



New Car Retailing Industry – a market study by the ACCC

Issues Paper

October 2016

New car retailing industry market study

This issues paper outlines how you can make a submission to the Australian Competition and Consumer Commission's (ACCC) new car retailing industry market study.

The ACCC undertakes in-depth market, sector or industry reviews as part of its role in promoting effective competition in markets. This involves the ACCC assessing whether market characteristics are conducive to competition and benefiting consumers, or whether market imperfections require intervention by the ACCC or others. These reviews also assist us to identify good competitive practices within industry and encourage it more broadly.

Consumer issues arising in the new car retailing industry are a priority area for the ACCC. In June 2016 the ACCC announced that it would commence a market study into the new car retailing industry which would be informed by a range of recent and ongoing enforcement, education and research projects, as well as further consultation and analysis as initiated by the market studies process.¹ We noted then that the ACCC and other Australian Consumer Law agencies continued to receive a high volume of complaints from consumers about defects with vehicles, covering a broad spectrum of manufacturers.

This issues paper covers:

- the scope of the market study²
- issues on which the ACCC is seeking information being:
 - consumer guarantees, warranties and new cars
 - fuel consumption, carbon dioxide (CO₂) and noxious emissions, and car performance
 - post-sale service arrangements
 - access to repair and service information and data.
- how to make submissions and key dates.

Key dates

The dates below are indicative—as the market study progresses, the ACCC will publish further information with confirmed dates on our website: www.accc.gov.au/newcars.

17 October 2016	Issues paper released. Submissions invited.
14 November 2016	Issues paper submissions close.
December 2016	Forum(s) with invited key stakeholders.
Mid-year 2017	Draft report to be released for comment.
Third quarter 2017	Roundtable(s) with invited key stakeholders.
Late 2017	Final report to be released.

Questions or queries about the market study can be directed to newcars@accc.gov.au.

¹ ACCC media release, [ACCC launches market study into new car retailing industry](#), 17 June 2016.

² This market study is being undertaken under s.28(1)(c) of the CCA.

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Background

The ACCC has received a large number of complaints from consumers relating to new cars. Other relevant agencies and complaint handling bodies also report a growing number of complaints from consumers and industry. The purpose of this study is to gain a better understanding of how the new car retailing industry operates, while focusing on key issues that have come to the ACCC's attention.

This market study will examine whether industry practices are consistent with what we would expect from a competitive market. In particular, practices relating to:

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

To inform the ACCC's understanding of practices in the new car retailing industry, this market study will explore the broad structure and operation of the new car retailing industry, assessing whether market characteristics, including new car buyer behaviours and expectations, are conducive to competition.

A consumer survey undertaken by Colmar Brunton will also inform the report.

While this study will focus on new cars, it will **not** consider:

- direct or parallel imports of new cars by individuals
- car financing and insurance products
- product safety³
- demonstrator vehicles
- capped price servicing.⁴

The ACCC also notes a number of other government reviews relating to cars (see **Appendix A**). Where relevant, the ACCC will consider the findings of these reviews as they relate to the key areas of interest to this study.

Potential outcomes

Information collected during the market study may lead to a range of outcomes, such as:

- increased consumer knowledge and awareness of their rights under the Australian Consumer Law (ACL) when engaging with the new car retailing industry
- recommendations for policy/regulatory change in order to address any identified competition or consumer law issues
- further action taken by the ACCC to address any behaviour in the industry that raises concerns under the ACL and *Competition and Consumer Act 2010* (Cth) (CCA).

³ Product safety in cars is regulated under the Motor Vehicle Standards Act 1989, the Motor Vehicle Standards Regulations 1989 and the CCA. The Department of Infrastructure and Regional Development (DIRD) and the ACCC cooperatively administer the provisions relating to car safety, including recalls and consumer guarantees. DIRD retains officers with the necessary technical expertise to investigate complaints about car safety and the need for recall.

⁴ The ACCC has undertaken prior projects related to this issue. For more information about the ACCC's work in relation to capped price servicing see **Appendix A**.

Making a submission

The ACCC invites your views either as a written submission or by completing our online questionnaire.

Given the other reviews underway outlined in **Appendix A**, we would encourage interested parties to focus submissions to the ACCC's market study on the topics specific and relevant to this study.

We will take into account the submissions and responses to the online questionnaire for our draft report, which we expect to release in mid-year 2017. We will issue the final report in late 2017.

Submissions

This Issues Paper seeks submissions on a number of key topics (a complete list of questions is outlined at **Appendix D**). The ACCC does not expect that all interested parties will address all the issues raised, but rather that they will address issues which relate to their businesses or their areas of concern.

Submissions should be provided by **COB Monday 14 November 2016** via the ACCC's [consultation hub](#).

The ACCC prefers to receive electronic copies of submissions, either in PDF or Microsoft Word format which allows for the submission text to be searched.

Online questionnaire

The online questionnaire is a streamlined process designed to assist consumers and small businesses to make a submission on particular areas of interest.

Responses will be published on the ACCC's website in a compiled format. Respondents may elect to provide a response anonymously and are not required to respond to all the questions.

Responses to the online questionnaire can be provided by **COB Monday 14 November 2016** via the ACCC's [consultation hub](#).

Treatment of submissions

Confidentiality claims

To foster an informed and consultative process, all submissions and responses to the online questionnaire will be considered public and will be posted on the ACCC's website. Interested parties wishing to submit commercial-in-confidence material to the ACCC should submit both a public and a commercial-in-confidence version of their submission. The public version of the submission should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or 'c-i-c'.

The fewer confidentiality restrictions placed on submissions to the issues paper, the more easily we can test information provided and reach accurate conclusions about the market. Therefore, we ask that information you claim confidentiality over be genuinely of a confidential nature and not otherwise publicly available. We request that you provide reasons in support of your claim, to assist us to better understand your claim and assess the information you provide.

We are committed to treating confidential information responsibly and in accordance with the law. Where we are provided with confidential information, we will, to the extent reasonably possible, seek to protect the confidentiality of that information. In some circumstances we may be legally required to produce confidential information. For example, we may be required to disclose information that is subject to a confidentiality claim pursuant to a court order or subpoena. If this occurs, we will endeavour to notify and consult with you about the proposed release of your information and measures (such as confidentiality orders) that may be taken to protect that information. It is also important to note that we may share confidential information internally with ACCC and AER staff and with our external lawyers and consultants.

For further information on the ACCC's treatment of confidential information, please refer to the [ACCC/AER Information Policy](#) publication.

Privacy

For privacy reasons, personal information (e.g. home and email addresses, signatures, phone, mobile and fax numbers) may be removed from submissions before being published on the website. You may wish to remain anonymous or use a pseudonym; however, the ACCC may place less weight on the submission.

1. Structure and operations of the new car retailing industry

The new car retailing industry in Australia encompasses a range of sectors, including:

- car manufacturing, distribution and retailing
- equipment and parts manufacturing, wholesaling and retailing
- mechanical and electrical servicing and repair, and road-side rescue services.

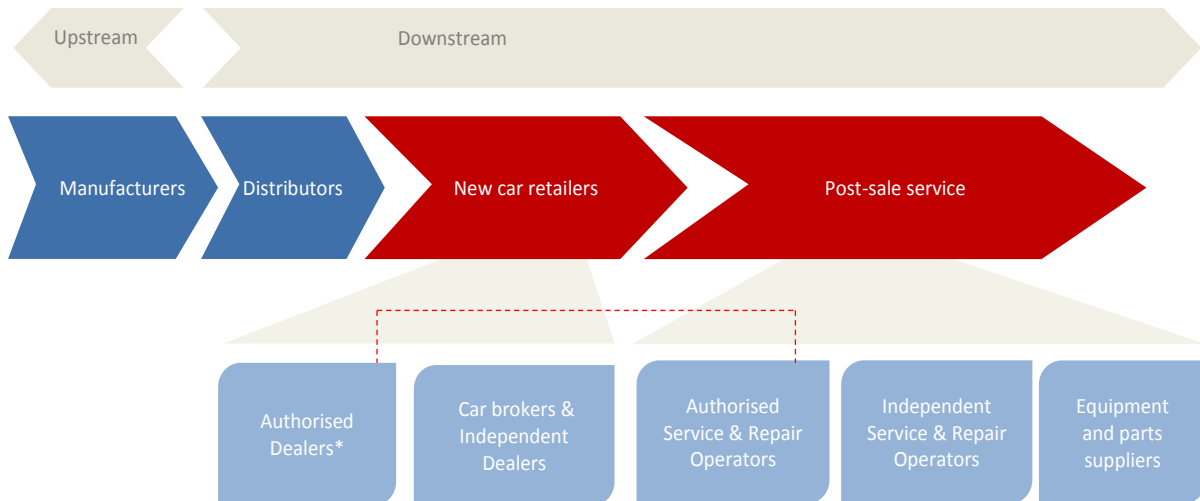
What is a ‘new car’?

The ACCC intends to focus on markets related to ‘new cars’ as distinct from used cars. It is noted, however, that there are many definitions of ‘new car’ which can rely on age, ownership or registration.

For the purpose of this market study, a ‘new car’ will be defined as a car purchased by an Australian consumer, and which has not previously been registered.⁵ This study will focus on cars, defined for this study to be: passenger vehicles, four wheel drive vehicles and vans.⁶

Diagram 1 depicts the ACCC’s current understanding of the key participants in the new car retailing industry supply chain. The supply chain highlights some of the contact points consumers have with business when buying a new car and accessing post-sale services.

Diagram 1: New car retailing industry supply chain



*Authorised dealers include single-brand and multi-brand dealers.

⁵ The thresholds for defining a ‘consumer’ in s. 3(1) of the ACL will be used to determine what new cars are included in the study. Small businesses that employ fewer than 20 people are a consumer for the purposes of this study.

⁶ This means that the study will exclude vehicle types such as motorcycles, trucks, buses, plant and equipment, unpowered vehicles, trailers, farm equipment (e.g. tractors), limousines, demonstrator cars, and parallel imported cars (e.g. cars bought by consumers overseas and imported into Australia) as well as new cars purchased for the purpose of re-supply, and new cars purchased for using them or transforming them in trade or commerce.

Diagram 1 definitions

- *Manufacturers*: businesses engaged in the manufacture or assembly of new cars.
- *Distributors*: businesses which supply cars to retailers (dealers). This can include franchisors or an overseas manufacturer's domestic entity.
- *Car brokers*: third-party firms with links to dealerships which aim to facilitate sales for consumers.
- *Authorised dealers*: businesses selling cars as a retailer or on a wholesale basis under a franchise (or dealership) agreement with one or more manufacturers.
- *Independent dealers*: businesses selling cars as a retailer or on a wholesale basis with no direct affiliation with any manufacturers.
- *Authorised service and repair operators*: mechanics or repair service providers who are directly affiliated with a particular manufacturer or authorised dealer (see dotted line in diagram above).
- *Independent service and repair operators*: mechanics or repair service providers with no direct affiliation with any manufacturers or dealers.
- *Equipment and parts suppliers*: businesses which sell repair equipment and replacement car parts.

The contractual relationships between the different parties operating in the new car retailing market are varied, and can include complex single or multi-franchise agreements between manufacturers/distributors and dealers. Under the Franchising Code of Conduct, which the ACCC regulates, all motor vehicle dealership agreements are considered franchise agreements.⁷

The post-sale service markets are similarly complex, with franchise arrangements present in the service and repair markets, and a degree of vertical integration existing between manufacturers, distributors, authorised dealers and repairers, and between manufacturers and authorised equipment and parts suppliers.

The ACCC is interested in further exploring these relationships.

1.1. New car retailing market

The new car market in Australia is diverse and growing: in 2015-16, nearly 1.2 million new cars were sold in Australia, an increase of 3.8 per cent compared to the previous year, and the highest ever annual number of new cars sold in Australia.⁸ There are currently around 60-70 different brands available to consumers and a number of channels through which consumers can purchase new cars, including through dealership networks or car brokers. There is also an increasing trend in consumers buying new cars online.⁹

New cars sold in Australia are largely produced overseas, with domestic production accounting for 8 per cent of new car sales in 2015.¹⁰ In recent years, a relatively high exchange rate and low import barriers has seen a high level of import penetration and increased competition in the Australian new car market.¹¹ The high degree of competition in

⁷ Clause 5(2), *Competition and Consumer (Industry Codes – Franchising) Regulation 2014*.

⁸ ABS (Australian Bureau of Statistics) 2016, *Sales of New Motor Vehicles*, Cat. no. 9314.0, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/9314.0>, accessed on 15 August 2016.

⁹ Australian Automotive Dealer Association, 2013 National Automotive Industry Survey: The Automotive Retailer of 2020, p. 40.

¹⁰ ACA Research, *2015 Vehicle Sales – Trends In The Australian Automotive Market*, February 2016 <http://www.acaresearch.com.au/australian-market-research-blog/2015-vehicle-sales-trends-in-the-australian-automotive-market>, accessed on 13 September 2016.

¹¹ Productivity Commission Inquiry Report, *Australia's Automotive Manufacturing Industry*, p 64-67, 31 March 2014, <http://www.pc.gov.au/inquiries/completed/automotive/report/automotive.pdf>.

the market for new cars is reflected in the decrease in the real price of cars, with prices declining by nearly 7 per cent between June 2011 and June 2016.¹²

The ACCC is interested in exploring the impact of increased competition on the profitability and business models of car dealers.

1.2. Post-sale service markets

The post-sale service markets, sometimes referred to as the automotive aftermarkets, are comprised of a number of sub-markets. These markets include:

- the manufacturing, distribution and retailing of car parts and tools
- the mechanical and electrical servicing of cars and repair services, including a number of specialist sub-markets (e.g. transmission or engine repair).

After a new car is purchased, the ongoing cost of servicing and maintenance represents a significant share of total consumer expenditure on motor vehicles. In 2015-16, the motor vehicle engine and parts repair and maintenance sector in Australia recorded \$15.4 billion in revenue, with motor vehicle servicing accounting for 41 per cent of total revenue.¹³ Repair and parts costs have also been increasing in recent years: between June 2011 and June 2016, the cost of spare parts for cars has increased by 7 per cent, while repair and maintenance costs increased by 11 per cent over the same period.¹⁴

As shown in diagram 1, service and repair providers include both authorised (dealer-affiliated) and independent service and repair operators. Parts and tools may be sold by car manufacturers and dealers, authorised resellers and other independent parts suppliers.

With competition in the new car retailing market leading to lower margins, dealers increasingly depend on post-sale service arrangements such as car servicing and the sale of parts to remain profitable.¹⁵ Similarly, as cars continue to evolve technologically, the cost of increasingly sophisticated equipment required for servicing and repair is leading to lower profit margins, particularly for independent repairers.¹⁶

The ACCC is interested in exploring the impact of these trends on the degree and nature of competition between authorised and independent repairers and parts suppliers.

¹² Australian Bureau of Statistics, *Consumer Price Index, Australia*, Jun 2016, Cat. no. 6401, Table 9, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6401.0>, accessed on 13 September 2016. Note that this CPI data refers to all motor vehicles, not specifically new cars.

¹³ IBIS World 2016, Industry Report S9419: Motor Vehicle Engine and Parts Repair and Maintenance in Australia, p. 3.

¹⁴ Australian Bureau of Statistics, *Consumer Price Index, Australia*, Jun 2016, Cat. no. 6401, Table 9, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6401.0>, accessed on 13 September 2016. Note that this CPI data refers to all motor vehicles, not specifically new cars.

¹⁵ Deloitte, *Motor Industry Overview 2014*, March 2014, p. 17.

¹⁶ IBIS World 2016, Industry Report S9419: Motor Vehicle Engine and Parts Repair and Maintenance in Australia, p. 4.

Questions on the structure and operations of the new car retailing industry

1. How well does the ACCC's understanding of the new car retailing industry supply chain reflect market participants' understanding of the supply chain? Which key market participants does it not capture? How could the ACCC's definitions be improved?
2. What search costs do consumers typically incur when buying a new car? Have online sales decreased these costs?
3. What are the key factors determining vertical relationships and contractual arrangements in the car industry? In particular:
 - (a) what is the contractual relationship between manufacturers, and authorised dealers and authorised repairers?
 - (b) what are the common features of these contracts?
 - (c) to what extent do contractual relationships raise barriers to entry and exit and/or reduce the degree of competition in the car market (or specific submarkets)?
4. What is the nature of the business model applying to new car dealers? To what extent does the sale of new cars, service and repairs, finance and insurance and used car (purchases) and sales each underpin gross profit margin of dealers? Is there variability between dealers in the market?
5. To what extent do consumers substitute between brands and models, particularly responding to price differences? Do consumers show loyalty to particular brands of cars and dealerships, particularly for the aftercare of their new cars and for future car purchases?
6. What is the level of competition between participants in each sector of the market? For example between:
 - (a) authorised and independent dealers
 - (b) authorised and independent service and repairer operators
 - (c) authorised and independent parts distributors.
7. Has competition increased in the new car industry over time and, if so, what is driving this change and how have dealers/manufacturers responded?
8. What are the main drivers of the increase in new car sales? E.g. import tariff reductions, competition from used cars, lower prices due to increased competition.
9. Are there other trends developing in the new car retailing industry in Australia? For example, has there been any consolidation in the dealership segment? What impact might these trends and changes have on consumers?
10. What is the level of intra-brand competition (for example competition between retailers of the same branded product)?

2. Consumer guarantees, warranties and new cars

The automotive industry's compliance with consumer guarantee requirements is an area of focus for the ACCC. In 2014-15, the ACCC and ACL regulators received around 1,800 consumer contacts about consumer guarantee issues relating to cars. In 2015-16, the ACCC alone received over 1,300 contacts.

While vehicle safety is not an area of focus for this study,¹⁷ it is relevant to note that cars were the most recalled product safety item in the 2015-16 financial year with 182 recalls, up from 169 in the previous year.¹⁸

The issue of car specific 'lemon laws' is being canvassed by the current ACL review being conducted by Consumer Affairs Australia and New Zealand (CAANZ) (see **Appendix A**). Through this market study, the ACCC will examine whether lemon laws are likely to provide any additional consumer protections to the consumer guarantees that already apply in the new car retailing industry. The ACCC is also interested in exploring the responsiveness of manufacturers and dealers to consumer complaints about defective vehicles in the context of consumer guarantees, manufacturers' warranties and dealers' extended warranties.

This section examines:

- consumers' options for seeking a remedy for a defective new car
- consumer guarantees — manufacturers' and dealers' handling of complaints
- consumer guarantees — enforcement and access to remedies
- manufacturers' warranties and dealers' extended warranties — commencement and interaction with servicing
- non-disclosure agreements.

2.1. Consumers' options for seeking remedies

Consumers who have concerns about a defective vehicle have several different avenues — statutory and commercial — through which to seek a remedy.

Consumer guarantees

The ACL is the national law for fair trading and consumer protection. The ACL sets out consumer rights that are called consumer guarantees.

Consumer guarantees are a set of consumer rights under the ACL, which include rights to a repair, replacement or refund as well as compensation for damages and loss and being able to cancel a faulty service (further information about consumer guarantees can be found at **Appendix B**).

Consumer guarantees apply automatically to goods, such as a car, which are acquired for personal, domestic or household use.¹⁹ Consumer guarantees also apply to new car purchases by businesses where the car was less than \$40,000 or was bought to use in the transport of goods on public roads.²⁰

¹⁷ Product safety in cars is regulated under the *Motor Vehicle Standards Act 1989*, the *Motor Vehicle Standards Regulations 1989* and the CCA. The Department of Infrastructure and Regional Development (DIRD) and the ACCC cooperatively administer the provisions relating to car safety, including recalls and consumer guarantees. DIRD retains officers with the necessary technical expertise to investigate complaints about car safety and the need for recall.

¹⁸ See: www.productsafety.gov.au/news/check-your-home-for-recalled-products.

¹⁹ ACL, s 3.

²⁰ ACL, s 3.

Consumer guarantees apply regardless of any other warranty offered by a manufacturer or dealer and are not limited to the terms and conditions or the period of the manufacturer's warranty or dealer's extended warranty.²¹

State and territory legislation may also provide additional statutory warranties, in addition to the consumer guarantees in the ACL.²²

Manufacturers' warranties

A manufacturer's warranty is a promise, provided by a car manufacturer, that the car will be free from defects for a certain period and that the manufacturer will fix any defect at no cost to the customer so that the car is in a reasonable condition for its age.

Dealers' extended warranties

A dealer's extended warranty is a service offered by a dealer, and provided by an insurer, which can extend the coverage provided by the manufacturer's warranty (and is in addition to the consumer guarantee rights in the ACL). A dealer's extended warranty may be purchased by a consumer or included by a dealer as part of a package.²³

Figure 1 illustrates the period of operation of consumer guarantees, manufacturers' warranties and dealers' extended warranties. Consumer guarantees continue to operate at the expiry of any other warranty periods:



2.2. Consumer guarantees — handling of complaints

Consumers have made complaints to the ACCC about faults and defects in their cars, and about the responses from manufacturers and/or dealers to requests to remedy these issues. At the broad level, the issues raised by consumers include:

- recurring failures which are not resolved by repeated repairs
- vehicles being detained for excessive periods of time while problems are diagnosed or repaired
- refusals to repair particular defects, or charging for the repair where the defect was not covered by the manufacturer warranty or was outside of the warranty period, and the unavailability of, or extended periods of time required to obtain, spare parts to repair vehicles
- refusal to provide a refund or replacement for significant failures, which are not resolved by a repair
- being offered an alternative remedy (for example a free service, an extended warranty or a trade-in) in response to requests for repairs, replacements or refunds

²¹ ACCC, [Motor vehicle sales and repairs: An industry guide to the Australian Consumer Law](#), August 2013, p. 10.

²² For example: *Motor Dealers and Repairers Act 2013* (NSW), s 69(2) and *Motor Vehicle Traders Act 2011* (Tas), s 44(2). These are state and territory specific legislation and are outside the jurisdiction of the ACCC.

²³ ACCC, [Motor vehicle sales and repairs: An industry guide to the Australian Consumer Law](#), August 2013, p. 10.

- poor or low customer service levels: consumers having to deal with both dealers and manufacturer to obtain remedies; consumers experiencing difficulties and engaging in protracted negotiations to have issues resolved.

Examples

1. A consumer complains about a recurring defect in their car. The dealership technical staff address the issue and the consumer is offered free of charge a substitute car for three days while the car is being fixed. However, the problem recurs and the dealership is unable to address the issue for several months. The consumer is required to leave the car at the dealership for extended periods of time for diagnostic testing and repair. The consumer requests a substitute car but ultimately has to hire it themselves. When the car is returned and fixed, the consumer seeks compensation for the cost of hiring the car. The request is declined by the dealer as it is not covered by the terms of manufacturer's warranty.
2. A particular car model has a manufacturing defect which leads to engine failure after 80,000 kilometres when the car is beyond its manufacturers' warranty. When a consumer requires an engine replacement due to this defect, the manufacturer requires the consumer to pay for the repair, as the car is no longer covered by the manufacturer's warranty.
3. A consumer experiences excessive shuddering and jerking of their car in the first few months after purchase. The consumer has the transmission repaired and parts replaced by the dealer a number of times under the manufacturer's warranty, but the issue reappears each time. The consumer decides to reject the car and request a refund or replacement under the ACL. The dealer only offers further repairs under the manufacturer's warranty.

In all of these examples the ACCC considers that the consumer guarantees under the ACL would apply.

The issues emerging through complaints to the ACCC and other ACL regulators are reflected in a report recently published by Choice titled '*Turning lemons into lemonade – Consumer Experiences in the new car market*'.²⁴ Choice commissioned a survey of new car owners which found that about two thirds of them had experienced problems in the first five years after purchasing a new car.

- While the majority of problems were minor, such as issues with in-car technology, batteries, electronics or the vehicle's interior, 14 per cent of new car owners surveyed experienced major problems that caused the car to stop or seriously impaired the operation of the car.
- In most cases, respondents were able to obtain remedies although this was not an easy process.
- About 15 per cent of respondents who tried to resolve a problem were unable to do so.
- Respondents were asked to sign confidentiality agreements as part of the resolution of their car's problem.

²⁴ Choice, *Lemons on wheels*, 11 March 2016, <https://www.choice.com.au/transport/cars/general/articles/lemon-cars-and-consumer-law>, accessed 24 August 2016.

2.3. Consumer guarantees — enforcement and access to remedies

Complaints made to the ACCC reveal that many consumers are having difficulty enforcing their consumer guarantee rights to obtain remedies from dealers and manufacturers for defective cars.

Consumers may choose to pursue their claim through a consumer tribunal or the court system, including by joining a class action.

The ACCC may take action in circumstances where a car manufacturer's conduct will, or has the potential to, harm the competitive process or result in widespread consumer detriment.²⁵

Compliance with the consumer guarantee provisions by car manufacturers and dealers is an area of focus for the ACCC. We have engaged with a number of car manufacturers and are assessing their approach to dealing with consumer complaints and the interaction between manufacturers' warranties and consumer guarantees.

ACCC case study: Investigating consumer complaints handling practices

In September 2015, Fiat Chrysler Australia (Chrysler) provided an administrative undertaking to the ACCC, following an investigation into consumer guarantee complaints concerning vehicle faults and Chrysler's handling of those complaints.

The ACCC had received a number of complaints from Chrysler customers concerning vehicle faults and the handling of their complaints by Chrysler and its dealers. The complaints related to various issues including delays in sourcing spare parts and failing to adequately deal with customer complaints.

Chrysler acknowledged the ACCC's concerns and cooperated with the investigation. Chrysler advised the ACCC that it had taken a number of steps to improve its aftersales care, particularly complaint handling, to address these concerns.

Chrysler's undertaking includes a commitment to establish a consumer redress program, and to review its handling of previous complaints, as well as an ACL compliance program which includes a complaints handling system. Through the undertaking, Chrysler established a process where affected Chrysler customers could agree to have their previous complaints independently reviewed, with Chrysler committing to implement the remedy recommended by the independent reviewer.

2.4. Manufacturers' warranties and dealers' extended warranties — commencement and interaction with servicing

Consumers may receive inconsistent or unclear information about when a manufacturer's warranty commences.²⁶ In some situations, this may leave new car buyers with less warranty than they were expecting.²⁷ Inconsistencies in statements made about the commencement date of warranties, or unclear language, have the potential to cause consumer detriment.

The differences between consumer guarantees, manufacturers' warranties and dealers' extended warranties may also be unclear to consumers. A lack of clarity may result in

²⁵ ACCC, Compliance and Enforcement Policy 2016.

²⁶ CarsGuide, *When does your new-car warranty actually start?*, 5 February 2016, <http://www.carsguide.com.au/car-advice/when-does-your-new-car-warranty-actually-start-39193>, accessed 24 August 2016; CarsGuide, *Buyers being shortchanged on warranty*, 27 August 2012, <http://www.carsguide.com.au/car-news/buyers-being-shortchanged-on-warranty-20723>, accessed 24 August 2016.

²⁷ CarsGuide, *How to buy a dealer demonstrator vehicle?*, 12 August 2016, <http://www.carsguide.com.au/car-advice/how-to-buy-a-dealer-demonstrator-vehicle-45211> accessed 24 August 2016.

consumers not understanding if and when they may use an independent repairer, as opposed to a dealer, to service or repair their car.

Choice of repairer

Suggestions that new cars must be serviced at a dealer to maintain the owner's consumer guarantee rights are false.²⁸

Consumers can also generally use independent repairers to service their cars during the period of a manufacturer's warranty.²⁹ A manufacturer's warranty may set out requirements that consumers must comply with. For example, it might require that servicing is carried out:

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

Provided an independent repairer services the car in accordance with any such requirements the manufacturer's warranty will remain valid.³⁰

However, if a manufacturer's warranty states that the car must be serviced by a dealer, this may raise concerns under 'exclusive dealing' prohibitions found in the CCA. Exclusive dealing broadly involves a trader imposing restrictions on a person's freedom to choose with whom, in what or where they deal.³¹ The practice may not automatically be a contravention of the CCA, unless there is a substantial lessening of competition.

A dealer's extended warranty usually commences at the end of the manufacturer's warranty. A common requirement of dealers' extended warranties is that the car must be serviced by the dealer offering the warranty. Imposing this requirement may be permissible. If this is a requirement of a dealer's extended warranty, an independent repairer may void the warranty if they service the car.³²

Choice of car parts

The ACCC is concerned that dealers may be making statements suggesting that consumers must use genuine parts in order to maintain their warranties. Statements about the use of non-genuine parts voiding warranties may be false or misleading. As stated above, provided independent repairers are qualified, use appropriate quality parts and repair according to manufacturer's specifications, the manufacturer's warranty will remain valid.

The ACCC is also aware of concerns that insurers may encourage the use of second-hand parts by their nominated repairers, which, in the event of an accident and subsequent repairs, may interact with dealer's extended warranties in a way that may have the potential to cause consumer detriment.

²⁸ ACCC, [Motor vehicle sales and repairs: An industry guide to the Australian Consumer Law](#), August 2013, p.14.

²⁹ Deputy Chair Schaper, 'To service or not to service: vehicles under warranty' in *Australian Automotive Market*, ed. Allan Edwards (Publisher Cameron McLachlan for the Australian Automotive Aftermarket Association, February 2016), p. 6.

³⁰ ACCC, [Motor vehicle sales and repairs: An industry guide to the Australian Consumer Law](#), August 2013, p. 9.

³¹ ACCC, [Motor vehicle sales and repairs: An industry guide to the Australian Consumer Law](#), August 2013, p. 9.

³² Deputy Chair Schaper, 'To service or not to service: vehicles under warranty' in *Australian Automotive Market*, ed. Allan Edwards (Publisher Cameron McLachlan for the Australian Automotive Aftermarket Association, February 2016), p. 6.

2.5. Non-disclosure agreements

The ACCC is aware that some consumers have been asked to sign confidentiality or non-disclosure agreements about the remedy they obtained for a faulty or defective new car.

While the use of confidentiality and non-disclosure agreements can sometimes be part of commercial dealings, it is likely to be misleading and deceptive to represent that the provision of a statutory remedy is provided on condition that a consumer signs such an agreement, or where the agreement seeks to limit statutory rights. Consumers are entitled to rely on their consumer guarantee rights irrespective of whether they agree to sign non-disclosure agreements.

Questions on consumer guarantees, warranties and new cars

11. When purchasing a new car, what information is given to consumers about their consumer guarantee rights? What information are consumers given about the terms and conditions of the manufacturers' warranties or the dealers' extended warranties? Who provides this information? How is this communicated?
12. What information is given to consumers about the interaction between their consumer guarantee rights, the manufacturer's warranty and, where relevant, the dealer's extended warranty? Who provides this information? How is this communicated?
13. What are consumer perceptions of consumer guarantees, manufacturers' warranties and dealers' extended warranties? How do these influence a consumer's decision to buy a new car?
14. Have consumers relied on consumer guarantee rights to seek a refund, repair or replacement for a new car that had a major fault and been denied? Please provide examples.
15. What issues, if any, have consumers experienced in having their manufacturer's warranty or dealer's extended warranty claims accepted? Please provide examples.
16. Are there examples of consumers being advised that rights to a repair, replacement or refund are limited because a vehicle is outside the manufacturer's warranty? If so, does this arise when dealing with a dealer or a manufacturer? Please provide details.
17. Are there examples of consumers being offered alternative remedies, such as a free service, in response to a request that a new vehicle be repaired, replaced or refunded?
18. Are dealers constrained in their ability to provide remedies to consumers by, for example, contractual clauses requiring prior manufacturer's approval to provide a specific remedy or reliance on manufacturer's expertise in diagnosing issues?
19. What training are dealers given in explaining consumer guarantees, the manufacturer's warranty or dealer's extended warranty? What information is provided at the point of sale and after sales?
20. What information is given to consumers about when their manufacturer's warranty and/or dealer's extended warranty commences and expires? What information are consumers given about how the manufacturer's warranty and dealer's extended warranty interact? How is this communicated?
21. What information are consumers given about who can service their new car without affecting either the manufacturer's warranty or dealer's extended warranty? Who provides this information? How is this communicated?
22. What issues have consumers experienced in having a dealer's extended warranty claim accepted where the car has been previously repaired with used parts? How does this interact with the terms and conditions of a consumer's insurance policy?
23. Are there examples of consumers being required to sign a confidentiality agreement in order to resolve a complaint about a new car? If so, does this arise when dealing with a dealer or a manufacturer? Please provide details.

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

The ACCC is aware that various representations are made to consumers about fuel consumption, carbon dioxide (CO₂) emissions, noxious emissions and car performance when purchasing a new car.

Under the ACL, businesses must not make statements that are incorrect or likely to create a false impression. Further, the ACL prohibits businesses from engaging in conduct that misleads or deceives or is likely to mislead or deceive consumers or other businesses.³³

3.1. Fuel consumption and emissions

There has recently been considerable Australian and international media coverage of consumer experiences of higher than expected fuel consumption and emissions, as well as advocacy work by consumer groups responding to consumer concerns.³⁴ The ACCC has also received a number of complaints from consumers who have experienced significantly higher fuel consumption than their car's labelled or advertised values.

What is 'fuel consumption'?

For the purpose of this market study, fuel consumption refers to litres of fuel consumed per 100km (L/100km).³⁵

What are CO₂ emissions and noxious emissions?

Cars emit **carbon dioxide**, which is measured in grams per kilometre (g/km). A car's CO₂ emissions are very closely linked with its fuel consumption, however some fuels, such as diesel, have a higher energy content and may go farther in terms of kilometres per litre of fuel, but also produce more CO₂ per litre of fuel consumed.

Noxious emissions from cars include carbon monoxide, hydrocarbons, oxides of nitrogen and particulate matter. These emissions are generally the result of imperfect engine combustion, and have an impact on air quality.³⁶

3.1.1. Regulatory structure

The Australian Design Rules (ADRs) set standards that each vehicle must comply with prior to supply to the market in Australia. The ADRs are made under the *Motor Vehicle Standards Act 1989* (MVSA) and cover a range of vehicle attributes, including emissions.³⁷

Certain ADRs are considered a mandatory safety standard under the MVSA for the purposes of the ACL. The supply of cars not complying with such ADRs would constitute a breach of the ACL.

³³ *Competition and Consumer Act 2010*, Part 2-1, Sections 18 and 29.

³⁴ See: CarsGuide, *We need to change fuel consumption testing*, 26 December 2015, <http://www.carsguide.com.au/car-news/we-need-to-change-fuel-efficiency-testing-comment-37484>, accessed on 29 August 2016; Choice, *End the fuel rip-off campaign*, <http://e-activist.com/ea-action/action?ea.client.id=1965&ea.campaign.id=43460>, accessed on 29 August 2016; Which?, *VW emissions claims – it's only half the story*, 23 September 2015, <http://www.which.co.uk/news/2015/09/vw-diesel-emissions---its-only-half-the-story-416730/>, accessed on 29 August 2016.

³⁵ This is the same terminology used by DIRD. See DIRD, *Fuel Consumption Label*, https://infrastructure.gov.au/roads/environment/fuel_consumption_label.aspx, accessed on 29 August 2016.

³⁶ DIRD, *Vehicle Emissions Discussion Paper*, February 2016, p. 3, <https://infrastructure.gov.au/roads/environment/forum/>, accessed on 29 August 2016.

³⁷ DIRD, *Australian Design Rules and the Environment*, <https://infrastructure.gov.au/roads/environment/index.aspx>, accessed on 29 August 2016.

The Department of Infrastructure and Regional Development (**DIRD**) is responsible for the development and review of the ADRs.

See **Appendix C** for a list of other regulations relating to cars.

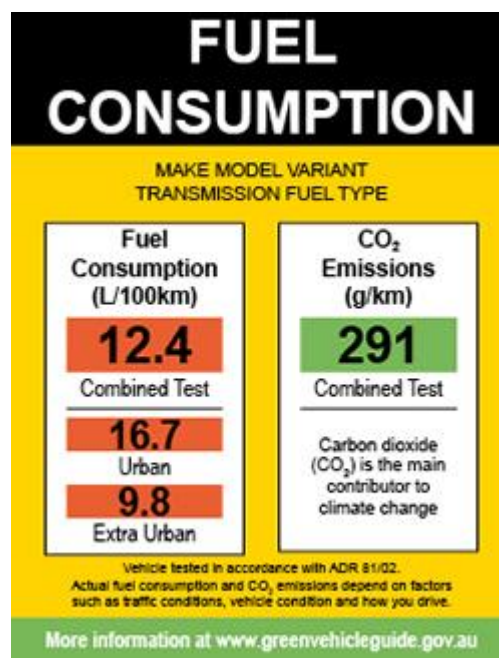
Fuel consumption and CO₂ emissions labelling

New cars sold in Australia are required to display a fuel consumption label on the front windscreen. This label is a standard required under ADR 81/02.

The label indicates a vehicle's fuel consumption (L/100km) as well as its CO₂ emissions (g/km). The results are based on a standard test procedure to allow consumers to compare the performance of different models under the same test conditions.³⁸

Fuel consumption and emissions testing

Since 2000, Australia has participated in an internationally harmonised framework for car fuel consumption testing under a standard created by the United Nations Economic Commission for Europe (UNECE).³⁹ The testing procedure is called the New European Driving Cycle (NEDC). The tests are carried out to determine the fuel consumption and emissions of vehicles to ensure compliance with the UNECE emission standards, which set maximum emission levels for CO₂ and a series of pollutants.⁴⁰



While a standardised approach to vehicle emissions testing ensures test results are repeatable and cars can be assessed on a comparable basis, a number of variables can affect actual car emissions and fuel consumption levels such as traffic conditions, car condition, driver behaviour (e.g. harsh acceleration or braking) or car usage (e.g. loading, entertainment systems and air conditioner use). As a result, the emissions levels in 'real world' conditions will likely differ from those reported in a standardised test.⁴¹

3.1.2. Impact of false or misleading representations on consumers

Cars are a significant medium- to long-term investment for many consumers, so it is important that consumers receive accurate information about fuel consumption and emissions. A 2015 report into 'real-world' fuel consumption and car emissions by the International Council on Clean Transport found that the disparity between test values and real world values has been increasing over time, and that the disparity is not uniform across car types, brands or models.⁴²

³⁸ Green Vehicle Guide, *Fuel consumption label*,

<http://www.greenvehicleguide.gov.au/pages/Information/FuelConsumptionLabel>, accessed on 29 August 2016.

³⁹ Department of Infrastructure and Transport (now DIRD), *Regulation Impact Statement for The Harmonisation of the Australian Design Rules*, p. 3, <http://ris.dpmc.gov.au/files/2012/03/03-Harmonisation-of-the-ADRs-RIS.pdf>, accessed on 29 August 2016.

⁴⁰ The UNECE is preparing to implement Worldwide Harmonised Light Vehicles Test Procedures (WLTP) to replace the NEDC on 1 September 2017. See European Commission- Daily News, *Car emissions: EU moves closer to more robust testing methods for CO₂ emissions and fuel consumption*, 15 June 2016, http://europa.eu/rapid/press-release_MEX-16-2223_en.htm, accessed on 29 August 2016.

⁴¹ In August 2016, the Australian Automobile Association announced that it will conduct a pilot program to measure on-road driving emissions in late 2016. See *Vehicle Emissions: AAA puts top sellers to real-world tests*

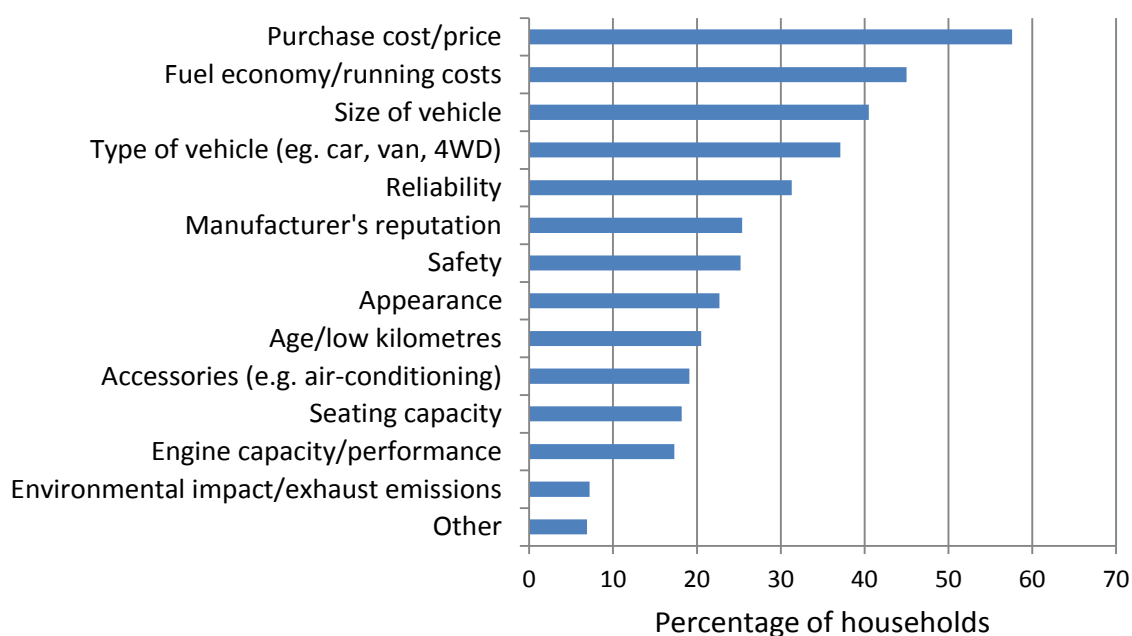
⁴² International Council on Clean Transport, *From laboratory to road: A 2015 update*, p. 8-17, <http://www.theicct.org/laboratory-road-2015-update>, accessed 29 August 2016.

This means that consumers might change their purchasing decision from one car or brand to another to their detriment, based on potentially misleading claims about emissions or fuel consumption test values. Consequently, misleading claims may distort competition and dampen incentives for manufacturers to make investments to achieve genuine improvements in fuel efficiency and emissions abatement.

Chart 1 below shows the factors considered by Australian households when purchasing a car. It shows that fuel economy was ranked as the second most important factor when purchasing a car after price, with more than 40 per cent of households factoring it into their purchasing decisions.

Emissions and the environmental impact of the vehicle did not rank highly among factors considered by households when purchasing a car (it was considered by less than 10 per cent of households). However, as some consumers may rely on this information when making purchasing decisions, consumer detriment due to false or misleading claims about CO₂ and noxious emissions may occur.

Chart 1: Factors considered when buying a motor vehicle, 2012



Source: Australian Bureau of Statistics, *Environmental Issues: Waste Management, Transport and Motor Vehicle Usage*, March 2012, Cat. no. 4602.0.55.002, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4602.0.55.002>, accessed on 15 August 2016.

Note: The data presented in this chart relates to all motor vehicle purchases and is not limited to new cars.

3.1.3. How fuel consumption and car emissions are communicated to consumers

Fuel consumption and CO₂ values are communicated to consumers in a number of ways, including on mandatory fuel consumption labels (pictured above), and by car manufacturers and dealers, particularly on websites and in other general promotional material.

Manufacturers and dealers do not generally promote a vehicle's low noxious emissions as a point of sale to the same degree as fuel consumption or CO₂ emissions. However, manufacturers do make claims about the 'environmentally friendly' nature of their cars (see the Volkswagen case study below for an example of this). To prevent these claims being

misleading, businesses making these claims must be able to substantiate them.

ACCC case study: Review of manufacturer and importer fuel consumption communications

The ACCC has reviewed communications relating to fuel consumption by manufacturers, importers and dealers. This follows a number of complaints it received from consumers about vehicles failing to achieve the fuel consumption levels represented by the vehicle's manufacturer or importer.

The ACCC is concerned that if car manufacturers or dealers use unqualified NEDC figures more broadly in advertising and marketing, they may mislead consumers into believing that the vehicle can achieve fuel consumption levels that it will not achieve.

In August 2016, the ACCC wrote to a range of car manufacturers and importers explaining its concerns and informing them that they should not represent that NEDC figures will be achieved in real world driving conditions. The ACCC informed car manufacturers and importers that in order to avoid misleading consumers they should qualify any use of the fuel consumption figures derived from the NEDC testing by explaining how NEDC testing operates, that these figures are unlikely to be achieved in real world driving conditions and should be used for comparative purposes only.

The ACCC will continue to monitor representations about fuel consumption made by car manufacturers and dealers, and may take enforcement action if it identifies businesses engaging in conduct that contravenes the ACL.

ACCC case study: Claims against Volkswagen

Since September 2015 there has been extensive media and consumer interest worldwide in allegations that Volkswagen equipped its vehicles with software that was used to cheat on noxious emissions tests.

Australian action against Volkswagen

On 1 September 2016 the ACCC instituted proceedings in the Federal Court of Australia against German company Volkswagen Aktiengesellschaft (VWAG) and its Australian subsidiary, Volkswagen Group Australia Pty Ltd (VGA) (together, Volkswagen), alleging they engaged in misleading or deceptive conduct, made false or misleading representations and engaged in conduct liable to mislead the public in relation to diesel vehicle emission claims.

The ACCC alleges that between 2011 and 2015:

- VWAG engaged in misleading conduct by installing and not disclosing the existence and operation of 'defeat' software, which controlled the operation of the vehicles' exhaust gas recirculation system. The software caused the cars to produce lower nitrogen oxide (NOx) emissions when subject to test conditions in a laboratory, but switched to a different mode under normal on-road driving conditions resulting in significantly higher NOx emissions being produced by the vehicles.
- Both VGA and VWAG engaged in misleading conduct by representing that the cars complied with Australian and European standards and all Australian regulatory requirements when, because of the defeat software, that was not the case.
- Using information provided by VWAG, VGA marketed the cars in Australia as being environmentally friendly, clean burning, low emission and compliant with stringent European standards when this was not the case under normal driving conditions.

The ACCC is seeking declarations, pecuniary penalties, corrective advertising, findings of fact and costs.⁴³

In addition to the ACCC's action, private litigants have commenced class actions against Volkswagen in Australia. Two proceedings were initiated in late 2015 and include claims against the Australian and overseas parent companies related to Volkswagen, Audi and SKODA.

⁴³ ACCC media release, [ACCC takes action against Volkswagen over diesel emission claims](#), September 2016.

Questions on fuel consumption, CO₂ emissions and noxious emissions

24. What information is communicated to consumers about the fuel consumption, CO₂ emissions and noxious emissions of cars they purchase (i.e. from manufacturers, dealers, government guides, labels etc.)? How is this information provided to consumers (other than through mandatory labelling)?
25. Are consumers aware that fuel consumption and CO₂ emissions values are designed to be comparative? Is this made clear to consumers at the point of sale or elsewhere? Are there any ways in which consumer understanding could be improved?
26. What processes (e.g. training or education) are in place to ensure that dealers or sales staff are knowledgeable about, and don't mislead consumers about, the fuel consumption and emissions characteristics of a new car?

3.2. Car performance

Car performance refers generally to the speed and power of a car. However, car performance may also refer to the way a car drives, in terms of its handling and precision. It can refer even more broadly to a car's durability, reliability and quality.

Car performance features allow retailers to differentiate their products from the rest of the market, and may account for price differences across new car brands and models. As consumer purchasing decisions may be influenced by representations relating to a car's performance, it is important that any representations made are accurate.

Car performance, in terms of speed and power, has not been noted as a key factor for consumers when choosing a car. As shown in chart 1 above, out of fourteen factors, engine capacity/performance was the third least important factor when buying a motor vehicle, being considered by only 17 per cent of consumers. However, chart 1 also shows that reliability and safety were the fifth and seventh most important factors respectively, being considered by more than 25 per cent of consumers.

Questions on car performance

27. Other than those described above, are there any additional factors or measures that could be included in the term 'car performance'?
28. To what extent do manufacturers and dealers seek to differentiate their products and services, and on what basis? To what extent do perceptions of quality and reliability account for price differences?
29. To what extent do claims relating to car performance affect consumer purchasing decisions? Please provide examples.
30. Are you aware of any examples of claims by dealers or manufacturers (through websites, TV, print etc.) that are made to consumers about car performance that are potentially false, misleading or deceptive?
31. Do you have suggestions of how claims made to consumers about car performance could be improved?

4. Post-sale service arrangements

New cars require regular servicing to maintain the efficient functioning of their electronic and mechanical parts.⁴⁴ Servicing may include changing engine and air filters, lubricating car components and changing engine oil.⁴⁵

New cars may also require repairs. A repair is required when an electronic, mechanical or computerised part no longer performs the function it was designed to do.⁴⁶ Repairs may involve replacing parts with a fixed life span e.g. brake pads, or repairing or replacing more durable parts that have failed or become damaged.⁴⁷

Servicing and repair is undertaken in the post-sale service market. The ACCC is aware of a range of practices in the post-sale service markets that may raise competition issues. There are also other issues that may adversely affect consumers.

This section examines:

- ACCC activity in the post-sales service markets
- access to parts and tools
- logbooks and dealer stamps
- online logbooks.

4.1. ACCC activity in the post-sales service markets

The ACCC has previously undertaken activities in the post-sales service markets, with a focus on considering competition issues. The ACCC is also interested in examining whether there are other potential anti-competitive practices in this market which may lead to adverse outcomes for consumers.

The following two case studies provide examples of the competition issues in this sector.

ACCC case study: Competition in supply chain components

In November 2015, the Federal Court found that a Japanese company, Yazaki Corporation (Yazaki), engaged in collusive conduct with its competitor in the supply of wire harnesses to Toyota Motor Corporation (Toyota) in Australia, in proceedings brought by the ACCC. The Court found that in 2003 and 2008 Yazaki made and gave effect to arrangements with a competitor, which included the coordination of quotes to Toyota for the supply of wire harnesses used in the manufacture of the Toyota Camry, in breach of the exclusionary arrangement provisions of the CCA and the Competition Code of Victoria (the Code). Wire harnesses are electrical systems that facilitate the distribution of power and the sending of electrical signals to various components of a motor vehicle. Yazaki's conduct affected the supply of wire harnesses used in the manufacture of the 2006 and 2011 Toyota Camry models in Australia.

Of particular interest was the fact that, although much of the conduct occurred in Japan, the Court found that Yazaki's conduct was subject to the CCA and the Code because Yazaki was carrying on business in Australia. The Court also found that Yazaki's Australia subsidiary, Australian Arrow Pty Ltd (AAPL), engaged in market sharing and price fixing conduct in 2003 in relation to wire harnesses

⁴⁴ CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012, p. 6.

⁴⁵ Jemma Castle, Car warranties and dealer servicing, Choice, 18 April 2016, <https://www.choice.com.au/transport/cars/maintenance/articles/car-warranties-and-dealer-servicing> accessed on 25 August 2016.

⁴⁶ CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012, p. 6.

⁴⁷ CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012, p. 6.

used in the manufacture of the 2002 model Toyota Camry.

The matter was of interest to the ACCC as the collusion by Yazaki in Japan affected the price of wire harnesses built into Australian made Toyota Camrys. This is an example where collusive arrangements were allegedly made outside Australia and the ACCC pursued an outcome to seek to enforce Australian cartel laws to protect Australian consumers and industry.

ACCC case study: Competition in components for aftermarket parts

In October 2013, Koyo Australia Pty Ltd (Koyo Australia) was ordered by consent to pay penalties of \$2 million following action by the ACCC. The Court found that in 2008 and 2009, Koyo Australia made and gave effect to two separate cartel arrangements with two of its competitors to increase the price of ball and roller bearings to their aftermarket customers.

Bearings are an essential component in products such as motor vehicles, mining conveyors, household electrical items and farm machinery. The Court has also made orders restraining Koyo Australia from engaging in similar cartel conduct for a period of three years and requiring it to implement a competition and consumer law compliance training program.

4.2. Access to parts and tools

The ACCC is aware of concerns that some market participants have experienced restrictions on their ability to acquire or supply genuine parts or proprietary tools for completing repairs and servicing. The ACCC notes, however, that car manufacturers and consumers may have a number of safety and security concerns and an interest in tracing genuine car parts in the broader context of reducing car thefts.⁴⁸ The ACCC is interested in exploring how these interests may be balanced.

There are four types of parts offered by suppliers:

- *genuine branded parts* (genuine parts): the car manufacturer's branded parts equivalent to those originally fitted to a new car
- *parallel imports*: genuine parts first supplied overseas then imported into Australia by parties outside the manufacturer's authorised distribution network
- *original equipment manufacturer parts (OEM)*: parts manufactured using the original car manufacturer's designs, but made available for sale under a different brand
- *aftermarket parts* (aftermarket): generic parts manufactured by third party manufacturers.

The ACCC has received complaints that car manufacturers may be restricting access by other supply chain participants to genuine parts, with genuine parts only supplied to dealers and authorised resellers. The ACCC has also received complaints indicating the practices of some manufacturers may restrict the ability of other supply chain participants to access the tools required to complete repairs or servicing.

Restrictions on the ability of other supply chain participants to access these parts and tools may affect competition in the market for repairs and servicing, leading to increased costs and reduced choice for consumers.

The ACCC also notes reports of an overall trend towards fewer supply chain participants operating in post-sales markets, with greater market segmentation towards specialists.⁴⁹ The ACCC monitors and assesses mergers relating to suppliers of car parts and accessories. A reduction in the number of supply chain participants may disproportionately affect regional and rural consumers, and users of cars with specialised and computerised components. This means such consumers may need to travel farther for service and repairs, reducing the

⁴⁸ National Motor Vehicle Theft Reduction Council, '[Annual Report — 2015](#)', 31 October 2015, p. 12.

⁴⁹ Auto Skills Australia, '[Automotive Environmental Scan 2015](#)', April 2015, p. 12.

strength of, and scope for, competition and inconveniencing consumers.

ACCC case study: Competition in parts markets

In 2015, the ACCC conducted a public review of a proposed acquisition by GPC Asia Pacific Pty Ltd (GPC) of the Covs Parts business (Covs) from Automotive Holdings Group Ltd (AHG). GPC and Covs are the two primary suppliers of automotive parts and accessories in regional Western Australia.

Following investigations, the ACCC opposed the proposed acquisition, finding that it was likely to substantially lessen competition in the supply of automotive parts to trade customers in specific regional markets in Western Australia as there would be no other supplier of automotive parts with the same range or prices as GPC and Covs and any timely new entry was unlikely.

GPC offered to exclude the Covs stores in Albany, Esperance, Karratha and Port Hedland from the proposed acquisition, with AHG to retain and continue to operate those stores. AHG also offered the ACCC an undertaking to continue to operate these stores as a going concern, in substantially the same manner as they were operated before the proposed acquisition.

The ACCC considered that the excluded stores would continue to constrain GPC in each of the towns in which they were located and that the revised transaction would not be likely to result in a substantial lessening of competition in any relevant market. The ACCC accepted the undertaking.

Questions on access to parts and tools:

32. What are the differences between genuine, OEM, parallel import and aftermarket parts? When and why are these parts used? When and why are second-hand parts used in repairing or servicing new cars?
33. What information is made available about different types of car parts to the market? Who makes this information available and when?
34. What information are consumers given about using different types of car parts and its effect on their manufacturer's or dealer's extended warranties? How is this communicated?
35. What issues, if any, have consumers and independent repairers had in accessing appropriate parts or tools to repair or service a new car?
36. What types of parts and tools do manufacturers sell to consumers and independent repairers? Do these differ from what is made available to dealers? What explains the difference?
37. What types of parts and tools do dealers sell to consumers and independent repairers? How does this differ from what manufacturers sell? Are dealers put at a competitive disadvantage for selling these parts and tools?
38. Where a common platform is used by manufacturers (e.g. Volvo S40, Ford Focus and Mazda 3 are built on a common platform, with different features/trim), does this make it easier to access parts and tools?

4.3. Logbooks and dealer stamps

When a new car is purchased, manufacturers generally provide a logbook which includes information about the car, such as manufacturer specifications regarding servicing, and provides a record of the service history of the car. Keeping a record of the completed service schedule helps consumers preserve their car warranty. A complete record of servicing also assists in maintaining the resale value of a car.

The service page of a logbook may include a section or a box which indicates that it should be stamped by an 'authorised dealer' upon the completion of a service.⁵⁰ This may give the

⁵⁰ Deputy Chair Schaper, 'To service or not to service: vehicles under warranty' in *Australian Automotive Market*, ed. Allan Edwards (Publisher Cameron McLachlan for the Australian Automotive Aftermarket Association, February 2016), p. 6.

owner an impression that it is a condition of the warranty that an authorised dealer carry out the scheduled service on the car.

The ACCC has previously advised that a manufacturer's warranty is not necessarily voided if a logbook is not stamped by an authorised dealer. Deputy Chair Schaper in February 2016 noted that:

Even if the service page boxes in the logbook are labelled in this way, an independent repairer may sign or stamp the relevant page of the customer's service logbook (once they have completed the service) without it affecting the manufacturer's warranty provided any other requirements are met (i.e. the service is carried about by qualified staff etc.)⁵¹

4.4. Online logbooks

The ACCC is aware that paper logbooks are being replaced with online logbooks by some manufacturers. The ACCC has received complaints that, in relation to some makes of new cars, only dealers or authorised repairers are able to access online logbooks while independent repairers cannot. Such practices may have a detrimental effect on consumers by making record keeping more costly and increasing the risks of incomplete record keeping.

Incomplete service records, or records kept across different media, may also have a negative impact on the resale value of a car. Further, this practice may raise competition concerns by dis-incentivising new car owners from servicing their cars through independent repairers and raising barriers to entry and expansion. Such conduct may limit the freedom of consumers in choosing who services or repairs their car and accordingly, may raise prices for consumers.

The ACCC notes, however, that a number of new car manufacturers provide consumers with mechanisms to access their online logbooks for free online.

Questions on logbooks, dealer stamps and online logbooks:

39. What is the purpose of a logbook? How is this communicated to consumers? What other uses are there for a logbook?
40. What are the industry trends for providing online logbooks, rather than a paper copy? What other record keeping methods are available? What are the benefits or challenges of using such methods?
41. What level of access do consumers or others have to online logbooks? Who can update the online logbook? What barriers, if any, are there to do so?

⁵¹ Deputy Chair Schaper, 'To service or not to service: vehicles under warranty' in *Australian Automotive Market*, ed. Allan Edwards (Publisher Cameron McLachlan for the Australian Automotive Aftermarket Association, February 2016), p. 6.

5. Access to repair and service information and data for new cars

As cars become more technologically sophisticated, with computers and software monitoring and controlling car components that were previously purely mechanical, the control of repair and service information and data may be a barrier to entry for small businesses in the market for repairs and servicing. Increased barriers to entry reduce the ability of consumers to choose who services and repairs their new cars.

Further, the consequences for consumers of new cars that generate significant amounts of diagnostic data and collect data about the driver, and issues associated with ownership, control and access, are still being understood. These issues arise in post-sales servicing and have attracted attention in Australia and abroad.⁵²

The ACCC has received complaints about access to repair and service information including in relation to the sharing of reset codes to switch off warning and error lights, access to repair and service manuals, access to electronic log books, coding for electronic keys and software problems. The ACCC notes that there is a consumer and industry interest, however, in protecting car security and safety systems in the broader context of reducing car thefts.⁵³ The ACCC is interested in exploring how these interests may be balanced.

The ACCC is also exploring whether there are continuing or alternative competition and consumer issues more broadly for supply chain participants and consumers in accessing repair and service information and data.

This section reviews:

- the availability of repair and service information and data
- current Australian and international regulation.

What is repair and service information and data?

For the purposes of this issues paper, the ACCC adopts the Productivity Commission's distinction between data and information:

*... Data comprises raw, unorganised material such as characters, text, words, numbers, pictures, sound or video. However, without being put into context, it has little if any meaning. Information is derived from data after it has been processed and presented in context — in this way, data is given meaning.*⁵⁴

Repair and service information and data includes, but is not limited to, the following:⁵⁵

Information and data from manufacturers of new cars

- dimensions and tolerances for mechanical parts
- initialisation and reset codes for computerised systems
- specifications for oils and lubricants

⁵² CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012; European Commission, [Study on the operation of the system of access to vehicle repair and maintenance information](#), Directorate-General for Enterprise and Industry, October 2014.

⁵³ National Motor Vehicle Theft Reduction Council, 'Annual Report — 2015', 31 October 2015, p. 12.

⁵⁴ Productivity Commission, *Data availability and use: Issues paper*, April 2016, p. 2.

⁵⁵ CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012, p. iv; FCAI, AAA, AAAA, AADA, AMIF, [Agreement on Access to Service and Repair Information, 2014.](#); European Commission, [Study on the operation of the system of access to vehicle repair and maintenance information](#), Directorate-General for Enterprise and Industry, October 2014.

- diagrams of wiring looms and voltages for electronic components
- repair manuals, body repair manuals and wiring diagrams
- supplements or updates to any of the above

Information and data from independent publishers of repair and service information

- information for diagnosis, body repair, servicing, inspection, periodic monitoring, re-programming and re-initialisation of the car or its components
- repair manuals, body repair manuals and wiring diagrams

Information and data from the systems embedded in new cars

- vehicle on-board diagnostic information, with information and data reported by the car.

Repair and service information and data may include the diagnostic and repair tools, and associated training and knowledge, required to access relevant information and data and to remedy problems.

5.1. Availability of repair and service information and data

New cars require regular servicing to maintain the efficient functioning of their electronic and mechanical parts. Increasingly, servicing may include installing software updates or firmware for computer systems that interface with drivers, assist in navigation or monitor and control the engine, fuel economy and fuel emissions.⁵⁶

New cars also embed a number of computer systems to control wireless sensors, cruise control, external cameras, navigation, safety,⁵⁷ tracking and infotainment systems.⁵⁸ New cars may require repairs to these increasingly computerised systems. A recent report by Choice has noted that, in an online survey of consumers of new cars, in-car technology is the feature most likely to cause problems for respondents which would require repair.⁵⁹

Repairers are increasingly reliant on on-board diagnostic information to repair and service new cars.⁶⁰ On-board diagnostic systems, with information and data reported by the car, assist repairers with identifying faults and problems in cars. The diagnostic scan tools used to identify faults and problems, however, may not pinpoint problems, rather providing an indication of where to look.⁶¹

Controls on technical updates and other information from a manufacturer, including the meaning of fault codes, may affect the capacity of an independent repairer to readily identify or remedy a problem. This may result in consumer detriment, for instance, if an independent repairer is required to tow a client's car to a dealer to obtain access to the relevant information or data this increases costs for the consumer.

Availability of repair and service information and impacts on consumers

A 2015 Senate report into the future of Australia's automotive industry noted industry concern that not all car manufacturers are offering access to repair and service

⁵⁶ Jemma Castle, Car warranties and dealer servicing, Choice, 18 April 2016, <https://www.choice.com.au/transport/cars/maintenance/articles/car-warranties-and-dealer-servicing> accessed on 25 August 2016.

⁵⁷ Deloitte, [2014 Global Automotive Consumer Study - Australia Insights](#), 2014, pp. 23-24.

⁵⁸ Auto Skills Australia, [Automotive Environmental Scan 2015](#), April 2015, pp. 10-11.

⁵⁹ Choice, [Turning lemons into lemonade: Consumer experiences in the new car market](#), 15 March 2016, p. 8.

⁶⁰ Australian Senate, [Future of Australia's Automotive Industry: Driving Jobs and Investment](#), Economics References Committee, December 2015, pp. 26-27.

⁶¹ Auto Skills Australia, [Automotive Environmental Scan 2015](#), April 2015, pp. 10-11.

information.⁶² Consumers, particularly in regional or rural areas of Australia, may face increased costs and reduced choice if an independent repairer is unable to access relevant repair and service information and data. Consumers in such a circumstance may be required to drive long distances, or have their car towed, for routine servicing or repairs.

The ACCC notes that the Federal Chamber of Automotive Industries (**FCAI**) has made available a website with links to car manufacturers' websites and email addresses, where supply chain participants can gain access to repair and service information and data through subscriptions to the relevant car manufacturer's service portal.⁶³ The ACCC is also aware of industry concerns that access to the portals, the availability of information, and the format information is presented in may not be consistent or standardised.

Consumer trends show a shift to preferring different types of propulsion (e.g. electric, diesel, hybrid, hydrogen cell) in their cars.⁶⁴ The capacity of independent repairers to obtain repair and service information and data on these cars and their components may be more controlled than for dealers or repairers affiliated with manufacturers. The way access to such information is controlled may affect not only a consumer's capacity to choose who services or repairs their new car, but may influence their car buying behaviour and may reduce their choices when buying a new car.

Consumers of new cars, with the requisite competencies, may prefer to conduct relatively minor or basic servicing or repairs themselves, for which they will require access to repair and service information and data. A consumer may also be interested in accessing repair and service information and data for other reasons.

Supply chain participants, and consumers, may obtain repair and service information and data from alternative sources. Such sources include:

- information from independent publishers of repair and service information and data, often for a fee, such as Autodata or Haynes
- informal individual arrangements between supply chain participants
- online forums.⁶⁵

Obtaining repair and service information and data from these sources may require entering into many different agreements and paying multiple fixed fees. They may also not be as timely, comprehensive or reliable as obtaining it formally from the manufacturer or a dealer. For instance, these mechanisms may not include vital software updates for the car's computerised systems, which may affect the car's quality or safety.

Questions on access to repair and service information and data

42. What repair and service information and data exists in relation to new cars? Who controls this information and data?
43. What repair and service information and data is shared by manufacturers? How is it shared? With whom is it shared? What conditions are on sharing this information and data?
44. What is the effect of not having some level of access to repair and service information and data? On what basis might repair and service information not be shared? Why?

⁶² Australian Senate, *Future of Australia's Automotive Industry: Driving Jobs and Investment*, Economics References Committee, December 2015, p. 28.

⁶³ FCAI, 'FCAI member service and repair information', <http://www.fcai.com.au/service-repair/member-service-repair> accessed 26 August 2016.

⁶⁴ Deloitte, *2014 Global Automotive Consumer Study - Australia Insights*, 2014, p. 19.

⁶⁵ Patric Finkbeiner, 'Knowledge sharing in automotive repair: the major predictors', *International Journal of Sales, Retailing and Marketing*, vol. 4, no. 2, 2015.

45. Is repair and service information and data presented in a standardised way across manufacturers? How consistent is repair and service information and data in terms of availability and how it is presented across brands?
46. How is repair and service information and data accessed? What controls are there on accessing it?
47. What other methods exist for accessing repair and service information and data? What are the benefits or challenges of using such methods?
48. Where a common platform is used by manufacturers (e.g. Volvo S40, Ford Focus and Mazda 3 are built on a common platform, with different features/trim), does this make it easier to access repair and service information and data?
49. What issues have consumers experienced with accessing repair and service information? How do these issues impact them?

5.2. Current Australian and international regulations

In 2012, the Commonwealth Consumer Affairs Advisory Council (**CCAAC**) reviewed the sharing of repair information in the automotive industry. In this review, CCAAC found that:

*...the need to access specialised repair information has the potential to become a barrier to entry in the market for repairs. While it is not currently preventing competition in this market, policy makers should closely monitor the ease with which vehicle repairers can access such information and be prepared to act if necessary.*⁶⁶

Following the CCAAC review, in December 2014, the FCAI, the Australian Automobile Association (**AAA**), the Australian Automotive Aftermarket Association (**AAAA**), the Australian Automotive Dealer Association (**AADA**) and the Australian Motor Industry Association (**AMIF**) signed the *Agreement on Access to Service and Repair Information for Motor Vehicles*.⁶⁷ This 'heads of agreement' aims to provide a safeguard ensuring that service and repair information is available in a timely manner to the consumer's repairer of choice at a fair and reasonable cost. The agreement further outlined the obligations of the signatories to develop separate enabling documents — including codes of practice — with their members to enact the principles of the agreement.

Accordingly, in February 2015 the FCAI established its own voluntary code of practice: *Voluntary Code of Practice – Access to Service and Repair Information for Motor Vehicles*.⁶⁸ The objectives of this code include the provision of an information pathway and a means of access to repair information that may be used by parties outside the authorised dealer network. Other signatories to the heads of agreement have also established voluntary codes of practice.⁶⁹

A Senate report on the Future of Australia's Automotive Industry released in 2015 noted both the development of the *Agreement of Access to Service and Repair Information for Motor Vehicles* and the voluntary codes of practice.⁷⁰ The Senate report noted industry concerns

⁶⁶ CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012, p. iii.

⁶⁷ FCAI, AAA, AAAA, AADA, AMIF, [Agreement on Access to Service and Repair Information, 2014](#).

⁶⁸ FCAI, [The Voluntary Code of Practice for Access to Service and Repair Information for Motor Vehicles, February 2015](#).

⁶⁹ AAA, [AAA Code Of Practice For Access To Service And Repair Information For Motor Vehicles](#), May 2015; AADA, [Access to Service and Repair Information for Motor Vehicles — Voluntary Code of Practice](#); AMIF/MTAA, [Access to Service and Repair Information — Code of Conduct](#), April 2015; AAAA, [Vehicle Data Sharing Code of Practice](#), April 2015.

⁷⁰ Australian Senate, [Future of Australia's Automotive Industry: Driving Jobs and Investment](#), Economics References Committee, December 2015, p. 28.

about the effectiveness of these voluntary instruments and concerns that continuous monitoring of access to repair and service information is needed.⁷¹

Concerns about the effectiveness of the heads of agreement and the voluntary codes have also been raised with the ACCC. Industry participants have previously approached the ACCC to determine whether the issue of access to repair and service information and data raises concerns under the competition provisions of the CCA. The ACCC is continuing to assess these issues.

Access to repair and service information and data has also attracted attention abroad. In the United States (US), Massachusetts has introduced a 'right to repair' law, which has been reflected in voluntary agreements between independent repairers and manufacturers in all other US states.⁷² Further, since 2000, the National Automotive Service Task Force (NASTF) administers a voluntary agreement between the car manufacturing industry, the tool and equipment industry and independent repairers to provide access to information, training and tools needed by independent repairers to diagnose and repair cars.⁷³

Since 2009, Canada has had the Canadian Automotive Service Information Standard, a voluntary agreement modelled on the NASTF service information standards agreement in the US to provide improved information access for independent repairers.⁷⁴

In 2010, the European Union (EU) introduced regulations to facilitate independent repairers' access to car repair and maintenance information, giving independent repairers the ability to access to technical information.⁷⁵

Questions on current Australian and international regulations

50. What impact have the Heads of Agreement and/or voluntary codes of practice had on access to repair and service information and data? Provide examples.
51. What effect have the Heads of Agreement and/or voluntary codes of practice had on competition in the repair and service sector? How has this affected consumers?
52. How effective are the Canadian, US and EU approaches? Are there any concerns with a mandatory system, such as in the EU and Massachusetts, being introduced in Australia? What are the risks and benefits of similar regulation (voluntary or mandatory) in the Australian context?
53. What other ways could repair and service information and data be shared or provided? Could or should the information and data be standardised?

⁷¹ Australian Senate, *Future of Australia's Automotive Industry: Driving Jobs and Investment*, Economics References Committee, December 2015, p. 29.

⁷² Gabe Nelson, 'Automakers agree to "right to repair" deal', 25 January 2014, <http://www.autonews.com/article/20140125/RETAIL05/301279936/automakers-agree-to-right-to-repair-deal> accessed 24 August 2016.

⁷³ National Automobile Service Taskforce, 'About NASTF', <http://www.nastf.org/i4a/pages/index.cfm?pageid=3282>, accessed 1 September 2016.

⁷⁴ National Automotive Trades Association, Association of International Automobile Manufacturers of Canada and Canadian Vehicle Manufacturers' Association, *An Agreement Respecting the Canadian Automotive Service Information Standard*, September 2009, p. 2.

⁷⁵ European Commission, *Study on the operation of the system of access to vehicle repair and maintenance information*, Directorate-General for Enterprise and Industry, October 2014.

6. Other issues

While the ACCC understands that the car industry is complex and evolving, the scope of this paper is limited to issues that are present in the new car retailing industry today.

In this section, the ACCC is interested in feedback from stakeholders regarding other issues stakeholders have identified in the new car retailing industry.

6.1. New car dates

When a new car is sold, a reference may be made to the car's build date or compliance date. Manufacturers and dealers may also refer to the new car's model year.

- The **build date or year** refers to when the car was manufactured, and is not necessarily the year the car is sold.
- The **model year** is a marketing term, indicating the model cycle or edition of the car.
- The **compliance date** is the date the car is fitted with a compliance plate. The compliance plate indicates the car meets the Australian Design Rules for safety and emissions requirements.⁷⁶

The ACCC is interested in exploring consumers' understanding of the different car dates.

Questions on new car dates

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

6.2. Other issues

The ACCC is interested in receiving submissions relating to other issues in the new car retailing industry that may affect competition and consumers.

As noted earlier, the ACCC will not consider: direct or parallel imports of new cars by individuals; car financing and insurance products; product safety⁷⁷; capped price servicing matters or demonstrator vehicles in this market study.

This market study will also exclude vehicle types such as motorcycles, trucks, buses, plant and equipment, unpowered vehicles, trailers, farm equipment (e.g. tractors), limousines, demonstrator cars, and parallel imported cars (e.g. cars imported by consumers into Australia) as well as new cars purchased for the purpose of re-supply, and new cars purchased for using them or transforming them in trade or commerce.

Notwithstanding these exclusions above, the ACCC welcomes submissions on emerging competition and consumer issues which may be present in the new car retailing industry.

Questions on other issues

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

⁷⁶ Department of Infrastructure and Regional Development, 'Vehicle Certification in Australia', 12 October 2015, <https://infrastructure.gov.au/roads/motor/standards/certification/index.aspx>.

⁷⁷ The ACCC recently submitted to the Productivity Commission that 'Given this elaborate and entirely appropriate regulatory framework [for motor vehicles], we do not believe we have a role to play in regulating motor vehicle safety'. ACCC, [Productivity Commission Study into Consumer Law Enforcement and Administration: Australian Competition and Consumer Commission submission](#), August 2016.

Appendix A – Government reviews relating to cars

There are a number of recent and ongoing Australian government reviews that relate to cars. These are listed below for reference.

- Consumer Affairs Australia and New Zealand (**CAANZ**) is currently undertaking a review of the ACL. The review is assessing the effectiveness of the provisions of the ACL and the flexibility of the ACL to respond to new and emerging issues. CAANZ released an [Interim Report](#) in October 2016, which includes an examination of consumer guarantees, manufacturers' warranties against defects and extended warranties. The [Interim Report](#) also addresses 'lemon laws' and industry-specific regulation for motor vehicles. A final report is expected to be released in March 2017.
- The Department of Infrastructure and Regional Development (**DIRD**) recently reviewed the *Motor Vehicle Standards Act 1989*, culminating in a [number of regulatory reforms](#), announced by the Government on 10 February 2016. DIRD is also reviewing possible new measures to address vehicle emissions (CO₂ and noxious emissions) for the Ministerial Forum on Vehicle Emissions. The Ministerial Forum released a [Vehicle Emissions Discussion Paper](#) for public comment in February 2016 to explore a range of possible options to address vehicle emissions. Following a subsequent consultation process on possible new measures in late 2016, the Ministerial Forum is expected to report to Government in the first half of 2017 on a draft implementation plan for these new measures.
- The Productivity Commission (**PC**) is undertaking an inquiry into data availability and the use of private and public sector data, and released an [Issues Paper](#) in April 2016. The terms of reference of the PC's inquiry does not specifically address access to vehicle data, but the results of the inquiry may inform this market study. A draft report is expected to be released in November 2016. In March 2014 the PC also released a [report](#) on public support for Australia's automotive manufacturing industry.
- The National Transport Commission (**NTC**) is undertaking a review of the regulatory options for automated vehicles, and released a [Discussion Paper](#) in May 2016. The NTC also released an [Issues Paper](#) on regulatory barriers to automated vehicles in February 2016. The NTC is due to submit policy recommendations related to these reviews to the Transport and Infrastructure Council in November 2016.
- In February 2016, the Australian Securities and Investments Commission (**ASIC**) released a [report](#) about the experience of consumers who bought add on insurance products through car yards and a [report](#) into the sale of life insurance through car dealers. ASIC found that consumers can pay up to 18 times more for life insurance sold through a car dealer compared to the cost of simple life insurance products sold directly to the consumer by these insurers. ASIC also released an [app](#) in August 2016 aimed at educating people about the full costs of buying and running a car. In September 2016 ASIC released a further [report](#) on the sale of add-on insurance through car dealers, reviewing data on five common general insurance products. This report found that these products are very poor value; they are sold in circumstances where they provide very little to no benefit to consumers; and that the sales environment where consumers are required to make multiple complex decisions on the basis of limited information (such as the dollar cost of the premium) and where insurers do not properly manage the risk of unfair sales attributable to very high commissions and conflicts of interest.
- On 25 November 2014, the Australian Senate referred an inquiry into the future of Australia's automotive industry to the Senate Economics References Committee. The inquiry was established to develop a policy framework and identify areas where the

government could act to assist all sectors of the industry. A [final report](#) was published in December 2015.

- The ACCC has previously looked at issues associated with capped price servicing.⁷⁸ The ACCC reviewed representations, including in brochures and advertisements, made by some car manufacturers that scheduled service prices were capped at a maximum price. However, their terms and conditions allowed for these prices to be changed at any time, and in some instances had changed their prices. Following the ACCC's engagement with the industry, a number of car manufacturers amended their terms and conditions for capped price service offers and their advertising.
- In 2013 the Australian Government released a [report reviewing the Franchising Code of Conduct](#). The report recommended that an analysis be conducted of the impact of a minimum term and standard contractual agreements for motor vehicle agreements before a future review of the Franchising Code of Conduct.

⁷⁸ ACCC, 'ACCC takes action on Kia capped price servicing', 23 February 2015, <https://www.accc.gov.au/media-release/accc-takes-action-on-kia-capped-price-servicing> accessed 23 August 2016.

Appendix B — Consumer guarantees under the ACL

For all goods purchased after 1 January 2011, the ACL gives consumers a set of rights called consumer guarantees. These cannot be excluded, modified or limited by contract. They include guarantees that:

- goods supplied are of acceptable quality, which includes that goods are fit for all purposes for which goods of that kind are commonly supplied, are acceptable in appearance and finish, are free from defects, are safe and are durable (s. 54 of the ACL)
- goods will be fit for any disclosed purpose (s. 55)
- if goods are supplied by description, the goods correspond with the description (s. 56)
- if goods are supplied by reference to a sample or demonstration model, the goods correspond with the sample or demonstration model in quality, state or condition
- the manufacturer will take reasonable action to ensure that spare parts and facilities to repair goods are reasonably available for a reasonable period (s. 58)
- the manufacturer will comply with any express warranty given or made by the manufacturer in relation to the goods (subsection 59(1)).

These rights apply for a period that is reasonable taking into account the nature of the goods and how long they might be expected to function.

Remedies

The remedies in relation to consumer guarantees depend on the nature of the failure to comply with the consumer guarantee.

The ACL provides that a failure to comply with a guarantee is a 'major failure', if:

- the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure
- the goods depart in one or more significant respects from the description, sample or demonstration model, if they were supplied by description or by reference to a sample or demonstration model
- 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 purpose
- if the goods are unfit for a disclosed purpose that was made known to the supplier and they cannot easily and within a reasonable time be remedied to make them fit for such a purpose
- they are not of acceptable quality because they are unsafe.

Under the consumer guarantees regime, consumers have rights to remedies of repair, replacement and refund against the supplier, depending on the nature of the failure to comply with the guarantee. In some circumstances, the consumer may also have a right of action for damages against the supplier and manufacturer.

Where the failure to comply with the consumer guarantee is a major failure or cannot be remedied, consumers can choose to reject the goods or recover compensation from the supplier for any reduction in the value of the goods below the price paid. If the consumer chooses to reject the goods, they can either obtain a refund or a replacement.

Where the failure to comply with the consumer guarantee is not a major failure and can be remedied:

- the consumer may require the supplier to remedy the failure within a reasonable time. The supplier can comply by providing a repair, replacement or refund; or
- if the supplier refuses or fails to remedy the failure within a reasonable time, the consumer can:
 - a) have the failure remedied themselves and recover from the supplier all reasonable costs incurred in having the failure remedied; or
 - b) reject the goods and either obtain a refund or a replacement.

Indemnification of suppliers by manufacturers

Under certain circumstances, a manufacturer is liable to indemnify a supplier if a supplier is liable to the consumer for loss or damage suffered by the consumer and the manufacturer would be liable to pay damages to the consumer for the same loss or damage.

Representations about rights and remedies under the consumer guarantee provisions

Other provisions in the ACL prohibit businesses from engaging in misleading or deceptive conduct and unfair practices in trade or commerce. This may include making representations, express or implied, about consumer rights and remedies under the statutory provisions. Relevant provisions include prohibitions from:

- engaging in misleading or deceptive conduct (s. 18)
- making false or misleading representations, in connection with the supply or the promotion of the supply or use of goods about the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy (paragraph 29(1)(m) of the ACL)
- making a false or misleading representation, in connection with the supply or the promotion of the supply or use of goods concerning a requirement to pay for a contractual right that is equivalent to any condition, warranty, guarantee right to remedy provided for under the law (paragraph 29(1)(n)).

The ACCC can seek a range of orders from the Federal Court for a breach of sections 18 and 29 of the ACL, including declarations and injunctions. The ACCC can also seek an order for a civil penalty of up to \$1.1 million for a corporation and \$220,000 for an individual for a breach of section 29 of the ACL.

Appendix C – Motor vehicle regulations and voluntary codes

Name of regulation	Who enforces the regulation	Type of regulation
ACL (Sections 18, 29, Part 3-2 Division 1 Consumer guarantees)	ACCC	Australian consumer law
CCA Part IV: restrictive trade practices	ACCC	Australian competition law
Motor Vehicle Standards Act 1989	DIRD	Commonwealth
Australian Design Rules	DIRD	Commonwealth
Motor car trader obligations (Motor Car Traders Act 1986; Motor Car Traders Regulations 2008)	Consumer Affairs Victoria	State consumer law – car retailers
Motor Dealers and Repairers Act 2013	NSW Fair Trading	State consumer law – car dealers and repairers
Motor Vehicle Dealers Act 1973	WA Department of Commerce	State consumer law – car dealers
Sale of Motor Vehicles Act 1977	ACT Government	State consumer law – car retailers
Motor Vehicle Traders Act 2011	Tasmanian Government	State consumer law – car retailers
Consumer Affairs and Fair Trading Act	NT Government	State consumer law
Fair Trading (Motor Vehicle Repair Industry) Act 2010	ACT Government	State consumer law– car repairers
Fuel consumption labelling standard	DIRD	Fuel efficiency and emissions
Vehicle Emission Standards, provided in the Motor Vehicle Standards Act 1989	DIRD	Fuel efficiency and emissions
Fuel Quality Standards Act 2000	Australian Government Department of the Environment	Fuel efficiency and emissions
Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (Franchising Code of Conduct).	ACCC	Mandatory industry code

Voluntary agreements and codes of practice:	Parties	Type of code/agreement
Industry Agreement on Access to Service and Repair Information	FCAI, AADA, AAA, AMIF, AAAA	Voluntary Industry code – service and repair information
The Voluntary Code of Practice for Access to Service and Repair Information for Motor Vehicles	FCAI	Voluntary Industry code – service and repair information
Choice of Repairer – Code of Practice	AAAA	Voluntary Industry code – service and repair information
Access to Service and Repair Information for Motor Vehicles	AADA	Voluntary Industry code – service and repair information
Code of practice for access to service and repair information for motor vehicles	AAA	Voluntary Industry code – service and repair information
New Vehicle Receiving and Inspection Procedures	FCAI	Voluntary Industry code – receiving and inspection procedure
Voluntary code of practice for motor vehicle advertising	FCAI	Industry code – car advertising
Motor Vehicle Insurance and Repair Industry Code of Conduct	Code Administration Committee (Representatives from both the ICA and MTAA)	Voluntary Industry code – repair and insurance dispute resolution

Appendix D – List of questions

Questions on the structure and operations of the new car retailing industry

1. How well does the ACCC's understanding of the new car retailing industry supply chain reflect market participants' understanding of the supply chain? Which key market participants does it not capture? How could the ACCC's definitions be improved?
2. What search costs do consumers typically incur when buying a new car? Have online sales decreased these costs?
3. What are the key factors determining vertical relationships and contractual arrangements in the car industry? In particular:
 - (a) what is the contractual relationship between manufacturers, and authorised dealers and authorised repairers?
 - (b) what are the common features of these contracts?
 - (c) to what extent do contractual relationships raise barriers to entry and exit and/or reduce the degree of competition in the car market (or specific submarkets)?
4. What is the nature of the business model applying to new car dealers? To what extent does the sale of new cars, service and repairs, finance and insurance and used car (purchases) and sales each underpin gross profit margin of dealers? Is there variability between dealers in the market?
5. To what extent do consumers substitute between brands and models, particularly responding to price differences? Do consumers show loyalty to particular brands of cars and dealerships, particularly for the aftercare of their new cars and for future car purchases?
6. What is the level of competition between participants in each sector of the market? For example between:
 - (a) authorised and independent dealers
 - (b) authorised and independent service and repairer operators
 - (c) authorised and independent parts distributors.
7. Has competition increased in the new car industry over time and, if so, what is driving this change and how have dealers/manufacturers responded?
8. What are the main drivers of the increase in new car sales? E.g. import tariff reductions, competition from used cars, lower prices due to increased competition.
9. Are there other trends developing in the new car retailing industry in Australia? For example, has there been any consolidation in the dealership segment? What impact might these trends and changes have on consumers?
10. What is the level of intra-brand competition (for example competition between retailers of the same branded product)?

Questions on consumer guarantees, warranties and new cars

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

12. What information is given to consumers about the interaction between their consumer guarantee rights, the manufacturer's warranty and, where relevant, the dealer's extended warranty? Who provides this information? How is this communicated?
13. What are consumer perceptions of consumer guarantees, manufacturers' warranties and dealers' extended warranties? How do these influence a consumer's decision to buy a new car?
14. Have consumers relied on consumer guarantee rights to seek a refund, repair or replacement for a new car that had a major fault and been denied? Please provide examples.
15. What issues, if any, have consumers experienced in having their manufacturer's warranty or dealer's extended warranty claims accepted? Please provide examples.
16. Are there examples of consumers being advised that rights to a repair, replacement or refund are limited because a vehicle is outside the manufacturer's warranty? If so, does this arise when dealing with a dealer or a manufacturer? Please provide details.
17. Are there examples of consumers being offered alternative remedies, such as a free service, in response to a request that a new vehicle be repaired, replaced or refunded?
18. Are dealers constrained in their ability to provide remedies to consumers by, for example, contractual clauses requiring prior manufacturer's approval to provide a specific remedy or reliance on manufacturer's expertise in diagnosing issues?
19. What training are dealers given in explaining consumer guarantees, the manufacturer's or dealer's extended warranty? What information is provided at the point of sale and after sales?
20. What information is given to consumers about when their manufacturer's warranty and/or dealer's extended warranty commences and expires? What information are consumers given about how the manufacturer's warranty and dealer's extended warranty interact? How is this communicated?
21. What information are consumers given about who can service their new car without affecting either the manufacturer's warranty or dealer's extended warranty? Who provides this information? How is this communicated?
22. What issues have consumers experienced in having a dealer's extended warranty claim accepted where the car has been previously repaired with used parts? How does this interact with the terms and conditions of a consumer's insurance policy?
23. Are there examples of consumers being required to sign a confidentiality agreement in order to resolve a complaint about a new car? If so, does this arise when dealing with a dealer or a manufacturer? Please provide details.

Questions on fuel consumption, CO₂ emissions and noxious emissions

24. What information is communicated to consumers about the fuel consumption, CO₂ emissions and noxious emissions of cars they purchase (i.e. from manufacturers, dealers, government guides, labels etc.)? How is this information provided to consumers (other than through mandatory labelling)?
25. Are consumers aware that fuel consumption and CO₂ emissions values are designed to be comparative? Is this made clear to consumers at the point of sale or elsewhere? Are there any ways in which consumer understanding could be improved?
26. What processes (e.g. training or education) are in place to ensure that dealers or sales staff are knowledgeable about, and don't mislead consumers about, the fuel consumption and emissions characteristics of a new car?

Questions on car performance

27. Other than those described above, are there any additional factors or measures that could be included in the term 'car performance'?
28. To what extent do manufacturers and dealers seek to differentiate their products and services, and on what basis? To what extent do perceptions of quality and reliability account for price differences?
29. To what extent do claims relating to car performance affect consumer purchasing decisions? Please provide examples.
30. Are you aware of any examples of claims by dealers or manufacturers (through websites, TV, print etc.) that are made to consumers about car performance that are potentially false, misleading or deceptive?
31. Do you have suggestions of how claims made to consumers about car performance could be improved?

Questions on access to parts and tools:

32. What are the differences between genuine, OEM, parallel import and aftermarket parts? When and why are these parts used? When and why are second-hand parts used in repairing or servicing new cars?
33. What information is made available about different types of car parts to the market? Who makes this information available and when?
34. What information are consumers given about using different types of car parts and its effect on their manufacturer's or dealer's extended warranties? How is this communicated?
35. What issues, if any, have consumers and independent repairers had in accessing appropriate parts or tools to repair or service a new car?
36. What types of parts and tools do manufacturers sell to consumers and independent repairers? Do these differ from what is made available to dealers? What explains the difference?
37. What types of parts and tools do dealers sell to consumers and independent repairers? How does this differ from what manufacturers sell? Are dealers put at a competitive disadvantage for selling these parts and tools?
38. Where a common platform is used by manufacturers (e.g. Volvo S40, Ford Focus and Mazda 3 are built on a common platform, with different features/trim), does this make it easier to access parts and tools?

Questions on logbooks, dealer stamps and online logbooks:

39. What is the purpose of a logbook? How is this communicated to consumers? What other uses are there for a logbook?
40. What are the industry trends for providing online logbooks, rather than a paper copy? What other record keeping methods are available? What are the benefits or challenges of using such methods?
41. What level of access do consumers or others have to online logbooks? Who can update the online logbook? What barriers, if any, are there to do so?

Questions on access to repair and service information and data

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

43. What repair and service information and data is shared by manufacturers? How is it shared? With whom is it shared? What conditions are on sharing this information and data?
44. What is the effect of not having some level of access to repair and service information and data? On what basis might repair and service information not be shared? Why?
45. Is repair and service information and data presented in a standardised way across manufacturers? How consistent is repair and service information and data in terms of availability and how it is presented across brands?
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47. What other methods exist for accessing repair and service information and data? What are the benefits or challenges of using such methods?
48. Where a common platform is used by manufacturers (e.g. Volvo S40, Ford Focus and Mazda 3 are built on a common platform, with different features/trim), does this make it easier to access repair and service information and data?
49. What issues have consumers experienced with accessing repair and service information? How do these issues impact them?

Questions on current Australian and international regulations

50. What impact have the Heads of Agreement and/or voluntary codes of practice had on access to repair and service information and data? Provide examples.
51. What effect have the Heads of Agreement and/or voluntary codes of practice had on competition in the repair and service sector? How has this affected consumers?
52. How effective are the Canadian, US and EU approaches? Are there any concerns with a mandatory system, such as in the EU and Massachusetts, being introduced in Australia? What are the risks and benefits of similar regulation (voluntary or mandatory) in the Australian context?
53. What other ways could repair and service information and data be shared or provided? Could or should the information and data be standardised?

Questions on new car dates

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

Questions on other issues

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

END of Issues Paper