 2015

⁵ IHS report op cit

1.2 We note, however, there is no reference to salary packaging companies, novated leasing companies and fleet lessor companies which account for a significant proportion of sales to both private and fleet buyers (about 49% of all new sales are to fleet operators⁶).

1.3 It is important to note that the significant financial negotiations and interactions between leasing and salary packaging companies and the end consumer usually occur outside the retail car dealer channel and away from licensed dealer premises. In most cases, dealer interactions are limited to vehicle selection and delivery.

1.4 This fact needs to be carefully considered in proposing changes to the retail car industry regulatory framework. All relevant distribution channels need to be covered.

1.5 AADA is unsure of the meaning of the term “independent dealer” in the context of the Australian market. If it refers to used car dealers, we are unable to comment.

1.6 We agree that the definition of a “new car” purchased by an Australian consumer should be one that has not been previously registered. We would also draw your attention to the VFACTS motor vehicle classifications and definitions which includes passenger motor vehicles, sports utility vehicles and light trucks.

1.7 AADA draws the ACCC’s attention to the importance of the arrangements dealers have with financiers to fund vehicle inventories using so-called ‘floorplan’ financing. An examination of these arrangements is vital to gaining a proper understanding of the retail car industry.

1.8 Floorplan or vehicle bailment is a flexible form of asset financing which has been in widespread use in the industry for over 70 years. It is fundamental to the prevailing retail dealer business model and is a key factor in delivering an efficient operating cost structure to successful franchised dealerships.

1.9 Floorplan operates so that the manufacturer or distributor invoices the floorplan financier for new vehicles ordered by the retail dealer with the financier taking a security over the vehicle title (a bailment).

1.10 The dealer is then legally obligated to settle the floorplan liability simultaneously with, or soon after, the sale of the vehicle to a customer.

⁶ VFACTS YTD Oct 2016

1.11 The total amount of floorplan financing used by franchised new car dealers is estimated to average around \$5-6 billion⁷ at any given time during the year. The efficient management of this significant debt liability is a major factor in determining a dealer's profitability and long term business success.

1.12 Some new car dealers also choose to floorplan used cars but these arrangements are usually subject to strict criteria in respect to age and condition of vehicles.

1.13 The floorplan financier charges interest on the floorplan, and will conduct regular stock checks, will have upper limits for the amount financed and may take security over assets other than the vehicles themselves.

1.14 If floor-planned vehicles fail to sell within certain agreed timeframes financiers often require dealers to pay out some or all of the financed amounts. These so-called 'curtailments' can cause cash flow pressures on some dealers in periods of subdued demand.

1.15 Typically, retailers and wholesale financiers negotiate floorplan arrangements that reflect the overall size and complexity of the business relationship.

1.16 For example, financiers will often tie the cost of providing wholesale bailment to the overall volume of retail paper a dealership is able to write in a specific period (month, quarter, year). The floorplan arrangements can also be effected by capital and investment loans that the dealer has with the wholesale financier.

1.17 These arrangements vary from financier to financier and dealer to dealer. It is critical to business success however that dealers maintain strong working relationships with their wholesale funder. Often, the financier is able to write significant volume and performance requirements into the financing agreement. This is highly relevant to the overall financial performance of the dealership.

1.18 These arrangements also have a bearing on the parallel study being conducted by ASIC into flex commissions on finance contracts. Such commissions are a form of base line inducement for dealers to sell targeted retail contract volumes and thus off-set the overall cost of financing inventory

⁷ Estimated by BDO on the basis of 1.1M TIV, 60-80 days' supply of inventory turned 4-6 times @ av veh value wholesale value of \$30 thousand.

ACCC Question 2 - What search costs do customers typically incur when buying a new car? Have online sales reduced these costs?

2. AADA Response

2.1 In general terms, customer search costs are low to negligible. There is little doubt that the internet has changed consumer behaviour on the vehicle purchase and finance journey. In the late 1990s as the internet began its growth phase industry commentators predicted that consumers would buy cars online built to individual personal specifications. The vision was that “clicks” would replace “bricks” and that dealerships with their large investments in facilities would become less important in the customer purchase process.

2.2 This vision has been delivered, at least in part.

2.3 A recent survey⁸ found that more than two-thirds (68%) of new car buyers made only 1.6 dealership visits on average before buying - with 40% visiting only one dealer. This is down from an average of 5 dealership visits just a decade ago⁹.

2.4 This important shift in consumer shopping behaviour continues to gather pace but many vehicle manufacturers and importers continue with facility policies that lag the market. Many dealer franchise agreements continue to require inappropriate levels of “bricks and mortar” investment by dealers.

2.5 This disconnect has important implications for the financial health of franchised new vehicle dealers. The negative impact of facility policies that lag contemporary trends in customer shopping behaviour is magnified by manufacturer strategies that tie dealer trading margin to increasingly risky investments in over-scaled facilities.

2.6 In the large European, UK and US markets some direct to customer internet vehicle sales are already occurring¹⁰. Recently, Stratton Finance, a subsidiary of Carsales.com.au announced a direct-to-consumer on-line sale model called Carconnect. Com.au (Click on [CarConnect](#)).

2.7 These developments add to the risks and challenges for the average franchised new vehicle dealer.

2.8 The vehicle purchase journey in both the on-line and more traditional models involves a number of steps including:

⁸ J.D. Power & Associates “2013 New Autosopper.com Study”

⁹ McKinsey report, 2/2014

¹⁰ Visit [Rockar Direct Sales](#) as an example

- developing a shopping list of vehicle brands and models
- developing a shortlist
- considering the need for finance
- consideration of finance options
- visiting dealerships
- test driving vehicles
- selecting finance lenders
- final choice of vehicle

2.9 On average, consumers take approximately 8-10 weeks to search, shortlist and purchase a vehicle¹¹.

2.10 The explosion of availability of vehicle information has reduced the vehicle shopping time commitment for customers¹². On average, new car buyers spend around thirteen hours researching their purchase. About half of this time is spent on-line. They spend an average of less than four hours in face-to-face discussions with the dealer from whom they purchase.

2.11 Importantly, this process with its heavy emphasis on the internet continues to drive the trend for customers to arrive at showrooms more than well-educated on the details of their vehicle choices and options and ready to transact.

2.12 Arguably this saturation of information combined with the significant choice of brands and dealers might translate into a greater time investment by the customer. As the above studies show however the ubiquity of relevant information via the web has made the entire customer process far more efficient – most of the research is done in the office or the living room at home, in a time and place that the consumer chooses.

¹¹ The Australian Vehicle and Finance Purchase Journey - ACA Research - Mar 2013

¹² The 2016 Car Buyer Journey - Cox Automotive, IHS Automotive

ACCC Question 3 - What are the key factors determining vertical relationships and contractual arrangements in the car industry? In particular:

- a) what is the contractual relationship between manufacturers, and authorised dealers and authorised repairers?**
- b) what are the common features of these contracts?**
- c) to what extent do the contractual relationships raise barriers to entry and exit and/or reduce the degree of competition in the car market (or specific submarkets)?**

3. AADA Response

3.1 Manufacturers/distributors and their authorised dealers operate under a dealership agreement and accordingly the relationship is regulated by the Franchising Code of Conduct and general law. The dealership agreement determines the contractual relationship between the franchisor and franchisee.

3.2 Standard features of a franchise agreement can include:

- Fixed term, commonly 3 to 5 years (not always the case)
- Prime Market Area (PMA) – postcode designation
- Volume targets
- Satisfactory customer satisfaction scores
- Dealer Principal Credentials and approval
- Staff training
- Facility brand specifications and representation
- Inventory holding
- Warranty audits
- New vehicle and parts inventory supply
- Financial reporting
- Dispute resolution
- Termination process

3.3 As a general comment, we remind the ACCC that the Wein Review¹³ on Franchising recommended that standard terms in Motor Dealer Franchise Agreement be reviewed and potentially implemented given the unique issues and levels of investment risk.

3.4 The terms in some franchise agreements might be characterised as overly restrictive and could be perceived as potential barriers to entry. A potential franchisee

¹³ Treasury – Wein Review of the Franchising Code of Conduct Report 2013

must not only be strongly credentialed in areas such as financial management, sales, leadership and customer care, but they must also be prepared personally to make a significant capital investment in an industry which is both high risk and extremely competitive.

3.5 Even when a potential franchisee is acceptable to the franchisor, and has a willing risk appetite their ability to raise the capital through borrowings will often act as a barrier. Typically, financiers (both OEM captive finance companies and others) will require a dealer to provide open-ended personal guarantees to secure the relevant loans.

3.6 Some agreements contain clauses or requirements that could be considered restrictive depending on individual circumstances. Examples that will benefit from further examination include:

- A requirement to use only nominated financiers (for both retail and wholesale financing)
- Restraints on advertising both print and internet
- Restraints on acquiring more dealerships either in the one brand or other brands
- Restraints on dealers being able to share facilities with other brands or reduce the footprint once a particular brand loses significant market share
- Clauses that allow manufacturers to issue sales targets linked to margin without proper justification of the target setting process. These target pressures can lead to undesirable practices including pre-reporting of vehicles not actually sold to consumers
- Some agreements allow manufacturers to vary fundamental terms of the contract by way of general dealer bulletin. This includes critical terms such as margins, facility requirements and stock levels
- Some agreements might allow franchisors to control dealership goodwill on sale
- Some agreements exclude customers such as fleet and government clients from the dealer network by dealing direct
- Performance targets extend to all parts of the business, sales, service, parts, finance, CSI
- Some agreements require dealers have to participate financially in national marketing campaigns
- Some agreements require dealers to take stock using automatic release arrangements with financiers

3.7 Franchised dealers today are almost always multi-franchised operations and fiercely compete for potential customers. They compete on both an intra-brand and

inter-brand basis in local markets and through the internet dealers seek potential consumers outside their PMAs.

3.8 This allows for unprecedented levels of retail competition across geographies compared to even ten years ago.

ACCC Question 4 – What is the nature of the business model applying to new car dealers? To what extent does the sale of new cars, service and repairs, finance and insurance and used car (purchases) and sales each underpin gross profit margin by dealers? Is there variability between dealers in the market?

4. AADA Response

4.1 New Car Franchised Dealer Business Model

4.1.1 New car dealers in Australia operate a business model that requires considerable business acumen to achieve a nuanced balance between five important profit centres:

- New Car Department
- Used Car Department
- Parts, accessory and aftermarket sales
- Service workshop sales
- Finance and Insurance commissions

4.1.2 A modern well run dealership will generally achieve a net profit of around 2% to revenue – that is to say two dollars of profit for every one hundred dollars of sales revenue. Coles and Woolworths by comparison generally achieve 5-7%.

4.1.3 Most dealers attempt to breakeven in the new and used car departments and rely on parts, service and the finance and insurance revenue streams to deliver an acceptable net return. Not all operators are equally successful however and a recent Deloitte survey¹⁴ showed that about 19% of all new car dealers failed to make a profit in 2015.

4.1.4 Today, AADA members face the prospect of reduced income streams across all five profit centres in their businesses if regulatory programs currently mooted by ACCC and ASIC are implemented as proposed.

4.2 Further Detailed Issues on the Business Model

4.2.1 Consider in isolation the profitability of the new and used vehicle departments.

¹⁴ Deloitte op cit

4.2.2 Gross margins are extremely low as a result of the fierce competition perpetuated by vehicle manufacturers driving for volume and market share to support scale efficiencies at the source plants (all of which will be off-shore by December 2018). This aggressive target-setting combined with the price pressures generated by well researched customers has driven new car margins down in real terms over the last ten years.

4.2.3 Importantly, so-called 'front end' or trading margins on new cars have been further reduced in this same time as all manufacturers and importers have adopted a 're-earnable' margin strategy.

4.2.4 These strategies reduce the dealers' 'on-floor' trading margin by linking significant proportions of the overall margin to key performance indicators that are generally only achievable with considerable management focus and expertise. Failure to achieve these 're-earnable' bonuses can reduce a dealer's new car margin by up to 50%¹⁵.

4.2.5 While the finance and insurance and parts and service departments will generally operate at a net profit they would not do so without sufficient volume in vehicle sales which generates a significant proportion of the throughput of those departments.

4.2.6 In the extreme case where a dealer is unable to balance both volume and profitability and consistently fails to achieve a franchisor's sales targets that dealer will be at risk of non-renewal of the franchise agreement.

4.2.7 The interdependence of the departments has increased in the last decade as a result of the financial imperative to achieve high levels of customer satisfaction (alluded to in the 're-earnable' margin discussion above).

4.2.8 Dealers strive for customer satisfaction as a means of increasing retention in order to support throughput and profitability.

4.2.9 Further, manufacturers measure and incentivise the dealers based on the levels of customer satisfaction achieved since customer satisfaction drives brand loyalty.

4.2.10 Most franchisors use some form of net promoter score to arrive at customer satisfaction metrics and these measures are widely accepted throughout the motor industry (and other industries) as reliable indicators of consumer health.

4.2.11 The table below provides some guidance in regard to the financial dynamics of the dealership model, using an example of a dealership which has annual sales of say \$100m:

¹⁵ Average of AADA members franchise agreements

	Sales Orientation %	Sales (million) \$	Gross %	Gross (million) \$	Gross Orientation %
New	65%	65	7.3%	4.7	38%
Used (inc Wholesale)	20%	20	10%	1.6	13%
Parts	8%	8	21%	1.6	13%
Service	<u>7%</u>	<u>7</u>	64%	<u>4.5</u>	<u>36%</u>
Total	100%	100	12.4%	12.4	100%
Add - F&I (26.5%)				3.3	
Other Income (18.7%)				2.3	
Less-Expenses (125.6%)				<u>(15.6)</u>	
Net Profit				2.4	
Net Profit %				2.4%	

4.2.12 While there is some variability in the gross margins (%) achieved by dealers, which principally reflects brand, geography and management ability, the variability is not significant due to the high level of competition in the industry. Although still not significant, there is greater variability in net profit, when measured as a percentage of sales, which principally reflects the ability to manage expenses or by virtue of differing cost structures, for example rent and employee costs.

4.2.13 We note that the financial dynamics outlined in the table above apply to BDO's benchmark for net profit to sales of 2.4%. The long term industry average is closer to 2.0%.

4.2.14 Using net profit to sales as a guide, most industry participants fall within a profitability band of 0% to 4%.

ACCC Question 5 – To what extent do customers substitute between brands and models, particularly responding to price differences? Do consumers show loyalty to particular brands of cars and dealerships, particularly for the aftercare of their new cars and future car purchases?

5. AADA Response

5.1 There is a level of substitution between brands and models that reflects vehicle attributes and those of the buyer. The level of substitution varies between the volume, prestige and luxury market segments.

5.2 The Australian market is highly competitive with around 67 brands and over 350 models competing for around 1.1 million vehicle sales a year.

5.3 The choice available to the Australian consumer places pressure on brand loyalty given emerging technologies and increasing levels of specification. Loyalty rates vary

by brand but generally fall within the 40%-67% range according to a recent study¹⁶. Manufacturers and dealers invest heavily in brand loyalty through a range of initiatives such as:

- a focus on customer satisfaction (as previously outlined)
- world class facilities and trained staff
- fixed price servicing
- manufacturer warranty periods (continually increasing)
- guaranteed future value arrangements
- competitive financing arrangements

5.4 Vehicle choice criteria will also affect brand and dealer loyalty as well as the attributes of the buyer. Criteria usually include reliability, value for money, styling, vehicle specifications including internet connectivity and modern features such as Bluetooth integration, satellite navigation, parking aids, vehicle cameras and safety equipment such as airbags and stability control.

5.5 Dealer loyalty varies widely and is driven by a diverse range of factors with the most important being geographic location, prior customer experience and effective customer engagement by dealer sales and service staff. It is widely accepted that positive prior sales and service experience is the most important of these and a recent study has again confirmed this¹⁷.

ACCC Question 6 – What is the level of competition between participants in each sector of the market? For example, between:

- a) authorised and independent dealers**
- b) authorised and independent service and repairer operators**
- c) authorised and independent parts distributors**

6. AADA Response

In the order raised by ACCC:

6.1 With respect to new cars, there is no competition between authorised and independent dealers. Under the existing arrangements only authorised dealers (franchised dealers) have access to the supply chain that enables them to sell new cars for the brands they represent.

6.2 There is however significant competition in the area of used cars, in part due to independent used cars dealers, but more significantly as a result of the “private to

¹⁶ Experian Automotive Research Jan 2016

¹⁷ Dealership Loyalty Study – May 2016 – David Ensing MaritzCX

private” market. The private to private market for used cars represents around 42%¹⁸ of all used cars sold nationally and this percentage is growing annually driven by non-dealer internet platforms such as Carsales and Gumtree.

6.3 There is significant competition between authorised and independent service and repairer operators.

6.4 There is a perception that franchised new car workshops are more expensive than independent repairers, and in some instances that may be the case. We would argue however that on the measure of value-for-money franchised dealers compare favourably to the independents.

6.5 We note the distinction made in the FCAI submission to this study (p 9) between franchised independents (such as K-Mart Tyre and Auto etc) and individual operators and we confirm that this distinction is important when analysing this market.

6.6 In assessing the ‘value-for-money’ equation we need to recognise that today’s motor vehicles are technically complex by design. For example, a recent KPMG study¹⁹ showed that 55% of all vehicles presently produced in Europe are connected to the internet (the so-called ‘Connected Car’ is taking its place in the ‘Internet of Things’). The study predicted that this will rise to 100% in ten years.

6.7 In the context of this ever increasing technical complexity, independent repairers face varying degrees of difficulty depending on their scale of operation.

6.8 Independent repairers generally operate with a lower cost base reflecting a smaller investment in operating standards and facilities. In general terms, the smaller independents lack the capital resources to fund investments in special tools, diagnostic equipment and staff training needed to service modern vehicles.

6.9 In comparison, franchised dealers offer:

- Factory trained technicians
- Fixed price servicing arrangements
- Factory backed warranty arrangements
- Manufacturer sourced special tools and diagnostic equipment
- Customer satisfaction initiatives, and
- World class facilities

¹⁸ Automotive Holdings study based on VFACTS, company reports and Deloitte industry estimates

¹⁹ KPMG ‘Connected and Autonomous Vehicles’ – March 2015

6.9 It is relevant to note that the independent repairers represented by AAAA, AAA and MTAA were parties to the industry agreement on access to vehicle service and repair information that was also signed by AADA and FCAI in 2014.

6.10 So far as we can determine, this agreement is operating satisfactorily and breach notifications under the agreement are minimal.

6.11 There is also significant competition between authorised dealers and independent parts distributors, particularly in the trade component of a dealership's parts business.

6.12 The main drivers are:

- Availability of grey parts (non-genuine parts produced and imported)
- Large insurers instigating arrangements with organisations who stock recycled parts which they make available to the insurers at low cost

ACCC Question 7 – Has competition increased in the new car industry over time and, if so, what is driving the change and how have dealers /manufacturers responded?

7. AADA Response

7.1 Competition has increased significantly over time challenging all of the traditional revenue streams typical of a franchised dealer i.e. New, used, parts, service and finance and insurance.

7.2 Principally the increased competitiveness is being driven by:

- Vehicle manufacturers' need for volume and market share to sustain production scale economies which are fundamental to their business models
- This translates into constant pressure on the dealers to achieve set volume targets required under franchise agreements
- Brand and model proliferation in a relatively small new car market in global terms (Australia is about 1.5% of the global market)
- As previously noted there are 67 brands and 350 models available in today's market, up significantly over the last 20 years
- This 'model proliferation' has been driven by the Federal Government's policy, starting with the Button Plan in the 1980s, to reduce import tariffs for motor vehicles in order to encourage the Australian automotive industry to be more globally competitive. This has seen a reduction of tariffs in the 1980s from nearly 60% down to 5% and 0% where Free Trade Agreements are in place. The reduction of tariffs means there are very low barriers of entry in the

Australian automotive market

- Reduced brand and dealer loyalty (as previously noted)
- Availability of information, principally through the internet, which has helped customers familiarise themselves with alternatives in brand, dealers and of course price (as previously noted)
- Ever reducing price entry levels for most brands including luxury and prestige marques. (In fact, a recent survey by AutoExpress UK²⁰ indicates new cars in Australia are the third cheapest in the world in terms of total cost of acquisition, behind India and Russia)
- The financial imperative for dealers to generate an acceptable return relative to their significant investment in business goodwill, staff and facilities. Throughput (sales volume) is one of the factors necessary in order to achieve an acceptable return

7.3 Manufacturers and dealers have responded to these increased competitive pressures, and will continue to respond, with initiatives such as:

- Manufacturer promotion of brand image, in part through showroom and service workshop facility investment requirements for dealers
- Focusing on customer satisfaction by enhancing the whole of vehicle life experience for customers (some of which has been outlined above)
- Less opposition by individual manufacturers to dealers representing other brands (multi franchising), recognising that generally no one brand will deliver sufficient volume to generate an acceptable return to dealers
- Reduction in dealer representation which has occurred as a result of:
 - manufacturer network strategies to reduce numbers, increase individual average through-put and thus deliver scale sufficient to earn an acceptable return for dealers
 - attrition resulting from financial hardship of individual dealers
 - industry consolidations (particularly by the three listed entities, AP Eagers, Automotive Holdings and AutoSports Group)

²⁰ Auto Express Survey Sep 2016 'Car running costs: how much does it cost to run a car around the world?'

ACCC Question 8 – What are the main drivers of the increase in new car sales? import tariff reductions, competition from used cars, lower prices due to increased competition.

8. AADA Response

8.1 The main drivers of new car sales include (but are not limited to):

- Population increase
- Historically low interest rates
- Consistent relatively full employment rates
- Reductions in prices due to manufacturing scale efficiencies including robotisation, CAD/CAM design and technology improvements
- Sustained increases in consumer desire for independent mobility
- Significant marketing spending by the manufacturers and the dealers
- Significant investments in facilities and customer experience
- New car price reductions relative to wages increases in real terms
- General economic and household prosperity
- The Australian taxation system and in particular the growth of salary packaging and novated leasing
- The out-working of the final phases of the Button Car Plan with the virtual elimination of tariffs driving better affordability – with the Luxury Car Tax an obvious outlier in that context

ACCC Question 9 – Are there other trends developing in the new car retailing industry in Australia? For example, has there been consolidation in the dealership segment? What impact might these trends and changes have on consumers?

9. AADA Response

9.1 The significant trends which will, or may have an impact on the industry and which will or may have an impact on the consumer, include:

9.2 Finance Contract Commissions

9.2.1 ASIC is presently considering the introduction of a regulation to mandate reductions to commissions from the in-dealership sale of finance contracts by our members.

9.2.2 Independent economic modelling shows that²¹, depending on the final cap imposed, such a regulation has the potential to reduce AADA members' incomes by between \$750 million and \$1000 million annually.

9.2.3 This latter figure is about equal to the entire new car retail industry's profits last financial year²².

9.2.4 AADA's view as previously expressed to ASIC by formal submission is that the point of sale interest rates available on finance offered to customers by dealers as agents for the financiers compares very favourably to alternative sources of finance available to the customers.

9.2.5 Should regulation apply such that dealers can no longer continue to be able to sell at rates above a prescribed cap that will potentially leave the customer with little alternative but to seek less competitive sources of finance. These sources generally have much higher writing rates (e.g. credit cards, pay day lenders etc)

9.3 Insurance Commissions

9.3.1 The ACCC is presently considering an application from the Insurance Council of Australia to indulge in cartel behaviour to limit new car dealer commissions on the sale of add-on insurance products to 20% of the premium, without a concomitant reduction in the premium paid by consumers.

9.3.2 This proposal therefore amounts to a redistribution of insurance margins to the detriment of AADA members and in favour of the insurance companies, with no consumer benefit apparent in the proposals.

9.3.3 AADA formally submitted our views to the ACCC and ASIC and accordingly we will not restate our position here. However, any regulation to that effect will have a significant financial impact on dealership businesses with potentially no significant gains to consumers.

9.4 Industry consolidation

9.4.1 Consistent with a mature industry, consolidation is occurring reasonably rapidly, in large part because smaller industry participants are finding it increasingly difficult to generate acceptable returns. The larger industry participants understand that by increasing their volumes and leveraging synergies they can achieve an acceptable return.

²¹ BDO Confidential Modelling presented to ASIC – July 2016 AADA Submission

²² BDO Op Cit

9.4.2 The large publicly listed entities and some equally large but privately held operators are also generally more able to leverage their balance sheets and capital structures to raise the necessary funding to allow industry roll-ups to occur.

9.4.3 We expect these trends to continue and to generally have a positive impact for consumers or at least to be neutral. There is a number of factors that support this view;

- forecast continued volume and market share pressure from manufacturers to the benefit of consumers
- manufacturers and dealers will continue to focus on and invest heavily in customer experiences to enhance brand and dealer loyalty
- manufacturers will continue with approval policies for dealer candidates that ensure operators have goals and values aligned to their own and which specifically include commitments to volume/market share targets and enhanced customer experience scores to promote brand loyalty

9.5 Industry disruption

9.5.1 Industry participants and analysts contemplate significant disruption which will challenge, or even completely change, the traditional revenue streams of a dealership business. While the timeframes and severity are very difficult to forecast we expect disruption will come in the form of:

- Electric and hybrid vehicles
- Ridesharing
- Self-driving vehicles (L1 through L5 autonomy over the next 20 years)

9.5.2 These changes will drive further positive consumer outcomes in terms of affordability, lower greenhouse gas emissions, better more user-friendly technology and higher levels of safety²³.

ACCC Question 10 – What is the level of intra-brand competition (for example competition between retailers of the same branded product)?

10. AADA Response

10.1 Intra-brand competition between dealers representing the same brand is as significant and possibly even more significant than the competition between dealers representing competing brands (inter-brand competition).

²³ See Tony Seba “Clean Disruption” for a more detailed discussion of these significant trends. [Clean Disruption](#)

10.2 This is true because once a customer (typically well researched and less brand loyal than ever before) has settled on a brand and model they then have a choice of dealers from whom to purchase their chosen vehicle. As outlined earlier, the geographic location of the dealer will provide some differentiation for the customer, as will the perceived level of customer service, and the availability of the particular vehicle.

10.3 However, many consumer studies taken over the last two decades show²⁴ that price continues to be a critical differentiator for many customers (see table below).

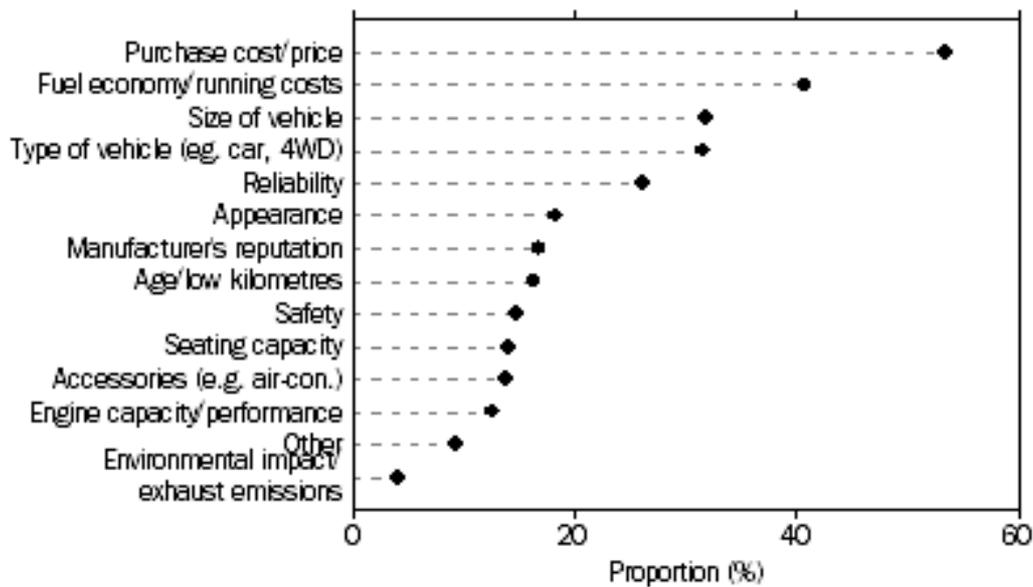


Figure 1 Factors influencing purchase decision – ABS 2009

10.4 Accordingly, dealers of the same brand will compete fiercely on price.

10.5 Dealer representation (number) and geographical dispersion (referred to as Prime Market Area) are controlled by the manufacturer, based roughly on the size of the market (population) and market share of the brand. Accordingly, higher volume brands, such as Toyota are likely to be more highly represented in larger metropolitan areas.

10.6 It is also relevant to note that many manufacturers and distributors own and operate retail dealerships on their own account and in direct competition with their franchised networks. These 'factory stores' may benefit from a cost model that independent franchised dealers cannot achieve (e.g. input costs may be lowered by bundling with the manufacturer's own purchases, borrowings or investments).

²⁴ Australian Bureau of Statistics Study - 2009

Chapter 2 - Consumer guarantees, warranties and new cars

General comments

1. As noted above, the Australian automotive industry is extremely competitive. Motor vehicle manufacturers spend many millions of dollars (globally many hundreds of millions of dollars) creating and building their brands. The manufacturers, distributors and their dealers are acutely aware that their brand can be damaged by defective or unreliable vehicles and by poor, unresponsive after-sales service. Consequently, manufacturers spend substantial amounts of money ensuring that their new motor vehicles are as reliable as possible. They also spend significant amounts of money on after sales service and on trying to satisfy those few customers who are not happy with their purchase.
2. AADA has had an opportunity to review the submission made by the Federal Chamber of Automotive Industries (FCAI) and concurs with that submission.
3. In short, it is in the commercial interests of the manufacturers and importers for their customers to be satisfied regardless of any legal obligations.

Response to specific questions

Question 11- When purchasing a new car, what information is given to consumers about their consumer guarantee rights? What information are consumers given about the terms and conditions of the manufacturers'²⁵ warranties or the dealers' extended warranties? Who provides this information? How is this communicated?

11.1 AADA concurs with the comments contained in the FCAI submission but also notes that ACL includes mandatory wording on the sale of motor vehicles as follows:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

11.2 AADA believes this consumer advisory clearly communicates the relevant rights and remedies.

²⁵ The paper refers to 'manufacturer's warranties'. Strictly speaking, most express warranties are given by the Australian distributor, not the entity which manufactured the vehicle. To avoid any confusion, in this chapter we have also used the term 'manufacturer's warranty'.

Question 12 - What information is given to consumers about the interaction between their consumer guarantee rights, the manufacturer's warranty and, where relevant, the dealer's extended warranty? Who provides this information? How is this communicated?

12.1 AADA concurs with the comments contained in the FCAI submission.

Question 13 - What are consumer perceptions of consumer guarantees, manufacturers' warranties and dealers' extended warranties? How do these influence a consumer's decision to buy a new car?

13.1 AADA concurs with the comments contained in the FCAI submission.

13.2 In respect of dealer extended warranties, AADA notes that these generally receive satisfactory oversight under the relevant ACL and related statutes.

Question 14 - Have consumers relied on consumer guarantee rights to seek a refund, repair or replacement for a new car that had a major fault and been denied? Please provide examples.

14.1 AADA notes that this issue (in broad terms) is currently being reviewed as part of the Australian Consumer Law review.

14.2 AADA concurs with the comments contained in the FCAI submission.

Question 15 - What issues, if any, have consumers experienced in having their manufacturer's warranty or dealer's extended warranty claims accepted? Please provide examples.

15.1 AADA cannot comment on the issues in relation to consumer experiences with manufacturer warranties. However, we point out that Dealers are subjected to strict warranty processes and audits. This can include the use of sampling on warranty claims to extrapolate error rates with substantial financial implications for dealers. Warranty audit policies and procedures are set by overseas companies and may not always account for local laws. Dealers can be financially penalised for not adhering to overseas protocols and so must bear the entire cost of satisfying local consumer requirements.

15.2 This dynamic has the potential to cause consumer satisfaction issues.

15.3 An area of confusion in having manufacturer warranties accepted is where independent repairers promote to consumers that an independent repairer can service

a motor vehicle without invalidating the manufacturer's warranty where in fact that is not necessarily the case.

15.4 The 'traditional' warranties offered by manufacturers are voluntary, private contracts between the manufacturer, the dealer and the consumer. It is usually a promise made to the consumer to fix or replace a part for free for a limited period of time or a certain number of kilometres, and is conditional on the consumer obeying the specific conditions of the contract.

15.5 If a consumer has agreed to a voluntary, private contract for a manufacturer warranty, it is not unlawful for a manufacturer or dealer to inform consumers that doing certain things would breach that voluntary, private contract.

15.6 For example, if:

- a manufacturer warranty requires the consumer to have their vehicle serviced at set intervals, by a licensed repairer (an authorised dealer), using parts approved by the manufacturer; and
- the consumer has their vehicle serviced at irregular intervals, by an aftermarket repairer not authorised by the manufacturer, using aftermarket parts not approved by the manufacturer,

then the consumer has breached the conditions of the manufacturer warranty.

15.7 This does not mean that the consumer's rights under the statutory warranties such as the Australian Consumer Law are necessarily affected. The rights under the Statutory Warranty will continue to exist subject to the consumer being able to establish a contravention of those rights.

15.8 There is nothing in the Australian Consumer Law that makes it unlawful for a manufacturer or distributor to include a condition of this type in a voluntary warranty. The only issue is that the manufacturer or distributor must not suggest to consumers that non-compliance with conditions of the voluntary warranty (e.g., must use approved parts) will automatically invalidate rights the consumer may have under the ACL consumer guarantees.

15.9 Accordingly, independent repairers can cause issues for consumers if they are encouraging them to inadvertently breach their manufacturer's warranty by promoting that they can service vehicles without invalidating the manufacturer's warranty.

15.10 AADA members understand the ACL and operate within it.

15.11 In respect of dealer extended warranties, AADA has formed the view, based on member feedback that tribunal reviews (e.g. VCAT, NSW CTTT etc) related to franchised new car dealer extended warranty claims are not significant in number.

15.12 Where matters are not able to be settled and the consumer elects to go to a court or tribunal for resolution, data gathered from members to support this submission show an average resolution rate in favour of the dealer of over 80%.

15.13 We also note that the NSW Government Department of Fair Trading's 'Name and Shame' Register does not list any franchised new car dealers.

15.14 Most consumers have their issues resolved at the dealership.

Question 16 - Are there examples of consumers being advised that rights to a repair, replacement or refund are limited because a vehicle is outside the manufacturer's warranty? If so, does this arise when dealing with a dealer or a manufacturer? Please provide details

16.1 AADA concurs with the comments contained in the FCAI submission.

16.2 We have no specific examples of the types of behaviours suggested in the question.

16.3 Sometimes, consumers are capable of making spurious claims. Even so, we do have frequent examples of our members and manufacturers working together in the interests of accommodating consumers with marginal or questionable claims to the maximum extent possible, within the bounds of commercial reality. The previously quoted favourable settlement rates support this contention.

16.4 Moreover, section 102 of the Australian Consumer Law prescribes the form of written warranties that must be provided to consumers. Among other things, the warranty must state:

1. what the person giving the warranty must do to honour the warranty;
2. what consumers must do to be entitled to the claim;
3. that the goods [the vehicle in this case] come with guarantees that cannot be excluded under the Australian Consumer Law;
4. the period or periods within which a defect in the goods or services to which the warranty relates must appear if the consumer is to be entitled to claim the warranty; and
5. the procedure for claiming under the warranty.

16.5 AADA members take their legal obligations in this regard very seriously and any statements made in relation to repair and replacement accord with the requirements of the Australian Consumer Law.

Question 17 - Are there examples of consumers being offered alternative remedies, such as a free service, in response to a request that a new vehicle be repaired, replaced or refunded?

17.1 AADA concurs with the comments contained in the FCAI submission.

17.2 We have examples of our members stepping in with additional remedies for consumers where they feel the consumer has been inconvenienced unreasonably even though a repair has been effected. These often include extended warranties, free services or special discounts. They are not offered in lieu of the correct response, but rather as relationship building incentives to ensure customer satisfaction is maximised.

17.3 This is almost always done at the dealer's expense.

Question 18 - Are dealers constrained in their ability to provide remedies to consumers by, for example, contractual clauses requiring prior manufacturer's approval to provide a specific remedy or reliance on manufacturer's expertise in diagnosing issues?

18.1 As stated in the FCAI submission, if the manufacturer is expected to pay for the consumer's claim then it is reasonable and appropriate that the manufacturer be involved in the process of assessing and determining the consumer's complaint. Manufacturers usually have greater expertise in diagnosing issues and as such their involvement is generally useful.

18.2 Our members' experience is that manufacturers make a genuine effort to provide timely prior approvals where policy requires it.

18.3 Over the last decade, manufacturers have generally progressively relaxed the prior approval limits for dealers in good standing.

18.4 While most manufacturers support dealers in relation to consumer claims, some manufacturers leave it to the dealer to handle consumer claims in some circumstances. AADA is aware of instances where the manufacturer did not provide appropriate support or assistance to the dealer and referred to clauses in the Dealer Agreement that specifically allowed the manufacturer to manage its responsibilities in this way.

18.5 While this type of behaviour is not typical, most franchise agreements contain clauses that allow it. This can have negative repercussions for consumers and in our view bears further scrutiny.

18.6 Finally, there can be no restraint placed on a dealer to provide remedies to which consumers are entitled under the Australian Consumer Law. To that end, dealers are required to notify consumers of this - see answer to Question 16.

Question 19 - What training are dealers given in explaining consumer guarantees, the manufacturer's or dealer's extended warranty? What information is provided at the point of sale and after sales?

19.1 Training varies by dealer size. Many members have training sessions for their dealers and their staff where they are provided with information on consumer's rights including those under the ACL and the manufacturers warranties.

19.2 In addition, members and their staff can access training modules on consumers' right under the ACL, organised through the FCAI and provided by external parties.

19.3 Many larger dealer groups retain in-house legal counsel who work with the front-of- dealership teams to ensure compliance with the ACL and clarity for consumers around the interaction between the ACL and dealer and manufacturer guarantees and warranties.

19.4 Finally, in the 2015 AADA National Conference, one of the presentations given to members was on the differences between consumer guarantees under the Australian Consumer Law and manufacturer's guarantees.

Question 20 - What information is given to consumers about when their manufacturer's warranty and/or dealer's extended warranty commences and expires? What information are consumers given about how the manufacturer's warranty and dealer's extended warranty interact? How is this communicated?

20.1 The manufacturer's express warranty is clearly spelt out in the owner's handbook which is provided to the consumer by the dealer. As stated in the answer to Question 16, this is legal requirement pursuant to section 102 of the Australian Consumer Law and one which AADA members take seriously and comply with.

20.2 Dealer franchise agreements require dealers to explain their rights to consumers at the time the vehicle is delivered. With a modern car, the explanation of owners' rights together with instruction on the operation of the vehicle's complex technology can take well over an hour, and sometimes longer. Dealer franchise agreements also require dealers to comply with all applicable laws. This includes section 102 of the Australian

Consumer Law. Accordingly, a dealer can have their dealer franchise agreement terminated if they do not comply with section 102 of the Australian Consumer Law.

20.3 AADA members take these responsibilities seriously not only because of the legal and moral obligations to do so, but because it goes to the core of building solid enduring business relationships with customers.

Question 21 - What information are consumers given about who can service their new car without affecting either the manufacturer's warranty or dealer's extended warranty? Who provides this information? How is this communicated?

21.1 At the time of delivery, AADA members generally emphasise to consumers the advantages of having their vehicles serviced at the dealership. They not however actively discourage consumers from seeking advice on alternative servicing arrangements should they wish to do so.

21.2 Dealers are also entitled to inform consumers that doing certain things may invalidate their manufacturer warranty (but not statutory warranties) - see answer to Question 15. In this regard, AADA's position is consistent with that adopted by the ACCC in an industry guide to motor vehicle sales and repairs, entitled 'Motor vehicle sales and repairs: An industry guide to the Australian Consumer Law'. At page 9 of the guide, in the section dealing with warranties against defects, the ACCC acknowledges that manufacturers can set out conditions in their express warranties.

21.3 The relevant section is extracted below:

'Warranties against defects may set out requirements that consumers must comply with. For example, a warranty against defects on a motor vehicle may require the consumer to ensure any servicing is carried out:

- *by qualified staff*
- *according to the manufacturer's specification*
- *using appropriate quality parts where required.'*

Question 22 - What issues have consumers experienced in having a dealer's extended warranty claim accepted where the car has been previously repaired with used parts? How does this interact with the terms and conditions of a consumer's insurance policy?

22.1 In relation to the first question, dealer extended warranties usually require the use of new genuine parts to preserve the integrity of the vehicle and to maintain key performance attributes. If a vehicle presents with a prior repair conducted using non-

genuine or used parts AADA members will generally work with the customer to arrive at a reasonable compromise to ensure the customer's needs are met.

22.2 Where the fitment of a non-genuine or used part can be directly ascribed as the root cause of a vehicle problem, AADA members will again work with the customer within the bounds of commercial reality. However, customers that knowingly authorise the fitment of these parts must naturally bear some cost consequences.

22.3 We are not able to comment on the second part of this question as we do not have oversight on the myriad terms included in the various policies.

22.4 We otherwise refer to and repeat our answers to Question 15 & 21.

Question 23 - Are there examples of consumers being required to sign a confidentiality agreement in order to resolve a complaint about a new car? If so, does this arise when dealing with a dealer or a manufacturer? Please provide details.

23.1 AADA is not aware of any instances in which it is a 'requirement' to sign a confidentiality agreement in order to resolve a complaint about a new car. There may be instances where a consumer is asked to sign a confidentiality clause and if the consumer elects to do so, it is done on a consensual basis. In the absence of a determination by a relevant tribunal or a court that a consumer guarantee or contractual right has been breached, it is not unlawful or improper to request that any settlement be entered into on a confidential basis. This is done because a dealer may wish to avoid the perception of 'guilt' where there has been no adverse findings against a dealer or in order to prevent a customer from using social media to give a misleading perception of the reasons and basis for the settlement.

23.2 Confidentiality clauses are very common in the settlement agreements of legal disputes and have not been held to be unlawful by the Courts.

23.3 AADA otherwise concurs with the comments contained in the FCAI submission.

QUESTIONS ON FUEL CONSUMPTION, CO2 EMISSIONS AND NOXIOUS EMISSIONS

Chapter 3 - Fuel consumption, CO2 emissions and noxious emissions and car performance.

AADA concurs with the comments contained in the FCAI submission.

As a general principle, AADA members cannot influence these vehicle metrics. Also, AADA members use the information provided by manufacturers in their marketing and sales activities with customers. Members therefore at all times have the reasonable expectation that this information is accurate.

Question 24 - What information is communicated to consumers about the fuel consumption, CO2 emissions and noxious emissions of cars they purchase (i.e. from manufacturers, dealers, government guides, labels etc.)? How is this information provided to consumers (other than through mandatory labelling)?

24.1 AADA concurs with the comments contained in the FCAI submission.

24.2 As a general principle, AADA members cannot influence these vehicle metrics. Also, AADA members use the information provided by manufacturers in their marketing and sales activities with customers. Members therefore at all times have the reasonable expectation that this information is accurate.

Question 25 - Are consumers aware that fuel consumption and CO2 emissions values are designed to be comparative? Is this made clear to consumers at the point of sale or elsewhere? Are there any ways in which consumer understanding could be improved?

25.1 AADA concurs with the comments contained in the FCAI submission.

25.2 As a general principle, AADA members cannot influence these vehicle metrics. Also, AADA members use the information provided by manufacturers in their marketing and sales activities with customers. Members therefore at all times have the reasonable expectation that this information is accurate.

Question 26 - What processes (e.g. training or education) are in place to ensure that dealers or sales staff are knowledgeable about, and don't mislead consumers about, the fuel consumption and emissions characteristics of a new car?

26.1 AADA concurs with the comments contained in the FCAI submission.

26.2 As a general principle, AADA members cannot influence these vehicle metrics. Also, AADA members use the information provided by manufacturers in their marketing and sales activities with customers. Members therefore at all times have the reasonable expectation that this information is accurate.

26.3 Furthermore, AADA members run in-house training to ensure front-of-dealership sales and service advisory staff are fully familiar with the relevant product information including this information on fuel consumption and emissions.

QUESTIONS ON CAR PERFORMANCE

Question 27 - Other than those described above, are there any additional factors or measures that could be included in the term 'car performance'?

27.1 AADA concurs with the comments contained in the FCAI submission.

Question 28 - To what extent do manufacturers and dealers seek to differentiate their products and services, and on what basis? To what extent do perceptions of quality and reliability account for price differences?

28.1 AADA concurs with the comments contained in the FCAI submission.

Question 29 - To what extent do claims relating to car performance affect consumer purchasing decisions? Please provide examples.

29.1 AADA is not aware of any specific examples of claims relating to car performance affecting consumer purchasing decisions.

29.2 That said, it is widely accepted that performance, in the broadest definition of that term, is an influencing factor in consumer purchasing decisions (however see chart p16).

Question 30 - Are you aware of any examples of claims by dealers or manufacturers (through websites, TV, print etc.) that are made to consumers about car performance that are potentially false, misleading or deceptive?

30.1 AADA is not aware of any such claims.

Question 31 - Do you have suggestions of how claims made to consumers about car performance could be improved?

31.1 AADA concurs with the comments contained in the FCAI submission.

QUESTIONS ON ACCESS TO PARTS AND TOOLS

Chapter 4 – Post sale service arrangements

AADA notes the FCAI submission with respect to this section. AADA supports the content of the FCAI submission and makes the following additional comments in relation to certain questions in this section:

Tier 1 Suppliers

- It is widely known and acknowledged that some Tier I component suppliers manufacture aftermarket parts of similar design to their OEM parts for sale at lower price points.
- These Tier 1 suppliers acknowledge and agree that the aftermarket targeted part is usually of lower quality and durability than the OEM part. They freely make this information available to consumers at point of sale and in promotional material.
- Some Tier 1 suppliers organise certified repair networks under their own brands and generally speaking these networks comply with their obligations under the relevant legislation.

Pure Aftermarket Suppliers

- A secondary channel of pure aftermarket suppliers exists below the Tier 1 level.
- These suppliers generally compete with the OEM parts purely on price.

Question 32 - What are the differences between genuine, OEM, parallel import and aftermarket parts? When and why are these parts used? When and why are second-hand parts used in repairing or servicing new cars?

32.1 AADA concurs with the comments contained in the FCAI submission.

Question 33 - What information is made available about different types of car parts to the market? Who makes this information available and when?

33.1 AADA concurs with the comments contained in the FCAI submission.

Question 34 - What information are consumers given about using different types of car parts and its effect on their manufacturer's or dealer's extended warranties? How is this communicated?

34.1 Presumably, this question is addressing the time at which a new vehicle is delivered to a consumer. On this basis, all matters relevant to a manufacturer's express warranty are clearly set out in the owner's handbook which is provided to the owner when he/she purchases their car.

34.2 AADA otherwise refers to and repeats the answers to Questions 15 & 16.

Question 35 - What issues, if any, have consumers and independent repairers had in accessing appropriate parts or tools to repair or service a new car?

35.1 AADA is not aware of any consumers or independent repairers that have had any issues with accessing appropriate parts or tools which are required to service a new car.

35.2 AADA notes the FCAI's submission in response to this question and does not have any further information to add.

Question 36 - What types of parts and tools do manufacturers sell to consumers and independent repairers? Do these differ from what is made available to dealers? What explains the difference?

36.1 AADA concurs with the comments contained in the FCAI submission.

Question 37 - What types of parts and tools do dealers sell to consumers and independent repairers? How does this differ from what manufacturers sell? Are dealers put at a competitive disadvantage for selling these parts and tools?

37.1 AADA concurs with the comments contained in the FCAI submission.

Question 38 - Where a common platform is used by manufacturers (e.g. Volvo S40, Ford Focus and Mazda 3 are built on a common platform, with different features/trim), does this make it easier to access parts and tools?

38.1 AADA concurs with the comments contained in the FCAI submission.

QUESTIONS ON LOGBOOKS, DEALER STAMPS AND ONLINE LOGBOOKS

Question 40 - What are the industry trends for providing online logbooks, rather than a paper copy? What other record keeping methods are available? What are the benefits or challenges of using such methods?

40.1 AADA concurs with the comments contained in the FCAI submission.

Question 41 - What level of access do consumers or others have to online logbooks? Who can update the online logbook? What barriers, if any, are there to do so?

41.1 AADA concurs with the comments contained in the FCAI submission.

41.2 Consumers are able to access the information contained in online logbooks either through logging in on a personalised online account, or through requesting a copy of the service information through an authorised dealer.

QUESTIONS ON ACCESS TO REPAIR AND SERVICE INFORMATION AND DATA

Chapter 5 - Access to repair and service information and data for new cars

Question 42 - What repair and service information and data exists in relation to new cars? Who controls this information and data?

42.1 In the first instance when a new vehicle or part is released, the relevant repair and service information is largely owned and controlled by the manufacturer of the vehicle/part. As part of their dealership agreement, authorised dealers are required to undertake ongoing investment in training of their service personnel, to acquire expensive special tools and to maintain equipment and relevant campaign and repair parts inventories.

42.2 Over time, other sources for the information become available such as independent repairers and even special-interest forums. A lot of this information can be accessed via the internet, normally for a modest fee which is significantly cheaper than the ongoing investment required by authorised dealers.

Question 43 - What repair and service information and data is shared by manufacturers? How is it shared? With whom is it shared? What conditions are on sharing this information and data?

43.1 AADA notes the extensive response made by the FCAI in its submission in response to this question. AADA does not have any further information to add.

Question 44 - What is the effect of not having some level of access to repair and service information and data? On what basis might repair and service information not be shared? Why?

44.1 AADA considers that there is ready access to repair and service information by authorised dealers and independent repairers.

44.2 AADA notes that it is important for the ACCC to understand that some repair and service information might not be shared for a number of reasons including, if it was going to be used:

- in such a way that the vehicle's safety, security or environmental compliance could be compromised;
- to "reverse engineer" some aspects of the vehicle; or
- to gain an inappropriate or extraneous commercial advantage.
- in a manner that breaches a consumer's privacy;
- in a manner that breaches existing confidentiality agreement or proprietary rights; or
- in a manner that contravenes any existing legislative or regulatory obligations

44.3 The sharing of security, environmental and safety information should be non-negotiable because of the associated risks of consumer detriment.

44.4 These risks include but are not limited to the cloning of electronic keys, the unauthorised recalibration of engine control modules to enhance performance at the expense of emissions compliance and the inadvertent decommissioning of important safety features such as airbags and vehicle stability programs.

44.5 All of these issues can lead to serious consumer harm.

44.6 It is the case in other jurisdictions that service and repair information is made available in a similar manner to Australia, but that the above categories are not readily provided (for the same reasons outlined above).

44.7 Finally, the sharing of service and repair information may be limited where to do so may infringe proprietary rights of the manufacturer or the privacy of the consumer.

Question 45 - Is repair and service information and data presented in a standardised way across manufacturers? How consistent is repair and service information and data in terms of availability and how it is presented across brands?

45.1 All manufacturers' vehicles are different. This is the essence of their marketability - to distinguish their vehicles from other brands and models.

45.2 Vehicles are manufactured in different places around the world, using different protocols and processes. Accordingly, it is completely understandable that service information is not standardised across all manufacturers. It would be near impossible (and a significant cost and compliance burden) to require this to be undertaken.

45.3 The ACCC should be aware that repair and service information is readily available.

45.4 For example, repairers can, for modest cost, access relevant information on web portals run by VACC, MTAQ, FCAI and many of the OEMs. It is worth noting that even at modest cost the uptake on these services is relatively weak.

Question 46 - How is repair and service information and data accessed? What controls are there on accessing it?

46.1 AADA notes the FCAI's submission in relation to this question and does not have any further information to add.

Question 47 - What other methods exist for accessing repair and service information and data? What are the benefits or challenges of using such methods?

47.1 It is important that any information that is being accessed is accurate and up-to-date, and that those who are seeking to interpret the information have ongoing training to ensure they can properly repair a vehicle.

Question 48 - Where a common platform is used by manufacturers (e.g. Volvo S40, Ford Focus and Mazda 3 are built on a common platform, with different features/trim), does this make it easier to access repair and service information and data?

48.1 AADA notes the FCAI's submission in relation to this question and agrees that it makes little difference. The information can be readily accessed through available sources mentioned above.

Question 49 - What issues have consumers experienced with accessing repair and service information? How do these issues impact them?

49.1 AADA is not aware of any issues experienced by consumers in accessing repair and service information.

QUESTIONS ON CURRENT AUSTRALIAN AND INTERNATIONAL OPERATIONS

Question 50 - What impact have the Heads of Agreement and/or voluntary codes of practice had on access to repair and service information and data? Provide examples.

50.1 AADA notes the FCAI's submission in relation to this question and makes the following additional remarks.

50.2 The Heads of Agreement has put in place an opportunity for independent repairers to access service and repair information. AADA refers the ACCC to information on the very low take-up rates for information provided by MTAQ, VACC and others in their submissions.

50.3 AADA is therefore of the view that there has been no evidence or substantiated claims that independent repairers have not been able to access the information they may require under the Heads of Agreement.

Question 51 - What effect have the Heads of Agreement and/or voluntary codes of practice had on competition in the repair and service sector? How has this affected consumers?

51.1 AADA notes the FCAI's submission which states that all independent repairers are able to access repair and service information, and therefore should be able to compete with authorised dealers. If independent repairers are of the view that they are not able to compete with dealers, it is for reasons other than access to repair and service information.

Question 53 - What other ways could repair and service information and data be shared or provided? Could or should the information and data be standardised?

53.1 AADA notes the FCAI's submission in response to this question and makes the following additional remarks.

53.2 AADA considers that the efforts that have been undertaken to date to provide access to information and data are extensive when compared to other jurisdictions.

53.3 In addition, as outlined in the FCAI submission and additional comments above, there has been very little take up of access to service and repair information, despite the fact that independent repairers can access this information through a range of sources, and at prices that are significantly cheaper than what dealers are required to pay as an ongoing investment in their business.

53.4 If independent repairers are not prepared to pay very modest rates for access to service and repair information through existing mechanisms, AADA considers that they will not be prepared to pay the same rates dealers are required to pay for an ongoing and significant investment in equipment and training.

53.5 Finally, in sharing any repair and service information, it is important that consumers are also clearly informed about their rights and the potential risk of invalidating a manufacturer's warranty (as opposed to statutory warranties) - see answer to Question 15 & 21. AADA support consumer choice so long as consumers are provided with all relevant information to allow them to make an informed choice.

Chapter 6 – Other Issues

Question 54 - Are consumers aware of the differences between the build date, model year and compliance date of a car? How are consumers informed of these differences? Do these dates align with consumer expectations, and if not, how might consumers be affected?

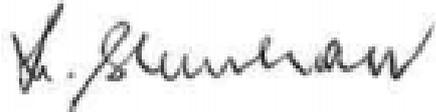
54.1 AADA notes the FCAI's submission in response to this question and has no further information to add.

Question 55 - Are you aware of any other issues in the new car retailing industry which affect competition and consumers? If so, outline and provide specific examples.

55.1 AADA is intending to make a submission to the review on the ACL currently being undertaken by the Consumer Affairs Australia and New Zealand. AADA intends that submission to raise a number of issues relevant to the new car retailing industry. A copy of the submission can be provided upon request when completed.

We would be happy to meet with you to discuss this and other submissions received and provide any further information or clarification in respect of material received from other parties. Please do not hesitate to contact me on mobile 0413 007 833, email dblackhall@aada.asn.au or our Policy Director Michael Deed on mobile 0417 742 956, email mdeed@aada.asn.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Blackhall', written in a cursive style.

David Blackhall
Chief Executive Officer