



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# New Car Retailing Industry market study: authorised new car dealers' factsheet

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The ACCC has looked into competition and consumer issues in the new car retailing industry.

We considered a number of issues which may affect authorised new car dealers, including an analysis of how manufacturers' agreements with dealers and related policies and procedures may impact on dealers' compliance with the Australian Consumer Law (ACL).

**We're recommending that car manufacturers transform their approach to consumer guarantee claims, update their complaint handling systems, and review their commercial arrangements with dealers to ensure they comply with the ACL.**

## What we found

### **Commercial arrangements between manufacturers and dealers can constrain and adversely influence the behaviour of dealers in responding to complaints**

Dealer agreements for the sale of motor vehicles are deemed by the Franchising Code of Conduct to be franchise agreements. As franchisees, dealers are contractually obliged to comply with the terms, policies and procedures set by the manufacturer (the franchisor). Dealers are often under commercial pressure to comply with these requirements so as to increase the prospects of having their franchise agreement renewed.

Manufacturer complaint handling policies and procedures normally determine a dealer's response to consumer guarantee or warranty claims. These policies usually focus on the customer's contractual rights under the manufacturer's warranty, and fail to adequately consider consumer rights under the ACL. This can limit a dealer's willingness to address a consumer's complaints and potentially prevent dealers from meeting their ACL obligations.

Dealers are frequently in the challenging position of balancing their ACL obligations to customers, safeguarding their own financial interests and maintaining a long-term commercial relationship with their manufacturer. However, it remains the responsibility of dealers to meet their ACL obligations, and for manufacturers in turn to meet theirs by not adopting commercial arrangements that stifle this.

### **Complex warranty claim processes can result in dealers being inadequately indemnified for remedies they have provided**

Dealers, as retailers of new cars, have direct responsibility to provide remedies to consumers under the ACL if a new car (or any other goods or services they supply) does not meet one or more of the relevant consumer guarantees (for example, that goods must be of acceptable quality).

Dealers are entitled, under the ACL, to seek reimbursement from the manufacturer for any loss or damage incurred in meeting the consumer's rights, where the manufacturer was responsible for the failure.

Manufacturer processes and policies for dealing with claims that are unnecessarily complex, including arbitrary administrative and technical requirements, can lead to dealers being inadequately reimbursed or indemnified for remedies they have provided to their customers.

### **Consumers face difficulties understanding the difference between consumer guarantees and warranties**

When it comes to buying a new car, many consumers face difficulties understanding how the ACL consumer guarantees apply and the difference between the consumer guarantees and any warranties offered by the manufacturer. This appears to be in part the result of a focus by dealers at the point of sale on the manufacturer's warranty and the potential sale of an extended warranty.

A verbal explanation of consumer guarantees at the point of sale of a new car is insufficient. Consumers need information that can be referred to at any time during their ownership of their car. We consider it best practice for dealers to provide an explanation about consumer guarantees in writing.

A balanced provision of written information about consumer guarantees requires not only an explanation of the statutory rights available to consumers, but also an explanation of the statutory obligations of manufacturers and dealers. It also requires an explanation of the potentially complex interaction between consumer guarantees and other consumer rights available under warranty in the event of a problem with the car.

## **Recommendations and ACCC actions**

In our final report, we recommend:

- car manufacturers should transform their approach to the handling of consumer guarantee claims or risk action for non-compliance with the ACL. We also recommend that car manufacturers:
  - update their complaints handling systems to ensure consideration of consumer guarantee rights are embedded in all relevant systems, policies and procedures
  - review their dealer agreements, policies and procedures to ensure that their commercial arrangements with dealers do not contain unfair contract terms.
- the ACL be enhanced to:
  - provide consumers with additional clarity about when they are entitled to a refund or replacement under consumer guarantees
  - require specific forms of disclosure in relation to extended warranties.

We also support further consultation on the ACL proposals relating to major failure and encourage relevant stakeholders, including car manufacturers and dealers, to participate in further consultation to be conducted by Consumer Affairs Australia and New Zealand.

Certain issues raised by dealers and the Australian Automotive Dealer Association in relation to the imbalance of power in their commercial arrangements with manufacturers may require further examination. One option for consideration of these issues is the next review of the Franchising Code of Conduct.

We're also going to:

- work with manufacturers and dealers to develop a concise and simple explanation of consumer guarantee rights under the ACL, and their interaction with warranties, which should be provided to consumers when they buy a new car.
- update the *Motor vehicle sales and repairs—an industry guide to the Australian Consumer Law*, to ensure this publication provides additional guidance to consumers about consumer guarantees under the ACL. Guidance may also be designed for use by businesses, including dealers, regarding their rights and obligations under the ACL.

## **Enforcement**

We will continue to actively monitor complaints made to us and will take further action to enforce the law where necessary. This includes action to address conduct which may be misleading or unconscionable or practices which do not comply with the consumer guarantee requirements of the ACL.

## **More information**

For more information on the study and to read the final report, visit [www.accc.gov.au/newcars](http://www.accc.gov.au/newcars).