



**Small Business  
Development Corporation**

Our ref: D17/4539

ACCC New Car Retailing Market Study  
via: [newcars@accg.gov.au](mailto:newcars@accg.gov.au)

To the review team

The Western Australian Small Business Development Corporation (SBDC) thanks the Australian Competition and Consumer Commission (ACCC) for the opportunity to review the New Car Retailing Industry Market Study (the Market Study) Draft Report.

The SBDC maintains a strong interest in the Market Study, and the broader regulatory environment that impacts on small businesses as consumers. An important component of the SBDC's mandate is to advocate to government on behalf of the Western Australian small business sector. The SBDC strives to influence the formation of a regulatory environment that supports the growth of the small business sector in this State, resulting in the creation of jobs and a diversified economy.

*The Market Study Issues Paper*

The SBDC sees the Market Study as an opportunity to further improve the regulatory environment for small businesses. In response to the 2016 Market Study Issues Paper, the SBDC submitted comments and case studies highlighting the issues being experienced by small businesses when purchasing, retailing or repairing new vehicles. As outlined in that submission, the complaints the SBDC received from small businesses related predominantly to consumer guarantees and warranties, and car performance. The SBDC also addressed the topic of lemon laws, access to repair and service information and data, and the relationship between motor vehicle dealerships and manufacturers.

*The ACL Review*

In 2016, the SBDC also contributed to the Consumer Affairs Australia and New Zealand's Review of the Australian Consumer Law (ACL)<sup>1</sup>. The SBDC presented a range of policy positions and case studies to the ACL Review in order to demonstrate the need for further reform to better protect small business consumers. A number of the SBDC's arguments are also relevant to the Market Study, and have been summarised below:

- The definition of a 'consumer' under the ACL should be amended by increasing the monetary threshold from \$40,000 to \$100,000, and linked to the Consumer Price Index. The SBDC believes that the current monetary threshold reduces coverage of the consumer guarantee provisions in the ACL to small businesses and does not capture purchases of vehicles or machinery typically undertaken by small business consumers. Currently, if a small business purchases a new car over \$40,000 it is not able to access the consumer guarantee provisions prescribed in the ACL. The SBDC understands that the ACL Review has recommended lifting the consumer threshold to \$100,000, which we strongly support.

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<sup>1</sup> May 2016 Submission to the ACL Review Issues Paper and December 2016 Submission to the ACL Interim Report

- The consumer definition exemptions should be removed so as not to further reduce the benefits of the ACL for small businesses. The SBDC believes that the ACL needs to be extended to cover a larger range of vehicles and trailers, and not be limited to those used in the transport of goods on public roads.
- There needs to be further clarification of what constitutes a 'major failure', especially in relation to problems with motor vehicles. The SBDC believes that the ACL needs to be amended so that multiple non-major failures constitutes a major failure and attracts the same remedies (replacement or refund). The ACL Review has recommended changes to multiple non-major failures and consumer rights to refunds and replacements in line with these concerns, which the SBDC is strongly supportive of.
- There needs to be specific amendments to the ACL relating to the motor vehicle industry. The SBDC has advocated for the following reforms:
  - Limits on the number of times a vehicle should be taken in for repair for the same issue over a defined period (e.g. within the first one to two years of purchase).
  - Multiple issues causing the vehicle to be out of use for a defined period (such as more than two consecutive weeks) constitutes a major failure.
  - Provisions that state the manufacturer is responsible for compensating the small business consumer for the loss incurred as a result of having their vehicle out of action.
  - Provisions that require a dealer to offer a consumer an equivalent vehicle to that being repaired for free until the vehicle is repaired.
  - Provisions that state manufacturers are responsible for compensating the dealers for any loss they incurred as a result of a manufacturing fault, such as the cost of providing the consumer with a free loan vehicle.

#### *The Market Study Draft Report*

The SBDC has reviewed the Market Study Draft Report and read with interest the ACCC's key findings. The SBDC supports the ACCC's recommendations and planned actions to improve the new car retailing industry, particularly in relation to improving independent repairers' access to technical information and parts, and clarifying and enhancing consumer guarantee rights under the ACL.

The SBDC applauds the ACCC for undertaking the Market Study and for proposing fair and sensible reforms that will better assist and protect small businesses involved in the industry or those purchasing new cars as part of their operations.

Yours sincerely



David Eaton  
**SMALL BUSINESS COMMISSIONER**

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