AADA
AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION

AADA RESPONSE TO THE BUCHAN REVIEW

CONTENTS

FOREWORD

The Australian Consumer Law (ACL) is one of Australia's most important consumer protection frameworks. Envied by jurisdictions around the world, it provides Australians with strong rights and remedies if things go wrong and plays a critical role in maintaining confidence in the Australian marketplace.

For Australia's 3,910 new vehicle dealers, the ACL is not an abstract piece of legislation; it is something that is applied every day through thousands of interactions with customers seeking advice, repairs, warranty support and remedies. Dealers are often the first point of contact when a consumer experiences a problem with their vehicle, and the conduit for resolution, working with manufacturers and consumers to achieve fair and timely outcomes. However, the automotive market has changed significantly since the introduction of the ACL.

Since its introduction, Australia's automotive industry has undergone significant change, with vehicles becoming increasingly sophisticated, more integrated global supply chains and an increasing shift towards electrification. At the same time, consumers are more informed than ever and have higher expectations regarding vehicle quality and aftersales support. While the principles which underpin the consumer guarantee framework are as important as ever, there are important questions that need to be asked about whether the ACL is continuing to operate as effectively as intended.

Against this backdrop, the Australian Automotive Dealer Association (AADA) commissioned Emeritus Professor Jenny Buchan to undertake an independent review of the operation of the ACL and the Franchising Code of Conduct in the Australian new vehicle market. We did so because dealers were increasingly raising concerns that the practical operation of the framework was not always delivering the outcomes consumers expect.

The Review confirms what dealers have continued to tell us, that there are a number of challenges experienced by dealers and consumers, and that these are not isolated incidents but structural issues where the current framework may no longer reflect the realities of the modern automotive supply chain.

The AADA welcomes Professor Buchan's Report, which comes at a critical opportunity for governments, regulators and industry participants to consider how the framework can continue to deliver strong consumer protections while evolving for a changing market.

This paper sets out the AADA's response to the Review and outlines a pathway for reform that seeks to improve outcomes for all participants.

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EXECUTIVE SUMMARY

The ACL has served Australian consumers well for many years and remains a cornerstone of Australia's consumer protection framework. It provides consumers with strong rights and remedies and has played an important role in maintaining confidence in markets across the economy.

However, over the years, the automotive industry has undergone significant change driven by policy developments such as the New Vehicle Efficiency Standard, growing electrification of the fleet, growth in new market entrants and the cessation of vehicle manufacturing in Australia.

The way vehicles are designed, built, diagnosed and repaired has also evolved rapidly, all the while the relationships between consumers, dealers and manufacturers have become increasingly interconnected and complex. Yet many aspects of the ACL continue to operate within a framework developed for a very different automotive environment.

These changes have exposed tensions within the current framework and raised important questions about whether responsibility, risk and decision-making authority continue to be allocated in the most effective way, particularly in the context of consumer guarantees and supplier indemnification.

To better understand these challenges and identify opportunities for reform, the AADA commissioned an independent Root and Branch Review of the Australian Consumer Law (ACL) and the Franchising Code of Conduct (Franchising Code) as they apply to the Australian new vehicle market.

The Review found that while the ACL and the Franchising Code continue to provide important protections for consumers and critical safeguards governing the manufacturer - dealer relationship, aspects of the current framework are increasingly struggling to accommodate the ever-changing nature of the market.

The Review identified five key themes:

- A growing disconnect between legal responsibility and operational control in the resolution of manufacturing defect claims;
- Practical shortcomings in the operation of manufacturer indemnification arrangements;
- Uncertainty surrounding the application of key ACL concepts, including 'major failure', 'reasonable time' and 'reasonable consumer';
- Inefficiencies within existing dispute resolution processes; and
- Limitations in the Franchising Code's ability to address power imbalances.

The Review concludes that these issues can result in delays, increased costs and uncertainty for consumers, dealers and manufacturers and warrants further reform in this space. **The AADA agrees with this conclusion.**

This paper proposes a staged reform pathway.

- In the short-term, priority should be given to reforms that improve dispute resolution outcomes and ensure manufacturers participate directly in claims involving alleged manufacturing defects.
- In the short to medium term, governments should pursue targeted legislative reforms to address deficiencies identified by the Review, including ambiguity in key consumer guarantee concepts and shortcomings in existing indemnification arrangements. These reforms would improve certainty for consumers, dealers and manufacturers and support more timely and consistent resolution of consumer claims.
- In the medium - term, governments should undertake a broader review of the consumer guarantee framework as it applies to motor vehicles to ensure the ACL remains fit for purpose in a rapidly evolving automotive market.

The AADA believes these reforms would strengthen consumer outcomes, improve efficiency and support a more equitable system for all participants in the Australian new vehicle market when engaging in consumer guarantee and indemnification frameworks.

INTRODUCTION

In November 2025, the AADA commissioned an independent Root and Branch Review of the Australian Consumer Law and the Franchising Code of Conduct as they apply to the Australian new vehicle retail sector. The ACL, contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth), establishes a framework of consumer guarantees and remedies that apply across the Australian economy.

The review was independently conducted by Emeritus Professor Jenny Buchan, one of Australia's leading experts in franchising law and regulation. Professor Buchan has held academic appointments at the University of New South Wales and other leading institutions, and has published extensively on franchising, regulatory frameworks and business law. The review was conducted independently and drew on evidence from a broad range of stakeholders, including consumer groups, regulators, First Nations consumer groups, Original Equipment Manufacturers (OEMs), dealers and legal experts.

Commissioned in response to longstanding concerns raised by AADA members, the Review examined the operation of the current framework when consumers experience issues arising from alleged manufacturing defects, particularly in circumstances where responsibility for assessing, managing and resolving those claims is shared between consumers, dealers and vehicle manufacturers.

The concerns examined by the Review are also reflected in broader industry feedback collected through AADA's annual Dealer Satisfaction Survey, which has identified declining dealer confidence in a range of manufacturer support and ACL processes.

While these issues have important commercial implications for dealers, they also have broader consequences for consumers seeking timely and effective remedies and for OEMs seeking to maintain confidence in their brands and products.

The Review represents one of the most comprehensive independent examinations of the operation of the ACL and the Franchising Code (as they relate to consumers and Australian new car dealers) in the automotive sector since the introduction of the ACL and provides a detailed assessment of how the current framework operates in practice.

This paper has been prepared by the AADA in response to the findings of the Review. Its purpose is to identify the key reform issues arising from the Review, outline the implications of those findings for consumers, dealers and manufacturers, and present a practical pathway for reform.

This paper does not seek to replicate the Review or provide a detailed assessment of every issue considered by Professor Buchan. Rather, it draws upon the Review's findings to articulate the AADA's position on reform priorities and identify practical measures that could improve the operation of the current framework.

THE CASE FOR REFORM

The Review identified a number of recurring themes across interviews and submissions from key Australian stakeholders, including dealers, consumer protection groups and agencies, the Indigenous Consumer Assistance Network, leading ACL and Franchising academics based in Australia and the United States and OEM participation. While stakeholder perspectives differed, there was a notable degree of consistency regarding the key challenges affecting the operation of the ACL and the Franchising Code in the new vehicle retail sector.

Taken together, the evidence suggests that aspects of the current framework are no longer operating as effectively as intended. In particular, there is a growing disconnect between legal responsibility and operational control, uncertainty surrounding the application of key consumer guarantee concepts, shortcomings in manufacturer indemnification arrangements, inefficiencies in dispute resolution processes and limitations in the Code's capacity to address entrenched power imbalances.

While these themes do not represent an exhaustive summary of the Review's findings, they were consistently identified throughout stakeholder consultations and are, in the AADA's view, the issues most relevant to the operation of the ACL and Franchising Code in the new vehicle retail sector.

RESPONSIBILITY AND CONTROL ARE INCREASINGLY DISCONNECTED

The current consumer guarantee framework increasingly places legal responsibility on dealers while critical decisions relating to manufacturing defect claims remain under OEM control. The Review found that this disconnect contributes to delays and uncertainty in the resolution of consumer claims.

- **Delays in repairs and dispute resolution**

Delays in repairs and dispute resolution are frequently driven by the misalignment between dealer responsibility and OEM control. While dealers are legally responsible for providing remedies to consumers under the ACL, they frequently rely on OEM approval for diagnostics, repair methodologies, parts allocation and reimbursement decisions. Where approvals are delayed or denied, repairs can stall, and disputes escalate, while consumers are left waiting for an outcome.

An important factor at play is also the fact that OEMs exclusively design and manufacture the vehicle and retain primary control over the above-mentioned systems for diagnostics, repair procedures, and technical information.

Dealers and consumers can wait up to 8 weeks for a response or direction from an OEM regarding a consumer guarantee and/or indemnification claim, as noted by Professor Buchan. During this period, consumers can be left without access to their vehicle, while dealers incur additional costs associated with loan vehicles, storage, administration and ongoing customer management.

Consumers appropriately engage with dealers as the supplier of the vehicle, but often seek assistance directly from the OEM, as the manufacturer of the vehicle, when a dispute arises. In many cases they are redirected back to the dealer, despite the fact that the defect itself originates in the manufacturing process. This can create understandable frustration for consumers, who reasonably expect the manufacturer to play a direct role in resolving issues involving alleged manufacturing defects.

The Review also highlighted the complexity of decision-making processes within some OEM networks. Claims may be escalated by local management teams to overseas parent companies, where decisions are made by individuals with limited visibility of the Australian regulatory environment or the specific circumstances of the claim. Evidence provided to the Review suggested that this can result in situations where matters are being treated primarily as warranty claims rather than ACL claims, creating uncertainty regarding consumer entitlements and a dealer's ability to seek indemnification.

Where a vehicle is outside the manufacturer's warranty period, the challenges can become more pronounced. As dealers remain responsible for meeting their obligations under the ACL, they are simultaneously negotiating with an OEM, that retains significant influence over how the matter is ultimately resolved. Supply chain constraints and parts availability can further extend repair timeframes, contributing to consumer dissatisfaction and adding to the financial and reputational impacts experienced by dealers.

- **Indemnification concerns**

While dealers have a statutory right to recover costs associated with remedying consumers for manufacturing-related defects, stakeholders reported that reimbursement processes do not always operate consistently in practice. The Review uncovered consistent concerns regarding the practical operation of indemnification arrangements under section 274 of the ACL, as they relate to dealers.

Dealers advised that claims for diagnostic work, repair costs and other expenses are frequently subject to lengthy approval processes, administrative requirements and disputes regarding reimbursement. Stakeholders also reported concerns regarding OEM prescribed labour times, the recovery of diagnostic costs and the level of scrutiny applied to repair claims.

These challenges associated with obtaining recognition and reimbursement of ACL related claims can create significant operational challenges for dealerships, particularly where extensive diagnostic work, technical assessments and engagement with the OEM are required before a claim is acknowledged, and the dealer has confidence that the associated costs will be recoverable. Dealers also reported costs associated with storing vehicles awaiting repair, OEM direction or buyback outcomes, as well as the ongoing responsibility of managing customer expectations while those processes remain unresolved.

UNCERTAINTY WITHIN THE CONSUMER GUARANTEE FRAMEWORK

Significant uncertainty exists surrounding the interpretation and application of key concepts within the consumer guarantee framework, and while flexibility is an important feature of the ACL, stakeholders consistently identified difficulties in applying concepts such as major failure, reasonable time and consumer rejection rights in the context of modern motor vehicles. The Review found that this uncertainty can contribute to disputes, inconsistent outcomes and delays in resolving consumer claims.

- **Uncertainty in the application of consumer guarantees**

There is widespread confusion and ambiguity regarding the application of key ACL concepts such as 'major failure', 'reasonable timeframe' and the 'rejection period', leading to disputes and perceived inequity. Dealers, consumers, OEMs, tribunal members, lawyers and courts all grapple with the interpretation and application of these concepts in practice.

A recurring theme throughout the Review was the difficulty in determining whether a particular defect constitutes a major failure. Consumers may view a defect as sufficiently serious to justify rejection of the vehicle, while dealers and OEMs may take the view that the issue is capable of being repaired within a reasonable period. Interviews with prominent academics, dealers and other stakeholders consistently identified uncertainty surrounding the operation of the major failure provisions and the interaction between a consumer's right to reject a vehicle and the dealer's ability to remedy a defect.

Stakeholders also expressed concerns regarding the current legislative wording, which states "an issue is considered a major failure if a 'reasonable consumer' fully aware of the nature and extent of the problem would not have acquired the goods". Evidence presented to the Review suggested that this test is open to differing interpretations, contributing to uncertainty and inconsistent outcomes.

- **Consumer remedies and buyback outcomes**

In buyback scenarios, the absence of a specific ACL provision containing a method or quantum of depreciation for a consumer buyback may result in full purchase price refunds, after the consumer has enjoyed extended vehicle use.

The age of the vehicle, period of use, kilometres travelled and overall vehicle condition are not expressly taken into account, which can result in outcomes that stakeholders perceive as disproportionate. The Review noted inconsistent approaches to buybacks across manufacturers, including differing approaches to dealer reimbursement and indemnification. In some cases, OEMs may leave the initial buyback decision to the dealer while subsequently reducing reimbursement where internal administrative processes have not been followed to the OEM's satisfaction.

The Review contains numerous examples illustrating these challenges and highlights the financial consequences that can arise where buyback outcomes, reimbursement arrangements and associated costs are disputed. Following a buyback, dealers may also incur additional costs associated with vehicle reconditioning, advertising, floorplan finance, insurance and preparation for resale. Stakeholders advised that these costs are not always recoverable from the OEM, resulting in additional financial exposure for dealers.

DISPUTE RESOLUTION PROCESSES ARE INEFFICIENT

Existing dispute resolution processes can be slow, costly and difficult to navigate for all parties involved in consumer claims. The Review found that these challenges are often particularly evident where there is a lack of willing participation of OEMs in proceedings despite being the manufacturer of the vehicle, and their significant role in determining how claims are assessed and resolved.

- **The OEM role at tribunals**

Stakeholders advised that tribunal proceedings can take 12 to 18 months to progress to a contested hearing, contributing to delays, increased costs and uncertainty for all parties. Dealers are often required to defend claims over extended periods and may elect to settle matters despite believing they have a reasonable defence, simply to avoid the time, cost and disruption associated with ongoing proceedings.

Interviews conducted by the AADA with the NSW Civil and Administrative Tribunal and Queensland Civil and Administrative Tribunal indicated that earlier OEM participation in tribunal proceedings can assist in achieving more timely and effective outcomes. However, evidence provided to the Review suggested that OEM involvement is often limited, despite them retaining significant influence over vehicle design, technical assessments, repair methodologies and warranty decisions.

Dealers do not always have a practical ability to ensure OEM participation in tribunal proceedings, even where the dispute centres on an alleged manufacturing defect. Review findings suggest that dealers are often reluctant to formally seek the participation of OEMs due to concerns about the broader commercial implications of challenging their franchisor. In some cases, dealers advised that they had sought tribunal assistance to join an OEM as a party to proceedings, but those requests were not always granted.

As a result, disputes involving alleged manufacturing defects can proceed without the participation of the party responsible for designing, manufacturing and prescribing the repair of the vehicle.

LIMITATIONS IN THE CODE'S CAPACITY TO ADDRESS ENTRENCHED POWER IMBALANCES

The operation of the ACL in the automotive sector cannot be separated from the dealer-OEM relationship, evident where the Review found that the commercial realities of that relationship can influence how disputes are managed, how indemnification rights are exercised and whether OEMs participate directly in consumer claims.

While the Franchising Code contains obligations relating to good faith, dispute resolution and fair dealing, stakeholders questioned whether the existing framework adequately addresses the inherent power imbalance that exists between vehicle manufacturers and individual dealers, which can exacerbate the above issues, such as OEM engagement in dispute resolution and seeking indemnification.

Unlike most commercial disputes, ACL claims involving alleged manufacturing defects arise within the context of an ongoing franchise relationship. Dealers are often required to balance their legal rights and obligations under the ACL against the commercial realities of maintaining a long-term relationship with the manufacturer whose products they sell and service.

Dealers reported concerns about challenging OEM decisions, pursuing indemnification claims or seeking to have OEMs joined to tribunal proceedings, where doing so may adversely affect the broader commercial relationship. These concerns can be particularly acute within the context of an ongoing franchise relationship, where decisions relating to franchise renewal, future investment requirements and other commercial matters may remain subject to the discretion of the OEM.

These dynamics have broader implications for the operation of the ACL framework and can ultimately impact how consumers are remedied in a dispute situation. Where dealers are reluctant to challenge manufacturer decisions or seek direct manufacturer participation in disputes, consumers may experience delays, increased complexity and reduced transparency in the resolution of their claims.

The Review therefore raises important questions about whether the existing Franchising Code provides sufficient safeguards to address the practical power imbalance that exists within the dealer/OEM relationship and whether additional protections may be required to ensure dealers can exercise their rights and obligations without fear of commercial disadvantage or retaliation.

REFORM PATHWAY

The findings of the Review demonstrate that the challenges identified are not isolated issues but symptoms of broader structural issues within the current framework. Uncertainty in the application of key ACL concepts, the disconnect between legal responsibility and operational control, inefficiencies in dispute resolution processes and limitations within the dealer-OEM relationship all contribute to poorer outcomes for consumers, dealers and manufacturers alike.

While some of these issues can be addressed through targeted legislative and regulatory reforms, others raise more fundamental questions regarding the operation of the consumer guarantee framework as it applies to motor vehicles. Accordingly, the AADA considers that reform should be pursued through a staged pathway that prioritises practical improvements in the short term while laying the foundation for broader structural reform over the longer term.

The Review demonstrates that many of the challenges identified are interconnected and cannot be addressed through a single reform. The AADA therefore supports a staged approach that combines immediate practical improvements with longer term structural reform.

- In the short term, priority should be given to reforms that improve dispute resolution outcomes and ensure manufacturers participate directly in claims involving alleged manufacturing defects.
- In the short to medium term, governments should pursue targeted legislative reforms to address deficiencies identified by the Review, including ambiguity in key consumer guarantee concepts and shortcomings in existing indemnification arrangements. These reforms would improve certainty for consumers, dealers and manufacturers and support more timely and consistent resolution of consumer claims.
- In the medium term, governments should undertake a broader review of the consumer guarantee framework as it applies to motor vehicles to ensure the ACL remains fit for purpose in a rapidly evolving automotive market.

AADA RECOMMENDATIONS FOR REFORM

MANDATORY OEM PARTICIPATION IN MANUFACTURING DEFECT CLAIMS

The Review identified numerous examples where disputes involving alleged manufacturing defects proceeded without meaningful participation from the manufacturer, despite the manufacturer retaining responsibility for vehicle design and manufacture, technical assessments, repair methodologies and warranty decisions.

In response, the AADA recommends that where a claim involves an alleged manufacturing defect, the OEM should be required to engage early in the claims process and participate in court, tribunal or other dispute resolution proceedings as a primary respondent. This would ensure that the party best placed to explain, assess and resolve the issue is directly involved in the dispute resolution process.

TARGETED REFORM OF THE ACL CONSUMER GUARANTEE FRAMEWORK FOR MOTOR VEHICLES

The Review identified a number of deficiencies in the practical operation of the ACL consumer guarantee framework as it applies to motor vehicles. These include ambiguity in key concepts such as major failure, reasonable time and rejection rights, uncertainty regarding the treatment of depreciation in vehicle buyback scenarios, and shortcomings in the ability to gain full reimbursement (for all costs incurred) through manufacturer indemnification arrangements.

In response, the AADA recommends that governments pursue targeted legislative reforms to address these identified deficiencies and improve the operation of the existing framework, to provide greater certainty for parties, reduce disputes and delays, and ensure that consumer claims can be resolved more efficiently and consistently.

AADA RECOMMENDATIONS FOR REFORM

COMPREHENSIVE REVIEW OF THE ACL CONSUMER GUARANTEE FRAMEWORK FOR MOTOR VEHICLES

The Review identified broader structural issues relating to the operation of the ACL consumer guarantee framework as it applies to motor vehicles. While targeted reforms may address specific deficiencies, the Review also raises more fundamental questions about whether a consumer protection framework designed to apply across all consumer goods remains appropriate for products as complex and heavily regulated as modern motor vehicles. It also raises questions about whether the current framework appropriately allocates responsibility for consumer claims involving alleged manufacturing defects, particularly where manufacturers retain significant control over the assessment, diagnosis and remediation of those defects.

In response, the AADA recommends that governments undertake a comprehensive review of the consumer guarantee framework as it applies to motor vehicles, in which such a review should consider whether the current framework appropriately reflects the realities of the market and whether the existing allocation of responsibilities between dealers and manufacturers remains the most effective means of delivering outcomes under the consumer guarantee framework.

CONCLUSION

When the AADA commissioned this Review, the objective was not to validate a predetermined position or advocate for a particular outcome, but to undertake an independent examination of how the consumer guarantee framework is operating in practice for consumers, dealers and manufacturers. In our view, Professor Buchan has achieved that objective by approaching these issues through an impartial lens and, in doing so, identified a number of important findings that make a compelling case for further reform and consideration.

Importantly, the Review does not suggest that the principles underpinning the ACL are no longer appropriate. Rather, it raises legitimate questions about whether aspects of the current framework continue to operate as originally intended in a modern automotive market and whether they remain appropriately aligned with the realities of today's automotive supply chain.

This presents an important opportunity for governments, regulators, consumers, dealers and manufacturers to come together and consider how the framework can adapt to continue to deliver strong consumer protections. The challenge now is to translate the findings of the Review into meaningful reform and address the issues identified throughout this paper, ensuring the framework remains fit for purpose for all participants.

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