

Submission to the ACCC New Car Retailing Industry Market Study and Draft Report

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Firstly I would commend the ACCC for commissioning this review. The automotive industry is a large segment of the Australian economy making an enormous contribution through employment, investment, associated business, government revenue and service to customers. It is a complex, diverse and challenging industry.

Australia's automotive market, more than any market in the world, is fiercely competitive due to our geographical isolation, large number of manufacturers, relatively small population, aggressive free trade policies, strong consumer and competition laws and consumer expectations across our diverse national landscape.

Within the automotive industry there are many different sectors, some of which are participating in this market study. The repair industry (both mechanical and smash repairs), used cars, insurance, finance and parts supply are **all a by-product of a new vehicle being purchased and operated**. This review must not lose sight of this nor should its potentially positive outcomes be compromised by not taking a whole of industry view.

There is the potential to influence the long term sustainability of all participants for the benefit of the customers we serve. Specifically that the intent of ACL is upheld, embraced by the industry and aligned so that it is clear and practical in application.

I would urge the ACCC, along with the participating parties, to give careful consideration to the impact and consequences of any recommendations arising from this study. The old adage of being careful what you wish for will ring true if the end result of this study is a retraction of participants in the market, namely manufacturers who may choose to leave the Australian marketplace as a result of an overly onerous compliance regime. It needs to be remembered that approximately half of the manufacturers present in the Australian marketplace today hold less than 2% market share and therefore their tolerance to any form of regulation may be significantly less than the major players in the market. Whilst some may say that this may be a good outcome it also needs to be remembered that with any withdrawal comes the very real potential that prices for cars will increase as a result of less competition and that there will be significant job losses as a result of dealership closures.

Unfortunately, the draft report has failed to fully understand the unique complexities that make up the new car retailing market in Australia.

Specifically the market study has failed to effectively unwind the relationship between the manufacturer and the dealership and to understand the nuances between these entities.

This relationship commences with a manufacturer making a decision to enter the Australian market. The withdrawal of light vehicle manufacturing in Australia from 2017 signals a permanent shift in how manufacturers will regard this market into the future. The lack of any form of government subsidy will mean that manufacturers, even though there were only three in 2017 that were beneficiaries of this system, are not beholding in any way to comply with

any regulatory system that impedes on their profitability. In effect, if you make it too hard, they will simply leave. So whatever the outcome of this review it needs to be a balanced approach.

Manufacturers set the rules of engagement for the dealer network. Make no mistake this is not a negotiated outcome for the dealer but rather a take it or leave it offer. There is an urgent need in this country to have a separate franchising code that deals with our industry. Manufacturers do not consider these agreements to be a “franchise arrangement” moreover it is a dealer agreement that provides little to no room for movement. It is also a one size fits all arrangement meaning that, apart from individual targets, the bulk of the agreement is consistent regardless of territory.

The market study does not appear to recognise the significant cost associated with entering into a dealer agreement. In metropolitan Perth as an example, it would be estimated that the establishment costs associated with setting up a franchise dealership would be in the vicinity of \$10 to \$20 million. This is before any staff are engaged and training commenced. Recent sales of established dealerships in Perth have seen results ranging from, in one instance \$26 million to another of \$40 million.

The market study, and comments by the Chairman since the release of the draft, would seem to attack dealers for making a profit. The figure quoted by the report is that dealers are making up to 64% on servicing quoting gross profit with no explanation of expenses or net profit. There are two factors that must be considered. Firstly, it is not unreasonable for a dealer to make a profit, particularly when they are investing such significant amounts of money into setting up what has to be considered is a high risk business. It is also the end profit figure and not one component that tells the tale of profit. Interestingly the report makes reference to large independent repair operators such as K-Mart Tyre and Auto and Midas, but provides no assessment of their profit margins which does suggest a degree of bias in this review. Secondly, Deloitte have reported that good performing dealerships are returning approximately 2.6% net with many well below this. On any fair assessment, one would have to say that such a small return is not indicative of an industry that gouges consumers.

The manner in which this market study report has been prepared has failed to provide a balanced, fair assessment of the facts behind dealership operations and the true costs of operating in this environment. This has to be done in order to address the other significant issue within the report of access to technical data for the independent repair sector.

It is strongly recommended that the ACCC undertake a review of a range of dealer agreements from different manufacturers so that it can fully understand how this system currently operates.

The imbalance between dealers and manufacturers is further demonstrated when we turn to the issue of warranties and the compliance with the ACL. There would be very few dealers operating today who are not acutely aware of their obligations under the ACL and try very hard to satisfy their clientele. The real issue is that dealers are more often than not, left

exposed by their manufacturer who will not pay for the full cost of remedial work, and by doing so, leave the dealer to foot the bill.

When looking at the ACL and its application for this industry it is extremely difficult to comply with a law that lacks clarity and definition and attempts to deal with a toaster in the same way as motor vehicle.

Issues such as what constitutes a failure, what is a major fault, what is fair wear and tear and when does a fault escalate to a failure all need far greater clarity for the system to work effectively.

If dealers and manufacturers don't understand the ACL how can they communicate it except to say "consumers have entitlement under ACL that may include repairs, refunds and replacement of goods that fail - more detail and explanation is available at www.accc.gov.au or www.commerce.wa.gov.au?

It could be argued that the pendulum has swung too far to the left with all rights vested with a consumer and little recourse for the dealer to rebut the claim because of the fear of court action.

A further issue in relation to the ACL is the inconsistent manner in which claims are settled by the system. In WA we are fortunate to have a Consumer Affairs agency that understands the automotive sector and deals in a balanced manner. Despite this, and there are a number of examples where the Department has advised the consumer that there has not been a breach, the consumer still has the ability to take the matter to the courts where the issue is determined by a magistrate who generally will have little to no experience or knowledge of matters mechanical.

There needs to be a fairer, more balanced method of dealing with claims under the ACL that preserves the rights of a consumer but also respects the rights of the dealer.

Access to Technical Information

It is a foundation principle in dealing with consumers that businesses should not make false or misleading statements when promoting their services or products.

There is currently a very strong push for manufacturers to have to release repair information to the broader market so that independent repair businesses can offer to service any vehicle.

I put it to the ACCC that any automotive repair business, be they a franchise dealer or independent repairer, is misleading the market if they claim to be able to repair all 69 manufacturer's vehicles. It is simply not possible.

The MTAA has called for an accredited model that would see an independent repairer gain access to information after meeting certain standards including tooling and training. An accredited model would more than likely see a business nominate or select to repair specific makes and models of cars and in doing so would become a specialist repairer. This approach

would seem to make enormous sense, particularly in markets where there is a lack of licensing for repairers.

The potential for considerable consumer detriment is very real if the ACCC chooses to regulate to free up access to technical information and consumers have their vehicles repaired by ill-equipped, poorly trained mechanics.

It must also be remembered that manufacturers and dealers have a huge two way movement of information about the field performance of their products. Constant technical updates and changes, improved components, better processes all reflect this information stream. While it may not be perfect it is an essential element in delivering product quality and improvement. Specialised model training requirements, model specific equipment and tools and the interface with dealer and manufacturer based electronic management systems are an enormous cost to the manufacturer and the dealer and require a significant commitment to a continuous system.

I find it a staggering concept that consideration is being given to providing access to this technical information without an effective compliance regime. The ACCC may talk about an even playing field but not only is this grossly unfair to dealers it is potentially prone to risk and compromise of the outcomes being sought for consumers.

A compliance and information licensing system for independent repairers would address this inequity and provide the level playing field being sought. This would ensure

- Factory training of technicians accompanied technical data
- Specialised equipment and mandatory tools where required were in place
- Data transmission for in field intelligence was provided
- Monitoring for maintaining the integrity of rework and recall programs
- The definition of a service to include compliance with the log book scheduling for full service rather than just oil changes.

It is one thing to suggest the sharing of technical information but a very different thing to build the capacity to correctly use it. The independent repairers have presented a case including examples of dealer based work being highly priced and poorly done, filling the independents shops with unsatisfied consumers.

The reality is that dealers also have a continual stream of consumers who have by their own frustration or in many cases by direction from their independent repairer returned to the dealer to get faults repaired that could not be otherwise addressed. These include:

- Work required in correcting incorrect adjustment and repair.
- Further compounding work as a consequence of incorrect work
- Resulting faults due to incompatible lubricants and coolants
- Premature failure of low quality or poor fitting parts
- Lack of attention to specific maintenance items in services
- Lack of model specific knowledge.

Access to full technical information will not address this problem but rather compound it. Saying “We repair ALL makes and models” with or without manufacturer based data when there is not the expertise or equipment required to do so must surely be false and misleading.

Dealerships are now manufacturer aligned independent businesses specialising as a one stop that provides brand specific new cars, used cars, service and repairs, parts and accessories. This requires a huge commitment to facilities and staff, a massive undertaking of resources and funds to service our customers. I don't offer or intend to service or repair other brands because I know I simply can't effectively and efficiently do justice to every make or model in the market.

The gap created between dealers and the new form of fuel stations provided the opportunity for the independent repairers and later the chain service providers. Make no mistake independent repairers provide an extremely valuable and necessary service to consumers. They provide an option for consumer choice especially for older vehicles and very cost conscious consumers.

While the independents, particularly the franchise groups, have continually targeted dealers and their client bases, manufacturers and their dealer networks have resisted campaigns directed in this way rather choosing to offer the client more by way of loan cars, road side assistance, capped price servicing and GPS updates along with other loyalty programs.

The recent Nissan advertising of non-genuine parts has been one of the few campaigns that actually targets its independent competitors. Perhaps the industry's silence in this respect has been interpreted as a sign of accepting the basis of the independents various marketing campaigns. This is absolutely not the case.

I welcome “competing on a level playing field” as this will either remove cost compliance and responsibility from dealers or in turn ensure independent repairers meet the standard that dealers have been set by manufactures through an independent service franchise agreement for each brand.

In conclusion I have made some suggestions for further consideration from a dealer's perspective.

Dealer Recommendations

1. Provide greater clarity of definition in relation to major, minor, failures and faults.
2. Establish a franchise code for the automotive sector that ensures that manufacturer dealer agreements are balanced and fair, setting out each party's responsibilities.
3. The introduction of non-dealer (independent repairer) service agreements with manufacturers and or local dealers.
4. ACL code and compliance to form part of both dealer and non-dealer agreements that sets out the rights and obligations of all parties including consumer obligations or responsibility.
5. A warranty policy and process review including -
 - the role of the retailer and non-retailer in warranty repair.

- any policy or procedures that may have the effect of limiting dealers ability to provide the consumer with his rights and benefits.
6. Audit process review – on what grounds can a manufacturer charge back a paid warranty claim and the legitimacy of extrapolation.
 7. Examination of the practice of vehicle pre-registration at manufacturer’s request and its effect on warranty and ACL and the validity of volume based incentives on competition.

Thank you for the opportunity to respond to the draft report on the new car retailing industry.

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