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ROOT AND BRANCH REVIEW OF THE AUSTRALIAN CONSUMER LAW (ACL) AND THE FRANCHISING CODE OF CONDUCT (CODE) AS THEY APPLY TO BUYERS OF NEW CARS (CONSUMERS), MANUFACTURERS (FRANCHISOR/ 'OEMS') AND NEW CAR DEALERS (FRANCHISEES).

Or: Operation of the Australian Consumer Law and the Franchising Code of Conduct in the New Car Market

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EXECUTIVE SUMMARY

Overview

The Australian Consumer Law (ACL) and the Franchising Code of Conduct (Code) are the principal regulatory instruments governing the supply of new cars in Australia. Together, they shape the allocation of responsibility, risk and remedies between consumers, franchised dealers and original equipment manufacturers (OEMs).

Evidence considered in this Issues Paper indicates that while the ACL continues to provide strong consumer protections in principle, its interaction with the franchising model of vehicle distribution produces systemic frictions. These frictions arise largely from a misalignment between statutory liability and operational control, uncertainty in the application of key legal concepts to modern vehicles, and limitations in the Code's capacity to address entrenched power imbalances and long-tail consumer risks.

These issues have implications for consumer outcomes, dealer viability and OEM incentives, and are becoming more pronounced as vehicles become increasingly software-dependent and electric vehicles (EVs) increase in market share.

Consumers

For consumers, the ACL provides a framework of statutory guarantees intended to ensure acceptable quality, fitness for purpose and access to effective remedies. However, in the context of modern cars, these guarantees are increasingly difficult to apply predictably.

Key statutory concepts - such as *acceptable quality, major failure* and *reasonable time for repair* - are highly contextual and rely on case-by-case assessments. In practice, this has resulted in inconsistent outcomes across jurisdictions and dispute resolution forums, contributing to uncertainty for consumers and increasing reliance on negotiation or litigation rather than timely resolution.

Consumer detriment is compounded by the structure of the market. While defects often originate in OEM-controlled design, software or parts supply, consumers are required by the ACL to pursue remedies through the retail supplier. This can result in delays, fragmented communication and inconsistent access to remedies, particularly where OEM approvals or overseas technical input are required.

Buy-back cases illustrate these issues most acutely. Although intended as an exceptional remedy for major failures, buy-backs are frequently triggered by prolonged delays or process failure rather than irreparable defects. The absence of clear statutory guidance on depreciation or objective rejection thresholds creates uncertainty for consumers and can raise expectations that are not always aligned with operational realities.

Emerging issues relating to EVs - such as battery degradation, software updates and extended parts supply chains - further test the adequacy of existing consumer guarantee concepts.

Dealers

Franchised dealers are the primary point of legal responsibility to consumers under the ACL, but they do not control many of the factors that determine whether defects occur or how they are remedied. OEMs retain control over vehicle design, software, diagnostics access, parts supply, recall strategy and warranty systems.

This creates a structural mismatch between liability and control. Dealers are required to manage complaints, undertake diagnosis, provide interim remedies and, in some cases, pre-fund refunds or buy-backs before any indemnity from the OEM is confirmed.

Although the ACL includes indemnity provisions (s. 274) intended to allow dealers to recover losses arising from manufacturing-related defects, evidence suggests that these provisions do not operate effectively in practice. Reimbursement is often delayed, contested or reduced through OEM warranty processes and administrative requirements that do not reflect dealers' or OEMs' statutory obligations.

Dealers also incur a range of recurring, largely unrecovered costs - such as diagnostics time, hoist occupation, storage, loan vehicles, technician training and EV-specific infrastructure - that arise from OEM-controlled risks. These costs place pressure on cash flow, increase dispute incentives and may affect dealers' willingness or capacity to resolve consumer claims promptly.

Dispute resolution arrangements further compound these issues. Consumer claims are often heard in state and territory tribunals without OEM participation, even where disputes concern manufacturing or systemic defects. Dealers are therefore required to defend technically complex claims without access to OEM decision-makers or data, and to pursue indemnity separately.

OEMs

OEMs have the greatest capacity to manage defect risk and remedy outcomes through control over design, engineering, software updates, global defect data and supply chains. However, under the ACL's supplier-focused liability model, OEMs are often insulated from direct consumer claims.

This structure may weaken incentives for early OEM intervention and allows costs associated with manufacturing-related defects to be transferred downstream. In some cases, global warranty and goodwill systems are not closely aligned with Australian statutory obligations, creating compliance risks and contributing to delays and disputes.

The Code's good faith obligation is too broad and insufficiently practical to address entrenched dependence and bargaining inequality. In practice, dealers rarely challenge OEM conduct because of cost, risk and fear of retaliation, including non-renewal or reduced support.

The Code recognises the bargaining imbalance between OEM franchisors and dealer franchisees but provides limited practical mechanisms to address it. While amendments in 2024 strengthened provisions relating to termination and return on investment, the Code does not regulate warranty reimbursement practices, dealer indemnification for ACL liabilities, or long-tail consumer obligations following market exit.

These gaps are particularly relevant given the entry of new and less-established OEMs and the increasing prevalence of EVs, where long-term warranty, recall and battery obligations may arise well beyond the initial sale period.

In its current form, the Code regulates formal franchise conduct, but leaves the economic, technical and risk realities of modern vehicle distribution largely untouched. Without deeper integration with the ACL, stronger rules on indemnification, and enforceable obligations tied to OEM control, the Code remains an ineffective safeguard for the Australian new car sector.

Economic Imbalance in the Dealer-OEM Relationship

The relationship between original equipment manufacturers (OEMs) and franchised car dealers in Australia is characterised by a persistent structural imbalance in economic power. OEMs retain effective control over the key determinants of risk and cost - including design, software, defect identification, parts supply, recalls and warranty systems - while dealers are required to make substantial, brand-specific sunk investments and bear first-instance legal liability to consumers under the ACL. Information asymmetries, standard-form franchise agreements, unilateral OEM policy changes and limited practical access to statutory indemnity further entrench dealer vulnerability.

This imbalance results in systematic downstream transfer of OEM-controlled risks and costs to dealers. Dealers are frequently required to pre-fund diagnostics, repairs, loan vehicles, storage and buy-backs, often without timely or full reimbursement. The resulting pressure on dealer cash flow and risk exposure weakens incentives to resolve consumer claims promptly, increases dispute frequency, and can lead to inconsistent consumer outcomes. Over time, these dynamics risk eroding dealer viability, reducing service availability - particularly in regional markets - and undermining confidence in the regulatory framework as cars become more complex and EV-specific risks expand.

The regulatory settings contribute to these outcomes. While the ACL and the Code recognise consumer rights and bargaining inequality, they do not sufficiently align responsibility with control or provide effective mechanisms to prevent cost shifting.

System-level Implications

At a system level, the combined operation of the ACL and the Code continues to protect consumers but does so in a way that can generate avoidable disputes, delays and cost shifting. The party with the least control over defect causation - the dealer - often bears the greatest immediate financial and legal exposure, while OEM incentives to intervene early are muted. This exposure is exacerbated if the OEM or its Australian franchisor becomes insolvent.

The absence of clearer statutory rules tailored to modern cars reduces predictability, increases transaction and dispute costs, and may undermine confidence in the regulatory framework.

Reform options therefore warrant consideration with a focus on:

- better aligning responsibility with control,
- stronger OEM participation in disputes,
- improving certainty around remedies, particularly buy-backs and depreciation,
- strengthening the practical operation of indemnity mechanisms,
- requiring OEM indemnity to operate contemporaneously, not retrospectively, once a dealer complies with a consumer remedy under the ACL,
- prohibiting OEM practices that undermine indemnity in practice, including denial of reimbursement for administrative non-compliance where the substantive repair or remedy was necessary and effective,
- introducing a statutory presumption that financial responsibility for defects, delays and buybacks rests with the party that controls design, manufacture, software, diagnostics and parts supply,
- requiring OEMs to assume primary financial responsibility for manufacturing and design-related defects, including associated repair, refund, loan vehicle and storage costs, where those matters are outside dealer control,
- introducing mandatory timeframes for OEM reimbursement, with interest payable on late payments,
- mandatory pre-entry education on the ACL and the Code for new foreign OEMs,
- clarification of consumer guarantee rights for EVs and software-dependent vehicles,
- ensuring closer integration between the ACL and the Code in allocating risk across the new car supply chain, and
- amending the Corporations Act to enable franchisee-dealers to self-protect if the franchisor enters administration.

CHAPTER 1: INTRODUCTION

Scope of the issues paper

On 14 November 2025 AADA appointed Emeritus Professor Dr Jenny Buchan as a consultant to research and write an Issues Paper. The Issues Paper is Stage 1 of a project. It includes assessment on how new car dealers interact with consumer law by:

(1) identifying the consumer and new car dealer harm currently being experienced,

(2) identify where the ACL intersects with franchised new car dealers, and

(3) analysing where and in what way the law is currently not addressing consumer and new car dealer harm.

The Issues Paper includes anecdotal evidence by interviewees that contributes to the analysis of where and how the ACL addresses issues encountered by OEM's and new car dealer franchisees (Dealers) when responding to consumer harm. It also addresses the obligations imposed on OEMs and Dealers by the Code. It includes an Executive Summary of key findings from the evaluation that identify the cause of that finding.

Conduct of the research

The AADA advertised the research on its website and invited relevant stakeholders to make written submissions. OEMs, franchised car dealers located in inner city and regional areas of New South Wales, Queensland, Victoria, and Western Australia, the Australian Competition and Consumer Commission (ACCC), Queensland Civil and Administrative Tribunal (QCAT), NSW Civil and Administrative Tribunal (NCAT), industry groups, consumer groups, a consumer advocate and an academic consumer law expert met with the consultant and members of AADA. It draws on experience and practice in Australia of consumers, dealers and OEMs.

Acknowledgment

The following generously provided their time and expertise to inform the issues.

- AADA staff
- Consumer groups
- Dealers
- Experts from motor vehicle industry and law
- OEMs
- State and Federal government consumer protection agencies
- Tribunal members

Structure of this Issues Paper

This paper comprises nine chapters, including this introductory chapter. The chapters are set out as follows:

- Executive summary
- Chapter 1: Introduction
- Chapter 2: Background to the new car retail sector in Australia in 2026.

- Chapter 3: The regulatory environment with a focus on the Australian Consumer Law 2010, the Franchising Code of Conduct 2024 and regulation through private contracts
- Chapter 4: Consumer detriment
- Chapter 5: Economic reality of new car franchising
- Chapter 6: ACL issues for OEMs
- Chapter 7: ACL issues for dealers
- Chapter 8: Observations
- Chapter 9: For consideration

There are two groups of consumers in the new car market. Buyers of new cars are the ultimate consumers of cars supplied by OEMs and dealers. Franchisee dealers are business consumers. The vehicle OEM or the OEM's local Australian subsidiary is the franchisor. Dealers strive to satisfy both their OEMs and consumers.

> Modern motor vehicles are among the most technically sophisticated products consumers can buy. They contain embedded microprocessor controlled mechanical systems which are fully integrated and highly complex. These systems govern nearly every feature of the modern motor vehicle, from passenger comfort to steering, suspension control and automatic emergency braking.[1]

It is a small wonder that some new cars experience problems. They may originate with the OEM, the dealer, or the consumer.

Some problems can only be fixed by the OEM or one of its suppliers. Software may need to be rewritten for all cars of a particular model, worldwide, or a part with a design fault may have to be re-engineered and replaced.

Problems may originate in the dealer's workshop. These are identified and remedied without triggering a warranty claim.

Some problems stem from the consumer and how they have treated the car; failing to have it serviced regularly, or continuing to drive once the oil light has come on. The cost of fixing the car should be met by the consumer.

The main parties for the purposes of this Issues Paper are the new car consumer, the OEM, the OEM's Australian-based intermediaries being the distributors and the local franchisor, the franchisee dealer, and the state and territory based administrative tribunals that deal with some consumer complaints. This Issues Paper outlines problems with the design and implementation of the ACL and the Code in the context of Dealers as franchisee-consumers of the OEM's brand, consumers as the ultimate new car owners, and OEMs as the manufacturers. Dealers also buy cars as a trade-in for a new car so some issues affecting consumers and OEMs as a result of these trade-ins are included.

[1] AADA, Submission No 98 to Productivity Commission Right to Repair Issues paper, 3 February 2021, 5.

CHAPTER 2 - BACKGROUND

> A reliable car is essential to life for most adults living in Australia. When their car is not working people can struggle to get to work or get their kids to school, and there are broader effects like people might have to get a hire car to get to work or they miss shifts off work because they don't have transport. … the absence of a reliable car has far-reaching knock-on effects for the consumer.[2]

An evolving global product in a competitive local market

The market for new cars in Australia is evolving quickly. The Federal Government introduced policies to incentivise the purchase of electric vehicles in July 2022. Additional incentives and legislation were introduced in 2026. State, territory and local governments also incentivise purchase or lease of EVs with a range of policies. Self-driving cars are being tested and will doubtless be in use before another decade has passed. Consumers expect legislation to kept pace.

There is a tension between dealers trying to manage, verify and repair faults responsibly, allocating costs and navigating their OEM relationships, and consumers who may have heightened expectations. Consumers may rely on ACL rights, and OEM's warranties without understanding or caring about the complexities involved. The system is complicated by ambiguous legislation, inconsistent OEM support, and evolving consumer awareness driven by technology, access to AI generated responses and slow, expensive and often unpredictable legal recourse.

OEMs control vehicle design and software, recall and defect identification, parts supply and availability, approval of repairs and buy-backs, and access to global defect data. Dealers, by contrast, bear first-instance statutory liability, reputational risk, and tribunal exposure. Consequently, there is a misalignment of risk and control. The party with the least control over defects carries the greatest financial risk.

Dealers in Australia compete in a relatively small national market. The global multinational OEMs have significant bargaining power, not just on price but also on supply, of cars, parts and tools, warranty agreements and post-sale servicing and reimbursement. Some of the major grievances on the part of consumers and dealers include securing approval from an OEM to address a consumer's concerns, unbalanced supply contract terms, OEM warranties not matching the ACL guarantees, potentially long delays at every juncture from making a buy back decision to supplying parts for a repair, and unsatisfactory dispute resolution processes.

[2] Interview with Luke Lovell, Shelley Hartle and Winyinnar Mensdaz Williams of Consumer Action Law Centre (Brian Savage and Michael McKenna in person, and Matthew Hawkes of AADA and Emeritus Professor Jenny Buchan via Teams, 16 February 2026)

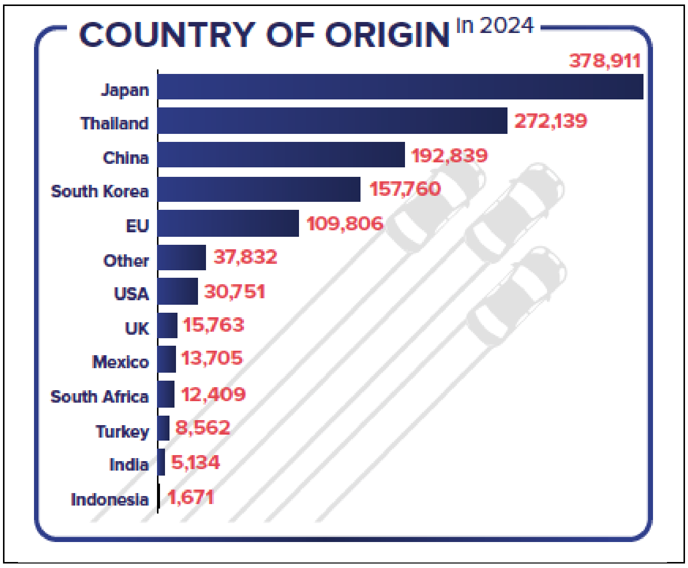

Figure 1: Origin of new cars in Australia, 2024.

An average modern car consists of roughly 30,000 parts. OEMs do not make all of these parts themselves but have them supplied by numerous third-party suppliers exactly as needed. The pyramid of suppliers and subcontractors consists of several levels (Tier-1, Tier-2 etc.).[3] Any parts, or even the businesses creating them, could fail. The failed part needs to be replaced under warranty. The failure could be categorised under the ACL as a major failure, or not a major failure.

Not only does Australia import new cars from a wide range of countries. The OEMs themselves source parts from a wide range of countries. For example, the countries supplying components and producing Audi cars are Germany, Hungary, China, Mexico, Slovakia, Spain, Poland, Slovakia and Brazil. Suppliers such as Bosch, Continental, Valeo, and BorgWarner supply components globally.[4]

The 'Australian supply chain stretches from the consumer, back through the dealer and/or warranty repair/service dealer; to the OEM via the distributor, importer; the warranty & policy (W & P) claims assessor decision makers, and 'OEM's' warranty auditors who typically may arrive on site visiting the dealership long after the warranty or policy claim had been submitted in accordance within the OEM's strict W & P guidelines'.[5]

Public inquiries

Over many decades numerous public inquiries in Australia have addressed aspects of new car dealerships, franchise relationships, discrete consumer rights aspects of the ACL like unconscionable conduct and unfair contract terms, right to repair, and the parties involved. The inquiries include those conducted by or for the government, and by the Productivity Commission ('PC'). In some cases, submissions made to these inquiries are publicly available. For others, only the briefing document, the final report and the government's response are available to help inform future development of the law.

[3] *Delivery chains in Automotive manufacturing run smoothly*, https://www.editelgroup.com/blogs/delivery-chains-in-automotive-manufacturing-run-smoothly/ accessed 23 February 2026.

[4] https://www.google.com/search?client=safari&rls=en&q=which+countries+does+Audi+source+car+components+from&ie=UTF-8&oe=UTF-8 AI search 3 Feb 2026.

[5] Alan Bergman, 'ACL, Fixed Operations and Warranty Audits Unmasked' (Conference paper, AADA National Dealer Convention, 8 September 2016).

CHAPTER 3: REGULATORY FRAMEWORK

At a federal level the ACL is the main regulatory instrument governing relationships between consumers, dealers and OEMs. The Code[6] provides an additional level of regulation between dealers and OEMs. It has no direct impact on retail consumers. Some provisions of the ACL are problematic for dealers and cause confusion for consumers.

Contracts are a form of private regulation between contracting parties. Franchise agreements establish a contractual relationship between OEMs and dealers. Contracts of sale establish the contractual relationship between dealers and car buyers. OEMs also provide contractual extended warranties to new car buyers. Resolution of warranty-related disputes occurs primarily in the state and territory administrative tribunals. The cost of litigation means disputes are pursued in the courts less frequently.

Australian Consumer Law

The ACL contains many sections that are relevant to consumers, dealers and OEMs. For each section or group of sections relevant applications to consumers of new cars are set out below. The most problematic sections for participants in the new car sector are those concerning the definition of consumer (s 3), unconscionable conduct of OEMs towards dealers (ss 21 and 22), unfair contract terms (ss 23-27), statutory guarantees (ss 54-64), product recalls (ss 122 – 127) and remedies relating to guarantees (ss 259 – 276).

The influx of new OEMs, especially Chinese brands and EVs, presents challenges related to consumer law compliance. These arise out of cultural nuances, and technical issues like battery reliability. These issues often only emerge after a few years of vehicle use, creating long-term risk for OEMs and dealers.[7]

Definitions

S. 3 'consumer'

The meaning of 'consumer' in the ACL does not include a consumer at every stage of the supply chain, only the final retail consumer. It is arguable that the dealer operating through a franchise model is a consumer of the OEM's products and services. They depend on their OEM for the supply of and quality of the car and for solutions if there is any manufacturing defect. The s 3 definition does not fit them.

S. 7 'manufacturer'

This is a broad definition that includes persons who; process or assemble goods, hold themselves out to the public as the manufacturer or allow others to do so, use their own brand or name in relation to goods, permit others to use their own name or brand in relation to goods, cause or hold themselves out as the manufacturer of the goods, imports goods where the person manufacturing the goods does not have a place of business in Australia[8]

A concern with the way the court has interpreted this definition is that the definition of 'manufacturer' in the ACL is likely confined to those in Australia or with some connection with Australia. This may become problematic in the case of legacy brands (e.g. Holden) or new overseas brands that may test the Australian market with the ultimate intention of departing for bigger markets elsewhere.

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[6] *Competition and Consumer (Industry Codes--Franchising) Regulation 2024* (Cth).

[7] Interview with Dealer A (Michael McKenna of AADA and Emeritus Professor Jenny Buchan, in person, 7 January 2026).

[8] Russell V Miller, *2025 Miller's Australian Competition and Consumer Law Annotated* (47th edition, Lawbook Co)1804-5.

Case: *Vautin v BY Winddown, Inc* (No 4) [2018] FCA 426. The question in each case is where the warranty was given to the consumer.

Misleading

S. 18 Misleading or deceptive conduct

(1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

S. 29 False or misleading representations about goods or services

(2) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

(m) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (including a guarantee under Division 1 of Part 3-2)

There is a long history of claims for breaches of ss 18 and 29, contributing to decades of legal precedent. These sections are no longer confusing to litigants. Breaches by dealers or OEMs are addressed through s 87B court enforceable undertakings to the ACCC, or litigation by anyone affected, or by the ACCC. A breach of a court enforceable undertaking can be litigated by the ACCC.

For example, in 2011 Nissan was issued with infringement notices by the ACCC after admitting its advertising had breached ss 18 and 29 ACL. In 2020, Toyota Australia recognised that the ACCC's concerns about two matters were legitimate. Firstly, Toyota's representations to consumers about the interaction of the statutory consumer guarantees and the OEM's warranties can be misleading and internal processes should be maintained that ensure consumers are informed of, and able to easily access, their legal statutory rights under the ACL. Secondly, Toyota's failure to inform consumers regarding mechanical issues with their vehicles (or issues with repairs) may be misleading.[9]

In 2025 the Federal Government issued a recall notice for nearly 3000 Volvo EX30 cars and urged owners to keep battery charge below 70% to avoid the risk of fully charged batteries catching fire.[10] This is the type of confusion that could lead to a class action with Volvo buyers claiming they were falsely misled about the range their car could travel before recharging.

Odometer tampering is a breach of s 29(1) of the ACL. Dealers are legally responsible to consumers even if they unknowingly sell a vehicle with a wound-back odometer. On occasion, dealers will buy a car as a trade-in, without realising the odometer has been wound back. The person who buys it from the dealer returns it, having discovered the true mileage. The dealer must absorb the cost of a full refund and then attempt to resell the vehicle at its true mileage.[11]

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[9] https://www.accc.gov.au/media-release/nissan-pays-infringement-notices-for-misleading-representations-in-dualis-'paintball'-advertisement; Undertaking to the ACCC given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Toyota Motor Corporation Australia Limited ACN 009 686 097, dated 2 December 2020.

[10] https://www.theguardian.com/business/2026/jan/12/australia-ev-drivers-warned-not-fully-charge-cars-volvo-ex30 (accessed 23 February 2026).

[11] Interview with Dealer C (Michael McKenna of AADA and Emeritus Professor Jenny Buchan, in person, 12 January 2026).

Unconscionable conduct

The unconscionable conduct provisions were extended to include statutory unconscionability via ss 21 and 22 in 1998.

S. 21 Unconscionable conduct in connection with goods or services

S. 22 Matters the court may have regard to for the purposes of section

S. 22 (1) Without limiting the matters to which the court may have regard for the purpose of determining whether a person (the supplier) has contravened section 21 in connection with the supply or possible supply of goods or services to a person (the customer), the court may have regard to:

(a) the relative strengths of the bargaining positions of the supplier and the customer; and

(b) whether, as a result of conduct engaged in by the supplier, the customer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and

(c) whether the customer was able to understand any documents relating to the supply or possible supply of the goods or services; and

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer or a person acting on behalf of the customer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and

(e) the amount for which, and the circumstances under which, the customer could have acquired identical or equivalent goods or services from a person other than the supplier; and

(f) the extent to which the supplier's conduct towards the customer was consistent with the supplier's conduct in similar transactions between the supplier and other like customers; and

(g) the requirements of any applicable industry code; and

(h) the requirements of any other industry code, if the customer acted on the reasonable belief that the supplier would comply with that code; and

(i) the extent to which the supplier unreasonably failed to disclose to the customer:

  (i) any intended conduct of the supplier that might affect the interests of the customer; and

  (ii) any risks to the customer arising from the supplier's intended conduct (being risks that the supplier should have foreseen would not be apparent to the customer); and

(j) if there is a contract between the supplier and the customer for the supply of the goods or services:

  (i) the extent to which the supplier was willing to negotiate the terms and conditions of the contract with the customer; and

  (ii) the terms and conditions of the contract; and

  (iii) the conduct of the supplier and the customer in complying with the terms and conditions of the contract; and

(iv) any conduct that the supplier or the customer engaged in, in connection with their commercial relationship, after they entered into the contract; and

(k) without limiting paragraph (j), whether the supplier has a contractual right to vary unilaterally a term or condition of a contract between the supplier and the customer for the supply of the goods or services; and

(l) the extent to which the supplier and the customer acted in good faith.

(2) Without limiting the matters to which the court may have regard for the purpose of determining whether a person (the acquirer) has contravened section 21 in connection with the acquisition or possible acquisition of goods or services from a person (the supplier), the court may have regard to:

(a) the relative strengths of the bargaining positions of the acquirer and the supplier; and

(b) whether, as a result of conduct engaged in by the acquirer, the supplier was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the acquirer; and

(c) whether the supplier was able to understand any documents relating to the acquisition or possible acquisition of the goods or services; and

(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the supplier or a person acting on behalf of the supplier by the acquirer or a person acting on behalf of the acquirer in relation to the acquisition or possible acquisition of the goods or services; and

(e) the amount for which, and the circumstances in which, the supplier could have supplied identical or equivalent goods or services to a person other than the acquirer; and

(f) the extent to which the acquirer's conduct towards the supplier was consistent with the acquirer's conduct in similar transactions between the acquirer and other like suppliers; and

(g) the requirements of any applicable industry code; and

(h) the requirements of any other industry code, if the supplier acted on the reasonable belief that the acquirer would comply with that code; and

(i) the extent to which the acquirer unreasonably failed to disclose to the supplier:

(i) any intended conduct of the acquirer that might affect the interests of the supplier; and

(ii) any risks to the supplier arising from the acquirer's intended conduct (being risks that the acquirer should have foreseen would not be apparent to the supplier); and

(j) if there is a contract between the acquirer and the supplier for the acquisition of the goods or services:

(i) the extent to which the acquirer was willing to negotiate the terms and conditions of the contract with the supplier; and

(ii) the terms and conditions of the contract; and

(iii) the conduct of the acquirer and the supplier in complying with the terms and conditions of the contract; and

(iv) any conduct that the acquirer or the supplier engaged in, in connection with their commercial relationship, after they entered into the contract; and

(k) without limiting paragraph (j), whether the acquirer has a contractual right to vary unilaterally a term or condition of a contract between the acquirer and the supplier for the acquisition of the goods or services; and

(l) the extent to which the acquirer and the supplier acted in good faith.

The ACCC successfully prosecuted Ford for unconscionable conduct in breach of s 21 in supplying vehicles to consumers where the vehicles did not meet required quality standards. Ford, the OEM, had misled the consumers about their range of possible remedies. Ford was penalised $10,000,000 and was required to pay $500,000 towards the ACCC's costs.[12]

> The Full Court has confirmed that the correct approach to assessing statutory unconscionability is to focus on the conduct and assess whether it is a sufficient departure from the norms of acceptable commercial behaviour as to be against conscience or to offend conscience, [then Chair of the ACCC] Mr Sims said. Because this decision makes it clear that it is not necessary to demonstrate exploitation of vulnerability, it extends the reach of the statutory unconscionable conduct prohibition so that it will protect more consumers and small businesses against egregious conduct by corporations.[13]

Despite the ACCC's success in the case against Ford and the fact that ss 21 and 22 having been law since 1998, 'overall, we know that unconscionably doesn't work'.[14] It appears that there have been no actions by dealers against OEMs alleging breaches of s20. Miller notes that the phrase 'goods or services' under ss 21 and 22 is not limited to goods and services of a kind ordinarily acquired for personal, domestic or household consumption'[15] so it may be the power imbalance between an OEM as franchisor, and a dealer with millions of dollars in sunk costs, that prevent dealers from claiming they have been treated unconscionably.

Unfair contract terms

The unfair contract terms were extended to cover small business contracts in 2015.[16] If a court finds a term of a contract to be unfair, the term can be void. In 2026 the government announced 'The Albanese Labor Government will strengthen the enforcement of the Franchising Code of Conduct and extend protections from Unfair Contract Terms and Unfair Trading Practices to all businesses regulated under

[12] *Australian Competition and Consumer Commission v Ford Motor Company of Australia Limited* [2018] FCA 703.

[13] ACCC Media release 26/21 on 22 March 2021 'Full Federal Court ruling provides vital clarification of the law on statutory unconscionable conduct'. *Australian Competition and Consumer Commission v Quantum Housing Group Pty Ltd* [2021] FCAFC 40.

[14] Conversation with Professor Jeannie Paterson, Melbourne Law School (Michael McKenna of AADA and Emeritus Professor Jenny Buchan, via Teams, 28 January 2026).

[15] Russell V Miller, *2025 Miller's Australian Competition and Consumer Law Annotated* (47th edition, Lawbook Co)1626.

[16] *Treasury Laws Amendment (Small Business and Unfair Contract Terms) Act* 2015 (Cth).

the Code, including automotive dealerships'.[17] This will address suggestions by advocates to focus on the power imbalance rather than arbitrary financial thresholds.[18]

Removal of the size thresholds, combined with the dealers' ability to request multi-party dispute resolution under section 88 of the Code could help rebalance unfair contract terms in dealers' contracts. In addition, deeming the following to be presumptively unfair: unilateral variation of warranty policies, audit clawbacks unrelated to consumer harm and time-bar clauses restricting statutory indemnity, would even the playing field between OEMs and dealers. It would also be beneficial to empower the ACCC to challenge unfair franchise terms directly under the Code without requiring dealer litigation.

S. 23 Unfair contract terms.

S 23 ACL is accessible by small businesses where a contract containing the unfair terms is in standard form, is for the supply of goods or services and where the party makes the contract at a time when they employ fewer than 100 persons. That party's annual turnover must be less than $10,000,000 for their last income year.

Once sales teams, technicians, management, apprentices and administrative staff are tallied it is easy to increase the number of employees beyond 100. The turnover of a new car dealership is likely to exceed $10,000,000 to enable the dealer to meet their costs of doing business as well as for their business to return a profit.

The ACL definition of a 'small business' is considered arbitrary and often excludes car dealers, who have high turnovers due to selling expensive products but remain structurally vulnerable in their relationships with OEMs.[19] The thresholds mean that while new car dealers are consumers who sign standard form franchise agreements, they cannot plead a breach of the UCT provisions to challenge unfair contract terms in any of their contracts with their OEM.

S. 24 Meaning of unfair

S 24 (1) ACL states that a term in the contract will be unfair if three tests are satisfied. It must cause a significant imbalance in the parties' rights and obligations under the contract, not be reasonably necessary to protect the legitimate interests of the party, and cause financial or other detriment to the small business if it were relied on.

S. 27 Standard form contracts

Franchise agreements and OEM's consumer warranties are examples of standard form contracts. There is little negotiation. They are presented to the prospective dealer on a 'take it or we'll offer the franchise to someone else' basis. The OEM will barely tailor the terms of its global franchise agreements to fit the dealer's country laws. An OEM's wish is for administrative efficiency and consistency across its global network.

27 Standard form contracts

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[17] The Hon Julie Collins, MP, 'Albanese Labor Government taking further action to support the franchising sector' (Media Release, 18 March 2026. The amendments to the ACL contained in The Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026 became law on 6 July 2026. S 28B is particularly important for consumers. https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbills%2Fr7468_first-reps%2F0000%22

[18] Paterson (n 14).

[19] See ibid.

(1) If a party to a proceeding alleges that a contract is a standard form contract, it is presumed to be a standard form contract unless another party to the proceeding proves otherwise.

(2) In determining whether a contract is a standard form contract, a court may take into account such matters as it thinks relevant, but must take into account the following:

(a) whether one of the parties has all or most of the bargaining power relating to the transaction;

(ba) whether one of the parties has made another contract, in the same or substantially similar terms, prepared by that party, and, if so, how many such contracts that party has made;

(b) whether the contract was prepared by one party before any discussion relating to the transaction occurred between the parties;

(c) whether another party was, in effect, required either to accept or reject the terms of the contract (other than the terms referred to in section 26(1) in the form in which they were presented;

(d) whether another party was given an effective opportunity to negotiate the terms of the contract that were not the terms referred to in section 26(1);

(e) whether the terms of the contract (other than the terms referred to in section 26(1) take into account the specific characteristics of another party or the particular transaction;

(f) any other matter prescribed by the regulations.

It is suggested that an additional factor be added to s 27(2). That is; 'whether the supplier complying with the contract would deprive the consumer of statutory protections'. An example of the type of contract that causes a new car dealer franchisee to breach the ACL are some OEM's new car warranty contracts. For example, one new car dealer explained

> the … ACL prescribes that we've got up to three years to make a warranty claim, presumably through the courts, but most of the manufacturer's franchisors give you two weeks from the date that you finish the repair. Even if you've had pre-authorization for the repair, if you're late, they then make it difficult for you to claim payment. And some of their automated systems don't let you claim it if you're late.[20]

This is a breach of the ACL warranty obligations, including s 64 ACL. The franchisee knows it must adhere to its obligations to the consumer under ss 259 – 261 ACL. The franchisee dealer's reluctance to challenge this situation or to seek indemnification from the manufacturer under s 274 ACL is another demonstration of the power imbalance between the foreign OEM represented in Australia through its local franchisor, and the Australian franchisee.

Statutory guarantees under the ACL

The ACL provides statutory guarantees in relation to the supply of goods, and services. The words 'goods' and 'services' are defined in s 2 ACL. The definition of goods includes software. The ss 54 - 56 guarantees are the three key guarantees where the dealer can seek indemnity from and recover damages from the OEM because the OEM would have been liable to pay damages to a consumer for the same loss or damage. s 271 (1).

The consumer guarantees are the following:

s 54 – Guarantee as to acceptable quality

[20] Interview with Dealer L (Michael McKenna and Emeritus Professor Jenny Buchan, via Teams, 27 January 2026).

s. 54(2) Goods must be of acceptable quality. Acceptable quality means the goods are fit for purpose, acceptable in appearance and finish, free from defects, safe and durable. Relevant considerations are the nature of the goods, the price, any statements about the goods on any packaging or label on the goods, any representation made by the supplier or OEM and any other relevant circumstances.

The person who needs to be dissatisfied with the quality is a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable having regard to the matters in subsection (3).

The concept of 'reasonable consumer' in s 54(2) is problematic. As one OEM says, the ACL is ambiguous in [not] defining 'reasonable consumer' Without clear definitions, consumers, dealers and OEMs face uncertainty on what a 'reasonable consumer's' expectation may be.[21] An OEM has noted that the ACL does not cover ongoing software updates. Clarification is needed as to whether software update obligations are required as part of consumer guarantees.[22] The difficulty of deciding who is a 'reasonable consumer' was addressed by the High Court in *Williams v Toyota Motor Corporation Australia Limited; Toyota Motor Corporation Australia Limited v Williams ('Williams')*[23]

> Section 54(2) posits a hypothetical inquiry as to what a reasonable consumer at the time of supply would regard as acceptable if the reasonable consumer was 'fully acquainted with the state and condition of the goods', including any 'hidden defects'. At least in a case involving a hidden defect, an inquiry into whether the [ACL] guarantee has been complied with requires attributing to a reasonable consumer, at the time of supply, later acquired knowledge of the defect that renders the goods below an acceptable quality. The attributed knowledge of the defect must be knowledge that would render a reasonable consumer 'fully acquainted' with the true state and condition of the goods; it follows that this must include full knowledge of or acquaintance with the defect, including later acquired knowledge of the propensity of the defect to occasion adverse consequences and the nature of those consequences, even if understandings of those matters vary over the period of time leading up to the trial.
>
> If such knowledge is attributed to a reasonable consumer at the time of supply, there is no reason why later acquired knowledge of the capacity to repair the defect or ameliorate its consequences, including when, how and at what cost those repairs or ameliorative steps could be undertaken, should not also be attributed. Those matters are characteristics of the nature and seriousness of the defect and, in turn, the state and condition of the goods. Knowledge of those matters cannot be divorced from what constitutes the relevant 'defect', even though they may not necessarily preclude the defect from rendering the goods in breach of the guarantee in s 54.

S 54(3) lists five criteria that are cumulatively applicable to determine whether goods are of acceptable quality. They are the nature of the goods, the price, any statements made about the goods on any packaging or label on the goods, any representations made and other relevant circumstances. The test is objective.

S 54(6) states that goods do not fail to be of acceptable quality if the consumer causes them to become of unacceptable quality or fails to take reasonable steps to prevent them from becoming of unacceptable quality, and they are damaged by abnormal use.

The court in *Ford Motor Company of Australia Pty Ltd v Capic*[24] considered at what point goods will be regarded as not being of acceptable quality when there is only a risk of failure, not an actual failure.

[21] A major OEM.

[22] A major OEM.

[23] [2024] HCA 38, paras 33 and 34. Joint judgment by *Gageler CJ, Gordon J, Steward J, Gleeson J and Beech-Jones J.*

[24] [2023] FCAFC 179.

The relevant variables are the severity of the problem if it arises and the probability or inherent risk of it arising.[25]

In the 2026 context s 54 ACL could be applied to dangers posed by flush door handles.[26] ‘China just banned flush/hidden door handles on all cars sold there - starting January 1 2027 for new models (with a 2029 grace period for existing ones). This design is being phased out over safety concerns like post-crash egress failures during power loss or fires’.[27]

If the consumer is launching an action solely against the dealer (as the supplier) for a defect the OEM would ordinarily be required to cover a supplier (the dealer) for costs incurred as a result of a breach of one of the ACL guarantees in s 54, 55 & 56. All dealers interviewed identified numerous cost items that OEMs will not cover. These are identified in Chapters 5 and 6.

S. 55 Guarantee as to fitness for any disclosed purpose etc.

The applicant, Peck, in *Peck v Australian Automobile Group Pty Ltd*[28] argued unsuccessfully that a fire that started in his garage had been started by an electrical fault in a vehicle. ‘He failed to establish that the vehicle was not fit for the purpose for which it was purchased’.[29]

S. 58 Guarantee as to repairs and spare parts

Guarantee that the OEM of the [supplied] goods will take reasonable action to ensure that facilities for the repair of the goods, and parts for the goods, are reasonably available for a reasonable period after the goods are supplied. ‘The current ACL does address parts supply, warranty and recall obligations; however, revisions could be made to enhance clarity and consumer protection’.[30]

For example, there is no clear definition of ‘reasonable period’ for parts supply in s 58. This creates uncertainty, especially when a brand exits the Australian market. Other jurisdictions specify the period. For example, Europe mandates 10 years.[31]

Australian dealers’ ability to comply with the s 58 guarantee is of particular concern to dealers whose OEM departs the Australian market. When Holden ceased manufacturing in Australia. GM Holden indicated that it would continue to provide ‘aftersales support – servicing, spare parts, honouring warranties and conducting recall actions if required – for at least the next 10 years through a national aftersales network’.[74]

In its submission to a Senate inquiry, it stated: ‘Holden will continue to honour all commitments given to consumers at the time of purchase, including the 7-year free service commitment. This service commitment is funded by Holden, which pays dealers for services undertaken on Holden vehicles. Holden will also be providing appropriate resourcing for warranty claims and product quality issues. Holden will continue to maintain local operations to handle any recall and safety-related issues if they arise, working as usual with relevant government agencies’.[32]

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25 Miller (n 15) 1718.

26 https://www.abc.net.au/news/2026-02-03/china-bans-hidden-door-handles-over-safety-concerns/106301632.

27 https://www.youtube.com/watch?v=aS67JAmXjnc

28 [2023] FCA 1413.

29 Miller (n 15) 1723.

30 A major OEM.

31 A major OEM.

32 The Senate, Education and Employment References Committee ‘Driving a Fairer Deal: Regulation of the Relationship between Car Manufacturers and Car Dealers in Australia’, March 2021, 29.

S 59 Guarantee as to express warranties

These are the warranties provided by OEMs. As Miller notes, 'although there is nothing in the *Competition and Consumer Act*'s s 131 or ACL s 59 (or in the definition of 'manufacturer' in ACL s 7) to suggest that the operation of the Act is confined to those within Australia, or who have some connection with Australia, as a matter of statutory construction, it is generally accepted that an enactment will be presumed to apply only to the territory or nationals over which the Australian Government has jurisdiction'.[33] Miller cites Derrington J's statement in *Vautin v BY Winddown, Inc (No 4).*[34] 'The question was where was the warranty given to the consumer? In that case a vessel was bought from a dealer in Australia from an OEM in the USA. The warranty was given to the consumer, via the dealer, in Australia'.[35] The OEM's warranty applied.

S. 60 ACL Guarantees to render services with due care and skill

'The effect of s 60 is to negate the opportunity to contract out of or limit a claim for negligence by consumers, in relation to the supply of services in trade or commerce. Such claims may only be limited or contracted out of if permitted to do so by the exceptions to this warranty'.[36] Ss 63 and 65 ACL list exceptions. These are not applicable to motor vehicle dealers. If a dealer fails to meet the standard of due skill and care, and the failure is not major, the consumer can require the dealer to remedy the failure within a reasonable time, relying on s 267(2)(a) ACL.

S. 62 ACL Guarantee that services will be supplied to consumer in a reasonable time

Consumers, dealers and OEMs face uncertainty regarding the timeframe in which repairs should be completed.[37] One OEM proposes that legislation should impose clear minimum standards for OEM and/or dealer responses, including defined timeframes for acknowledging and addressing consumer guarantee claims.[38]

The lack of a defined 'reasonable time' led to problems for Honda Australia, for a situation beyond their control. No dealer was involved as Honda operates through agents. The administrative tribunal, Victorian Civil and Administrative Tribunal (VCAT) found that Honda had breached ss 54 and 62, but the failure was not a major failure. The consumer was able to retain use of his car while a replacement for the faulty part was sourced. S 62 was breached because there was an unreasonable delay in replacing a faulty bumper bar. This finding despite the fact that Honda had advised the consumer that 'delays in shipping and 'the global logistics environment' were outside their control'.[39]

s 64 ACL The statutory guarantees cannot be excluded by contract

Despite the prohibition in s. 64, some OEMs, have policies that immediately void extended warranties if a car is traded to an independent dealer. Dealers then must pay for repairs that would have been free if the previous private owner had taken the car directly to the OEM themselves.[40]

S 64A ACL Limitation of liability for failure to comply with guarantees.

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[33] Miller (n 15) 1728.

[34] [2018] FCA 426

[35] Miller (n 15) 1723.

[36] Ibid 1729.

[37] A major OEM.

[38] A major OEM.

[39] *Singh v Honda Australia Pty Ltd* (Civil Claims), [2024] VCAT 799 (2024), Issue (g)(v).

[40] Interview with Dealer I (Brian Savage and Michael McKenna of AADA and Emeritus Professor Jenny Buchan, in person, 22 January 2026)

S 64A (4) Relevant matters to decide whether limitation of liability is fair and reasonable:

(a) the strength of the bargaining positions of the person who supplied the goods or services and the person to whom the goods or services were supplied (the buyer) relative to each other, taking into account, among other things, the availability of equivalent goods or services and suitable alternative sources of supply;

(b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity of acquiring the goods or services or equivalent goods or services from any source of supply under a contract that did not include that term;

(c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties);

(d) in the case of the supply of goods, whether the goods were manufactured, processed or adapted to the special order of the buyer.

S. 67 Conflict of laws

Miller observes that '[t]his section makes it clear that the operation of the consumer guarantees cannot be avoided even if the OEM includes a choice of laws clause in a contract and chooses that the laws of another country are to apply'.[41]

Product recalls

S 124 ACL Obligations of a supplier in relation to a recall notice

The ACCC hosts a site advising of compulsory recalls.[42] Some relevant examples concern BMW airbags,[43] BMW EV wall charging sockets,[44] General Motors Silverado,[45] Mitsubishi Motors' remote keys sold without a button/coin battery warning in some models,[46] Nissan for selling vehicles with a non-compliant jack.[47]

In some cases, the problem would not threaten consumer's safety. The repair/replacement would be quick and relatively inexpensive. For other recalls, like replacing air bags, more time and expense would be required of the dealer. Following litigation[48] by the ACCC, Mercedez Benz signed a s87B undertaking on 31 August 2022 as it had failed to comply with an air bag recall notice issued under s 122. It incurred a penalty of $12.5 million for this failure.

[41] Miller (n 15) 1737.

[42] http://www.recalls.gov.au

[43] https://www.productsafety.gov.au/search-consumer-product-recalls/bmw-e9x-vehicles-2010-2012-with-takata-psdi-5-driver-airbag

[44] https://www.productsafety.gov.au/search-consumer-product-recalls/mini-hv-wallbox-gen-ii-with-charging-socket-electric-vehicle-charger

[45] https://www.productsafety.gov.au/search-consumer-product-recalls/general-motors-chevrolet-gmc-chevrolet-silverado-gen-2-gmt900-utility-vehicle-my2014

[46] https://www.productsafety.gov.au/search-consumer-product-recalls/mitsubishi-my2020-2022-mirage-asx-eclipse-cross-outlander-pajero-pajero-sport-triton-and-express-some-remote-keys-for-all-variants-only-vehicles-in-the-attached-vin-list-are-affected

[47] https://www.productsafety.gov.au/search-consumer-product-recalls/nissan-f16-juke-my2020-vehicle-jack

[48] *ACCC v Mercedes-Benz Australia/Pacific Pty Ltd* [2022] FCA 1059.

S 124 imposes an obligation on the supplier if a recall notice requires them to take action but does not provide for the OEM to indemnify the supplier.

None of the parties interviewed identified the product recall provisions of the ACL as problematic for them. But as a recall notice and the ensuing rectification would invariably stem from a manufacturing defect s. 124 should be amended to provide for dealer indemnification by the OEM.

Div 5 Consumer goods, or product related services, associated with death or serious injury or illness

S 131 Suppliers to report consumer goods associated with the death or serious injury or illness of any person

This section imposes obligations on the supplier who has become aware of the death or serious injury or illness of any person to advise the Commonwealth Minister in writing within two days.

S 132A requires the notice to be confidential.

These ss. could become relevant to EVs with recessed door handles that make it impossible for the occupants to escape from the vehicle during a fire/ accident, and also to autonomous vehicles.

As with section 124, the onus is on the supplier (dealer), not the OEM. The OEM would have an ongoing river of data from all countries where the model of car is sold. It is arguably in the stronger position to fulfil obligations under s 131.

Part 3-5 – Liability of OEMs for Goods with Safety Defects

S 138 – 144 Actions against OEMs for goods with safety defects

This is relevant where the OEM supplies the car with a safety defect, and the consumer suffers injury because of the defect. This will be particularly relevant to the OEMs operating through an agency model; Mercedez-Benz and Honda. OEM is interpreted as defined in s 7 ACL.

S 142 ACL provides statutory defences to a defective goods action.

S. 147(1) supplier/s to provide OEM's details

S 147 (2) Supplier deemed to be OEM after 30 days no knowledge

Part 5-4 – Remedies relating to guarantees

Dealers, OEMs, tribunal members and courts all grapple with whether a failure is major or not major. Consumers may be quick to suggest that a failure is major. As the FCAI and others have noted, 'most faults can be fixed, without any residual problems'.[49] The greatest difficulties for the dealer arise where the fault is inherent in the manufacture of the car.

S. 259 Action against suppliers of goods (the Dealer)

[49] Federal Chamber of Automotive Industries' Submission Treasury Consultation *Improving the effectiveness of the Consumer Guarantee and Supplier Indemnification Provisions Under the Australian Consumer Law* (25 February 2022).

(1) A consumer may take action under this section if:

(a) a person (the supplier) supplies, in trade or commerce, goods to the consumer; and

(b) a guarantee that applies to the supply under Subdivision A of Division 1 of Part 3 - 2 (other than sections 58 and 59(1)) is not complied with.

(2) If the failure to comply with the guarantee can be remedied and is not a major failure:

(a) the consumer may require the supplier to remedy the failure within a reasonable time; or

(b) if such a requirement is made of the supplier but the supplier refuses or fails to comply with the requirement, or fails to comply with the requirement within a reasonable time--the consumer may:

(i) otherwise have the failure remedied and, by action against the supplier, recover all reasonable costs incurred by the consumer in having the failure so remedied; or

(ii) subject to section 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection.

(3) If the failure to comply with the guarantee cannot be remedied or is a major failure, the consumer may:

(a) subject to section 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection; or

(b) by action against the supplier, recover compensation for any reduction in the value of the goods below the price paid or payable by the consumer for the goods.

(4) A consumer may take action under this section if:

(a) a person (the supplier) supplies, in trade or commerce, goods to the consumer; and

(b) a guarantee that applies to the supply under Subdivision A of Division 1 of Part 3-2 (other than ss 58 and 59(1)) is not complied with.

(5) If the failure to comply with the guarantee can be remedied and is not a major failure:

(a) the consumer may require the supplier to remedy the failure within a reasonable time; or

(b) if such a requirement is made of the supplier but the supplier refuses or fails to comply with the requirement, or fails to comply with the requirement within a reasonable time – the consumer may:

(i) otherwise have the failure remedied and, by action against the supplier, recover all reasonable costs incurred by the consumer in having the failure so remedied; or

(ii) subject to section 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection.

(6) If the failure to comply with the guarantee cannot be remedied or is a major failure, the consumer may:

(a) subject to section 262, notify the supplier that the consumer rejects the goods and of the ground or grounds for the rejection; or

(b) by action against the supplier, recover compensation for any reduction in the value of the goods below the price paid or payable by the consumer for the goods.

In *Ferraro v DBN Holdings Aust Pty Ltd t/as Sports Auto Group* [50] Ferraro bought a second-hand car from DBN incorrectly represented as never having been in an accident. Besanko J decided that, as s 259 (3) defined 'major failure' to include failure to comply with a statutory warranty that cannot be remedied, Ferraro was entitled to a refund and compensation.[51] This was a clear-cut case, undefended.

S. 260 When a failure to comply with a guarantee is a major failure

A failure to comply with a guarantee referred to in section 259(1)(b) that applies to a supply of goods is a major failure if:

(a) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or

(b) the goods depart in one or more significant respects:

(i) if they were supplied by description—from that description; or

(ii) if they were supplied by reference to a sample or demonstration model—from that sample or demonstration model; or

(c) the goods are substantially unfit for a purpose for which goods of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or

(d) the goods are unfit for a disclosed purpose that was made known to:

(i) the supplier of the goods; or

(ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made;

and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or

(e) the goods are not of acceptable quality because they are unsafe.

S 259 and 260 present definitional problems for dealers, and windows of opportunity for consumers. Dealers, OEMs, tribunals, courts and advisors struggle to define who is a 'reasonable consumer', what is a 'reasonable time' to repair a manufacturing defect, what costs incurred by a consumer are 'reasonable', as well as how to determine whether a failure is or is not major? The ACL lacks clear definitions or consideration of operational factors which may influence repair time, such as dealer capacity, technical skill, parts demand and availability to complete repairs.[52] It also makes no mention of depreciation.

[50] [2015] FCA 1127.

[51] Miller (n 15) 1961.

[52] A major OEM.

> I think the right to reject, which is a major failure, should be the last resort. So [one way] to fix it, the legislation needs to define it and say it means it's only a major failure if the product can't be repaired and take out the subjective 'would the consumer have bought it?'.[53]

Suggestions for improvement include: standardizing terms like 'major failure' could help align consumer and dealer expectations.[54] Instead of the current subjective test (whether a consumer would not have bought the product had they known of the fault), it is suggested that 'major failure' should be limited to cases where a product is 'dead on arrival' or is not repairable.[55] There is a call for clear definitions of what constitutes a 'major' vs. 'minor' fault, including specific criteria for the age of the vehicle and distance driven.[56] Adoption of a model similar to the U.S. or Singapore has been suggested. There, a right to reject is only triggered after a specific number of failed repair attempts (e.g. three attempts), providing a 'bright line' rule.[57]

The *Motor Dealers and Repairers Act 2013* (NSW) has effectively an unfair trading practices part 6 section dedicated to this exact issue. This could be extended to all new car dealers nationally.

But if civil penalties are introduced, rather than penalizing a 'failure to remedy,' civil penalties should focus on the 'failure to remedy within a reasonable period of time,' accounting for diagnostic complexities and shipping delays.[58]

One consumer group suggests creation of an ombudsman scheme and expert panels to provide quicker, more accessible justice for consumers.[59]

Buy-backs (ACL s 260)

In buy-back scenarios under the ACL, dealers may have to refund the full original purchase price even if the car is several years old or has high mileage (e.g. 170,000 km). OEMs may only agree to reimburse the dealer for the current loss on resale rather than the full original value.[60] Dealers often lose the value of 12 months of registration and must cover insurance for the car once it is back in their stock.[61]

If a dealer makes an independent determination to buy back a car because they believe there is a major failure, but the OEM disagrees, the dealer may have to bear the entire loss themselves.[62]

Customers often spend tens of thousands of dollars on enhancements (e.g. $30,000 in accessories on a $100,000 vehicle). While ACL suggests consumers should not be out of pocket, it is extremely difficult

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[53] Paterson (n 14).

[54] Interview with John Caine and Anthony Botta of VACC (via Teams, 9 January 2026) and Interview with Dealer G (Brian Savage and Michael McKenna of AADA, Anthony Botta of VACC and Emeritus Professor Jenny Buchan, in person, 22 January 2026).

[55] Paterson (n 14).

[56] Interview with Dealer J (Brian Savage and Michael McKenna of AADA, Emeritus Professor Jenny Buchan, in person, 23 January 2026).

[57] Paterson (n 14).

[58] See ibid.

[59] Interview with Consumer group 1's lawyer (Brian Savage, Michael McKenna, David Russell and Urmika Deb of AADA, Emeritus Professor Jenny Buchan, via Teams, 27 January 2026).

[60] Interview with Dealer D (Michael McKenna of AADA and Emeritus Professor Jenny Buchan, in person, 12 January 2026).

[61] See ibid.

[62] Ibid.

for dealers to justify these costs back to the OEM, especially if the accessories weren't on the original sales contract.[63]

Ss. 263 (2) and (3) Return the goods

S. 271 Action for damages against manufacturers of goods

(1) If:

(a) the guarantee under section 54 applies to a supply of goods to a consumer; and

(b) the guarantee is not complied with;

an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the OEM.

(2) Subsection (1) does not apply if the guarantee under section 54 is not complied with only because of:

(a) an act, default or omission of, or any representation made by, any person other than the manufacturer or an employee or agent of the manufacturer; or

(b) a cause independent of human control that occurred after the goods left the control of the manufacturer; or

(c) the fact that the price charged by the supplier was higher than the manufacturer's recommended retail price, or the average retail price, for the goods.

(3) If:

(a) a person supplies, in trade or commerce, goods by description to a consumer; and

(b) the description was applied to the goods by or on behalf of the manufacturer of the goods, or with express or implied consent of the manufacturer; and

(c) the guarantee under section 56 applies to the supply and it is not complied with;

an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the manufacturer.

(4) Subsection (3) does not apply if the guarantee under section 56 is not complied with only because of:

(a) an act, default or omission of any person other than the manufacturer or an employee or agent of the manufacturer; or

(b) a cause independent of human control that occurred after the goods left the control of the manufacturer.

(5) If:

[63] Interview with Dealer K ((Brian Savage and Michael McKenna of AADA, Emeritus Professor Jenny Buchan, in person, 23 January 2026).

(a) the guarantee under section 58 or 59(1) applies to a supply of goods to a consumer; and

(b) the guarantee is not complied with;

an affected person in relation to the goods may, by action against the manufacturer of the goods, recover damages from the manufacturer.

(6) If an affected person in relation to goods has, in accordance with an express warranty given or made by the manufacturer of the goods, required the manufacturer to remedy a failure to comply with a guarantee referred to in subsection (1), (3) or (5):

(a) by repairing the goods; or

(b) by replacing the goods with goods of an identical type;

then, despite that subsection, the affected person is not entitled to commence an action under that subsection to recover damages of a kind referred to in section 272(1)(a) unless the manufacturer has refused or failed to remedy the failure, or has failed to remedy the failure within a reasonable time.

S. 272 Damages that may be recovered by action against manufacturers of goods

(1) In an action for damages under this Division, an affected person in relation to goods is entitled to recover damages for:

(a) any reduction in the value of the goods, resulting from the failure to comply with the guarantee to which the action relates, below whichever of the following prices is lower:

(i) the price paid or payable by the consumer for the goods;

(ii) the average retail price of the goods at the time of supply; and

(b) any loss or damage suffered by the affected person because of the failure to comply with the guarantee to which the action relates if it was reasonably foreseeable that the affected person would suffer such loss or damage as a result of such a failure.

(2) Without limiting subsection (1)(b), the cost of inspecting and returning the goods to the manufacturer is taken to be a reasonably foreseeable loss suffered by the affected person as a result of the failure to comply with the guarantee.

(3) Subsection (1)(b) does not apply to loss or damage suffered through a reduction in the value of the goods.

Miller notes that 'an assessment of the quantum of damages requires consideration of the following, drawn from *Toyota Motor Corporation Australia Ltd v Williams*[64]; *Ford Motor Company of Australia Pty Ltd v Capic*[65]; *Dwyer v Volkswagen Group Australia Pty Ltd*[66]:

- 'The availability of replacement or repair as a means of remedying the defect and restoring the value of the consumer goods in the hands of the buyer.

[64] [2023] FCAFC 50.

[65] *Capic* (n 24) 179.

[66] [2023] NDWCA 211.

- The nature of the defect and magnitude of its effect on the utility of the goods in the hands of the consumer where repair is not possible (or the cost is prohibitive).
- Where repair was not available at the time of trial, reasonable expectations of the consumer as to the availability and timing of any such repair. In favouring the possibility of the availability of a fix, two types of uncertainty that existed at the time of purchase should be taken into account: firstly, uncertainty as to whether there would be a fix; and secondly, even if a fix became available, uncertainty for how long it might take for the fix to be designed, tested and made available.
- Where repair was available at the time of trial, or the uncertainties referred to above had been resolved, the known information as to the availability, cost and timing of a fix at the time of trial.
- Any use to which the goods were put despite the defect.
- Where repair would wholly reinstate the utility of the goods, the cost of repair may be a measure of the reduction in value of the goods that resulted from the defect. But if repair will only partially reinstate utility, then it may be necessary to allow an amount for repair cost and, in addition, assess the residual reduction in value associated with the ongoing diminished utility'.[67]

Whether that is a defence to the Applicant's claim under s 272(1)(a) of the ACL … for reduction in value damages turns upon whether Ford effected these repairs within a reasonable time: ACL s 271(6). … Whether the repair could be said to have been undertaken within a reasonable time in any given case would, on its face, appear to turn upon facts which are individual to the vehicle in question'.[68]

S. 273 Time limit for actions against manufacturers of goods

An affected person may commence an action for damages under this Division at any time within 3 years after the day on which the affected person first became aware, or ought reasonably to have become aware, that the guarantee to which the action relates has not been complied with.

This causes losses for dealers whose OEMs impose shorter time frames on them in contradiction to s 273. This is addressed in Chapter 7.

S. 274 Indemnification of suppliers by manufacturers

(1) A manufacturer of goods is liable to indemnify a person (the supplier) who supplies the goods to a consumer if:

(a) the supplier is liable to pay damages under section 259(4) to the consumer for loss or damage suffered by the consumer; and

(b) the manufacturer is or would be liable under section 271 to pay damages to the consumer for the same loss or damage.

(2) Without limiting subsection (1), a manufacturer of goods is liable to indemnify a person (the supplier) who supplies the goods to a consumer if:

(a) the supplier incurs costs because the supplier is liable under this Part for a failure to comply with a guarantee that applies to the supply under Subdivision A of Division 1 of Part 3 - 2; and

[67] Miller (n 15) 1975.

[68] *Capic* (n 24) 1320.

(b) the failure is:

(i) a failure to comply with the guarantee under section 54; or

(ii) a failure to comply with the guarantee under section 55 in relation to a disclosed purpose that the consumer made known to the OEM either directly or through the supplier or the person referred to in section 55(2)(a)(ii); or

(iii) a failure to comply with the guarantee under section 56 in relation to a description that was applied to the goods by or on behalf of the manufacturer of the goods, or with the express or implied consent of the OEM.

(3) The supplier may, with respect to the manufacturer's liability to indemnify the supplier, commence an action against the manufacturer in a court of competent jurisdiction for such legal or equitable relief as the supplier could have obtained if that liability had arisen under a contract of indemnity made between them.

(4) The supplier may commence the action at any time within 3 years after the earliest of the following days:

(a) the day, or the first day, as the case may be, on which the supplier made a payment with respect to, or otherwise discharged in whole or in part, the liability of the supplier to the consumer;

(b) the day on which a proceeding was commenced by the consumer against the supplier with respect to that liability or, if more than one such proceeding was commenced, the day on which the first such proceeding was commenced.

Under Section 274 there is a requirement by OEMs to indemnify suppliers (Dealers) for consumer guarantee claims made under the ACL. Despite this requirement, some OEMs, normally operating under the instruction of their overseas head offices, enforce their own warranty policies and procedures in this country, without regard to the laws of Australia.[69]

Chapter 7: details numerous complications for dealers in pursuing their rights under s 274 ACL.

S. 275 Limitation of liability etc.

If:

(a) there is a failure to comply with a guarantee that applies to a supply of services under Subdivision B of Division 1 of Part 3 - 2; and

(b) the law of a State or a Territory is the proper law of the contract;

that law applies to limit or preclude liability for the failure, and recovery of that liability (if any), in the same way as it applies to limit or preclude liability, and recovery of any liability, for a breach of a term of the contract for the supply of the services.

S. 276 This Part not to be excluded etc. by contract

[69] Australian Automotive Dealer Association (AADA), Submission No 13.2 to *Senate inquiry into the regulation of the relationship between car manufacturers and car dealers in Australia* (6 November 2020) 10.

(1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying:

(a) the application of all or any of the provisions of this Part; or

(b) the exercise of a right a conferred by such a provision; or

(c) any liability of a person in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3 - 2 to a supply of goods or services.

(2) A term of a contract is not taken, for the purposes of this section, to exclude, restrict or modify the application of a provision of this Part unless the term does so expressly or is inconsistent with the provision.

(3) This section does not apply to a term of a contract that is a term referred to in section 276A(4).

S. 276A Limitation in certain circumstances of liability of manufacturer to seller

(1) Despite section 274, if goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the liability under that section of the manufacturer of the goods to a person (the supplier) who supplied the goods to a consumer is limited to a liability to pay to the supplier an amount equal to:

(a) the cost of replacing the goods; or

(b) the cost of obtaining equivalent goods; or

(c) the cost of having the goods repaired; whichever is the lowest amount.

(2) Subsection (1) does not apply in relation to particular goods if the supplier establishes that it is not fair or reasonable for the liability of the manufacturer of the goods to be limited as mentioned in subsection (1).

(3) In determining for the purposes of subsection (2) whether or not it is fair or reasonable for the liability of a manufacturer to a supplier in relation to goods to be limited as mentioned in subsection (1), a court is to have regard to all the circumstances of the case, and in particular to the following matters:

(a) the availability of suitable alternative sources of supply of the goods;

(b) the availability of equivalent goods;

(c) whether the goods were manufactured, processed or adapted to the special order of the supplier.

(4) This section is subject to any term of a contract between the manufacturer and the supplier imposing on the manufacturer a greater liability than the liability mentioned in subsection (1).

An examination of contracts between OEMs and dealers would clarify the extent, if any, to which s 276A (4) imposed an unreasonable burden on dealers.

Franchising Code of Conduct

The Code is a mandatory industry code[70] under the *Competition and Consumer Act 2010* (Cth) (CCA). It attempts to balance relationships between franchisees and franchisors. S 51ACB CCA mandates that ‘A corporation must not, in trade or commerce, contravene an applicable industry code’. Ss 51ACC to 51AF CCA provide the ACCC with extensive powers for investigating and penalising breaches of industry codes. The core weakness of the Code is that it acknowledges but does not correct the entrenched power imbalance between OEM franchisors and dealer franchisees.

To comply with the Code franchisors must provide pre-contract disclosure, the parties to a franchise agreement must act in good faith, specific provisions must be included in franchise agreements, and dispute resolution processes are set out. Amendments in 2024 added provisions 85 to 88 which apply specifically to new car franchises.

Franchisors are also required to register on the Franchise Disclosure Register, and to update information annually to comply with Part 7 of the Code. Of the estimated 79 new car dealer franchisors in Australia, the only ones currently registered are Bentley Motors Ltd, Chery Motor Australia Pty Ltd t/a Omoda Jaecoo Australia, Chery Motor Australia Pty Ltd t/a Chery Motor Australia, EVDEALER Group Limited t/a BYD Automotive, and Kia Australia Pty Ltd.[71] Mercedez-Benz[72] and Honda[73] are registered too, despite not operating through the franchise model. Some of the data provided by Mercedes-Benz includes minimum setup cost $3,226,000 and maximum setup cost $39,135,000.

While the Code was strengthened in 2024 to include sections specific to new vehicle dealership agreements, it remains inadequate to address the realities of the OEM–dealer relationship in the new car market. It does not sufficiently rebalance power, allocate risk to the party with control, or ensure compliance with ACL obligations. Nor does it prevent OEMs from using contractual processes to hollow out statutory protections.

The Code does not regulate how OEMs structure or operate warranty and goodwill systems, despite these being central to dealers’ financial exposure. Consequences include under-reimbursement of labour and diagnostic time, denial of claims for minor administrative non-compliance, retrospective clawbacks through audits and refusal to fund loan cars, storage, lost or opportunity costs.

The sections in the Code relevant to new car dealers and their OEMs are 18, 45, 46 and 85-87.

18: Obligation to act in good faith

(1) Each party to a franchise agreement must act towards another party with good faith, within the meaning of the unwritten law from time to time, in respect of any matter arising under or in relation to:

(a) the agreement; and

(b) this Code.

This is the obligation to act in good faith.

Civil penalty: 600 penalty units.

[70] Claudio Burigo-Ficca *Franchising in Australia* Thematic Reports X 0002 (January 2025) IBISWorld, 6.

[71] https://franchisedisclosure.gov.au/Register/FranchiseProfile/FNC-007209

[72] https://franchisedisclosure.gov.au/Register/FranchiseProfile/FNC-005009

[73] https://franchisedisclosure.gov.au/Register/FranchiseProfile/FNC-005373

(2) The obligation to act in good faith also applies to a person who proposes to become a party to a franchise agreement in respect of:

(a) any dealing or dispute relating to the proposed agreement; and

(b) the negotiation of the proposed agreement; and

(c) this Code.

Matters to which a court may have regard

(3) Without limiting the matters to which a court may have regard for the purpose of determining whether a party to a franchise agreement has contravened subclause (1):

(a) for all agreements the court may have regard to:

(i) whether the party acted honestly and not arbitrarily; and

(ii) whether the party cooperated to achieve the purposes of the agreement.

(b) for a new vehicle dealership agreement – the court must have regard to whether the terms of the agreement are fair and reasonable.

(4) A franchisor must not enter into a franchise agreement that includes a provision that limits or excludes, or purports to limit or exclude, the obligation to act in good faith.

Civil penalty: 600 penalty units.

(5) A franchisor must not enter into a franchise agreement that includes a provision that limits or excludes, or purports to limit or exclude, the obligation to act in good faith by applying, adopting or incorporating, with or without modification, the words of another document, as in force at a particular time or as in force from time to time, in the agreement.

Civil penalty: 600 penalty units.

(6) To avoid doubt, the obligation to act in good faith does not prevent a party to a franchise agreement, or a person who proposes to become such a party, from acting in the party's or the person's legitimate commercial interests.

(7) To avoid doubt, if a franchise agreement does not:

(a) give the franchisee an option to renew the agreement; or

(b) allow the franchisee to extend the agreement;

this does not mean that the franchisor has not acted in good faith in negotiating or giving effect to the agreement.

Although the Code mandates good faith, it does not prevent OEMs from exercising their overwhelming bargaining power opportunistically, especially through mechanisms such as technical bulletins, warranty manuals, audit practices and policy updates.

In practice, OEMs can act consistently with their legitimate commercial interests while still imposing decisions that undermine dealer viability, force dealers to breach ACL obligations to consumers, and transfer OEM costs onto dealers without reimbursing them. Dealers rarely litigate good faith breaches because of cost, risk and fear of retaliation, rendering the obligation largely symbolic.

45: Franchise agreement must provide for compensation for early termination—new vehicle dealership agreements

(1) This section applies to a new vehicle dealership agreement.

(2) A franchisor must not enter into a new vehicle dealership agreement unless the agreement:

(a) provides for the franchisee to be compensated if the agreement is terminated before it expires because the franchisor:

(i) withdraws from the Australian market; or

(ii) rationalises its networks in Australia; or

(iii) changes its distribution models in Australia; and

(b) specifies how the compensation is to be determined, with specific reference to the following:

(i) lost profit from direct and indirect revenue;

(ii) unamortised capital expenditure requested by the franchisor;

(iii) loss of opportunity in selling established goodwill;

(iv) costs of winding up the franchised business.

Civil penalty:

(a) for a contravention by a body corporate—the amount under section 17; or

(b) for a contravention by a person who is not a body corporate—$500,000.

(3) A franchisor must not enter into a new vehicle dealership agreement unless the agreement contains provision for the franchisor to buy back or compensate the franchisee for the things mentioned in subsection (4) if:

(a) the agreement is not renewed and the franchisor does not enter into a new vehicle dealership agreement with the franchisee; or

(b) the agreement is terminated before it expires because the franchisor:

(i) withdraws from the Australian market; or

(ii) rationalises its networks in Australia; or

(iii) changes its distribution models in Australia.

Civil penalty:

(a) for a contravention by a body corporate—the amount under section 17; or

(b) for a contravention by a person who is not a body corporate—$500,000.

(4) For the purposes of subsection (3), the things are new road vehicles, spare parts and special tools.

(5) A franchisor must not enter into a new vehicle dealership agreement that contains a provision that purports to exclude any compensation to which the franchisee may be entitled, other than under the agreement, if the agreement is terminated before it expires other than because the franchisee has breached the agreement.

Civil penalty:

(a) for a contravention by a body corporate—the amount under section 17; or

(b) for a contravention by a person who is not a body corporate—$500,000.

46: Franchise agreement must provide reasonable opportunity for return on franchisee's investment—new vehicle dealership agreements

(1) This section applies to a new vehicle dealership agreement.

(2) A franchisor must not enter into a new vehicle dealership agreement unless the agreement provides the franchisee with a reasonable opportunity to make a return, during the term of the agreement, on any investment required by the franchisor as part of entering into, or under, the agreement.

Note: If expenditure is disclosed in a disclosure document for a franchise agreement, the circumstances in which the expenditure is likely to be recouped must be discussed (see section 47).

Civil penalty:

(a) for a contravention by a body corporate—the amount under section 17; or

(b) for a contravention by a person who is not a body corporate—$500,000.

Sections 45 and 46 address compensation for early termination, market exit, and return on investment, but they are limited in scope.

Key gaps include there being no requirement for OEMs to underwrite ongoing warranty, recall or buyback liabilities after exit, no obligation to maintain an onshore fund to meet future consumer claims, no meaningful mechanism to enforce parts supply or servicing obligations if an OEM withdraws from the Australian market, and no protection for the dealer's investment if the franchisor exits via insolvency. These weaknesses are particularly acute given the influx of new and less-established OEMs entering the Australian market through thinly capitalised local entities.

61: Payments to and from specific purpose funds

Section 61of the Code provides for the situation where the franchise agreement requires the franchisee to pay money to a specific purpose account. Section 61 (3) stipulates that the fund administrator must maintain a separate account with a financial institution for payments to the fund. This fund includes money, for example, that a franchisee pays for marketing. While the franchisor is trading the proceeds of the account can be used for the purposes set out in section 62.

However, if the franchisor entity becomes insolvent the insolvency process is mandated under the *Corporations Act 2001* (Cth). The Code theoretically binds the administrator but does not bind a liquidator. The fund can be used to pay the franchisor's creditors, even though the money in the fund was paid in by dealers for the benefit of the brand. It is suggested that the franchisee/dealers would be better protected if section 61(3) was amended to require the franchisor to hold the fund in trust for the benefit of all contributors, rather than simply in a 'separate account'.

85. Notification obligation – franchisor

86. Notification obligation – franchisee

87. Obligation to manage winding down of agreement

(1) This section applies if:

(a) under section 85, the franchisor gives the franchisee a notice that the franchisor intends to neither extend the agreement nor enter into a new franchise agreement with the franchisee; or

(b) under section 86, the franchisee gives the franchisor a notice that the franchisee intends to neither renew the agreement nor enter into a new franchise agreement with the franchisor.

(2) The franchisor and franchisee must, as soon as practicable, cooperate to develop and implement a written plan (with milestones) for managing the winding down of the dealership, including how the franchisee's stock (including new road vehicles, spare parts and service and repair equipment) will be managed over the remaining term of the agreement.

Note: Each party to a franchise agreement is under an obligation to act in good faith in relation to the agreement (see section 18).

Civil penalty: 600 penalty units.

Section 87 applies when an OEM is going to terminate an agreement. For consumers and dealers alike, the Code offers no enforceable assurance that statutory obligations will be met if an OEM leaves the market. It does not require that an OEM provide for an ongoing supply of spare parts and servicing after the dealership term ends or mandate funding, security or guarantees. Nor does it address long-tail risks such as batteries, recalls or software defects. It relies on good faith cooperation, even when an OEM is exiting the Australian market entirely. While the role of the Code is not to create consumer protection for retail consumers, this shortcoming places both consumers and dealers at risk.

If a brand exits the Australian market there are effectively no enforcement mechanism to ensure compliance with recall obligations if the brand has no local presence.[74] Consideration should be given to mandating exit plans for brands who leave the Australian market, providing strategy on how they will supply parts, the creation of an onshore pool of funds sufficient to meet warranty claims and recalls before they exit the market. This was done on a bespoke basis for Holden but that is not an efficient generic approach.

88: Franchisees may request multi-franchise dispute resolutions

Although section 88 allows multi-party dispute resolution, confidentiality clauses in franchise agreements inhibit collective action. OEMs may resist or refuse participation. Further, there is no obligation to join OEMs to consumer tribunal proceedings although the AADA recommends its members join the OEM as a matter of course.

As a result, dealers are left defending claims alone for manufacturing defects, technical evidence is absent or incomplete and indemnity disputes are pushed into separate, prohibitively expensive litigation.

Regulation through contracts

Franchise agreements

Franchise relationships are cemented through contracts known as franchise agreements. They are made between the national corporate subsidiary of the OEM as franchisor and dealer franchisees who, as business consumers, buy the opportunity to sell and service the franchised brand of new car in Australia in exchange for an initial fee and ongoing royalties and other payments.

[74] A major OEM.

Dealers are frequently balancing their ACL obligations to consumers, while safeguarding their own financial interests and maintaining a long-term commercial relationship with their OEM.[75] For the reasons identified in Chapter 5 'franchise dealers have weak negotiating power and have to work to ensure they aren't impaired despite any unfair contracts with OEMs'.[76]

All franchise agreements are 'necessarily and intentionally incomplete because mutual desires for flexible but bounded responses to uncertain future conditions limit the scope of precision and verifiable terms. Incomplete contracts like franchise agreements often exist deeply embedded in an ongoing relationship. The parties are not strangers; much of their interaction takes place 'off the contract' mediated not by visible terms enforceable by a court, but by a particular balance of cooperation and coercion, communication and strategy'.[77] 'In an incomplete contract, principal's (franchisor's) or agent's (franchisee's) decisions unspecified in the contract will be undertaken ex post on the basis of the unconstrained self-interest of the decision maker, given the incentives provided by the contract'.[78]

'It is in this world of contractual incompleteness and relational complexity that franchising exists'.[79] In new car dealerships the power imbalance between the dealers and the OEM is massively weighted in favour of the OEMs. It is embedded in all franchise agreements.

It is impossible to write a contract such as a franchise agreement covering all future scenarios in a relationship. In the context of dealers, any renegotiation during the franchise term is likely to take the form of updates to technical manuals, or new bulletins. Dealer agreements, policies and procedures provide OEMs with broad discretion to direct matters such as a dealer's handling and resolution of customer complaints. This can constrain and adversely influence the response of dealers to customer complaints and have the potential to prevent dealers from satisfying their ACL responsibilities.[80]

OEM Warranties

OEMs provide bespoke detailed warranties with new cars. They are in addition to the statutory warranties under the ACL. The only component of a motor car not covered by warranty is a battery.[81] The wording of consumer guarantees and the conditions attached to them can cause confusion for consumers. This can disadvantage consumers unfamiliar with legal processes and terminology.

The ACCC has received a number of complaints about the way in which Toyota Australia and its dealers have assessed claims about Toyota vehicles with faulty particulate filters between June 2015 and June 2018.[82] The situation with Toyota demonstrates that although the dealer fixes the car, the dealer cannot always provide a solution. Toyota as OEM had to resolve the fault including rewriting software. It is the OEM in this situation who should reimburse the dealer in full for all work addressing the fault.

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[75] AADA, Submission (unnumbered) to Treasury, *Consultation Regulatory Impact Statement - Improving Consumer Guarantees and Supplier Indemnification Provisions Under the Australian Consumer Law* February 2022, 30.

[76] Matt Reeves, *Motor Vehicle Dealers in Australia* IBISWorld Report Retail Trade G 3911 (November 2025) 40.

[77] Gillian K Hadfield, 'Problematic Relations: Franchising and the law of Incomplete Contracts' (1990) 42 *Stanford Law Review* 927-992, at 927-928.

[78] G Frank Mathewson and Ralph A Winter, The Economics of Franchise Contracts' *Journal of Law and Economics*, XXVIII (3), October, 503-26, in Franchising Contracting and Organization. Francine Lafontaine (ed) 29.

[79] Hadfield (n 77) 928.

[80] AADA, (n 75) 30.

[81] Dealer J (n 56).

[82] Toyota Motor Corporation Australia Limited (n 9).

CHAPTER 4: CONSUMER DETRIMENT

One consumer group made the point that:

> in regional settings, you just cannot overstate the importance of trust and relationships and face to face contact. As soon as you get into the realm of calling a multinational or even a national firm with different departments that are hard to get through, long wait times [consumers run out of patience].[83]

Reputationally, the dealers have a lot more to lose in regional settings where trust is so critical.[84]

Another consumer group notes that:

> cars can be part of a safety plan – a way to flee family violence or a means to evacuate during bushfires and extreme weather events. In Victoria's regional and rural areas without public transportation, including our rural Koori community, cars are essential.[85]

Following earlier reports by the ACCC, and several enforceable undertakings given by OEMs[86] to the ACCC addressing failures to meet their ACL obligations, the government is particularly concerned that consumers are denied their entitlements because of a failure by OEMs to compensate dealers for repair, refund, or replacement of affected vehicles'.[87]

Dealers want happy customers. They want, and need, positive online reviews to keep the OEMs happy and to encourage repeat and new business in very competitive markets. Dealers remain the first port of call for consumers as their contract of sale is with the dealer, and s.259 ACL directs them to the dealer. But, if the fault in a new car is a design fault, only the OEM can provide the remedy. Dealers are not responsible for the consumer's failure to maintain their new car properly although some consumers who have not had their car serviced routinely do take dealers on in Tribunals.

A fault may manifest itself in the first few weeks of ownership, the car could effectively be declared 'dead on arrival'. But some manufacturing faults take months or years to emerge and be correctly diagnosed.

Dealers respond to consumer guarantee or warranty claims within the framework of the policies and procedures set by the ACL and the specific OEM's warranties. Sometimes the commercial arrangements dealers have with their OEMs can have the effect of denying or making it difficult for consumers to readily access the remedies to which they are entitled.[88] OEMs often prescribe exactly what dealers can say to customers, sometimes forcing them to say things that go against their desire to maintain a good local reputation.[89] Clear guidelines on time limits or criteria for buybacks could protect consumers while balancing business sustainability'.[90]

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[83] Consumer group 1 (n 59).

[84] See ibid.

[85] Consumer Action Law Centre, Background Brief 'Keeping Victorians Moving: We need a better system for Victorians with car disputes', November 2023.

[86] e.g. (n 9).

[87] AADA Dealer Bulletin, Important Survey- Improving Consumer Guarantees and Supplier Indemnification, 25 January 2022.

[88] AADA (n 75) 30.

[89] Consumer group 1 (n 59).

[90] Dealer A (n 6).

The current indemnity framework does not provide adequate protections for dealers, which can directly impact consumer experience and access to guaranteed remedies.[91] Consumers may experience slower repairs or avoidable delays. These include reduced dealers' willingness to resolve minor guarantee claims to avoid escalating costs; a possible decline in consumer confidence and trust, leading to poorer satisfaction. Delays can give rise to further disputes.[92]

Some OEMs may use non-disclosure agreements (NDAs) in settlements, which can potentially limit a consumer's ability to discuss their statutory rights.[93]

OEMs provide a stepped process depending on whether a bought-back car can be repaired. Once a dealer buys a faulty vehicle back, it repairs it if repair is possible and sells it to recover some costs. Where vehicles rejected in one state are sold at auction they can end up being purchased by vulnerable consumers in another state.[94]

Inconvenience

People need their cars to be reliable and available 24/7. If a car has a fault, it may be off the road for weeks while the problem is diagnosed and fixed. The dealer may be able to provide a loan car or may have a car-supply arrangement with a rental car company. For consumers living in motorhomes, a breakdown can lead to massive accommodation and rental car bills.[95]

OEMs and dealers vary significantly in their approach to loan cars.

> We like to keep the customer mobile, no matter what. Almost instantly, we try to get them on wheels if their car is here or towed in. If we do find this not a manufacturing fault, then things change, then the towing cost and so on is on them, and I'm sure they totally understand once we explain, but it's a bit challenging with some OEMs'.[96]
>
> There's clearly problems, with some of the brands, between supplier and OEM, and then that flows through to customer, because the consumer ends up getting frustrated, and probably blaming the dealer when the OEM is making it awkward for the dealer to make the customer happy.[97]

Warranty issues

Consumer expectations

As a consumer,

> when you sign up with the brand, you go, I've got this great warranty. They're going to look after me. Doesn't matter what happens, there's 180 dealerships that'll help me, but they find

[91] A major OEM.

[92] A major OEM.

[93] Interview with Dealer F (Mark Korol and Michel McKenna of AADA and Emeritus Professor Jenny Buchan, via Teams, 19 January 2026).

[94] Consumer group 1(n 59).

[95] Dealer J (n 56).

[96] Dealer C (n 11).

[97] Dealer C, ibid.

> that a lot of the dealers run for the hills when the consumer looks to take up that warranty provision.[98]

Consumers often misunderstand what is covered under warranty, especially regarding service costs and wear and tear beyond warranty limits. Improved transparency and communication about warranty scope, service costs, and what constitutes a warrantable claim would help manage consumer expectations.[99]

Confusing ACL terminology

One consumer advocate observed 'I'm a longstanding consumer lawyer. I, to this day, couldn't give definitive advice to a client about whether or not it's a major fault'.[100]

An OEM suggested that penalties should be imposed for non-compliance tied to systemic failures or misleading warranty representations.[101]

Terms like *major failure* and *rejection periods* are confusing and difficult to apply in practice, leading to inconsistent outcomes in tribunals.[102] Consumers and dealers often disagree on whether a fault (like a faulty sensor) constitutes a major failure requiring a refund or a minor failure that can be repaired under warranty.[103] A consumer might view a warning light as a major defect, while a dealer might consider it a minor issue.[104] Consumers often view any apparently significant repair, such as removing a transmission or engine as a major failure that warrants a full vehicle buy-back even if the solution is a simple 'take out and put in' procedure.[105]

> It's quite different between every OEM and the understanding of where everyone's interpretation of the law and the OEM's stance on it.[106]

In an attempt to reduce confusion some 'OEMs provide annual ACL refresher training for customer-facing dealership staff to help them manage expectations and legal requirements.[107] Consumers can become frustrated because:

> most of the factories will not allow a dealer to admit there's any fault in a motor car. The furthest we can go at law is to acknowledge that there's a defect there, but the owner is unable to reproduce it.[108]

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[98] Interview with Dealer E (Anthony Botta of Victorian Automotive Chamber of Commerce (VACC) via Teams and Michael McKenna of AADA, and Emeritus Professor Jenny Buchan, in person, 13 January 2026)

[99] Dealer A (n 6).

[100] Consumer group 1 (n 59).

[101] A major OEM.

[102] Paterson (n 14).

[103] Dealer C (n 11).

[104] Caine (n 54)

[105] Interview with Dealer H (Brian Savage and Michael McKenna of AADA and Emeritus Professor Jenny Buchan, in person, 22 January 2026).

[106] Interview with Dealer M (Michael McKenna of AADA and Emeritus Professor Jenny Buchan, in person,13 February 2026).

[107] Dealer F (n 93).

[108] Interview with Alan Bergman of Star Consulting (Brian Savage and Michael McKenna of AADA and Emeritus Professor Jenny Buchan via Teams, 4 February 2026).

Dealers in the [named brand] ecosystem must assess whether a vehicle fault is major or minor themselves. This leaves them responsible for sharing that feedback with customers, whereas other brands provide a centralised team for these reviews.[109]

'The AADA has anecdotally received reports from dealers which indicate that consumers have a good understanding of the ACL and their rights under this legislation'.[110] However, consumer groups submit that 'regulators should produce guidance to help determine what constitutes a major failure specifically for markets where complaints regularly arise. This should at a minimum cover the new and used motor vehicle industry'.[111]

Dealers expressed a need for a centralized, 'forensic' register to check if a used car has a history of major accidents, flood damage, or auction sales, which would simplify diagnosis and risk assessment.[112] This could be added to the Personal Properties Securities Register under the *Personal Property Securities Act 2009* (Cth) and be open to all vehicle consumers. It could help prevent vulnerable consumers from buying cars that had been shifted interstate to sell after they had been involved in a flood, or an accident.

Confusing conditions of OEM warranties

Every OEM provides a contractual warranty in addition to the ALC warranties. The conditions of some OEM warranties are complex.

The OEM warranty for GMSV is straightforward; it is for the earlier of 3 years or 100,000kms. Hyundai Motor Group provides consumers with 7-year extended warranty terms. Toyota Australia provides a Manufacturer's Warranty (the 'Toyota Warranty Advantage') to consumers at the time they purchase a new Toyota. The term of the Toyota Warranty Advantage is five years with unlimited kilometres for domestic vehicles and five years or 120,000 kilometres for vehicles used in commercial applications. Full terms and conditions of the Toyota Warranty Advantage are available on Toyota Australia's website.

For another OEM the warranty is 'from 7 years to the greatest at 10 years, and some are service conditional, i.e. the car must be serviced within the brand set to unlock a second tranche. They'll be delivered with five years to start with'.[113] What this means is that the consumer 'can service anywhere at any mechanic in Australia, but at five years it ends. However, if the consumer did all of those five years of servicing in [the workshop of the selling brand], the OEM will give you another five, building out to a 10-year warranty'.[114]

One dealer explained the SSang Yong warranty.[115]

> SSang Yong has a two stepped service model. The service model is like a cap price service. Let's say every service once a year is $200.00. But when you read it, the supplementary items add additional cost. Even in the logbook they say [the supplementary items] have to be done, and if they're not done, a warranty claim will be denied. So, a customer thinks, I'm going to

[109] Dealer F (n 93).

[110] AADA, submission 98 to Productivity Commission *Right to Repair Issues Paper* (3 February 2021) 7.

[111] CHOICE, Indigenous Consumer Assistance Network (ICAN), CPRC, WestJustice, Consumer Action Law Centre, LawRight, Redfern Legal Centre, Consumer Credit Legal Service (WA) Inc (CCLS),WA Advocacy Network, Consumer Advocacy Groups Joint submission (unnumbered) to Treasury, *Introducing penalties for consumer guarantees* (November 2024) 4.

[112] Dealer C (n 11).

[113] Dealer E (n 98).

[114] See ibid.

[115] https://kgm.com.au/owners-and-service/warranty

> buy this car seven years, $200 bucks a year for full servicing. This is great. And the salespeople sell it that way. But when they hit the service desk. Service number four turns out to be $800.00 and [the consumer] says what's going on here now. They are told 'Unless you do this service, you won't have your warranty intact'. So the customer's, out of pocket and they feel mislead.[116]

'We're only talking about one brand; there are 70 odd brands. There may be others playing around with those games'.[117] i.e. 2-tier OEM warranties.

Time taken to get warranty work done

Dealers acknowledged that 'customers face significant delays in Australia, especially for EVs, and workshop back logs that can stretch up to six weeks just for diagnosis'.[118] This is partly attributed to 'long wait times for parts - especially those that cannot be air-freighted, like batteries. Those long wait times can potentially qualify a vehicle for a buyback'.[119]

A lot of [dealers] will look at the opportunity cost.

> I've only got so many hours to sell. Why do why do I want to fill my workshop up with warranty work from a brand that won't reimburse me the hours? That's having a detrimental effect on the customer … the smaller dealerships will just try to push warranty work to one of the bigger dealers and it's really inconvenient to a customer because they'll have to go further to get their car serviced, and then you'll get a dealership that'll make them wait to get the warranty done. They'll say no. We've already got so much warranty in today. You'll have to wait two weeks.[120]
>
> The customer either has the election of waiting an onerous period of time to get their car repaired with their local mechanic or shopping around and being inconvenienced with a different dealership who's prepared to take it on.[121]

Due to workshop congestion, some dealers have started refusing to accept tow-ins or diagnosis work for vehicles they did not originally sell.[122]

> From a customer perspective, … there's a reluctance with dealers at times to perform warranty work, especially on vehicles that haven't been sold by the dealership. If the dealership has sold those vehicles, when it falls under the ACL, the customer will pursue us as a dealership rather than the OEM. We probably learn more towards going that extra mile in that instance. Having said that though we don't turn away warranty work'.[123]

Loan cars

Many OEMs do not compensate dealers for providing loan cars, meaning consumers may be without transportation during long repairs unless they are with a brand like Toyota that prioritises mobility.[124]

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[116] Dealer E (n 98).

[117] Dealer E (n 98).

[118] Dealer H (n 105).

[119] Dealer F (n 93).

[120] Dealer E (n 98).

[121] See ibid.

[122] Dealer H (n 105).

[123] Dealer E (n 98).

[124] Dealer C (n 11).

Consumers of brands other than Toyota have varied experiences with loan car availability. For the time it takes to get approval from the OEM and to repair the fault some dealers 'give the customer a loan car. It depends on how confident we are; if it's our customer, they're always in the car, so that part's [not] an issue. We don't tell the OEM that we bought the car back … but most of them, that we put forward [as a warranty buyback claim], we're 100% confident that there has to be a buyback'.[125]

The majority of OEMs, 'run for the hills. They do not want to put customers in a loan car. They're terrible, all things considered'. A few times we've gone back to a [named] OEM, they've refused, so we stopped contacting them 'cause we're never gonna get help.[126]

Because dealers are under pressure from underpaid warranty work and horrendous loan car experiences, they may refuse to service certain vehicles or stop offering loan cars altogether, replacing them with less convenient shuttle buses.[127]

Stress and loan cars

One dealer's experience with an OEM that guarantees timely spare parts supply explains the knock-on effect of the OEMs refusal to supply a loan car.

> the OEM has a contractual obligation to provide parts in a timely manner. The failed parts that caused this problem do not usually fail, so stocks are not kept in Australia. They need to be sent from overseas. This will take several weeks. The customer uses this vehicle for work and cannot be without a vehicle. The OEM refused to supply or fund a loan car. The dealer explained that the dealer having to supply one of its own loan cars would leave the dealer's loyal paying service customers at a disadvantage with delays for service bookings where a loan car is required. The dealer also drew the OEM's attention to its ACL obligation to leave no one out of pocket for warranty related repairs, and to the fact that the dealer did not have this problem with any of the other OEMs it deals with. In the end the OEM identified a policy it had to enable dealers to buy loan vehicles [from it].[128]

Another case example shows that a dealer resorted to threatening to terminate a dealership if an OEM that was new to Australia did not meet its obligations under the ACL.

Case example: As the dealer explained; a guy buys a car from a previous dealer. The engine fails. That dealer agrees to buy the car back, and the OEM will provide a new engine. The customer pays to put it in. The new engine goes in the car. Now it is giving the customer nothing but trouble. The customer goes back to the dealer who says 'nothing to do with me. You go and see them down the road. They're the new dealer. It's their problem'.

The new dealer has had the car in its workshop for 6 or 7 months. The car owner has two disabled children. He doesn't have another form of transport, and he's fed up. By this point, [the OEM] has stopped answering his emails and is not communicating with him at all.

[The new dealer] said to the OEM, 'Pick your [expletive] franchise up and get it out of here. You bought me, nothing but trouble', because this is not the first episode. Eventually, the OEM caved in. A day later a brand new $55,000 car [from the OEM] showed up as a loan car for the customer, because the dealer threatened the OEM. But he had to go to that extent, the damage that's been done is unbelievable. And

[125] Dealer H (n 105).

[126] Dealer I (n 40).

[127] Dealer J (n 56).

[128] Dealer E (n 98).

then a day after that, the OEM decided to start re-communicating with the dealer on what they wanted to do.[129]

'Then the car owner came into the dealer's office screaming at [the dealer]. I said, listen mate. I got you the loan car. I'm doing the best I can. The previous dealer got you nothing and [the OEM] didn't want to know you. You should have been told that you bought a car with a new replacement engine in it. But that's an example of a new OEM'.[130]

Complaint handling/dispute resolution

There is no easy and fast way for consumers to attempt to rely on ACL guarantees. Tribunals are backed up and confusing and courts are prohibitively expensive. In many cases, consumers give up on their legitimate claims.[131]

Consumers currently face a complex complaint process that often involves escalating through dealership staff and possibly tribunals or courts. If a consumer is unhappy with a dealer's assessment, he or she may have to pursue claims through small claims courts or tribunals, which is time-consuming and stressful.[132]

The tribunal system is described as incredibly slow, sometimes taking years to resolve a case, by which time a dealership might have gone under.[133] The VCAT process is described as unsatisfactory. It's sometimes taking over a year to reach a hearing, leaving consumers without a resolution for extended periods.[134]

Consumers often find it frustrating when they cannot deal directly with the OEM. They are frequently referred back to the dealer.[135] Consumer groups suggest that:

> OEMs should have the same incentives to comply with their obligations as suppliers do. A system without this safeguard risks leaving [dealers] in a difficult situation where they risk carrying the full burden of the regime. This would not be fair on dealers, and it would risk reducing the impact of reforms, as dealers may still be more likely to resist legitimate repair or replacement requests from consumers.[136]

A more streamlined and accessible complaint resolution process, possibly with fixed timelines and clearer guidance, would benefit consumers.[137]

Rejection periods and method

Rejection periods are another unclear area of the law. 'If you look at the tribunal decisions, you see sort of a pattern of what the tribunal is deciding, but you couldn't be definitive with someone about it'.[138]

[129] Dealer J (n 56).
[130] See ibid.
[131] Consumer Advocacy Groups (n 111).
[132] Dealer F (n 93).
[133] Consumer group 1 (n 59).
[134] Caine (n 54).
[135] See ibid.
[136] Consumer Advocacy Groups (n 111).
[137] Dealer A (n 6).
[138] Consumer group 1(n 59).

Even things like method of rejection cause problems. One community legal service with clients living in remote parts of Australia identifies a problem with the formalities required to reject a car with a major failure.

> our clients aren't letter writers. They'll pick up the phone and say, "I can't deal with this car anymore. It keeps breaking down. I can't get it to you. I don't know what to do" will be the extent of their rejection of it. But that probably wouldn't cut through with the tribunal. I suspect it would want something in writing.[139]

New EVs and consumers

While currently too expensive for the client base of one of the consumer advocates interviewed, there are concerns about future risks, such as batteries reaching the end of their life and the difficulty of supplying replacements to remote areas.[140] Nevertheless, despite the concerns about price, the BYD Dolphin, at $29,990 drive away is now cheaper than a petrol propelled Toyota Yaris.[141]

Indigenous, regional and remote community participation in EVs

Consumers in remote locations, including indigenous consumers, face specific EV challenges. The main issues are inadequate charging and electricity infrastructure, high upfront costs and battery replacement costs, and weak financing access, vehicle unsuitability for remote conditions, maintenance and skills gaps, policy and market designs focused on urban users.

Addressing these barriers requires place-based policy, indigenous-led planning, infrastructure investment, and appropriate vehicle offerings, not just general EV incentives.

[139] See ibid.

[140] Ibid.

[141] https://www.carsguide.com.au/car-advice/10-cheapest-evs-in-australia-96860

CHAPTER 5: ECONOMIC REALITY OF NEW CAR FRANCHISING

The ACCC recognises the 'problems [of] the power imbalance between car manufacturers ('OEMs') and their dealers, in favour of the OEM. This imbalance means that OEMs can impose commercial terms on dealers which have the effect of making it difficult for dealers to provide satisfactory outcomes for consumers'.[142] Franchise relationships are secured by agreements. In the context of economics, franchise agreements play a dual role: 'creating the correct marginal incentives on a contractually specified measure of (or proxy for) performance, and the creation of rents sufficient to make the agreement self-enforcing'.[143]

> Divergent scales of the activities of franchisor-OEM and franchisee-dealer can be explained by locational factors and divergent scale economies when goods [like new cars] are produced centrally but gain part of their differentiation when they are presented at retail. The automobile's distinctive features must be explained personally to the buyer. [New car franchising] calls for decentralized production of the 'image' [by dealers] but centralized production of the good [by OEMs], just as other franchising situations involve decentralized production of the good [e.g. a burger] but centralized production of the image.[144]
>
> There are two major difficulties in the franchise relationship. Because the franchisor [or its parent OEM] owns the basic franchise system and its trademarks, and the franchisee owns and operates the retail outlet, the franchisor faces problems of controlling the quality of franchisee service. Conversely, the franchisee faces problems related to a franchisor's opportunistic use of this control power.[145]

This widely recognised power imbalance manifests itself in pervasive problems of hold-up, sunk costs, opportunism and asymmetry throughout the life of an OEM/ dealer, franchisor/ franchisee relationship.

The hold-up problem

In economic terms, a hold-up refers to a situation in which one party in a business relationship (here, the franchisee dealer) is exploited by another (the OEM) after making a sunk, relationship-specific investment. In the case of franchisee owned and operated new car dealerships, the franchisee investor becomes locked into the relationship.[146] The OEM uses this dependency to renegotiate terms to their advantage. This can be seen, for example, in the warranty context through audit claw-backs by OEMs and OEM policies surrounding the provision of loan cars to customers while a car that is covered by a warranty is assessed or awaiting arrival of replacement components.

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[142] ACCC submission No 13 to Treasury *Regulation Impact Statement – Franchise relationships between car OEMs and new car dealers* (13 February 2019) 1.

[143] Benjamin Klein, 'The Economics of Franchise Contracts' (1995) 2 *Journal of Corporate Finance* 9, 19 in Francine Lafontaine (ed), *Franchise Contracting and Organization* (Edward Elgar, 2005) 323.

[144] Richard E Caves and William F Murray II, 'Franchising, firms, markets and intangible assets' 42 (4) *Southern Economic Journal* April 572 – 86 in Franchising Contracting and Organization. Edited by Francine Lafontaine, 5

[145] Hadfield (n 77) 949.

[146] Benjamin Klein, 'The role of incomplete contracts in self-enforcing relationships' in Eric Brousseau and Jean-Michel Glachant (eds), *The Economics of Contracts: Theories and Applications* (Cambridge University Press, 2022), 59, 68.

> When the uncertainty of future market conditions increases, the value of the hold-up potential present in every imperfect contract (like a franchise agreement) increases.[147]

One dealer explains how differently dealers can fare compared with a consumer complaining direct to the OEM. 'If I was a member of the public and was going to make a complaint regarding something about a car, [the OEM] will most likely fix it free of charge, because of reputational risk… or the risk that I'll bring an Office of Fair Trading, or VCAT claim, or implement the ACL. The OEM wants to avoid that.[148] When we're a dealer, the OEM's completely immune from reputational risk. We say, 'listen, this car has failed'. The OEM says 'You're a dealer. It's not our problem'. So, at our expense, we have to repair the car, and the OEM drags their feet. We don't get the service, that the private person has.

Let's say it's [an EV] we've sold to the public as a used car. Under statutory warranty if something goes wrong, the consumer doesn't go to the OEM, they come to us. And we say, 'the car's come from the OEM', go back to them. 'No, I bought the car from you'. The consumer's right. We're responsible. So we have a loss. We didn't make the car. We didn't design it. And we just make our little … 10% margin out of the car. And then we lose all that margin, and more, to try and keep the customer happy, as is our obligation.[149] Other dealers have made the same observation.

Key features of hold-up

The investment (sunk-capital, training) is highly valuable within the specific partnership but loses most of its value if the relationship ends. The cost for a new car franchisee to establish the dealership is significant. For example, General Motors Australia and New Zealand Pty Ltd[150] lists the dealers required investment in Equipment Tools & Parts at $28,000 - $53,000, and inventory of GMSV vehicles at $300,000 - $1,000,000. The standard term of GMSV franchise agreements is one to less than three years. If a GMSV dealer (that sells cars like Corvette and Silverado) wanted to convert to selling another brand the dealer would have to rebadge the dealership, replace its trade dress to reflect the replacement brand, retrain technicians so they knew the new OEM's cars, buy new tools and equipment to meet the new OEM's specifications, and lose its GMSV customers. It would be an expensive conversion.

Economic consequences

An OEM may threaten to terminate the relationship to force better terms. For example, franchisors issue a list of mandatory tools that a dealer must buy. Most of these tools come from one supplier, Bosch. The cost of these is thousands of dollars per OEM and includes duplication.

One dealer explained the cost of buying specific diagnostic tools that record data to send to the OEM. To do a particular job under warranty the dealership was required to buy a tool that was not on the OEM's mandatory tool list. The tool in question was only required for warranty work. The OEM had loan tools available but was not willing to lend them to a non-CBD dealer. When the dealer pushed back that the tool was not on the mandatory tool list the OEM responded by publishing a Bulletin the following day requiring dealers to buy the tool. This was the first time in four years of representing the OEM's brand that the dealer had needed the tool. It cost $3,500. The warranty reimbursement by the OEM for the dealer performing the repair was $400.[151]

[147] See ibid. 59, 68.

[148] Dealer I (n 40).

[149] See ibid.

[150] Franchise Register entry https://franchisedisclosure.gov.au/Register/FranchiseProfile/FNC-004971

[151] Dealer M (n 106).

Solutions to hold-ups

Three possible solutions are:

(1) Merging the two parties into one firm so that the investment is owned by the combined entity, eliminating the incentive to hold up. This is a solution akin to that adopted by Mercedez-Benz and Honda that have exited the franchise model of selling new cars in Australia in favour of an agency model

(2) Designing more complete contracts to fix prices and terms, reducing the need for future negotiation. This solution is less practical where a market is evolving quickly and is operated through the franchise model.

(3) Fostering trust to prevent opportunistic behaviour. This has been achieved by one major OEM of long standing in Australia. Another is working on it.

Sunk costs and divergent objectives

High sunk costs are incurred by OEMs, dealers and consumers. The allocation of control among the parties creates a market that the ACL, the Code, franchise agreements and OEM-specific contractual warranties all have a role in managing.

The potential for free riding, known to economists as the principal/ agent problem, is a problem that stems from control. 'At the heart of the control problem is a divergence in interest between franchisor and franchisee'.[152] A franchisee wants to maximize profits … the franchisor wants to sell more franchises and more cars, and to increase royalty revenue. It may also want to test the market.

In the case of a new car franchise, 'these objectives make the franchisor less sensitive to the cost of operating the [dealership]'.[153] This is demonstrated in the capital cost of establishing a new car dealership. The franchisor, as OEM, imposts strict requirements for the look and feel of the showroom. This extends to requiring dealers to used specially imported fit out components even when comparable products are available locally at a more competitive price. These investments are highly idiosyncratic';[154] a showroom set up to meet the requirements of one OEM's brand cannot readily be switched to a replacement brand. That capital expenditure is an unrecoverable sunk cost.

For example, in 2009, Audi reportedly spent $50 million building its Sydney showroom, the biggest Audi dealership in the world. The cost of setting up a BYD dealership ranges from $6.8 million to $96 million. This includes the cost of premises and personnel and an initial allocation of vehicles and parts. In addition, the BYD franchisee dealer incurs ongoing payments to the franchisor, and other payments to third parties. The standard term of BYD franchise agreements is five or more years.[155]

Without access to data about the return on a franchisees investment it is not possible to say what length of term complies with section 46(2) of the Code.

152 Hadfield (n 77) 950.

153 See ibid.

154 Ibid 951.

155 BYD information on Franchise Disclosure Register https://www.franchisedisclosure.gov.au/register-search/ (accessed 30 April 2026)

Opportunism

'The incentive that causes a [dealer] with sunk costs to stay in operation despite losses makes franchisees vulnerable to franchisor opportunism'.[156] 'Because the franchisee will continue to operate even if it is not recovering its sunk investment, the franchisor can make decisions that induce losses that are not easily recovered if the franchisee goes out of business'.[157] In a dealership these decisions include the OEM's approaches to warranties, decisions concerning buy-backs, loan cars, acquisition of tools, a requirement that technicians enter report information rather than dictating it to an administrative assistant to type, and to how they respond to the approaches to remedy manufacturing or design flaws that are first brought to light by a dealer.

For example, a dealer identified two examples with time written off for work completed under warranty with what the OEM's prepared to pay the dealer versus what the job cost to do, offering to 'share it as long as it's done in an immunity because obviously we prejudice ourselves'.[158]

Dealers have spent up to $130,000 replacing faulty aluminium intake manifolds that were known design faults.

Asymmetry

Asymmetry is a situation where one party to a transaction has access to more of something than the other could obtain. It is pervasive in franchise relationships and can disadvantage consumers when the OEM imposes restrictions on what the dealer can say to the consumer. It can take many forms: information asymmetry, contract, adviser, risk, regulatory, consumer/dealer, OEM/ dealer, resource, and dispute resolution asymmetry.

Information asymmetry

Information asymmetry exists, for example, where the OEM knows that a fault has been identified in a car model in another country but does not pass this information to its Australian dealers. 'The OEMs forensically study the data. They know where their issues are because they're being fed in data from all over the world from every market'.[159] They have access to four levels of data about any model of car, of which only two are available to dealers. Requiring OEMs to share technical data in a timely way could assist in faster, more accurate repairs.[160] This would also be good for consumers.

The consumer is oblivious to what's happening other than what the dealer tells them. What the dealer is allowed to tell them is often directed by the OEM. Dealers' experience is that often the OEM won't communicate directly with the consumer. When a situation becomes difficult, the OEM will tell the dealer in very prescribed terms, what they can say to the consumer. That may be very much against what the dealer wants to do, especially in a regional or rural area where they want to look after a regular consumer, and to sell to their family, they're going to be servicing this car, they're going to have a relationship with these people, it can put the dealer in a very difficult situation.[161]

Information asymmetry also exists in the wording of franchise agreements, and the culture of the franchisor. A franchisee only gains access to the OEMs brand-specific operational requirements after the franchise agreement has been signed. Before committing to the brand, it is impossible for a

[156] Hadfield (n 77) 952.

[157] See ibid, 951.

[158] Dealer E (n 98).

[159] Dealer I (n 40).

[160] Caine (n 54).

[161] Consumer group 1 (n 59).

franchisee to fully understand the extent to which the franchisor will honour or shirk its ACL obligations and what it's approach to warranty audits is.

Some dealers do provide training about the ACL to all customer-facing employees. It becomes difficult for dealers where instructions in the OEM's workshop/ service manuals and buyback policies do not reflect the ACL requirements accurately.

Contract asymmetry

All OEMs that supply new cars to the Australian market are global corporations. Some dealers operate several franchised brands. Each dealer signs a separate franchise agreement for each OEM. Every OEM has its own standard form of agreement that it has drafted to protect its own interests. Franchise agreements are a regulatory instrument that places the power to regulate the difficult times the relationship will experience in the hands of the drafter, the OEM.

The Code prescribes a formality to be adhered to before the agreement is signed. The franchisee must receive advice from a lawyer and an accountant or sign a statement that they have decided not to do so. This does not mean the advisor understood franchising or that there was any meaningful negotiation of the terms of the agreement. One dealer reports the extent of negotiation was that it negotiated to provide less showroom space to one OEM so it could accommodate a second OEM on the same premises.

Alongside the franchise agreement are manuals, bulletins, OEM warranties and processes the OEM requires its franchisees to adhere to rigidly. Fail to do so and the dealer risks breaching its franchise agreement and, at worst, being penalised by the OEM by being offered a shorter renewal term, having its warranty labour reimbursement rate reduced, or losing the dealership.

As part of representing the OEM's brand, the franchisee pays a franchise fee. At its own expense it builds and fits out a showroom and workshop. This includes navigating the local council building requirements and complying with the OEM's bespoke features, building hoists for servicing all including electric vehicles (EVs) and installing EV charging stations. The franchisees also pay for technicians to be trained about the OEM's cars, hire sales staff, administration staff, warranty clerks and train apprentices.

Commercial arrangements between OEMs and dealers can constrain and influence the behaviour of dealers in responding to complaints'.[162]

Adviser asymmetry

Franchisors, franchisees and consumers use lawyers and accountants they can afford. Dealers living away from the major cities are less likely to have ready access to advisors with franchise law expertise. This contributed to a tribunal decision against one dealer located away from a capital city that did not align with the ACL or contract law.

Facts: The dealer recounted: 'a consumer complained of two faults and wanted to have the car replaced. The first fault was an intermittent rattle. The rattle was found to be caused by the bull-bar that had been affixed by a third party. The second fault was a known OEM fault; the coolant cap failed, causing the car to overheat. The OEM did not have any replacement coolant caps available; they were on back order'.[163] The dealer had previously addressed four other claims with the same coolant cap problem. Those four owners stopped driving their vehicle until the problem was fixed.

[162] AADA (n 75) 30.

[163] Dealer M (n 106).

This consumer, knowing of the fault, and the consequences of continuing to drive the car, told the dealer he would drive the car until it stopped. He did! It stopped. The engine needed to be replaced.

Tribunal hearing: The dealer explained ‘our [local] solicitor and the [OEM’s] General Counsel came up with a plan, which I didn’t agree with’.[164]

The tribunal hearing was conducted online. The dealer and OEM were represented by solicitors. The consumer represented himself. Being represented meant the dealer could only talk to the tribunal member if invited to do so. He was not invited. The consumer presented two witness reports the day of the hearing, from his partner and a friend. Neither was a mechanic.

Result: The tribunal correctly classified the second fault as a manufacturing fault. Dealer was ordered to pay the consumer $50,200 within 28 days, and to collect the vehicle.

The dealer knew that if he lost, he should get indemnified by the OEM. To his horror, the dealer’s account was garnished by the consumer for the tribunal’s judgment amount of $50,218.30 before an appeal could be lodged. The order from the tribunal did not require the OEM to indemnify the dealer.

At this point the dealer sought legal advice from one of Australia’s pre-eminent motor vehicle franchise lawyers. They advised that to take on the OEM could cost $20-$30,000 but that amount could blow out depending on the trial.[165]

There was no apportionment of the loss between consumer and dealer. Under s 87CD (3)(a) ACL the loss could have been apportioned between the plaintiff consumer and the dealer/ OEM as the consumer, knowing of the risk, continued to drive the car until it failed. The contract law principle of a duty on the consumer to mitigate his loss could also have been considered in this claim.

Risk asymmetry

One of the characteristics of a franchise agreement is to allocate as much risk as possible to the franchisee, and as little as possible to the franchisor. The ACL embeds this risk allocation when a car has a defective design by directing the consumer to return to the dealer. If a dealer cannot address a consumer’s complaint satisfactorily, the dealer is, under contract law and in the customer’s mind, responsible. What follows is that the consumer loses confidence in the dealer, is unlikely to buy from that dealer again. The dealer’s reputation is damaged but the OEM risks less reputational damage.

A Federal Chamber of Automotive Industries’ (‘FCAI’) submission about consumer guarantees reinforces the vulnerability of car dealers as consumers. They observe that ‘the data employed by the RIS to estimate the financial impact of particular proposals is indicative only, …. As a general observation, it is clear that the data appears to heavily weight the savings to consumers in terms of time lost, and little consideration is given either to compliance costs or increased losses amongst deemed OEMs/ importers’.[166] Here, it is important to note the provisions of ss 7 (definition of ‘manufacturer’ and 147 (manufacturer not known) of the ACL.

Regulatory asymmetry

Dealers are not recognised as ‘consumers’ under the s 3 ACL definition. They are arguably consumers of their franchisor’s goods and services - the business model, vehicles and parts. The goods they

[164] Dealer M (n 106).

[165] Dealer M (n 106).

[166] Federal Chamber of Automotive Industries, Submission (unnumbered) to Consumer Policy Division, Australian Treasury, *Improving the Effectiveness of the Consumer Guarantee and Supplier Indemnification Provisions Under the Australian Consumer Law* (25 February 2022) 1.

purchase are new and used cars, often exceeding the statutory threshold of $40,000. If that was the only threshold it could be adjusted. The other threshold requires that the goods not be acquired for resale - but the dealer resells. Consideration could be given to including all franchisees under the s 3 definition.

Dealers cannot currently access the Unfair Contract Terms (UCT) provisions of the ACL (ss 23 and 24) to challenge their OEMs when their agreements contain unfair contract terms. There are threshold requirements the dealer will not meet. The asymmetry here is between dealers and franchisees in many other industry categories. Whilst dealers have huge sunk costs, high turnovers and provide employment for numerous employees it is not logical that they should be precluded from accessing the UCT provisions. The UCT provisions are currently under consideration for review by government.

Consumer/dealer asymmetry

Dealers, as retailers of new cars, have direct responsibility to provide remedies to consumers under the ACL. Where dealers have structural disincentives or insufficient confidence in obtaining reimbursement from OEMs, this may result in reluctance by dealers to offer remedies to which consumers are entitled.[167]

Satisfaction ratings for dealers are driven by OEM's surveys. OEMs may reduce already low warranty work reimbursement rates if a dealer fails to meet specific benchmarks, such as customer satisfaction scores or technician training levels.[168] Negative responses to customer satisfaction questions such as 'did the dealer wash your car' can damage a dealer's relationship with their OEM. Some dealers also find that consumers expect their EVs to be returned with fully charged batteries at no extra charge.

OEM/dealer asymmetry

Dealers are often under commercial pressure to comply with OEM's requirements to maximise the likelihood that their dealer agreement will be renewed on acceptable terms. This may have consequences for how a dealer responds to consumer guarantee claims that are not adequately covered by an OEM's systems, policies and procedures.[169] Dealer agreements reviewed by the ACCC rarely contain provisions that provide a dealer with the certainty they will be indemnified by the OEM if a new car has a manufacturing defect.[170]

OEMs' complaint handling policies and procedures primarily focus on handling claims within the OEM's warranty framework, without due consideration of a consumer's statutory rights under the ACL.[171] The handling of consumer guarantee claims within the parameters of an OEM's goodwill policy appears likely to undermine the consideration of the statutory rights which a consumer is entitled to under the ACL. The common requirement for dealers to seek prior approval (PWA) to make a goodwill contribution may also limit a dealer's ability to comply with the ACL.[172]

Unnecessarily complex warranty claim processes, including arbitrary or immaterial administrative and technical requirements, have the potential to result in dealers being inadequately indemnified for work they have provided in compliance with the OEM's warranty or the ACL.[173] For example, one dealer reports that a warranty claim was denied by the OEM because the car owner's wife signed to collect the car, not her husband, the owner. Another OEM, having agreed to reimburse a buyback of a defective car, reserves the right not to reimburse the dealer if any of the voluminous paperwork is not perfect.

[167] AADA (n 75).

[168] Dealer K (n 63).

[169] AADA (n 75).

[170] See ibid.

[171] Ibid.

[172] Ibid.

[173] Ibid.

Dispute resolution asymmetry

In contract law terms, there is privity of contract between the dealer and consumer, and between the dealer and the OEM, but not between the consumer and the OEM.[174] Under contract law unless one is a party to the contract one cannot sue or be sued for breaching it.

Statutes play a critical role in balancing rights and do not have to follow contract law rules. But, because of the way the ACL is structured, the person the consumer must approach to diagnose and either repair or replace a vehicle is the dealer. Where the fault stems from the OEM this makes no sense as the OEM is in the best position to know whether a problem has already been detected in the model of car, and to work out how to repair it.

Evidence suggests some OEMs expect the dealer to conduct and fund all of an investigation, any repair and to also manage any disputes with customers before they are willing to become involved.

One dealer explained a challenge 'while the indemnification provisions exist in the law, and they say, you should be paid and compensated, because of your relationship with the factory [OEM], it's hard. We know that sounds great on paper. We had this discussion with Consumer Affairs, Victoria. They just said, 'the indemnification provisions are there. It's a no brainer'. And we responded, 'yes, but you don't understand the power imbalance''.[175]

Externalities

Section 274 ACL provides a manufacturer of goods, the OEM, is liable to indemnify the dealer/supplier if the supplier incurs costs because the supplier is liable for a failure to comply with a guarantee that applies to the supply under Subdivision A of Division 1 of Part 3-2 ACL; and the failure is a failure to comply with the guarantee under section 54, 55 or 56 of the ACL.

Externalities are cost that dealers should be able to claim back from the OEM, but the OEM does not routinely meet, and the ACL is unclear about. Identified externalities include hoist time, the cost of loan cars, cost of storage space for faulty cars, faulty parts and special storage for batteries, the difference in wages of technicians and administrative staff between the amount the OEM will reimburse and the true cost of labour, the cost of destroying/ disposing of faulty parts and cars, and depreciation. In addition, the cost of litigation is typically met by the dealer and not shared with the OEM.

Hoist time

When a vehicle is dismantled on a hoist awaiting parts or an OEM's decision, the dealer loses the retail work income that hoist could have generated. OEMs generally do not compensate dealers for this lost revenue.[176] This time represents an opportunity cost, estimated at approximately $1,000 per day in lost gross revenue.[177] Workshops are becoming paralysed by non-profitable diagnosis work and stored buyback vehicles that take up hoist space.[178]

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[174] The exceptions to this contractual structure are Mercedes-Benz and Honda that operate through an agency model, not a franchise.

[175] Dealer J (n 56).

[176] Dealers G (n 54) and J (n 56).

[177] Dealer C (n 11).

[178] Dealer H (n 105).

Loan cars

Dealers bear the burden of keeping consumers mobile. This can include providing and insuring loan cars of equivalent value to the faulty car for months (e.g. an extreme example was the provision of a $250,000 loan car for 5–6 months).[179] Dealer losses include depreciation, wear and tear or damage to the loan cars while in the consumer's possession.[180] Under the ACL dealers are unable to charge the consumer for anything that is warranty related, so can't charge them the cost of providing a loan car. Providing a loan car is often a net loss. While some OEMs provide a daily compensation ($30 to $50 per day) it does not cover the registration, insurance, risk of damage and rapid depreciation of the vehicle.[181]

Storage

There are four triggers for the need for dealers needing storage, or increased storage capacity.

The AADA surveyed dealers in Tasmania and Victoria, asking about changing storage needs from August 2023 to August 2024. Responses indicated that '56% of dealers cannot stock all of their stock on location at their dealerships. 63% of dealers have made arrangement to acquire/lease/pay storage fees at remote storage facility of access stock. The cost of these facilities is significant, ranging from $7,700 per month to well over $250,000 per month. This excludes transport handling and cost of damage to vehicles. 95.65% of dealers are not receiving any subsidies by the OEM for the rental/lease of remote storage facilities. Those who are say assistance is of small proportions and only for stock over 60 days' supply, or assistance can be in form of standard fee trade free storage arrangements'.[182]

The second trigger is the need to store replaced/ defective parts. 'The replaced failed / defective / damaged parts are tagged, stored and keep available for the OEM's required period, or when required are returned by dealer to OEM for warranty parts evaluation inspection review. The dealer pays for the transport. Parts not returned are later destroyed and disposed of adhering to the OEM's policy and procedures requirements including the dealership obtaining a certificate of destruction where that is prescribed by the OEM'.[183]

The third trigger is the need to store EV batteries as stock items or after they have been removed from the car. Storing EV batteries presents additional storage requirements and staff handling training. Dealers need a separate facility for storing EV batteries.[184]

The fourth trigger is that while a vehicle's status is in dispute (which can take months or years), dealers incur storage costs and may have to pay interest on the vehicle if it is on their floorplan.[185] One dealer reported 15 faulty cars being delivered on flatbed trucks for storage in one day. Another dealer said it's under-cover storage was full of numerous large defective 4x4 vehicles. It had no room to accommodate more vehicles under cover.

In extreme cases, such as a major breakdown of a motorhome, a dealer might initially be responsible for meeting a consumer's accommodation and car hire bills (sometimes exceeding $15,000) while waiting for the OEM to respond.[186]

[179] Dealer I (n 40).

[180] Dealer I (n 40).

[181] Dealer J (n 56).

[182] 2024 Stock, Storage and Floorplan Survey. AADA power point presentation.

[183] Bergman (n 5).

[184] Dealer J (n 56).

[185] Dealer D (n 60).

[186] Dealer J (n 56).

Labour rates

OEMs reimburse labour rates for work done on warranties. Every dealer interviewed indicated the rates are well below retail or fleet rate. The more warranty work a dealer is doing, the less they have capacity to provide routine servicing at commercial rates. Reimbursement should also include payment for the time the dealer spends diagnosing the fault, liaising with the OEM and the customer, then driving the car to understand the problem and after it has been fixed to confirm it is fixed.

One OEM is of the view that the dealer's office staff should test drive a repaired car as they are cheaper than technicians. The office staff, however, are not skilled to evaluate whether the repair has been effective.

Parts

If a dealer needs one bolt to perform warranty work, an OEM will only supply the bolts in a pack of 10. It will reimburse under warranty the value of the one bolt used. The dealer could not order bolts singly and expects never to need the other nine bolts.

EV batteries can only be transported by sea. This means some dealers decide they need to keep one in stock – it's that or wait weeks or months for a replacement to come by ship. EV batteries need to be handled by technicians with specific training provided by the TAFE colleges.

CHAPTER 6: ACL ISSUES FOR OEMS

New cars are expensive. Both ACL and the Code, as a regulation under the CCA, present problems for OEMs and dealers. This section follows through the OEM/dealer/ consumer interaction and identifies problems in the ACL's application for OEMs.

Training and equipment

There is a severe shortage of trained technicians in Australia.[187] The dealer's technicians are required to have completed a TAFE course to acquire generic skills and nationally recognised vocational skills (e.g. AUR32721 Certificate III in Electric Vehicle Technology). In addition, they are required to undertake specific training offered by the various OEMs. Dealers typically pay for their own service staff's training, even though much of it is specific to the OEM's vehicles or compliance with the ACL.[188]

Most OEMs threaten a reduced warranty labour rate if technicians do not have the correct factory training, but they make it near impossible to achieve it.[189]

Diagnosing a defect

Currently the ACL structure places a heavy duty of compliance and dispute resolution on dealers, while OEMs bear limited direct responsibility; especially regarding indemnification for costs incurred in remedying consumer guarantee issues. Rebalancing the responsibility may improve fairness and reduce dealer exposure.[190]

Sometimes there is a place the dealer can access where the OEM has listed recurring problems, so that the dealer can shortcut a diagnosis. There may be an OEM produced bulletin, or a technical case that'll help. Where it exists, this practice benefits consumers and dealers by saving time and money.

Warranty

Brands unfamiliar with the ACL may impose restrictive warranty policies that conflict with statutory rights.[191] 'Under the indemnity provision, that's a cost incurred by the dealer. They do have to [comply with the OEM's requirements], if an OEM's using administrative … processes, to take away their rights at law'.[192]

OEMs have reportedly used the ACL as a shield to save money on warranty costs. Some OEMs have informed dealers that they will not handle warranties directly, forcing the dealer to be the primary point of contact for all 'agro' and legal responsibilities associated with the claim.[193]

One long established OEM suggested five years ago that 'the consumer guarantees under the ACL are already sufficient and repair remedies are already very stringent, therefore no additional changes are required. That OEM has rolled out significant training across its dealer network to ensure compliance

[187] Dealers G (n 54) and J (n 56).

[188] Dealer D (n 60). See also https://electricvehiclecouncil.com.au/docs/how-is-industry-working-with-dealerships-to-ensure-qualified-technicians-can-undertake-repairs/

[189] Dealer E (n 98).

[190] A major OEM.

[191] A major OEM.

[192] Dealer J (n 56).

[193] Dealer B (n 194).

with the ACL and to ensure all appropriate repair remedies are implemented. Any further changes would require significant time and resources, which would be an additional burden on dealerships around Australia without any evidence of material benefit to the consumer'.[194]

Cost recovery for warranty work (S. 274 ACL)

While some OEMs like Honda are considered 'gold standard' for reimbursing actual diagnosis time, others pay based on strict, often unrealistic, timelines. Labor costs for dealers in Australia have increased significantly, but OEM reimbursement rates have not always kept pace.[195] In 2026, a dealer's retail rate should be approaching nearly $300 an hour.[196]

As well as paying for less time than the job takes, OEMs often pay a reduced warranty labour rate rather than the dealer's standard retail or fleet rate.[197] OEMs often base their labour rates on prime labour costs, which exclude essential business expenses like superannuation, commissions, bonuses, and other on-costs.[198]

OEMs often use standard repair times to determine reimbursement, but these times are frequently unrealistic and do not cover the actual time required to complete a repair. Dealers can lose approximately 40% of their labour time because the OEM-specified time is unachievable.[199]

> You can tell the OEM "we can't do this in this time", but then they will go, "Well, everybody else can". They test everything in their factory, in optimal conditions. They bring in the best technician in the joint, in the world. And he's working on [the same brand of car until] he's blue in the face. And they'll say, there's the time and cover on that [car]. They will also adjust time [if we work out how to do a job more quickly than the OEMs technicians can]. E.g. replacing the timing covers on one brand used to take about 13 hours to do. Then one of our mechanics worked out that he didn't need to pull the engine out. He can do this smarter so we were making money on the work. Then the OEM goes, "Hang on a minute. Really!" We've worked it out, then they go, "Well, you don't have to pull the engine anymore, so we'll take that time off" because we know you've worked out how to get around it.[200]

The Productivity Commission published its Right to Repair report in 2021. It noted that 'it is now commonplace for cars… to have software and computers embedded within them … Partly as a result of this complexity, consumers often have to rely on OEMs or their authorised repairers to fix or maintain their products'.[201]

Case study: 72 cars were shipped to Australia without the modifications required to meet Australian Safety rules. It took the first dealer who identified the problem 72 hours to strip a car and install the required parts. The OEM proposed paying for 9 hours work per car. The dealer was eventually able to bring down the cost with repetitive work and processes to about 56 or 57 hours. He never ever got paid in full. And when pressure was put on the OEM, they said, look, we've got six other potential applicants who want your franchise, take it or leave it. Now that to me is bullying. That to me is unreasonable and unethical, but the dealer's got too much money invested [to push back].[202]

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[194] Toyota, Submission No 118 to Productivity Commission, *Right to Repair Issues Paper* (15 February 2021) 2.

[195] Dealer D (n 60).

[196] Bergman (n 108).

[197] Dealer D (n 60).

[198] Dealer K (n 63).

[199] Dealer L (n 20).

[200] Dealer J (n 56).

[201] Productivity Commission, *Right to Repair Issues Paper* (7 December 2020).

[202] Bergman (n 108).

Dispute systems

Consideration could be given to establish an online portal for consumers and dealers [and OEMs] to lodge ACL disputes, track progress, and access mediation services.[203]

[203] A major OEM.

CHAPTER 7: ACL ISSUES FOR DEALERS

Dealers have statutory obligations to consumers under the ACL. Simultaneously they have statutory rights and obligations with their OEMs under the ACL and the Code, and contract-based rights and obligations.

Dealers experience varying levels of cooperation from OEMs. Established brands tend to be more responsive, whereas some newer brands, especially Chinese, can be erratic, slow, and often push responsibility back onto dealers.[204] Some OEMs have become dictatorial or uncommunicative, often refusing to share technical data that could assist in diagnosing recurring issues.[205]

Dealers do not deal directly with OEMs in all matters. One highlighted the challenge of dealing with distributors that act as intermediaries, importing cars and arranging for their distribution to dealers.

> As we deal more through distributors, as these Chinese OEMs take over more, and then more of the traditional brands also go to distributors, because it's profitable, the problem of shirking legal obligations will get out of control. A distributor's job ends when he gives the dealer the car. Once he sold you the car, his money's in his bag. You'd be wasting your time joining a particular distributor to a case, because if that distributor's CEO cried, they'd come down here and just tear the dealer agreement up in front of you. Similarly, if you joined him to a tribunal or court action by a consumer, that would happen'.[206]

Financial and resource strain

OEMs are reluctant to cover diagnostic expenses and dealers bear the burden of managing customer complaints. This shifts significant responsibility and cost onto dealers.[207] Strengthening dealer rights to be reimbursed by OEMs for all ACL-related costs would reduce the financial burden on dealerships.[208]

When a vehicle has a major failure under s 260 ACL consumers can demand their money back. Dealers must refund the full purchase price at the point of rejection. This includes depreciation, stamp duty and registration costs. It may also include paying to transport the car from the consumer's location back to the dealership and paying for additions like bull bars that the dealer often did not install. OEM reimbursement under s 274 is typically retrospective and conditional.

For buybacks, dealers must often refund the customer in full first and then go cap in hand to the OEM to seek indemnification, providing proof of payment and redacted bank statements.[209] OEMs may later decide the dealer's judgment was incorrect and refuse to pay for the buy-back, leaving the dealer to bear the full cost of the vehicle.[210]

Dealers lose money because:

- They must refund the full purchase price even if the car has since depreciated.
- They cannot recover government costs like stamp duty (which can be up to $35,000 on high-end cars) from the government or the OEM.

[204] Dealer B (n 194).

[205] Dealer G (n 54).

[206] Dealer J (n 56).

[207] Dealer B (n 194).

[208] Caine (n 54).

[209] Dealer F (n 93).

[210] Dealer G (n 54).

- Dealers often bear the cost of loan vehicles during long repair times and wait for long periods to be reimbursed by an OEM. In one instance, it took nearly two years before the dealer was reimbursed for a buy back.[211]

Dealers are therefore required to pre-fund buy backs, often without any certainty of recovery, even where the defect is clearly manufacturing-related. This can create significant cash-flow, solvency and risk-management pressure.

Leverage by OEM

As outlined in Chapter 5, there is a significant power imbalance between dealers and large offshore-based multinational OEMs.[212]

Stock

> The [AADA] asked about the stock level and value currently held at one point in time being August 15th 2024 compared to last year same time. We noted that 80% of dealers are operating above typical inventory norms. This is quite alarming when we see that [new car dealers' in Victoria and Tasmania's] stock has increased 47% more in value than this time last year. We could still say that was a COVID high, but the jump is significant and looking towards the future with the EV disruption in terms of new entrants, alongside the NVES, … clearly, the scenarios we are looking at for the future are only heading one way. More OEMs dumping stock on you and more cost put on [dealers] to keep it.[213]

Some brands are having inconsistent stock arrivals, so one month [the dealer] gets four months' worth of stock, and then receives no stock for five months, so stock is aging, inventory management is disrupted and it's creating a backlog for the dealer.

The cost of inventory is impacted by inflation, it's harder to move stock, customers are cancelling orders, competition is increasing.

Some OEMs are pushing for [dealers] to turn stock into demos, not allowing [dealers] to reject stock [they] don't need, or having some specific programs that lead to stock accumulation. We know of a few brands that are attaching bonus to stock intake which is just as counterproductive as the sales bonus. We do know of a brand [that is] blocking Sales KPI bonus if stock intake is not met by a dealer so everything seems to be set up for a dealership to relieve the OEMs of stock.[214]

Major fault or not

Dealers find the ACL ambiguous, especially regarding definitions of minor and major faults, leading to customers sometimes misinterpreting multiple minor faults as a major fault. This ambiguity complicates handling claims.[215] The "major failure" test relies on counterfactual assessments of a hypothetical reasonable consumer and discretionary judgments by dealers and tribunals. This creates inconsistent outcomes and encourages early buy backs as a defensive response rather than continued repair attempts.

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[211] Dealer H (n 105).

[212] Consumer group (n 59).

[213] AADA (n 182).

[214] Ibid.

[215] Dealer B (n 194).

Many faults arise from individual components sourced from third-party manufacturers (sometimes international), not the vehicle as a whole. Dealers emphasize warranty coverage on these components but face difficulty convincing customers of this distinction.[216] [One OEM] had a problem with their turbos that would falter and damage the engine. The problem was a design fault. The engines had plastic pipes that corroded. Because the dealer sells a car, they have to spend $15,000 fixing a problem.[217]

More than one dealer identified that phone connectivity problems, especially with Apple CarPlay, represent a significant portion of complaints. This is attributed to software issues on the phone or third-party devices, not the vehicle, making resolution challenging.[218] It should not have to be something the dealer alerts a customer to before the sale is completed.

Diagnosing a defect

When a consumer presents a car for repair under warranty, the dealers begin by verifying the fault through workshop inspection and senior technician reports, followed by reviewing the car's service and the customer history before involving OEMs. They attempt to repair first before considering buybacks or replacements.[219]

The initial process is similar for all brands, though each OEM has slightly different processes. 'You come in, you've got a problem with your vehicle, we diagnose it. For some OEMs you've got to engage technical, depends on the what the problem is, and then, each OEM has a prior work approval (PWA). For some if the job is over $1,500 you've got to put a PWA in, or for certain items. If it's a trim or if it's a certain component, each is slightly different, if it needs a PWA or not. That's a logistical nightmare, trying to work out what does and what doesn't. Then you put the PWA in, then you order the order the parts'.[220]

Diagnosing issues in new technology like EVs can take excessive time - sometimes up to 8 or 20 hours. OEMs may only reimburse a fraction of that time, such as 2 or 16 hours.[221]

Dealers may be exposed to the financial and reputational risk if OEM defects occur and a brand fails to meet its ACL obligations.[222] Routine and standardized diagnostic testing (such as independent assessments split 50-50 between parties) helps clarify disputes about defects and buybacks. Having these processes clearly established and supported by OEMs would improve the situation.[223]

Warranty work

Dealers that provide reliable services can meet warranty requirements to maintain customer loyalty and to encourage word-of-mouth recommendations.[224] Delivering on this is not always straightforward.

[216] See ibid.

[217] Dealer I (n 40).

[218] Dealer B (n 194).

[219] See ibid.

[220] Dealer M (n 106).

[221] Dealer C (n 11).

[222] A major OEM.

[223] Dealer A (n 6).

[224] IBISWorld (n 76) 14.

> You have a little bit more power with the OEM if you've sold that car, simply because we jump up and down and scream and yell and say, I sold the car. These people are my customers. They live around the corner from me. I'm not tolerating this. You need to do something about it.[225]

There is widespread dealer concern regarding a Treasury proposal that could see dealers, rather than OEMs, paying civil penalties for vehicle faults.[226] Consideration should be given to reduce dealer exposure for issues outside their control. For example, if the OEM's design or production defect causes repeated failures in a vehicle, the dealer did not design or manufacture the vehicle yet under the current ACL, the dealer is required to provide remedies to the consumer.[227]

Cost recovery (s 274 ACL)

The ACL includes indemnity provisions under s 274, but dealers find it virtually impossible to recover some costs from OEMs due to the power imbalance in their franchise relationship.[228] Reimbursements may only cover the base cost of labour without providing a profit margin, especially for complex diagnostics or tricky cars.[229]

Administrative hurdles, and reimbursement rates are not accurately calibrated to address the cost of labour, the time taken to diagnose and repair, the opportunity cost of losing a hoist while the car is being diagnosed. Additional costs are incurred by dealers for storage of cars that are returned for repair or rejection, installing EV chargers and special EV hoists, and purchase and storage of parts for the OEM to examine once the replacement part has been installed.

Dealers often spend more hours diagnosing a complex issue than the OEM is willing to pay for.[230] For instance, a job might take eight hours, but the OEM only pays for two.[231] OEMs often set standard reimbursement times for repairs that are difficult for technicians to meet, such as allocating only 2.6 hours for a task that may take over 3.5 hours.[232]

There is often a significant gap between what a dealer charges for retail work (say, $200/hr) and what OEMs pay for warranty labour (say, $150/hr). One dealer interviewed said:

> We [spent] 10 hours on a vehicle and got paid for 18 minutes because the [OEM's allowed] time to replace that component is 18 minutes, so all that other time you've spent on a vehicle that doesn't service with you [and] has no loyalty to you just goes out the window. We'd rather be doing retail work at $200.00 an hour.[233]

Dealers may spend hours of technician time and use equipment (like hoists) to diagnose complex issues without being able to claim those costs back from the OEM.[234] OEMs may require dealers to perform extensive tests through their engineering departments (e.g. 'tech line'), but they often do not pay for the time spent performing these tests. In one instance, a dealer accrued 40 hours of diagnostic time before

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[225] Dealer J (n 56).

[226] Dealer F (n 93).

[227] A major OEM.

[228] Dealer H (n 105).

[229] See ibid.

[230] Dealer G (n 54).

[231] Dealer H (n 105). Dealer C (n 11) endorsed this.

[232] Dealer H (n 105).

[233] Dealer E (n 98).

[234] Dealer D (n 60).

requiring a 'tech line' to be raised, potentially leaving the dealer to absorb the cost of additional diagnostic work if they didn't follow specific protocols.[235]

OEMs have standard repair times. For instance, the dealer's done 20 of these repairs. Each one takes 2 hours, not 1.5 hours. If the dealer goes back to the OEM and says, 'we've done 20 of these, and we cannot do them for your time'. Generally, the OEM says this is our standard, and you need to meet that.[236]

OEMs may only reimburse for the exact number of parts used in a repair, or a part that needs to be replaced cannot be purchased alone, it comes as a fully integrated unit.

Problems with software

Modern vehicles of all types depend on a vast amount of software. The definition of 'goods' in s 2 ACL includes 'computer software'. 'A modern car contains 3,000+ semiconductor chips and 100 million lines of code'.[237] If any of the code is corrupted the vehicle may be undriveable. The software code may need to be rewritten by a third party contracted to the OEM, leaving the risk with the dealer who has primary liability under the ACL warranty provisions. As faulty software may make a vehicle unsafe to drive, and the remedy may take months, it may be appropriate for the liability for all associated costs to be placed directly with the OEM rather than via the dealer.

Administrative hurdles

Under the ACL, OEMs must indemnify dealers for costs incurred fixing manufacturing defects. Decisions regarding whether a fault is a manufacturing issue (and thus warrantable) are often made by clerks employed by the OEM who may not have technical or engineering expertise.[238] Many OEMs use complex flowcharts to avoid responsibility for claims.[239]

Case example: The administrative burden of claiming reimbursement is often inordinate compared to the value of the work. One dealer quoted that it took six hours to make a warranty claim. The issue is that technicians are not admin people. They're having to make technical cases that require typing all this information in, trying to articulate in writing, it's very difficult and the administrative side is not being recovered. The technicians don't like writing. They're not writers so the data entry is taking an extra-long time. One dealer reports having fought with the OEMs over this, [so now] he has his service advisors looking after their brand, because most of them type and put the technical case for the OEM into something legible. When the OEM finds out that that the advisor is entering data instead of my technician doing it they say, 'you need to be technical to be doing this'. The service advisors are literally putting what the technician said into writing. … So I've had fights with them and saying, I don't care what you're saying, at least you can read it.[240]

Claims can be rejected for minor administrative errors, such as a technician failing to record a specific battery voltage or not following the exact 'complaint, cause, correction' formatting required by the OEM.[241]

235 Dealer H (n 105).

236 Dealer J (n 56).

237 Presentation by Major General Fergus (Gus) McLachlan at the AADA *State of the Industry* meeting, 18 March 2026.

238 Dealer L (n 20).

239 Dealer E (n 98).

240 Dealer M (n 106).

241 Dealer L (n 20).

Some OEMs require prior approval for every single warranty claim. Failure to obtain this, even for minor repairs, results in an automatic denial.[242] Dealers may get verbal or technical PWA for a repair, but then have the financial claim rejected later by the OEM's warranty team.[243]

Time-related matters

Dealers may face long wait times for OEM approvals, especially with overseas headquarters. For instance, [for one brand] issues over $5,000 must go to China for an 8-week approval process. Another brand's process is described as clumsy and slow. [244] Language barriers between the OEM and dealer can exacerbate time delays. These issues disadvantage both consumer and dealer.

Late claims are often rejected by automated systems, even if the repair was pre-authorized.[245]

Another time related aspect is the length of time each OEM requires parts that have been replaced under warranty to be retained for. Some require parts to be stored by the dealer for 90 days after repair. For other OEMs it is 30 days.

A third issues is the amount of time an OEM allocates for a task. One OEM allowed 2 hours for a dealer to work on EV batteries. The task took 10.4 hours.[246]

Reimbursement by OEMs

If a dealer replaces a part to fix an intermittent issue and the OEM's subsequent testing finds there is nothing wrong with the returned part, they will often deny the entire claim, leaving the dealer to absorb the cost of both the part and the labour.[247]

Dealers often feel like the meat in the sandwich because they are legally required to provide remedies to consumers but struggle to get reimbursed by OEMs for that work.[248]

> we'll preference retail over [warranty repairs]. The issue there is then you have a weakness in the system, because particularly in smaller areas where the customer goes to the dealership and says, I bought my [car] from you. They're going to help me fix this warranty issue and that [named brand] dealer isn't interested in the warranty work because the warranty work is not profitable.[249]

Dealers often cannot recover legal fees even if they win a case in a tribunal. A dealer might successfully defend a $5,000 claim but still be out of pocket for $7,000 in legal expenses.[250]

Dealers may carry expensive inventory (e.g. hybrid batteries previously costing $24,000 each) to limit liability by ensuring quick repairs and preventing a minor fault from becoming a 'major failure' due to

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[242] Dealer K (n 63).

[243] Dealer G (n 54).

[244] Dealer H (n 105).

[245] Dealer L (n 20).

[246] See ibid.

[247] Dealer K (n 63).

[248] Consumer group (n 59).

[249] Dealer E (n 98).

[250] Dealer G (n 54).

delays.[251] [Some] OEMs have significantly reduced the cost of certain high-risk parts (e.g. batteries dropping from $24,000 to $6,000) to lower the financial burden on dealers.[252]

Dealers may spend several hours diagnosing a problem, but the OEM's 'standard repair time' for the actual fix might only be a fraction of that time (e.g. 4 hours of diagnosis for a 1.5-hour repair).

For complex repairs—such as pulling a vehicle apart to find a noise—dealers often perform days of labour that are never fully recognized or compensated by the OEM.[253] Dealers frequently perform warranty work for which they are not fully reimbursed by the OEM. For instance, a job might take eight hours, but the factory only pays for two.[254]

To recover the full time spent, dealers must write detailed stories to justify the labour, a process that is highly inconsistent across different dealerships.[255]

Problematic procedures

Some OEMs have contracted call centres to handle customer care inquiries. One dealer explains how this works.

Case study: 'it all starts from the very first bounce of the ball. The customer contacts [the OEM's] customer care, which are contractors. So, straight away, there's no [OEM] skin in the game. First of all, the process of dealing with a contractor is like ringing that police line, that, you know, ask you 50 questions, [and you're] murdered before someone even gets there. And this is where it starts. And then they'll tell the customer stuff that is not true and clearly cannot happen. They say to the customer 'we'll get a tow truck out there. We'll send it to the dealer, and the dealer will have a look at that car straight away today'. Now, we're the only dealer of that brand near here. We've got these motorhomes coming out of the Wazoo. Because they're blowing up this, they're blowing up that. Some of these cars haven't done 500 kilometres. You go and spend $180,000 on a motorhome, and the car stops on the side of the road, and they ring the motorhome retailer. And the retailer says to them this, it's nothing to do with us. And it has actually got something to do with them, because they're the seller. But from the cabin back, the seller has the warranty. The seller tells the customer, from the cabin forwards, it got nothing to do with us. You need to ring [brand OEM]'.[256]

So straight away, we've got problems. My car's just broken down. They've told me I have to bring it to you. And so they come in here, and they've been told by these contractors, they'll look at your car straight away. Well, there's not a hope in hell of us doing that.

And then the process to get the car back on the road, through the OEM, is horrendous. They need you to test this. They need you to test that. They'll go on, on, and on.

We'll get paid a certain amount, but as soon as we step outside their guidelines. Sometimes the diagnosis and repair could take 20 hours that we've smoked at $250 an hour. There's $5,000 in a hole. You don't want their franchise. But you've got to weigh it up. Is there money in selling the cars? No, the amount of that brand you sell is, it's not worth it. But the back end money on the motorhomes, when they come in for service, just general service. There's good money there. But you only take two from not to be able

[251] Dealer F (n 93)

[252] See ibid.

[253] See ibid.

[254] Dealer J (n 56).

[255] Dealer K (n 63).

[256] Dealer K (n 63).

to find a problem, and you have five or six grand in a hole, and the OEM won't give you the money back. It's your problem, and you've gotta fix it.[257]

Some overseas laws like the Florida Lemon Law do not cover the "living facilities" of motorized RVs (those portions of the RV designed, used, or maintained primarily as living quarters).[258] This is an area that could be clarified under Australian law.

Tools and parts to do warranty work

'OEMs force you to do things like, buying stuff you don't need, or they might make it mandatory that you have to hold this, or you've got to hold one of them, or they say you you'll need certain amount of demos, and you need that to qualify for any other programs. You know, to tick those boxes is literally to get what they want. For example, one OEM had a certain stock of EV that they can't get rid of. They were selling them themselves. The OEM decided 'we're not going to give it to our dealers'. Then they wanted the franchisee network to do the warranty work for them, and I refuse.[259]

We do see [premium model] that are not sold by us now, because obviously they'd only get sold out of, [major centres]. I think we have a couple of local ones. OEM themselves were telling [customers] that the franchisee network can fix your car, which technically, we could. But we couldn't order the parts because we didn't have an agreement with that OEM for that car.[260]

But then we're trying to do the servicing, which we do, but at a little bit of a loss, because the consumer might have free servicing [as part of the purchase price], but I had to buy the parts off another dealer because we couldn't buy direct, because we didn't have a parts account [for the premium brand], or we had to get them up from [a dealer that had the right account access]. A year ago that OEM wanted everyone to sign up to do free servicing. I wouldn't, because, like, why? I hardly have any anybody coming in with vehicle. I need training. I don't want to invest in anything.[261]

EV-specific issues

There is a critical shortage of qualified mechanics, particularly for brands that are not seen as aspirational. This is exacerbated by the technical complexity of EVs, where specialized training is often missing.[262]

Servicing EVs adds an additional level of tooling and compliance for dealers. One explains 'I had to have a lot of extra tooling and a lot of barriers, rubber floor mats, gloves, all the PPE gear, the technicians have to wear three sets of gloves. I have to have an exclusion zone. And the tech's got to be trained, which the dealer has to pay for. We had to install a charger or a couple of chargers. The chargers themselves were about $3,500 each, and then it costs me probably $2,500 each to install'.[263]

> we invest a lot in in tooling equipment and our guys are skilled, but the return on investment is negative.[264]

[257] Dealer J (n 56).

[258] The 2025 Florida Statutes, CHAPTER 681, MOTOR VEHICLE SALES WARRANTIES, https://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0600-0699/0681/0681.html

[259] Dealer M (n 106).

[260] See ibid.

[261] Ibid.

[262] Dealer H (n 105).

[263] Dealer J (n 56).

[264] Dealer E (n 98).

Consumers often experience 'range anxiety' or disappointment when electric vehicles (EVs) fail to achieve the range advertised in brochures, which are based on ideal testing conditions. There is concern that consumers may face a 'wave of litigation' when EV batteries need replacement outside of warranty, as the cost could exceed the vehicle's remaining value. [265] It might help if OEMs are required to define acceptable battery capacity thresholds (e.g. 70% after 8 years) or require disclosure of expected degradation.[266]

One dealer expressed concern 'you'll find that these Chinese cars, and they're not holding their charge, or they're blowing up on fire. The [OEM] walks away. These things are not dealt with at the point of import. They'll keep bringing in blocks of 500 cars, 'cause they're getting $5,000 a hit. And then we have the issue of the … damaged batteries. [Dealers] have to store them … we have to have a quarantined area specifically for damaged EV batteries. It's a hell of a fire risk. So, the use of your real estate, are you indemnified for that? No'.[267] Tesla buy some batteries back … you can never put one back into a car.[268]

Buybacks for EVs are noted as particularly problematic due to the high cost of components like batteries (e.g. $43,000), which factories may be reluctant to fully cover.[269] One dealer had to pay $15,000 for a battery replacement on a car with only 30,000 km because the OEM refused to cover it.

Warranty audits

Some brands conduct annual audits where minor technical infractions (like not reusing radiator coolant) can lead to financial clawbacks or fines.[270] OEMs may extrapolate error rates from a small sample across several years of claims in an audit, requiring the dealer to pay back large sums (e.g. $250,000).[271] OEMs may initially approve and pay a claim, only to have an auditor later deem it wrong and take the money back.[272]

One dealer hasn't been audited for maybe 2.5 years. This makes a warranty audit a major risk, because the volume the OEM can potentially audit is huge. It's a huge contingent liability for a dealer. And then the last time that dealer had an audit, the OEM had a focus on a particular warranty job.[273]

OEMs conduct audits that focus on whether administrative processes were followed rather than the effectiveness of the repair. A single administrative mistake in a small sample of files can lead to massive financial extrapolations across an entire year of claims, resulting in the dealer owing the OEM significant sums (sometimes over $100,000).[274] Some OEMs, such as [named brand], use warranty audits not just to ensure compliance but to collect money back from dealers. They may identify minor clerical errors (e.g. a customer didn't sign a repair order correctly) and use that to claw back a percentage of the dealer's entire year of warranty earnings.[275]

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[360] Caine (n 54).

[266] A major OEM.

[267] Dealer J (n 56).

[268] See ibid.

[269] Dealer C (n 11).

[270] Dealer F (n 93)

[271] Dealer D (n 60).

[272] Dealer J (n 56).

[273] See ibid.

[274] Dealer K (n 63).

[275] Dealer G (n 54).

Impact of AI

Dealers feel ACL rights are often overstated or misunderstood by consumers, partly due to aggressive OEM marketing and AI-generated information that lacks context about fault severity or depreciation, leading to unrealistic consumer expectations.

> I think, is unfair, because the OEM should fix the problem. They should be first in line. They made the car, and in some cases, when a client's come back [to us] and complained about a problem, the first thing we do, of course, we've been doing a lot of years, we check, we … Oh, that's been a common fault with this car from the OEM all around the world. So, the OEM is responsible, because it's not something that's just happened, and we've got a warranty, it's a known problem, or a design fault, from the OEM. It just happens we sold the car, and the problems happen then.[276]

> If the car's 15 years old, it's a Ute, and it's running 250,000 km's. Well, there should be no ACL on that at all. Because it's really at the end of life. Currently, someone buys it for $2,000 and has the same rights as the person who just bought a new car for $300,000'.[277]

Staff

Customers blame us as the dealership that they're dealing with. They feel misled.[278] 'It's not the OEM that has to defend the small print. It's our staff. We do lose staff over the anxiety that's caused in this type [of situation]'.[279]

> Presumably [the OEM the dealer took the issue up with] are aware that if customers were in receipt of full information at the point of purchase, they may not transact.[280]

There is a critical shortage of qualified mechanics, particularly for brands that are not seen as aspirational. This is exacerbated by the technical complexity of Electric Vehicles (EVs), where specialized training is often missing.[281]

Consideration should also be given to reduce OEMs exposure for issues outside their control. For example, if a dealer fails to invest in the development of adequately trained staff, sufficient repair capacity, or timely ordering of required parts – and as a result, vehicles undergo repeated repair attempts, are deprioritised or delayed - an OEM may become legally responsible to provide remedies to the consumer for multiple failed repair attempts or unreasonable delayed repairs.[282]

Investment in training

OEMs typically do not reimburse training costs, despite requiring training as a condition of performing warranty repairs. Dealers effectively carry costs that OEMs would bear if repairs were done in-house, including training, certification, and specialist capability development.

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[276] Dealer I (n 40).

[277] See ibid.

[278] Dealer E (n 98).

[279] See ibid.

[280] Ibid.

[281] Dealer H (n 105).

[282] A major OEM.

Dealers spend a reasonable amount of money doing [factory] training. And the reimbursement when it comes to using that training for warranty related items is not [equitable] we're not fairly compensated for it, hence some of the brands we have the training we don't attend.[283]

Technicians generally receive factory training, although newer or Chinese brands reportedly have less comprehensive training and slower OEM support. Some OEMs are more responsive than others, with delays common in parts supply and technical assistance.[284]

Technician training for dealers away from main centres in eastern states

Evidence from West Australian dealers highlights significant structural and geographic barriers to technician training, particularly for manufacturer-specific and advanced vehicle technologies (including EVs). These barriers materially increase dealer costs and exacerbate skills shortages. They increase warranty repair delays, raise the risk of incomplete or inefficient repairs, push unreimbursed costs onto dealers contrary to the ACL's indemnification principle, and reduce the availability of qualified technicians in West Australia and in regional and remote Australia. They also undermine the assumption implicit in ACL enforcement that dealers have equal capacity to diagnose and repair manufacturing defects across jurisdictions.

Geographic remoteness and travel burden

Most manufacturers require technicians to attend face-to-face factory training, which is usually held on the east coast (Sydney, Melbourne or Brisbane). For dealers without easy access to the three cities this means long-distance travel, accommodation, and meals for technicians, significantly increasing the cost of compliance with training requirements. 'If it's a one-day course, we lose a technician for three days when you take travel into account'.[285] One OEM only offers technician training in NSW.[286]

Opportunity cost of lost labour

While attending training, technicians are not available for billable workshop work, meaning dealerships lose both labour revenue and associated parts sales. As one dealer explained, sending a technician away for a week can cost a dealer $10,000–$15,000 in lost labour and parts revenue, in addition to wages paid during training.[287]

Training largely used for warranty work only

Training is often required very early in a new model of car's lifecycle, when most repairs are warranty repairs. Dealers are therefore required to absorb training costs before any retail return is possible, with OEMs not reimbursing those costs under warranty arrangements

Specialist tools and equipment compounding the issue

Training is often tied to the purchase of brand-specific or model-specific tools, which may only be used rarely. In locations such as Western Australia and Tasmania and rural locations where fleets are smaller and travel times longer, these tools can sit idle for years, providing no return on investment.

283 Dealer E (n 98).

284 Dealer B (n 194).

285 Ibid.

286 Ibid.

287 Dealer L (n 20).

Particular problems with electric vehicles

Some dealerships are not authorised to work on high-voltage EV batteries, requiring vehicles to be sent to metropolitan or authorised interstate dealers. This limits skills development in regional areas and reinforces a cycle where local technicians cannot gain experience because they cannot be trained and cannot be trained because the work is diverted elsewhere.

Competitive disadvantage for dealers outside major east coast cities

East-coast dealers often receive faster training access, more frequent OEM contact, quicker parts supply. Dealers that are not on the east coast are benchmarked against these dealers despite having structurally inferior access to training and support.

Parts needed for repairs

The only little issue we've had is to get a part, because it's a new brand in Australia.

A lot of the more complicated parts can take six to eight weeks to locate. For instance, a dealer might be waiting for a little radar part for the ad blue tank [to come from] Italy. And you could wait six weeks. You know what the consumer says? There's a jumbo landing every five minutes in Melbourne. Why can't it be on that plane? All these parts, excluding batteries, they should be flown in here, like, straight away. And then the OEM or their call centre shifts the blame. And it's the dealer that has to do everything, 'cause the OEM just doesn't want to know.[288]

OEM advertised warranties and extended warranties

Dealers have no control over OEMs' marketing collateral or warranty terms, which often raise consumer expectations that the dealer must manage. Improved alignment and communication between OEMs and dealers on warranty coverage and servicing obligations would reduce consumer complaints and disputes.[289]

OEMs promote long warranties and service packages as selling points, which raises consumer expectations that may not align with actual warranty coverage or service obligations. This creates pressure on OEMs and dealers to resolve disputes.[290]

This [new Chinese] car comes with a 10-year warranty. OK. So, from a consumer point of view, it's got factory warranty for 10 years. That is a complete warranty for everything, including the battery.[291]

Loan cars

A dealer may provide a consumer with a loan car. Some OEMs are exceptionally prescriptive about how this is managed. For instance,

> for seven days, we could self-approve a loan car. After seven days, if I haven't pulled the [customer] out of the car, then I need to contact the OEM and go, we're still waiting on parts, or we're still waiting on this, and they'll go, 'no problems, we'll approve you for another seven days'. As soon as I don't do that process, payment stops right then. And they will say, you didn't

[288] Dealer J (n 56).

[289] Dealer A (n 6).

[290] See ibid.

[291] Dealer I (n 40).

> have it approved. Bad luck. So as long as we follow their process and their rules, we will be compensated.[292]

[OEMs] run for the hills. OEMs do not want to put customers in a loan car'. [293]

How the law works, when a dealership sells a car without service follow-up

Let's say [the dealer] sold the car in 2020. It's still within OEM's warranty and it's done 95,000 kms. It's now into its fifth or sixth year of a seven-year warranty. The customer kicks up a major stink. They've got service records with a particular dealership 90 minutes' drive from [the dealership they bought the car from]. The [servicing] dealership cannot solve their warranty concerns with the OEM because the OEM doesn't want to come to the party.

They are then directed to the one-time transaction they had with the selling dealership…. suddenly everything falls back on us. We've not seen the car. We get customers saying 'I understand you want to look at the car, but an accredited service centre has already done all of that and you haven't been able to fix it and your OEM hasn't come to the party. I just want compensation'. They don't even want to give us the opportunity to look at it as their selling dealer. That's the way the law is.

The consumer just wanted a new for old vehicle at that point or substantial compensation, and we may not have seen them. Sometimes we even get them from as far away as interstate. It's quite common you may not even actually meet them. You trucked the car to Queensland, brand new in 2020. Never seen it since, and suddenly you're in a VCAT case with a customer you've never met because you retailed a good that was made in a foreign country.[294]

Impact of social media and AI

Dealers struggle with sophisticated complaints driven by AI-generated letters and non-legally trained consumer advocates who often demand large settlements.

Loud consumer complaints, especially via social media, can prompt quicker OEM responses, particularly from newer brands worried about reputation.[295] The dealer ends up fixing [a problem] because the dealer doesn't want to go on record in his local tribunal. And the dealer doesn't want Google reviews to cane him. Google is a rot on the back of every single dealer in this country because the dealer cops the criticism, not the OEM. It's the dealer who's not fixing it. The consumer's contract of sale is with the dealer.[296]

Remedies and dispute resolution (ss 259 – 275 ACL)

The current dispute resolution avenues are accessible but fragmented.[297] Tribunals are available, however, processes, decision-making and application of ACL vary by jurisdiction, creating inconsistency and confusion.[298] For high-value goods such as cars, disputes often escalate to courts, which are costly and slow, deterring many consumers.[299]

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[292] Dealer J (n 56).

[293] Dealer E (n 98).

[294] Dealer E (n 98).

[295] Dealer B (n 194).

[296] Bergman (n 108).

[297] A major OEM.

[298] A major OEM.

[299] A major OEM.

OEMs need to maintain internal compliance and dispute resolution teams to handle increasing complaints, legal actions, and tribunal cases. The volume and complexity of complaints, including those generated by AI and consumer advocates, increase the dealer's operational burden.[300] To improve consistency and transparency, it would be beneficial for dealers and OEMs to adopt uniform complaint-handling timelines and escalation processes.[301] Some dealers have in-house counsel. They report having to spend 50 per cent of their time on disputes across the dealerships in their network. It is not the best use of a General Counsel's time and expertise.

Dealers prefer issues to be resolved quickly to avoid prolonged disputes and negative publicity.[302] This is achievable when the OEM is co-joined to the action. Some OEMs explicitly instruct dealers not to add them as respondents in legal proceedings.[303] However, it 'invariably it takes longer to settle a case without the factory being at the table'.[304] Industry representatives and dealers propose that OEMs should be automatically co-joined in tribunal matters so they take ownership of technical solutions and financial settlements early in the process.[305]

Dealers often end up at an Administrative Tribunal for issues they did not cause, such as manufacturing defects. They describe the tribunals as having willy nilly processes where members lack industry knowledge and often aim to 'give the punter something' regardless of the facts.[306] Dealers face potential civil pecuniary penalties for failing to comply with consumer guarantees, even when the fault lies with the OEM or involves parts that must be shipped from overseas.[307]

Dealers can incur legal expenses defending consumer claims in tribunals or courts, which can reach hundreds of thousands of dollars for a single case.[308]

Dealers are the primary target for consumer litigation through the tribunals. Even if they win, they may be left with significant costs and unsellable vehicles.[309] Dealers may face claims in tribunals for cars they did not even sell. Even if the dealer wins, they cannot charge anyone for the significant time spent on the case.[310]

Dealers and consumer representatives identify that tribunals and Consumer Affairs lack the technical knowledge to distinguish between a 'major failure' and a 'cost-effective repair'.[311] A proposed solution for legal disputes is to include technical experts, or expert panels, in the vehicle disputes to help tribunals properly evaluate a failure.[312] Members with specific motor industry expertise could see a scam a mile away and follow standardized rules rather than subjective opinions.[313]

Case study: 'A car had done 3,000 kilometres. That's a new car. I bought the car [as a trade in], and [customer] bought it in. When it came to me, it was due for a service. We sent it to [the dealer for that brand] for full service. We've then sold it to a customer [interstate]. He had the car, drove the car for

300 Dealer A (n 6).
301 A major OEM.
302 Dealer B (n 194).
303 Dealer E (n 98).
304 See ibid.
305 Dealer J (n 56).
306 Dealer J (n 56).
307 Paterson (n 14).
308 Dealer D (n 60)
309 Dealer G (n 54).
310 Dealer J (n 56).
311 Dealer H (n 105).
312 See ibid.
313 Dealer J (n 56) and same issue identified by Consumer Group (n 59).

five weeks, and then rang, he said, 'the car just pulled over … stopped on the side of the road. So, what do we do?' They put it on a truck to [the dealer] in [the buyer's state], who said, the piston's gone down the bottom through the barrel, and it damaged the motor. It's $125,000 to fix.

So, we think … OEM warranty. I went to [the OEM] and made a complaint. They said, 'You're the dealer. If it was a private person, we'd honour it. You're the dealer so no'. So I paid for it. It was a $400,000 car. I had to sell another 30, 40 cars just to cover that cost.

The ACL law is unfair. … that was a manufacturers fault. When we spoke to the factory or … they were open. They said, yeah, it is a problem with this car. It's happened to others. It failed on me, but it was an OEM fault. It was impossible to get money from the OEM.

But it got worse. Under the ACL, the [customer] was actually fair. He said, cars fail. You shouldn't have [to give me] my money back. The car's depreciated. It's worth less than what he paid. He also paid all the government stamp duties, so what I'm gonna give him the 9%, [state stamp duty] … It's $35,000 stamp duty, which I'm not gonna get back from the government.

You know what he said? If you fix it, I'll be happy with that. But you've got to lend me that [very expensive car] you've got in your showroom on display. I had to truck a $250,000 car [interstate to the consumer], let him drive it for five or six months, because that's how long it took for the parts to come from the OEM, to get it all fixed and rebuilt.

When we got that loan car back, guess what it had? Little parking dent, little scuff on the front. The wheels were crashed. He drove it like a taxi. We had to re-detail the car, that car was worth less than it was five months before, so we sold that at a loss. OEM will support if it's a consumer, because of their reputation, but if it's a dealer. It your problem. You got to warranty the car'.[314]

> If there's a fault in the design of the car, that person should be responsible to rebuild the car, not [the dealer], just for selling it. And likewise, if it's a shoddy service, the service department needs to stump up and fix it.[315]

Tribunals – inconsistent decisions

One dealer recounted that:

Quite often, you might go to a compulsory hearing or a conference, and the VCAT member may say. Where's the OEM in this? They've got a role to play here. It shouldn't be a choice. The tribunal should have to say there's an OEM involved. They have to be joined and we're going to do that.[316] The dealer should not have to make the application to join the OEM.

One dealer could have been speaking for most dealers when he said; 'Every time I walk through that door at VCAT, I get a different decision'. I had a VCAT case, and the member said to the punter, well, the dealer might have to replace the car. But that car was old. And that's what the car is worth today. You won't be getting what you think that car's worth. So they replaced old with old? Or of dollar value, right? which we had to get valuations because again, [OEM] didn't help us on that one. These cars had a habit of letting go if you put cheap fuel in them. Got a hot day, over 35 degrees. Put 91 fuel in it. And they just blow. So it did, but the bloke said, I want a new car, but the member … knew straight away. No, you won't get the new car. You'll be getting this, so then we went back to the OEM. They said,

[314] Dealer I (n 40).

[315] See ibid.

[316] Dealer J (n 56).

right, oh, we'll just write him out the cheque, we'll pay him the money, and he can go off into the sunset.[317]

'But you could go the next day, and you get this [particular member] and you'd get a new car. Thank you very much. I said to her, like, I should have taped this. This was the worst example of a member I've ever come across in all the years I've been appearing in tribunals.'[318]

A lot of dealers won't tell you, they [won't] go to VCAT, but I couldn't care less. I've got nothing to hide, because that's what they all do now … it's like a pig in a poke. You don't know who you're going to get … And therein lies a lesson. [Depending on which member is hearing the matter I might know] I've lost before I walked through the door because you know they want to give the consumer something. They want to be Santa. The worst thing is, though, when they do find against the consumer, they apologise to them.[319]

Some members won't give the decision on the day. They're too scared to tell a consumer. Three weeks later, the dealer will get a letter saying, you won. But they won't tell the public.[320]

OEMs' attitudes to Australian laws

A rare experience is that it's a 'good brand, very little warranty income provided to the dealership, which means very little ACL blowback'.[321]

Other OEMs are terrible, all things considered. OEMs don't pay for any diagnosis work, which is very important.

> I called a meeting with their CEO and leadership team in December saying I don't care what your OEM's directive is. In Australia you need to pay like everybody else. If we need to find a problem, to be very clear, and the claim allowed is 0.5 of an hour to be paid. The 10 hours to find the problem are just wiped away.[322]

[OEMs] 'overtly run from the ACL. They publish in their dealer guidelines things that which we interpret to be against ACL, even in their own guidelines.[323] We looked at one Chinese brand's manual, and went, oh my goodness, there's a few unlawful statements in there. Perhaps the ACCC could consider instituting a program of random audits of OEM's ACL guidelines.

Structural weaknesses in the ACL framework affecting buy backs

OEMs have a key role in supporting dealers in buyback claims, especially in valuing vehicles and covering depreciation differences. They must balance financial exposure with consumer protection and dealer sustainability.[324]

In practice, buybacks frequently arise because repairs take too long, not because repair is impossible. Modern vehicles are highly complex products, increasingly dependent on software, electronics and EV battery systems. Many defects are technically repairable but require extended diagnosis, OEM

[317] See ibid.

[318] Ibid.

[319] Ibid.

[320] Ibid.

[321] Dealer E (n 98).

[322] See ibid.

[323] Ibid.

[324] Dealer A (n 6).

engineering input, global software updates, or parts with lengthy shipping times. The ACL framework does not adequately accommodate these realities. Because the ACL lacks clear time-based rules delays outside any of the parties' control can transform minor defects into buy-backs and neither dealers nor OEMs face clear incentives to resolve matters efficiently.

'If it's just a repair and the customer hasn't raised any concerns, and it's under warranty, [the dealer] just proceed as normal warranty policy, the only time that it gets raised further is when the customer raises something as a concern, or wants to obviously escalate it, and then that's when I [the dealer's service manager] put my different hat on, then I get the information, consult with the customer. I'll either consult with the manager to go through, or depends on the escalation level, on what it is. If we've sold, haven't sold or worked on the car, so I can generally have a pretty good gage while looking at it. If I'm confident it's not major, or something you can repair, I'll talk the customer. I always say that if they want to escalate it, to put it in writing, I'll have verbal conversations. But if you want to want your money back you need to put in writing to me what you're requesting. I'll review it and I'll come back. If I believe, this is going to blow, I will engage with the OEM at that point.[325]

Buy backs

OEMs and customers often clash over what should be accounted for in a buyback, sometimes leaving the dealer in the middle of a negotiation rather than agreeing to a straightforward refund.[326] Dealers experiences vary widely. The following are some experiences encountered by dealers.

Consumers often expect full refunds or replacements without consideration of vehicle age, distance driven, or claims influenced by ACL interpretations and marketing.[327]

Some OEMs do not provide any funds for a buyback until the vehicle is repaired and resold. The OEM then only pays the dealer the 'difference' between the buyback cost and the resale value.[328]

Dealers may experience extreme delays for approval for a buyback, and then in receiving funds.[329] For one Chinese brand issues over $5,000 must go to China for an 8-week approval process. Another overseas brand's approval process is slow and clumsy, while for another brand urgency fades once a dealer buys back a car.[330]

OEMs may completely refuse to reimburse a dealer after a buyback has occurred, questioning whether the dealer followed the correct procedures.[331]

We've had cars where people said, 'I just want the money back', so I've given the money back, and then I've had to rebuild the engine for $10,000 or $12,000, and I'll sell the car, resell it at loss. So, we've then stopped buying that car because we don't need the headache.[332]

An improvement would be placing a time limit on the OEM's response to buyback requests or legal disputes to avoid prolonged disputes and uncertainty.[333] This would also make it more certain for consumers and easier for dealers to manage the associated financial costs.

[325] Dealer M (n 106).

[326] Dealer A (n 6).

[327] Dealer B (n 194)

[328] Dealer H (n 105).

[329] See ibid.

[330] Ibid

[331] Dealer J (n 56).

[332] Dealer I (n 40).

[333] Dealer A (n 6).

We've been involved in a couple of buybacks. One OEM has been OK to date, but they do duck and weave as hard as they can for as long as they can before relenting. And for the buybacks we've been involved in, we've had genuine cases where it would be almost infallible for us to lose, I would be nervous if there was a little bit of grey areas. I think they'd run for the woods is my current view on [that brand] next [example] is a shocking offender. Their current position is they have no position so dealer [is fully liable]. Even if a vehicle fails at an early step, we did have a pleasing intervention from them in the last month and a half in assistance with getting a vehicle back onto the road. Had they have not been able to get the vehicle back on the road. I know the direction it would have gone. It would have just been dealer. See you later. So they're not good.[334]

In its worst form you've got '[OEMs] not interested'. About 12 months ago it was so hard to get the assistance from one brand, they shirked so hard. Luckily, the car was within one to two months since ownership. We just buy it back and turn it into a demo ourselves and accept the fact that it's a small loss because it is just too hard to deal with the factory. Equally we don't want to put our customer who may have bought two or three cars off [us] through a VCAT case and say oh, sorry Mr customer, we'll see you in 18 months in the VCAT, so we might make our own decision'.[335]

Some brands force dealers themselves to decide on vehicle buybacks, while others use third-party contractors for customer care who lack 'skin in the game' and often provide incorrect information to customers.[336] Others force dealers to buy back vehicles at raw cost, preventing them from recovering ordinary trading costs or treating the car as used stock.[337]

Two OEMs refuse to give prior written confirmation that they will reimburse the dealer for a buy-back, leaving the dealer to take a leap of faith and hope they are reimbursed after the fact.[338] The dealer makes up their mind. And what [the OEM will do] after [the dealer has] refunded the customer and gone through that whole process, is say, 'did you follow our procedures correctly? We'll choose whether we indemnify you or not now'.[339]

OEMs may refuse reimbursement if they determine, after the dealer has already refunded the customer, that the issue was a 'characteristic' of the car rather than a manufacturing defect.[340]

Some consumers place unreasonable demands on dealers. For instance, 'someone will drive a car for five years, put 80,000 kilometres on a clock, and then they'll go, well, it hasn't met its requirements. The dealer says, 'that's fair wear and tear'. But tactically people are just driving the car into the dealership, going, 'I've exercised my right to formally reject the vehicle, here's the keys, I'll see you at [the tribunal]'.[341]

Franchisee dealers often have to retail the bought-back vehicles themselves, frequently resulting in a financial loss.[342] However, following an AADA survey, OEM responsiveness to buybacks has reportedly improved, with some OEMs now taking the rejected vehicle back directly rather than requiring the dealer to resell it.[343]

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334 Dealer E (n 98).

335 Dealer E (n 98).

336 Dealer J (n 56).

337 Dealer E (n 98).

338 Dealer G (n 54).

339 Dealer J (n 56).

340 Dealer G (n 54).

341 Dealer A (n 6).

342 Dealer H (n 105).

343 Dealer F (n 93)

At the other end of the scale, some OEMs (example provided) are noted for being 'overly generous' with buy backs. This can set precedents that dealers find difficult to manage if they cannot pass those same costs back to the OEM in future cases.[344]

Depreciation (not reimbursed under s 274)

Depreciation is the difference between the original purchase price and the current value. Currently, there is no specific provision containing a method or quantum of depreciation for vehicle buy-back under consumer guarantees. This absence creates ambiguity, inconsistency, and potential unfairness for both consumers seeking compensation and for dealers and OEMs.[345] The lack of formal depreciation frameworks can lead to disputes and negotiation delays, as parties rely on valuations or case-by-case formulae that vary significantly.

The High Court of Australia in *Williams v Toyota* provided an approach to be taken in assessing reduction in value claims (depreciation). Jagot J noted that the *Competition and Consumer Act* 2010 Sch 2 s 272(1)(a) has a compensatory purpose … In assessing the amount of any reduction in value, s 272(1)(a) required consideration of both the hypothetical reasonable consumer fully acquainted with the state and condition of the goods including any hidden defects of the goods and whatever was known to have resulted from the failure to comply with the statutory guarantee up to the date of judgment of the action.[346]

One dealer suggested that a system where OEMs and dealers share this financial responsibility contemporaneously would help dealers manage these risks and avoid going under financially.[347]

Consumer groups submit that 'depreciation should not be factored into calculating refunds for consumer guarantees'.[348] They maintain that consumers would not game the system to obtain new vehicles or refunds. This is not the experience of dealers. While there is no data on phoenix-type repeat buyback claims by consumers, some dealers provide evidence that consumers sometimes drive vehicles for years and then seek buybacks.[349]

Currently consumers may receive full refunds for vehicles used for years, tribunal outcomes vary widely, and dealers absorb large, unrecoverable losses. This undermines fairness and predictability. In some cases, [tribunals] may order a full purchase price refund for older, high-km vehicles without allowing for depreciation, leaving the dealer or OEM to absorb the total liability.[350] If the right to reject remains broad, depreciation should be explicitly written into the legislation so that consumers do not receive the full purchase price back after using a vehicle for a significant period.[351]

[344] Dealer L (n 20).

[345] A major OEM citing *Kenneth John Williams v. Toyota Motor Corporation Australia Limited* [2024] HCA 38.

[346] *Williams v Toyota Motor Corp Australia Ltd* (2024) 419 ALR 373; (2024) 98 ALJR 1282; [2024] HCA 38; BC202415871.

[347] Dealer A (n 6).

[348] Consumer Advocacy Groups (n 111).

[349] Dealer A (n 6).

[350] Dealer H (n 105).

[351] Patterson (n 14).

CHAPTER 8: OBSERVATIONS

The appropriateness of joint dealer/OEM liability in a relationship characterised by a power imbalance (Section 259-277 of the ACL) needs to be re-examined. Legislation should provide a defined and fair allocation of responsibility between OEMs and dealers.[352]

Consumer reform priorities

These should focus on:

1. clarifying the statutory meaning of major failure, reasonable time and related concepts in the context of new cars.
2. introducing clearer and more predictable rules for vehicle rejection and buybacks, including the treatment of depreciation.
3. imposing clear decision-making timeframes on OEMs for repairs, parts supply, technical approvals and buyback responses.
4. requiring OEM participation in disputes involving alleged manufacturing, design or systemic defects.
5. improving consumer guidance on warranty terms, statutory rights and rejection processes.
6. clarifying the application of consumer guarantees to EVs, batteries and software-dependent vehicles.
7. Requiring consumer pre-purchase education about the characteristics of their new car.

Possible amendments to the ACL

ACL reform priorities

Reform should focus on:

- Aligning financial responsibility with OEM control.
- Requiring OEMs to respond to buyback requests within a fixed period and provide timely written confirmation of indemnity before a dealer must refund the consumer. Failure to respond would result in deemed acceptance of responsibility.
- Clarifying objective triggers for buybacks.
- Introducing a statutory depreciation methodology for vehicle buybacks. It should be based on age and mileage, duration of consumer use, nature of the defect and repair feasibility. This would preserve consumer protection while preventing disproportionate outcomes.
- Clarifying the application of consumer guarantees to battery degradation and replacement thresholds, unavoidable delays caused by EV component logistics, and mismatch of phone software with vehicle.
- Requiring OEM joinder in tribunal proceedings involving alleged manufacturing or systemic defects.
- Dealers should not fund buybacks where there is a manufacturing fault.
- Strengthening the practical operation of dealer indemnity rights so dealers are not required to fund OEM liabilities upfront.

[352] A major OEM.

Reform of the Franchising Code of Conduct

The Code recognises inequality of bargaining power but does not correct it. OEMs retain full control over defects, supply, warranties and data, while dealers bear statutory and financial liability.

Risk-Follows-Control Principle

Insert a new provision into the Code requiring that financial and legal responsibility for defects, delays and buy backs sits directly with the party that controls design, manufacture, software, and parts supply. Require the manufacturer to be responsible for recalls and for paying all costs associated with the recall to the dealers remediating the recalled cars.

Good faith obligation in the Code is too weak

The good faith obligation is vague, retrospective and unenforceable in practice, particularly given sunk costs incurred by dealers and OEM retaliation risk. It may be time to rebalance the good faith obligation by:

- Amending section 18 to include specific criteria applicable to sale of new cars, such as timely decision-making on warranty and buy back requests, consistency with ACL indemnity obligations, and proportionality of audit and compliance enforcement.
- Prohibiting retaliation (non-renewal, reduced margins, audits) against dealers who assert statutory rights or escalate disputes in good faith.
- Where an OEM controls the relevant decision (e.g. parts availability), avoidable delay or refusal should be presumed inconsistent with good faith unless the OEM proves otherwise.

Mandatory Compensation Provisions are Narrow and Incomplete

Compensation provisions focus on termination and exit but ignore ongoing consumer liabilities that persist long after sale or exit. I recommend considering:

- Requiring OEMs exiting the Australian market or restructuring to fund warranty claims, recalls, buy-backs, parts supply for a defined statutory period. This period should equate to the warranty provided by the OEM when the car was sold.
- For Onshore Warranty and Recall Funds, mandate locally held financial security (trust, bond or insurance) to meet long-tail consumer obligations, and dealer indemnification continuity
- Prohibiting franchise structures that lapse dealer indemnity once an OEM exits the market.

Winding-Down Obligations Do Not Address Market Exit Risks

Wind-down plans lack enforceable funding, technical and safety protections, especially for EVs and software-dependent vehicles. We recommend considering:

- Mandatory funded wind-down plans
- Require wind-down plans to include audited funding commitments and enforceable milestones.
- Require regulatory sign-off before OEMs are permitted to withdraw from Australia.

Dealers' position is weak if OEM exits through franchisor being wound up insolvent

OEM's Australian franchisors may be thinly capitalised entities set up to test the market. If they depart via insolvency any dealer protections provided by the ACL and the Code will cede priority to the franchisor's administrator's rights under Chapter 5 of the *Corporations Act 2001* (Cth). Under the Corporations Act administrators can require dealers to remain bound to their franchise agreements paying all contractual sums due to the franchisor until a liquidator is appointed to wind up the franchisor.

This process can take months[353]. Administrators can use these funds, and any money in a specific purpose fund (SPF) under section 61 of the Code, to satisfy the franchisor's creditors. This is regardless of whether the administrator provides ongoing support to the dealers. Despite section 61(4) imposing restraints on the use of the SPF, Chapter 5 of the Corporations Act is likely to trump the Code. Only once the administrator hands control to the liquidator will dealers be released from their contractual obligations.

Two pre-insolvency changes could protect the franchisees' assets. Firstly, section 61(3) of the Code could be amended to require the franchisor to hold the SPF in trust for the benefit of all contributors, rather than simply in a 'separate account'.

Secondly, the clauses that would enable dealers to cancel their franchise agreements during the period of administration are *ipso facto* clauses. An ipso facto clause in a franchise agreement enables the dealer to sever its agreement with the failed OEM when the OEM's administrator is appointed. This is of value when it becomes clear that there is no buyer for the franchisor. Currently, where ipso facto clauses, also referred to as 'self-executing provisions' are present in contracts s 451E (1) Corporations Act applies to prevent a franchisee exercising its right under an ipso facto clause because the franchisor is in administration. As a result, solvent contract parties, including franchisees, lack the capacity for self-protection. This legislation could be amended by the Minister adding franchisees to those currently protected in exercise of the power given under s 451E(6)(a) Corporations Act.

EV-Specific Exit Obligations

Explicitly address battery replacement, storage, disposal and software support.

[353] See *Rathner, in the matter of Citius Property Pty Ltd (Administrator Appointed)* [2023] FCA 26.

CHAPTER 9: FOR CONSIDERATION

Education for new car buyers

Not all buyers of new cars understand the attributes of the car they have chosen. Although the dealer is not to be accused of misleading the consumer, the s.18 ACL cases that have addressed the issue of 'who should be misled' can help determine the wide range of buyers that the new car dealer is selling a car to.

The High Court confirmed in *Self Care IP Holdings Pty Ltd v Allergan Australia Pty Ltd*[354] '[t]he relevant class of persons may be defined according to the nature of the conduct, by geographical distribution, age or some other common attribute, habit or interest'. With this description in mind, and in the context of the complexity of new cars, it may be prudent for a dealer to resist succumbing to the consumers wish to pay their money, sign the change of owner documentation, take the keys and drive away without further ado.

Adding an *education* step so the consumer leaves the dealership with a solid basic understanding of the car and what is needed to keep it running well would inform the consumer appropriately. The salesperson could run through a checklist of essential features before handing the car over. These could include: what fuel is best for the car, how to engage and disengage cruise control, how to change the time on the clock, how to disengage traction control if the buyer is driving on dirt roads, what to do when the oil light comes on, how to check the water and oil and when/ if they need to be checked and topped up, where the spare tyre and jack live, where to fit the jack to repair a puncture, how to operate the car using the space-saver spare tyre, whether any functions are integrated into the windscreen, how to make sure the warranty stays valid, the accurate range of the EV on a hot day or if the car is loaded. This should take no more than 15 minutes but would be useful for the consumer and provide a valuable record for the dealer.

National defects database and standardized forms

There should be a database of defects that happen. For example, as one dealer observed;

> we know a certain model of … diesel [cars] that have a problem with their engine. We know a certain model of [cars] that the airbags continually fail. Now, there needs to be a database on that, so [dealers] know, [without needing to waste a lot of time to diagnose the problem] that it's an OEM problem. Not if it occurred to 2 cars, but if it's occurred to 10,000 cars, it's obviously a problem.[355]

Moving toward a 'follow the bouncing ball' model – where OEMs provide standardized forms, release documents, and clear outcomes – could reduce business risk for dealers.[356]

[354] [2023] HCA 8; (2023) 97 ALJR 388. Cited in Miller, 1532.

[355] Dealer I (n 40).

[356] Dealer F (n 93).

Commitment to Australian market

The influx of new OEMs, especially Chinese brands and electric vehicles (EVs), presents challenges related to consumer law compliance, cultural nuances, and technical issues like battery reliability. These issues often only emerge after a few years of vehicle use, creating long-term risk for OEMs.[357]

In China, an entity must satisfy several specific requirements before it is allowed to offer franchises for sale. These include successfully operate two stores for one year. This approach may provide a template for new OEMs wishing to gain entry to the Australian market.

Consideration should be given to introducing mandatory ACL and Franchising Code of Conduct compliance education for all new OEMs entering the Australian market.[358] Consideration should also be given to implementing a mandate for OEMs to have clear contingency plans for recalls and warranty claims before granting them market entry.[359]

Warranty guarantees held by the OEMs offshore need to be accessible by dealers in Australia. In the United States, under the *Sarbanes-Oxley Act*, Section 404, every importer and OEM must report on their global warranty exposure and current warranty reserve.[360] One OEM disclosed in their Section 10K or 10Q filings that its global warranty exposure is $16.237 billion (USD). There is not one cent of it retained in Australia. When Holden went out of business (in Australia), it was a $2 company.[361] General Motors last filed in the US in December 2025, and they had $13.6 billion in warranty reserve.[362]

OEMs should be required to fly in parts immediately (rather than shipping by water) and provide better support to their dealer networks to ensure faster customer resolutions.[363] EV batteries can only be imported by ship.

The government plans to pay $7.1 million over two years, from 2025 to 2026, to help the ACCC implement the Franchising Code of Conduct.[364] It would be appropriate for some of these funds to be spent on developing pre-entry education about, and post entry compliance with the ACL and the Code for OEMs.

Australia should not ignore the risk of stock dumping following China's approach to EVs with flush door handles.[365] The US has also recognised the problems flush door handles cause and responded by introducing a bill to the House of Representatives called the 'Securing Accessible Functional Emergency Exit Act of 2026'.[366] The US bill, if passed into statute, would mandate cars needing (1) a power independent, easy-to-find manual release for each door providing occupant egress, which shall be intuitive to use and readily accessible for the occupant; and (2) means for emergency responder access to the occupant compartment when vehicle electrical power is lost.

[357] Dealer A (n 6).

[358] A major OEM.

[359] A major OEM.

[360] Warranty Reserves means reserves on the Borrower's books for the cost of defending and disposing of claims and actions for breach of express or implied representation or warranty. (source Law Insider 05.02.2026)

[361] Bergman (n 108)

[362] See ibid.

[363] Dealer J (n 56).

[364] IBISWorld (n 76) 29.

[365] https://www.youtube.com/watch?v=aS67JAmXjnc 5 Feb 2026 #Tesla #ChinaDoorHandlesBan #FlushDoorHandles

[366] https://www.congress.gov/bill/119th-congress/house-bill/6947/text

Government policies to encourage widespread adoption of EVs can benefit from the experience of other countries. Wang and Xing note that ‘in 2022, governments worldwide spent more than US$40 billion to promote EV sales’.[367] Their research revealed:

> Consumer subsidies are standard policies used by most countries …. Ideally, such policies can attain higher welfare by enlarging the market, promoting firm entry, and inducing technology spillovers to related industries. However, poorly designed subsidies can draw in low-quality entrants, reducing policy efficiency and undermining consumer perceptions of entire industries. … In China’s EV manufacturing sector, substantial entry of low-quality EV firms offering vehicles with poor battery and motor performance or safety concerns led to consumer complaints and harmed the industry’s reputation. … When failing to screen for qualities, generous subsidies can yield unintended outcomes by attracting entrants with low and imperfectly observed quality (i.e. lemons), damaging the industry’s collective reputation, leading to under adoption of high-quality EVs, and potentially resulting in a low-quality low-reputation equilibrium’.[368]

[367] Jingyuan Wang and Jianwei Xing, *Subsidizing Industry Growth in a Market with Lemons: Evidence from the Chinese Electric Vehicle Market*, 21 July 2025. Working paper.

[368] See ibid.