



Australian
Competition &
Consumer
Commission

New Car Retailing Industry – a market study by the ACCC

Draft Report

August 2017

This is a draft report prepared for further public consultation and input. The ACCC will release its final report after these processes have taken place.

Opportunity for further comment

You are invited to examine this draft report for the new car retailing industry market study and comment on it by written submission to the ACCC by **7 September 2017**. The ACCC will also be holding a roundtable with invited stakeholders on **25 September 2017**.

The final market study report will be prepared after further submissions have been received and the roundtable has been held and will be published in late 2017.

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 closed.
13 December 2016	Forum with invited key stakeholders.
10 August 2017	Draft report released for comment.
25 September 2017	Roundtable with invited key stakeholders.
Late 2017	Final report to be released.

Questions or queries about this study can be directed to newcars@acc.gov.au.

Executive summary

The new car retailing industry market study

Buying a new car is a significant purchase for a consumer. The purchase of a car and its ongoing maintenance account for around five per cent of total average household expenditure annually, typically making it second only to housing expenditure in importance. Well-informed consumers and competitive new car retailing markets are therefore likely to deliver considerable benefits.

Market studies are used by the Australian Competition and Consumer Commission (ACCC) to help promote effective competition in markets. Studies are normally undertaken where a number of concerns about market conduct have been raised, and a detailed examination of market characteristics could help to determine whether market intervention, including new policy proposals, regulatory solutions or enforcement action is warranted.

The ACCC's market study into the new car retailing industry is in response to a number of concerns raised with the ACCC and other fair trading agencies about how new car retail markets are operating. The issues raised include those complaints received by the ACCC and other Australian Consumer Law (ACL) agencies about defects with vehicles, misrepresentations to consumers, and issues in post-sale service markets.

This draft report considers these and other issues raised with the ACCC through the course of this study. It details the ACCC's findings from almost 12 months of investigation, consultation and research. It contains a number of key findings and recommendations for improving consumer protection and promoting competition in new car retailing and associated markets.

The ACCC now invites comments on this draft report before it is finalised in late 2017.

New car retailing

New car retailing activities cover more than just the sale of new cars at a car dealership. They extend to:

- activities that occur **prior to the sale**, such as the advertising of new cars and representations made about car performance or emissions
- activities that occur at the **time of the sale**, including the sale of finance and insurance products, representations on standard manufacturer warranties, and the sale of additional warranties
- **post-sale** activities which are closely linked to the new car sale, such as regular maintenance and the cost of spare parts for the new car.

The sale of a new car also triggers consumer guarantees under the ACL which relate to post-sale activities. These statutory rights cover what consumers can expect from a good or service and the remedies available to them if something goes wrong.

The new car retailing supply chain

A number of entities are involved in the new car retailing supply chain, including:

- **car manufacturers**, usually large multi-national firms that produce cars, parts and tools, and distribute their products through new car dealers
- **new car authorised dealers** are usually in franchise agreements with car manufacturers to supply as well as repair and service new cars
- **independent businesses** that repair and service new cars, or produce or supply parts

and tools.

New car retailing is a significant sector of the Australian economy:

- Around 1.1 million new cars were sold at more than 1500 new car dealers operating more than 3500 retail outlets in 2016. Car dealer revenues in 2016–17 are estimated at \$64 billion.
- New car sales also have flow on effects for car servicing and repairs, crash repairs and replacement parts. Around 40 000 manufacturer-authorized and independent car repair and service businesses will earn revenues of around \$18 billion in 2016–17 and close to 11 000 crash repair businesses are expected to earn revenues of \$6.8 billion.

The ACCC's key market observations

Analysis for this study has revealed a number of problems that are harming consumers and hindering effective competition in the new car retailing industry.

Three key observations arising from this study are:

The law offers protections for consumers when purchasing new cars, but there are material deficiencies in the way that consumers are able to enforce their rights, and the way these rights are represented to them by manufacturers and dealers.

The ACL provides protections to consumers through the consumer guarantees. Despite these protections, there are a number of systemic problems in the new car industry preventing consumers from obtaining the remedies to which they are entitled when their car experiences a problem. The biggest obstacle to consumers not receiving the remedies to which they are entitled under the ACL is the failure of manufacturers' complaints handling systems and policies across the new car industry to adequately take consumer guarantees into account.

ACCC response: The ACCC will continue to address non-compliance with the ACL by manufacturers or dealers, including enforcement action where appropriate. The ACCC has recently instituted proceedings in the Federal Court against Ford, and has accepted a court enforceable undertaking from Holden in relation to its concerns about alleged ACL non-compliance issues. The ACCC will also work with other ACL regulators and the industry to publish guidance for consumers on their rights in the event there is a problem with their new car, including guidance for dealers to distribute to consumers at the point of sale. The ACCC also supports the legislative amendments to the ACL proposed in the ACL Review aimed at providing greater clarity and to address any uncertainties about the application of consumer guarantees.

Concerns remain about the effect of limited access to information and data required to repair and service new cars.

The repair and service of new cars is increasingly reliant on access to electronic information and data produced by car manufacturers. Independent repairers, which are not authorised or affiliated with car manufacturers, are reliant on car manufacturers voluntarily sharing information and data. Around one in ten new car buyers have their car repaired or serviced with an independent repairer. The ACCC is of the view that the competitive discipline imposed by independent repairers on the aftermarket for the repair and servicing of new cars remains valuable and of benefit to consumers.

While voluntary commitments have been offered by car manufacturers to provide independent repairers with the same technical information to repair and service new cars that they provide to their dealers, problems with the breadth, depth and timeliness of the technical information offered appear to be enduring.

ACCC response: The ACCC considers that consumers benefit from competitive

aftermarkets. As voluntary commitments to share technical information have not been successful in meeting their aims and there has been only a limited improvement in access, the ACCC recommends regulatory intervention to mandate the sharing of technical information with independent repairers on 'commercially fair and reasonable terms'.

Consumers are not receiving accurate information about the fuel consumption or emissions performance of new cars.

Current fuel consumption and emissions testing procedures rely on laboratory testing rather than testing in real-world driving conditions. Manufacturers may therefore claim results for fuel consumption and emissions based on laboratory tests that are significantly better than can be achieved in real-world driving conditions. This is unlikely to meet consumer expectations and has the potential to be misleading.

Research from the Australian Automobile Association and consulting engineers, ABMARC, indicates that real-world fuel consumption is on average 25 per cent higher than official laboratory test results. The size of the gap between laboratory and real-world fuel consumption tests is not consistent across car types or brands, and has been increasing in recent years, casting doubt on the comparative value of fuel consumption figures currently displayed in fuel consumption labelling.

Consumer detriment may also occur when manufacturers fail to appropriately qualify fuel consumption claims. While the information supplied through mandatory fuel consumption labelling is primarily designed to help consumers make comparisons between different cars, the use of absolute values for fuel consumption and emissions may contribute to consumer misunderstanding.

ACCC response: The ACCC supports moves to enhance the quality of information supplied to consumers currently being considered by the Ministerial Forum into Vehicle Emissions, including the introduction of a more realistic laboratory test and real driving emissions testing.

The ACCC has directed its analysis and recommendations towards addressing these three issues. A number of other issues are also addressed in the report, and the ACCC also seeks comment on these issues.

Key Findings & Recommendations

Chapter 2: New car retailing industry characteristics

- Car manufacturers and authorised dealers are typically active in both the manufacture and supply of new cars and in the supply of aftermarket services, including car servicing, repairs and supply of parts and tools.
- Manufacturers and authorised dealers generally earn higher profit margins from aftermarket services than from new car sales. For dealers, although parts sales and repair and service account for 15 per cent of revenue, these aftermarket services contribute to 49 per cent of gross profit.
- A common pricing strategy for car manufacturers and authorised dealers is to discount new car prices to maximise sales of aftermarket services. This strategy reflects that consumers have more choices available at the time of the new car sale than they do in aftermarkets for repair, service and replacement parts after the sale.
- Retail markets for the supply of new cars in Australia are generally competitive, primarily indicated by low market concentration of car brands and dealers.
- Competition in markets for the supply of aftermarket services is less competitive as a result of factors including:
 - the ability and incentives of car manufacturers and their dealers to impede competition in profitable aftermarkets by controlling access to necessary inputs such as the technical information needed to repair and service a new car
 - consumer misunderstanding about warranty and servicing requirements (including the misconception that manufacturer warranties require new cars to be serviced at a dealership), and
 - high costs of switching once consumers have purchased a particular brand and make of car.

Chapter 3: Consumer guarantees and warranties

The ACL provides statutory protections for consumers

- The ACL is Australia's national law for fair trading and consumer protection and plays a critical role in providing protections to consumers in their dealings with business and in the event that there is a problem with a good or service, including new cars. The consumer guarantees provided by the ACL cannot be displaced.
- Manufacturer warranties provided with the purchase of a new car, and extended warranties offered by the dealer or a third party, provide additional protection to consumers in some circumstances.
- Together, the ACL and state and territory legislation, along with manufacturers' warranties, collectively provide consumers with an extensive suite of consumer rights to remedies or other forms of redress in the event that a new car is defective or fails to perform as promised.
- The recent review of the ACL has proposed a number of amendments to enhance the law and provide greater clarity to address any uncertainties about the application of consumer guarantees. The proposed amendments include reforms aimed at assisting consumers understand and choose a remedy if things go wrong with a good or when a good, including a new car, has multiple and ongoing issues.
- While the proposed ACL reforms would strengthen and provide greater clarity about the application of consumer guarantees, the existing law already provides remedies for faulty cars. This study has found that consumers are encountering difficulties enforcing

consumer guarantees when problems occur with new cars. The ACCC views these issues as chiefly a compliance problem associated with manufacturers' complaints handling systems failing to adequately take consumer guarantees into account.

Draft recommendations on proposed amendments to enhance the ACL

Draft recommendation 3.1

The ACCC supports the amendments proposed by CAANZ in the recent ACL Review to enhance the ACL and address any uncertainties about the application of consumer guarantees. Of particular relevance to issues arising in this study, the ACCC supports proposals 1, 2 and 3 in the final report on the ACL Review:

Proposal 1: Where a good fails to meet the consumer guarantees within a short specified period of time, a consumer is entitled to a refund or replacement without needing to prove a 'major failure'.

Proposal 2: Clarify that multiple non-major failures can amount to a major failure.

Proposal 3: Enhance disclosure in relation to extended warranties by requiring:

- agreements for extended warranties to be clear and in writing
- additional information in writing about what the ACL offers in comparison to the extended warranties
- a cooling-off period of ten working days (or an unlimited time if the supplier has not met their disclosure obligations) that must be disclosed and in writing.

Consumers are not receiving balanced information about their rights

- Consumers are not receiving adequate information about consumer guarantees at the point of sale of a new car. The information provided is generally very limited and is usually not provided in a form consumers can retain, and refer to later.
- An oral explanation is not sufficient. Consumers need information in a form that can be referred to at any time during their ownership of their car. The ACCC considers that it is 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.

ACCC action on consumer understanding of their rights

ACCC action 3.1

The ACCC will work with manufacturers and dealers to develop a concise and simple explanation of consumer guarantees and their interaction with warranties, which should, as industry best practice, be provided to consumers at the point of sale of a new car.

- Most consumers have a reasonable level of awareness of their consumer rights when they purchase goods or services in Australia. There are a variety of sources of information for consumers seeking to improve their understanding of their rights with respect to the purchase of a new car.
- This study has found that many consumers face difficulties in understanding the application of the consumer guarantees to their new car purchase and the distinction between consumer guarantees and warranties. Such difficulties impact the ability of consumers to accurately assess the value of any additional consumer protections offered by extended warranty products compared to the rights they already have under the consumer guarantees or the manufacturer warranty.

- 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. Dealers have commercial incentives, as the result of commission-based remuneration, to maximise their sales of extended warranties.
- The majority of consumers take their new cars to manufacturer authorised dealers for repairs and service. This appears to be, in part, the result of a mistaken belief that the manufacturer's warranty requires them to only use an authorised dealer.
- Contributing to this misunderstanding are direct and implied representations made by a number of manufacturers in their logbooks and service manuals to the effect that authorised dealers must carry out services or repairs (or that original equipment (OE) parts must be used). Many of these representations are likely to contravene the provisions of the ACL, and may also raise competition concerns under the CCA.

ACCC action on consumer understanding of their rights

ACCC action 3.2

To assist consumers better understand their rights when it comes to new car defects and failures, the ACCC will work with other ACL regulators to publish an updated version of *Motor vehicle sales & repairs - an industry guide to the Australian Consumer Law* (August 2013)¹ to ensure that this publication addresses the issues identified in this study, including specific guidance on criteria for determining a 'major failure'. Guidance may also be designed for use by businesses, including dealers, regarding their rights and obligations under the ACL.

ACCC action 3.3

Instances of misleading or deceptive conduct, or misrepresentations, in relation to the use of independent repairers or non-OE spare parts will be targeted through action by the ACCC, including enforcement action where appropriate.

Consumers face significant obstacles to enforce their ACL rights

- A significant body of evidence suggests systemic failures in the ability of consumers to enforce their consumer guarantee rights after the purchase of a new car. The ACCC has seen many examples of practices by manufacturers in dealing with consumer complaints that raise concerns under the ACL provisions, including the failure of manufacturers' complaints handling systems to adequately take consumers' ACL rights into account.
- The ACCC has identified five key issues contributing to the difficulties experienced by consumers in enforcing their consumer guarantees:
 - manufacturers' focus on warranty obligations to the exclusion of their consumer guarantee obligations
 - manufacturers' responses to 'major failures'
 - the widespread use of non-disclosure agreements by manufacturers when resolving complaints
 - the lack of effective independent dispute resolution options for consumers, and
 - particular features of the commercial arrangements between manufacturers and dealers.
- Manufacturers' complaint handling systems require dealers to check whether a car is under warranty before decisions are made as to an appropriate response to the customer's complaint. This means interactions with the consumer take place within the manufacturer's warranty framework to the exclusion of the consumer guarantees.

¹ ACCC, [Motor vehicle sales and repairs: a guide for industry to the Australian Consumer Law](#), 2013.

- There is a dominant ‘culture of repair’ underpinning manufacturers’ systems and policies for dealing with car defects and failures, even where cars have known and systemic mechanical failures which would entitle a consumer to a replacement or refund under the consumer guarantees.
- The widespread use of non-disclosure agreements when resolving consumer complaints suggests that consumers are not entitled to their consumer guarantee and warranty rights unless a non-disclosure agreement is signed when this is not the case. Non-disclosure agreements also substantially reduce information in the marketplace for new buyers about defects and safety issues that are common to a particular car.
- Independent dispute resolution options are providing little incentive for manufacturers to improve their ACL compliance. These options do not effectively enable consumers to obtain the remedies they are entitled to under the consumer guarantees. This creates little incentive for a manufacturer or dealer to offer these remedies at an earlier stage in a dispute.
- Given the nature of commercial relationships between dealers and manufacturers, 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. These commercial arrangements can have the effect of denying or making it difficult for consumers to readily access the remedies to which they are entitled.

ACCC action on the consumer experience of enforcing their rights

The ACCC has recently instituted proceedings in the Federal Court against Ford, and it has also accepted a court enforceable undertaking from Holden, in relation to its concerns about alleged ACL non-compliance issues.

ACCC action 3.4

Manufacturers’ complaints handling systems, policies and practices that do not comply with the consumer guarantee requirements of the ACL will continue to be targeted through action by the ACCC and fair trading agencies, including enforcement action where appropriate.

Such action may also address any instances of non-compliance by dealers. The ACCC is particularly concerned about manufacturers and dealers engaging in conduct that may be misleading or unconscionable.

Chapter 4: Accessing technical information to repair and service new cars

Technical information for servicing and repairing new cars is not widely available

- The nature of technical information to repair and service new cars is rapidly changing, with digital files and codes, and appropriate diagnostic tools, now often necessary to complete a car repair or service.
- Independent repairers have continuing problems accessing technical information for new cars. Few car manufacturers provide equivalent access to the technical information provided to their authorised dealers and preferred repairer networks, and many provide very little or no information at all.
- Independent repairers may be able to obtain technical information from sources other than the car manufacturer in Australia; however, the information is commonly incomplete, not applicable to Australian models, or offers no security of ongoing supply.
- Car manufacturers may have legitimate concerns about the sharing of some security-related technical information to repair and service new cars. Regardless, in other jurisdictions this information and data is securely shared with independent repairers.

- The ACCC has informed itself on these issues through consideration of a range of evidence including submissions from stakeholders, site visits and the reports of an automotive technical expert engaged by the ACCC to further examine the submitted claims of stakeholders, which found that access to technical information for independent repairers is inconsistent.

Existing voluntary methods of information sharing are not effective

- Key industry associations, including the FCAI, have voluntarily agreed to a set of aims and principles to ensure there is ‘a fair and reasonable competitive market within the car repair and service industry.’ The principles of the Heads of Agreement place voluntary obligations on car manufacturers to, in general, share with independent repairers, on ‘commercially fair and reasonable’ terms, the technical information they provide to their dealers.
- Broadly, most car manufacturers in Australia are not fully sharing technical information consistently with the aims and principles of the Heads of Agreement.
- The Heads of Agreement has several shortcomings which hinder its aims and principles of improving access to technical information from being achieved in a fair and efficient way.
- The ACCC has concluded that the net effect of the Heads of Agreement, across the industry, in improving access to technical information for new cars has been limited, and that the Heads of Agreement is ineffective in providing access that is consistent with its stated aims and principles.

Effective information sharing would enhance competition and improve consumer outcomes

- As discussed in chapter 2, car manufacturers have an incentive to limit access by independent repairers to technical information to steer service work to authorised dealers and repair work to preferred repairer networks.
- This is impacting the ability of independent repairers to effectively and efficiently compete in the aftermarkets for the repair and servicing of new cars.
- It is also causing detriment to consumers in the form of increased costs, inconvenience and delays when having their new car repaired or serviced.
- Consumer switching in the new car market is unlikely to provide strong competitive discipline on manufacturers and dealers in aftermarkets, and any benefit of competition in the sale of new cars to consumers does not offset the impact of less competitive aftermarkets. The ACCC’s view is that consumers benefit from competitive aftermarkets for the repair and servicing of new cars.

Developments in other jurisdictions offer pathways for reforms in Australia

- In foreign jurisdictions, regulatory interventions have made the technical information necessary for independent repairers to repair and service new cars more widely available.
- EU regulations requiring independent repairers to have ‘easy, restriction-free and standardised access’ to information and data to repair and service new cars have generally been successful in meeting those aims. In the US recent state legislation has stimulated further voluntary national changes to improve access.
- The EU and the US models are specific to their regulatory environments and geographically distinct markets. Elements of these models, such as secure processes to access security-related information and access to technical information by intermediaries to develop informational products and diagnostic tools, should be considered in Australia. However, outright adoption of other models may not be appropriate.

Draft recommendations on access to technical information for new cars

Draft recommendation 4.1

A mandatory scheme should be introduced for car manufacturers to share with independent repairers technical information, on commercially fair and reasonable terms. The mandatory scheme should provide independent repairers with access to the same technical information which car manufacturers make available to their authorised dealers and preferred repairer networks.

The mandatory scheme should place an obligation on car manufacturers and other industry participants to achieve the aims and principles set out in the Heads of Agreement (including those in relation to training and reinforcing existing statutory obligations on independent repairers to ensure repairs and servicing are carried out correctly to car manufacturers' specifications to assure the safety of consumers).

The mandatory scheme should, subject to the type of regulation used, address the following operational matters:

Real time access

- Car manufacturers should make available to independent repairers, in real time, the same digital files and codes, such as software updates and reinitialisation codes, made available to dealers to repair or service new cars.

Coverage

- Obligations on sharing technical information should apply to all car manufacturers in Australia.
- Consideration should be given to including options for relevant intermediaries to access technical information from car manufacturers on commercially fair and reasonable terms.

Definitions

- All relevant terms, conditions and exclusions should be defined in the regulation, for instance, defining diagnostic tools and their relevance to facilitating access to technical information, as well as defining security-related information.

Dispute resolution

- Any dispute resolution processes should be timely and accessible by all relevant stakeholders.
- Any dispute resolution processes should be subject to compulsory mediation and binding arbitration by an independent external party.

Governance/consultation

- Key stakeholders should meet regularly to discuss the rapidly changing nature of repair and service information.

Security-related information and data

- Similar to the EU or US models, a process for the secure release of security-related technical information should be established or authorised under the mandatory scheme.

Enforcement

- Appropriate options to enforce the terms of any regulation, if appropriate, should be included (e.g. penalties).

Chapter 5: Parts needed to repair and service new cars

Access to parts is sometimes restricted

- Car manufacturers and dealers sometimes restrict access to certain parts for legitimate reasons that may benefit consumers. This includes parts which can compromise vehicle security and encourage theft. However, a further motive for restricting access may be to steer more repair and service work back to authorised dealers and preferred repairer networks. This can reduce competition for servicing or repair work and raise prices.
- The lack of transparency and consistency across manufacturers about what are security-related parts means that access restrictions can be arbitrary, increasing uncertainty and cost for independent repairers. It could also undermine the intent of reforms to promote access to technical information needed to repair and service cars.

Draft recommendations and actions on parts

Draft recommendation 5.1

OE manufacturer-branded parts and accessories should be generally available to independent repairers on commercially fair and reasonable terms.

Car manufacturers should develop policies which clearly outline any parts subject to restricted access on security-related grounds. These policies should be publicly available.

The FCAI is well-placed to work with manufacturers to examine whether there is benefit in agreeing a standard definition and detailed classification system for 'security-related' parts to provide certainty to parts customers.

ACCC action 5.1

Refusals by car manufacturers to supply security-related parts for repair and service will be monitored and addressed through action by the ACCC, including enforcement action where appropriate.

High margins are earned on supply of spare parts

- Anecdotal evidence and submissions to this study suggest that parts prices in Australia are rising relative to the cost of new cars, and that Australia has high parts prices relative to some overseas jurisdictions.
- Detriments from high parts prices could include distortions in decisions about repairing cars; for example, high parts prices might cause cars to be 'written off' when it may be more efficient to repair them.
- There is limited competition to supply certain spare parts for repair and service. In addition, consumers have a limited ability to switch to alternative suppliers of parts in many instances and these factors may lead to high prices.
- However, parts prices should be considered within a broader context of supply of new cars and other aftermarket services. Manufacturers and dealers discount prices of new cars to capture a greater share of parts sales, which attract much higher margins.

Request for further information

The ACCC seeks further information on the issue of transparency in parts prices, and whether the withdrawal of retail price lists by some or all manufacturers would harm competition or increase costs in parts markets.

Chapter 6: Fuel consumption, emissions and the ACL

Consumers are not well informed about fuel consumption and emissions tests

- Fuel consumption is a significant factor for consumers when buying a car, second only to price and model. The environmental impact of new cars is also important to one in five consumers. For this reason, new car buyers need to be able to rely on the accuracy of claims made by manufacturers and dealers about the fuel consumption and emissions of particular car models.
- Representations to consumers about fuel consumption and emissions are made by manufacturers and dealers in a variety of ways. While they have no discretion about displaying mandatory labels, they do control claims made in promotional and advertising materials or at the point of sale. ACCC research for this study indicates that manufacturers are not always appropriately qualifying these claims, and that many consumers believe that advertised fuel consumption and emissions figures are likely to be attained in real-world driving conditions, when this is not the case.
- In addition, some consumers may not understand that fuel consumption and emissions values are intended for comparative purposes only. Even when representations are qualified, these consumers may still believe that the advertised figures will be attained.

Request for further information

The ACCC welcomes views on whether general consumer education or awareness initiatives about how fuel consumption and CO₂ emissions are measured (and what factors influence them) should be considered.

Draft recommendations on fuel consumption and CO₂ emissions claims

Draft recommendation 6.1

Changes to the fuel consumption label affixed to new cars should be considered to improve the comparative use of the information supplied. Introducing a star-rating system or annual operating costs may minimise the extent to which consumers interpret an 'absolute' fuel consumption/emissions value as equivalent to what they would achieve in real-world driving conditions.

There are material discrepancies between fuel consumption and emissions test and real-world results

- Current fuel consumption and emissions testing procedures rely on laboratory testing rather than testing in real-world driving conditions. Manufacturers may therefore claim results for fuel consumption and emissions based on laboratory tests that are significantly better than can be achieved in real-world driving conditions. This is unlikely to meet consumer expectations and has the potential to be misleading.
- Research from the Australian Automobile Association and consulting engineers, ABMARC, indicates that real-world fuel consumption is on average 25 per cent higher than official laboratory test results. The gap between laboratory and real-world fuel consumption tests is not consistent across car types or brands, and has been increasing in recent years. This casts significant doubt on the comparative value of absolute fuel consumption figures currently displayed in fuel consumption labelling.
- The Australian Government is currently reviewing possible new measures to address vehicle emissions under the Ministerial Forum on Vehicle Emissions. The Forum is considering a number of measures to improve the integrity of vehicle emissions testing, including the introduction of a more realistic laboratory test for fuel consumption and emissions, and for vehicle emissions, on road testing.

Draft recommendations on the fuel consumption and emissions discrepancy

Draft recommendation 6.2

The ACCC supports measures to enhance the quality of information supplied to consumers currently being considered by the Ministerial Forum into Vehicle Emissions, including the replacement of the current fuel consumption and emissions testing regime with the new Worldwide Harmonised Light Vehicles Test Procedure, a more realistic laboratory test, and the introduction of an on-road 'real driving emissions' test.

Chapter 7: Other issues

This study considered a number of additional issues, including telematics in cars, car performance and representations about the advertised year of a new car.

Draft findings on telematics

- The impact of telematics on competition and consumers is likely to become more acute as telematics technology becomes more prevalent. The ACCC will continue to monitor emerging issues in this area.
- The voluntary Heads of Agreement and codes of practice governing information-sharing in relation to technical information provides a process, as yet unused, for the signatories to discuss issues associated with access and ownership of data generated by telematics technology.

Draft recommendation on telematics

Draft recommendation 7.1

The ACCC supports the Productivity Commission's recommendations in its final report on Data Availability and Use for a comprehensive right for consumers to access digitally held data about themselves, including to direct data custodians to copy that data to a nominated third party which may address some of the concerns that were raised about the impacts of telematics technology on new car purchasers.

Draft findings on car performance

- Submissions to this study have pointed to a few examples of misleading claims in relation to car performance. However, submissions have not provided evidence that this issue is systemic.
- The current laws prohibiting false, misleading and deceptive conduct under the ACL provide adequate consumer protection in relation to this issue.

Draft findings on the advertised year of a new car

- Submissions to this study have provided limited evidence of systemic misleading behaviour by manufacturers or dealers in relation to the advertised year of new cars.
- The current laws prohibiting false, misleading and deceptive conduct under the ACL provide adequate consumer protection in relation to this issue.

Shortened terms

AAA	Australian Automobile Association
AAAA	Australian Automotive Aftermarket Association
AADA	Australian Automotive Dealer Association
ACCC	Australian Competition and Consumer Commission
ACCC Consumer Survey	ACCC Consumer Survey, <i>Consumer experiences of buying, servicing and repairing new cars</i> , Colmar Brunton, May 2017
ACL	Australian Consumer Law
ACL Review	The review of the Australian Consumer Law conducted by CAANZ, concluded in March 2017
ADRs	Australian Design Rules
ADS	Automotive Dealer Services
AMIF	Australian Motor Industry Federation
ANCAP	Australasian New Car Assessment Program
ASIC	Australian Securities and Investments Commission
CAANZ	Consumer Affairs Australia and New Zealand
CALC	Consumer Action Law Centre
CCA	<i>Competition and Consumer Act 2010</i> (Cth)
CCAAC	Commonwealth Consumer Affairs Advisory Council
DIRD	Department of Infrastructure and Regional Development
ECUs	Electronic control units
EU	European Union
Euro 5 Regulation	Regulation (EC) No. 715/2007
FCAI	Federal Chamber of Automotive Industries
FCAI Code	<i>Voluntary Code of Practice – Access to Service and Repair Information for Motor Vehicles</i>
Heads of Agreement	Agreement on Access to Service and Repair Information for Motor Vehicles
IAG	Insurance Australia Group Limited
ICA	Insurance Council of Australia
IPRN	Insurer preferred repair network
KTAS	Kmart Tyre and Auto Service
MARN	Manufacturer authorised repair network
MoU	Memorandum of Understanding
MTAA	Motor Trades Association of Australia
MTA NSW	Motor Traders' Association of NSW
MTAQ	Motor Trade Association Queensland
MTASA	Motor Trade Association of South Australia
MVSA	<i>Motor Vehicle Standards Act 1989</i> (Cth)
NASTF	National Automotive Service Task Force
NEDC	New European Driving Cycle

NMVTRC	National Motor Vehicle Theft Reduction Council
NTC	National Transport Commission
OE	Original equipment
OEM	Original equipment manufacturer
OSBC	Office of the NSW Small Business Commissioner
PC	Productivity Commission
SBDC	Small Business Development Corporation
SDRM	Secure data release model
SERMI	Security-related Repair and Maintenance
Suncorp	Suncorp Group
UN	United Nations
VACC	Victorian Automobile Chamber of Commerce
VIN	Vehicle Identification Number

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1. Introduction

1.1. The ACCC's role

The Australian Competition and Consumer Commission (ACCC) is an independent Commonwealth statutory authority whose role is to administer and enforce the *Competition and Consumer Act 2010* (Cth) (CCA) and a range of additional legislation, promoting competition, fair trading and regulating national infrastructure for the benefit of all Australians.

The ACCC's role is to protect and strengthen the way competition works in Australian markets, to improve the efficiency of the economy and to increase the welfare of Australians. This means the ACCC will take action where this improves consumer welfare, protects competition or stops conduct that is anti-competitive or harmful to consumers, and promotes the proper functioning of Australian markets.

1.2. ACCC market studies

The ACCC undertakes in-depth market, sector or industry reviews with the aim of improving its understanding of industry practices and dynamics in those sectors. Market studies enable the identification of competition issues, market problems, and possible solutions. Alternately, a market study may confirm competition in the relevant markets is functioning effectively and that no action is needed. The ACCC publishes market study findings to help inform consumers and industry, to encourage public debate over competition and consumer matters, and to inform policy consideration.

Consumer issues in new car retailing, including responses by retailers and manufacturers to consumer guarantee claims, are a current priority area for the ACCC.²

The new car retailing industry is growing and the ACCC and other Australian Consumer Law (ACL) agencies continue to receive a high volume of complaints from consumers about defects with cars, covering a broad spectrum of manufacturers. These matters have prompted the ACCC to examine the dynamics of the new car retailing industry in depth.

This market study has been self-initiated by the ACCC under s.28(1)(c) of the CCA, which gives the ACCC the power to 'conduct research in relation to matters affecting the interests of consumers, being matters with respect to which the Parliament has power to make laws.' Under this provision, the ACCC does not have the power to compel information and documents from market participants.

Market studies and inquiries sometimes provide the ACCC with information that can lead to investigations of potential breaches of the CCA. These investigations are undertaken separately to the market study itself. When the ACCC conducts investigations it has the power in certain circumstances to compel people and businesses to provide information and documents under s.155 of the CCA. Investigations can lead to a number of outcomes including court cases, court enforceable undertakings and infringement notices.

² ACCC, Compliance and Enforcement Policy, 2017.

1.3. Outline of market study process

This study sought to consider the extent to which there may be industry characteristics or business practices (including those resulting from market and regulatory failures, see box 1.1) which are impeding the efficient operation of new car retailing industry markets³ and which may be:

- limiting competition
- causing consumer harm
- resulting in non-compliance with the CCA/ACL or other aspects of the regulatory framework.

Box 1.1: Potential market failures in the new car retailing industry

Competitive markets are important because they enhance economic efficiency and thereby promote the interests of consumers.

Economic efficiency refers to how well markets allocate resources to their various uses (allocative efficiency), drive firms to produce at lowest-cost (productive efficiency) and result in ongoing changes in how firms improve their offerings over time in response to consumer preferences (dynamic efficiency).

In some instances, markets do not produce desirable efficiency and consumer outcomes, and these markets are said to be subject to market failure.

Two sources of market failure which may be present with respect to new car retailing are informational problems and the existence of potentially 'captive' customers in the aftermarkets for repair and service.

- **Informational problems** largely stem from transaction costs associated with acquiring useful information that is relevant to consumer decisions. For example, relevant to this study, consumers are readily able to acquire information about the upfront costs of a new car but it is more difficult to get information about the cost and quality of servicing and parts options. This can mean that consumers do not make the choices that they would have made if they were better informed.
- The existence of **consumers who are 'captive'** can also be a source of market failure. A particular question for this study was whether consumers may be 'captive' in relation to the supply of aftermarket services and goods for new cars, including repair, servicing and replacement parts. If consumers are captive in these aftermarkets it may result in them paying higher prices than they would if the aftermarkets were effectively competitive.

To inform our analysis, this study has drawn on information from various sources including public consultations (written submissions, consumer and small business questionnaire, targeted information requests and stakeholder forums), the published literature, an ACCC commissioned consumer survey and other research, complaints data and ACCC enforcement investigations.

For further information in relation to the consultation and research undertaken in this study see **Appendix A**.

³ For the purpose of this report, the word 'market' is used in its general or colloquial sense, to refer to the exchange of goods or services between sellers and buyers within the broader Australian automotive industry. Use of the word 'market' for the purpose of this report should not be confused with the more specific meaning which the word 'market' typically has for the purpose of the CCA; which is a specific product and geographic space in which rivalry and competition take place, as defined in s.4E of the CCA.

1.4. Market study scope

This study has sought to examine the new car supply chain, with a particular focus on matters related to:

- consumer guarantees and warranties
- access to technical information to repair and service new cars,
- fuel consumption and emissions.

This study has also considered aftermarket services and goods for new cars, including servicing, repair and replacement parts. Aftermarket services are important to consider in the context of this study given the ongoing maintenance costs borne by purchasers of new cars and the role of aftermarkets which may influence competition and practices in the retailing of new cars.

Box 1.2: Definition of a new car

For the purposes of this study, a new car is defined as a car purchased by an Australian consumer, and which has not previously been registered.⁴ This definition includes passenger vehicles, four wheel drive vehicles and vans.⁵

While this study has focused on new cars, it has not considered:

- direct or parallel imports of new cars by individuals
- car financing and insurance products
- product safety⁶
- demonstrator vehicles
- capped price servicing.⁷

Chapter 7 of this report discusses issues outside the scope of this study further.

1.5. The ACL and the CCA

All relationships within the Australian new car retailing industry are governed by the statutory protections offered to consumers by the CCA, including the ACL. These include relationships between consumers, dealers and manufacturers. Competition laws also govern relationships between industry participants and prohibit restrictive trade practices.

Key provisions of the ACL and CCA that are discussed in this report are outlined below.⁸

⁴ The thresholds for defining a 'consumer' in s. 3(1) of the ACL were 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.

⁵ This means that the study has excluded 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.

⁶ 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.

⁷ 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 section 7.4.2 – Capped Price Servicing.

⁸ Relevant provisions of the CCA and ACL have not been reproduced, and have only been summarised in this section to facilitate understanding.

1.5.1. ACL protections for consumers and prohibitions against certain conduct by traders

Consumer guarantees

When consumers buy a product or service, they come with automatic statutory guarantees under the ACL that they will work and do what was asked for.⁹ These are known as the consumer guarantees. Businesses must provide consumer guarantees regardless of any other warranties they provide or sell to a consumer. The consumer guarantees include that goods are of acceptable quality,¹⁰ and that parts for the repair of goods are reasonably available for a reasonable period after the goods are supplied.¹¹

Misleading or deceptive conduct

Businesses are prohibited from engaging in conduct that misleads or deceives or is likely to mislead or deceive consumers or other businesses.¹² There are also specific prohibitions against businesses making false or misleading representations,¹³ and against businesses engaging in conduct that may mislead the public as to the specific nature, characteristics, or suitability for purpose of a good.¹⁴

Unconscionable conduct

Businesses must not engage in unconscionable conduct, when dealing with other businesses or their customers.¹⁵ Unconscionable conduct is generally understood to mean conduct which is so harsh that it goes against good conscience.

Requirements for repairers

Repairers of consumer goods must give consumers a prescribed form of notice if:

- it is the practice of the repairer to use refurbished parts in the repair of the consumer's defective goods; or
- the goods being repaired are capable of retaining user-generated data.¹⁶

1.5.2. CCA prohibitions against anti-competitive conduct

Misuse of market power

A business with a substantial degree of power in a market is not allowed to take advantage of this power for the purpose of eliminating or substantially damaging a competitor or to prevent a business from entering into a market.¹⁷

⁹ Part 3-2, Division 1 of the ACL.

¹⁰ Section 54 of the ACL.

¹¹ Section 58 of the ACL.

¹² Section 18 of the ACL.

¹³ Section 29 of the ACL.

¹⁴ Section 33 of the ACL.

¹⁵ Part 2-2 of the ACL.

¹⁶ Section 103 of the ACL (prescribed under Regulation 91 of the Competition and Consumer Regulations 2010).

¹⁷ Section 46 of the CCA.

Exclusive dealing

Broadly speaking, exclusive dealing occurs when one person trading with another imposes some restrictions on the other's freedom to choose with whom, in what, or where they deal. Most types of exclusive dealing are against the law only when they substantially lessen competition, although some types are prohibited outright.¹⁸

1.6. Government reviews relevant to this report

The ACCC is aware of a number of recent and ongoing Australian government reviews and other developments in relation to new cars, and has taken the findings or outcomes of these reviews into consideration where relevant to this study. Two of these reviews and their relevance to this report are discussed below.

The Productivity Commission's inquiry into Data Availability and Use

In 2016–17, the Productivity Commission (PC) conducted a broad ranging investigation into the benefits and costs of options for improving availability and use of private and public sector data.¹⁹ As part of the inquiry, the PC was directed to identify options to improve individuals' access to public and private sector data, particularly data about themselves, and to identify ways consumers can use and benefit from access to data.²⁰

On 31 March 2017 the PC sent its final report to the Australian Government, recommending a legislated comprehensive right for consumers to direct how data about them or generated by their internet-connected activity is handled by data holders. The PC's earlier draft report also noted that a potential broader consumer right to data may have competition benefits for the automotive sector.²¹

Chapter 7 of this report, which addresses matters including telematics in new cars, discusses the findings and recommendations of the PC inquiry further.

Ministerial Forum on Vehicle Emissions

In October 2015, the Australian Government established a Ministerial Forum to coordinate a whole-of-government approach to addressing emissions from motor vehicles. The terms of reference for the Ministerial Forum cover a number of options to reduce fuel consumption and greenhouse gas emissions and pollution from cars, including:

- implementation of more stringent noxious emissions standards for new vehicles
- emissions testing arrangements for vehicles in conjunction with international regulatory agencies to ensure robust testing, and
- introducing fuel efficiency (CO₂) measures for new light vehicles.²²

The Ministerial Forum intends to provide a draft implementation plan on potential measures later in 2017 for consideration by Government.

Chapter 6 of this report, which addresses issues around fuel consumption and emissions, discusses the measures being considered by the Ministerial Forum further.

¹⁸ Section 47 of the CCA.

¹⁹ PC, [Data availability and use: Final report](#), 31 March 2017.

²⁰ PC, [Data availability and use: Final report](#), 31 March 2017, p. 15.

²¹ PC, [Data availability and use: Draft report](#), 3 November 2016, pp. 170–171.

²² DIRD, [Ministerial Forum on Vehicle Emissions](#), accessed 20 June 2017.

Other reviews

A more comprehensive list of the other relevant government reviews also considered by the ACCC can be found at **Appendix B**. The ACCC will continue to monitor the development of these reviews, and may address recommendations or findings which are relevant to this study in the final report on the new car retailing industry.

2. New car retailing industry characteristics

Key points

- Buying a new car is one of the most significant purchases for a consumer, typically second only to the purchase of a home. Data indicates that buying a car and its ongoing maintenance accounts for around five per cent of average household expenditure annually.
- In 2016, approximately 1.1 million new vehicles were sold by more than 1500 new car dealers across Australia with revenues estimated at approximately \$64 billion over 2016–17. Households and small businesses made up more than half of these purchases.
- New car sales have flow on effects for car servicing and repairs, and crash repair businesses. Around 40 000 repair and service businesses are expected to earn revenues of \$18 billion in 2016–17, while approximately 11 000 crash repair businesses are expected to earn revenues of \$6.8 billion.
- An important feature of the industry is the vertically connected ‘manufacturer authorised’ supply chains organised around car manufacturer brands. Businesses in these supply chains are vertically connected through commercial mechanisms such as manufacturer ownership of car and parts distributors, authorised dealer agreements, franchise and licensing agreements, and informal preferential business arrangements.
- In addition to new car sales, manufacturers and authorised dealers earn significant revenues and profits from aftermarket sales including repairs and service and replacement parts. While data on the Australian market is limited, it is generally recognised that manufacturers and authorised dealers earn higher profit margins from the sale of replacement parts and (for dealers) from the repair and service of new cars, than from new car sales themselves.
- Indeed, authorised dealers earn a significant proportion of their overall profit from new car repairs and service (about the same contribution to overall profit as the sale of new cars themselves), and international literature suggests manufacturers similarly earn a significant proportion of their overall profit from the sale of new car replacement parts.
- The relationship between new car sales and the service, repair and parts aftermarkets means that manufacturers and authorised dealers compete for new car sales in part to maximise revenue streams from these profitable aftermarkets. The relationship also drives manufacturer and dealer behaviours designed to ‘lock-in’ consumers to manufacturer authorised supply chains.
- Independent repairers operate outside manufacturer authorised supply chains and in competition with authorised dealer service centres, parts suppliers and vertically aligned crash repairers. These independent repairers are dependent on being able to trade with authorised businesses and to access the information, data, tools and parts required to repair and service modern cars.
- The vertical relationships in the authorised supply chains, and the manufacturers’ ownership of critical data, tools and information, mean manufacturers and their dealer networks have the ability and incentive to impede competition in aftermarkets. For example by limiting access to the information and data required by independent repairers to repair and service new cars.

This chapter provides:

- an overview of each industry sector
- a description of how consumers engage with the industry in each of the three consumer facing markets (new car retailing, aftermarket repair and service and crash repairs), and
- a description of how authorised and independent suppliers compete.

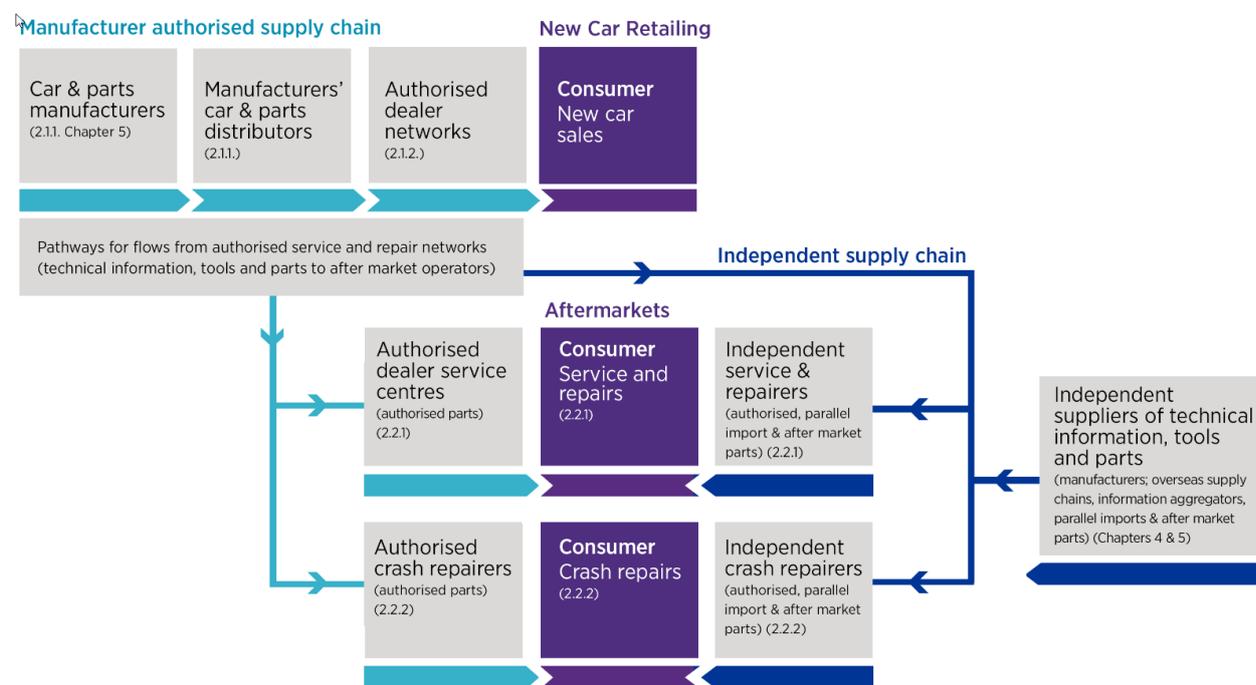
The new car retailing industry in Australia incorporates the following sectors:

- car and parts manufacturing, distribution and retailing
- aftermarket services, including:
 - car repairs and servicing (covering scheduled car service and maintenance, ad-hoc repairs of faults resulting from normal use and any parts used in this work)
 - crash repairs (covering work undertaken to repair damage to a car resulting from accidents and any parts used in this work).

Figure 2.1 gives an overview of the new car retailing industry. It highlights the key contact points for consumers: new car sales where consumers buy cars from authorised dealers, and aftermarkets, including repairs and service and crash repairs, where authorised businesses compete with independent repairers. It also highlights the flow of repair and service information, tools and parts to authorised and independent repairers.

'Authorised' means a manufacturer has authorised the supply of a good or service to the Australian market under their brand name, while 'independent' means supply into the Australian market which has not been authorised by a manufacturer.

Figure 2.1: New car retailing industry overview



Car manufacturers and their authorised agents supply car repair and service information, tools and parts to aftermarket operators in their authorised supply chains under the terms of dealer agreements and other licencing arrangements.

Independent repairers in the aftermarket rely on authorised and independent supply chains for access to repair and service tools, information and parts. Independent suppliers can include car manufacturers' overseas information, tools and parts supply chains (parallel imports), third party car information aggregators, aftermarket parts suppliers and informal networks.

The relationship between new car sales and the service, repair and parts aftermarkets is discussed in box 2.1.

Box 2.1: The relationship between new cars and aftermarket services

A significant feature of the new car retailing industry is the relationship between sales of new cars and sales in aftermarkets, such as car servicing and repair and replacement parts. As is discussed later in this chapter, high margins from the sale of replacement parts contribute significantly to manufacturers' and dealers' overall profitability. Similarly, authorised car dealers earn a significant proportion of their overall profit from the servicing of new cars—about the same contribution to overall profit as the sale of new cars themselves.

The demand for goods and services in these profitable 'secondary' aftermarkets depends on demand for new cars in the 'primary' retail market. As manufacturers and authorised dealers can usually capture a significant share of aftermarket sales, it creates strong incentives to maximise the sale of new cars.

The strong incentives to increase new car sales in order to maximise aftermarket sales affects the conduct of both car manufacturers and authorised dealers:

- Manufacturers produce and earn profits from both new cars and the replacement parts for those cars.²³ Manufacturers set the (wholesale) prices of cars and parts so as to maximise overall profits; this means manufacturers may set lower prices for new cars than if they only sold new cars.²⁴
- Authorised dealers earn profits from selling new cars as well as a range of complementary goods and services (including car repairs and service, parts, car finance and insurance). This may create incentives for dealers to sell cars at low margins or even a loss to enable profits to be made from the sale of add-on products in aftermarkets (see section 2.1.2).

The relationship between new car and aftermarket sales also highlights the importance of consumers having access to information at the point of sale on the 'whole of life' costs and benefits of buying and operating a particular car (see box 2.4). The decision to purchase a car can have significant and ongoing financial consequences for consumers over the life of car ownership (see Table 2.1). To make an informed choice about which car to buy, consumers need to be able to access, understand and use accurate information about the cars they are considering and related aftermarkets.²⁵

A further consequence of the new car sales and aftermarkets relationship is that it provides an incentive to car manufacturers and authorised aftermarket suppliers to limit competition in aftermarkets. A pricing strategy of low new car prices can only be profitable overall if sufficient profits can be earned in aftermarkets, and competition may undermine this.

The incentive to create obstacles to aftermarket competition plays out in a number of areas examined in this study, including in relation to:

- information provision to consumers about warranties and consumer guarantees
- access to data and information needed to repair and service cars
- parts pricing and access to parts and tools.

²³ Car replacement parts built to the car manufacturer's specifications may be produced by the original car manufacturer, by a company licenced by the car manufacturer or by an independent company with no legal authorisation from the car manufacturer. Chapter 4 has a fuller description of the different types of car replacement parts.

²⁴ The result is that a single firm will take into account the impact of lower prices for one good on the sales of the complement, whereas two separate firms would not.

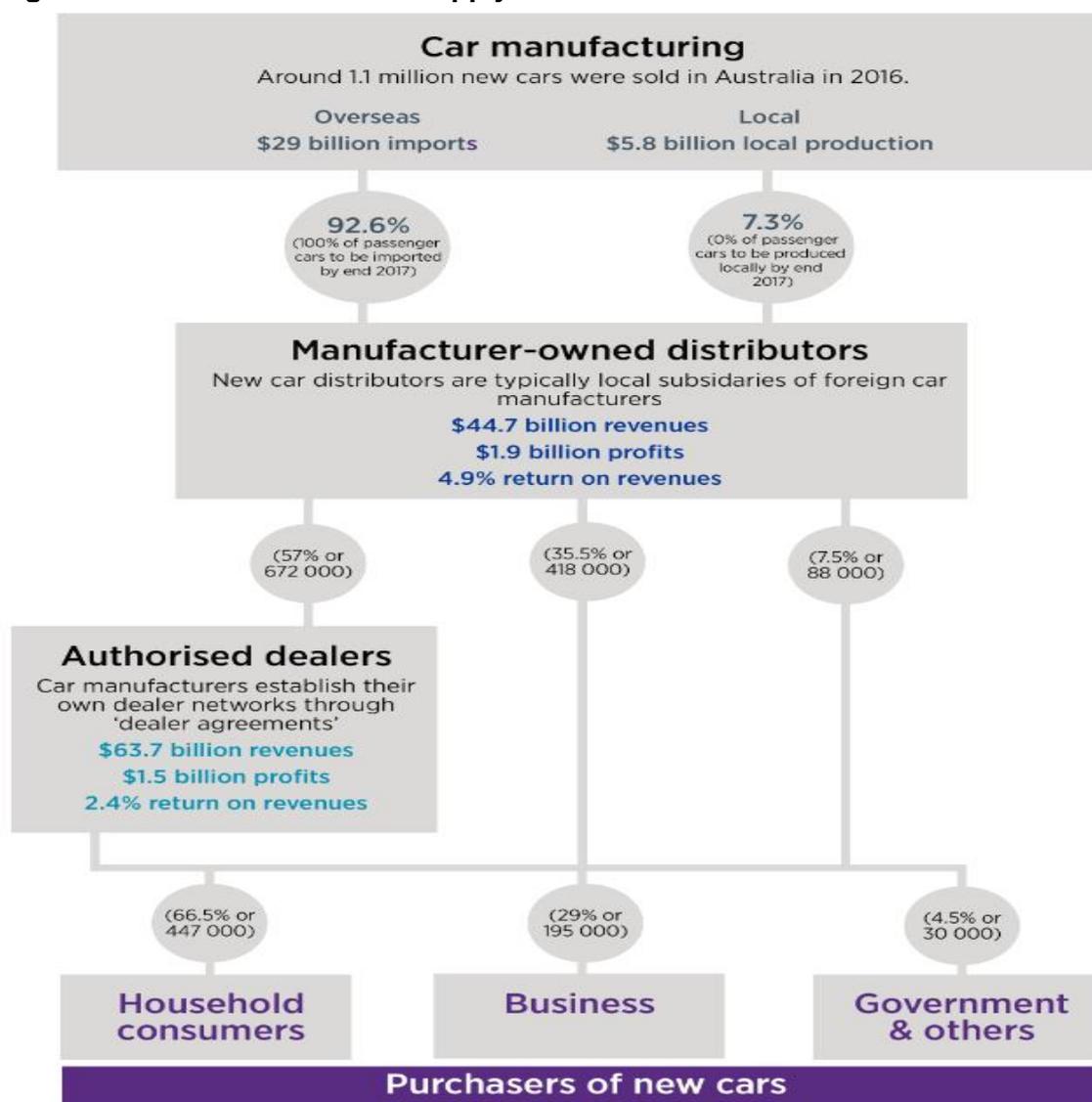
²⁵ The risk of information related market failures increase where consumers may not adequately consider whole of life costs and benefits of owning a given car. Some evidence indicates that consumers are significantly more responsive to the price of a new car than to the prices of parts, servicing and other aftermarket services. This is borne out in the ACCC Consumer Survey: a key finding was that fewer than 1 in 5 consumers consider the cost of parts when buying a new car compared with 3 in 4 that consider the price of a new car (ACCC Consumer Survey, p. 6).

2.1. The new car market

In 2016, around 1.1 million new cars were sold in Australia, including more than 210 car models produced by car manufacturers representing 67 brands.²⁶

Figure 2.2 gives an overview of the estimated size of each sector of the new car supply chain and the flows of cars from manufacturers to purchasers. Broadly, it shows that over 90 per cent of new cars sold in Australia are manufactured overseas. Approximately 43 per cent (just over 500 000 cars in 2016) are sold by manufacturers and their distributors in wholesale markets to commercial and government fleet buyers. The remaining 57 per cent (approximately 670 000 cars in 2016) are retailed by authorised dealers, with households accounting for two thirds of purchases (approximately 447 000 in 2016), businesses around 29 per cent (195 000) and governments around five per cent (30 000).

Figure 2.2: Australian new car supply chain



Note: As evidence to this study indicates that a very small number of new cars are currently purchased in Australia through car brokers and direct from the manufacturer these retail avenues are not shown here.

Source: ACCC calculations based on FCAI (VFACTS) motor vehicle sales data (as at December 2016); IBISWorld Industry Report C2311 Motor Vehicle Manufacturing in Australia, October 2016; IBISWorld Industry Report F3501 Motor Vehicle Wholesaling in Australia, August 2016; IBISWorld Industry Report G3911 Motor Vehicle Dealers in Australia, February 2017).

²⁶ FCAI, VFACTS National Report - New Vehicle Sales, December 2016. The total number of motor vehicles sold in Australia in 2016 was 1.178 million, which includes vehicle types outside of the scope of 'new cars' for the purposes of this study.

Buying a new car is one of the most significant financial decisions consumers make, typically second only to the purchase of a home. While the upfront purchase price of a new car may range from less than \$20 000 to well over \$100 000 depending on the model, many consumers buy new cars on finance and pay a weekly amount over the life of a car loan. Consumers also face ongoing costs to repair and service a new car.

Data indicates that buying a car and ongoing maintenance can account for a significant proportion of household expenditure. A 2010 Australian Bureau of Statistics survey²⁷ (updated to 2016 dollars) indicated that households surveyed spent around \$42 per week (or \$2173 a year) buying a motor vehicle and approximately \$28 per week (or \$1448 a year) on car parts and servicing. Overall, households surveyed spent an average of around \$70 a week (or \$3621 a year) to buy and maintain a car, accounting for approximately five per cent of total average household expenditure.

Table 2.1: Motor vehicle costs – purchase, repair and service, 2015–16

Type of expenditure	\$/week	\$/year	% of total household expenditure
Purchase of motor vehicle	41.6	2173.0	3.0
Motor vehicle parts and accessories (purchased separately)	11.2	579.9	0.8
Vehicle servicing (including parts and labour)	16.7	868.1	1.2
Total	69.6	3621.0	4.9

Note: Real values in 2015–16 dollars. Includes new and used cars. Ongoing expenditure excludes fuel, registration and insurance costs.

Source: ACCC calculations based on ABS data (6530.0 Household Expenditure Survey, Australia: Detailed Expenditure Items, 2009–10 and 6401.0 Consumer Price Index, Australia, March 2017, Tables 1 and 2, CPI: All Groups, Index Numbers and Percentage Changes, and Table 9. CPI: Group, Sub-group and Expenditure Class, Index Numbers by Capital City), accessed 22 June 2017.

2.1.1. Car manufacturing and wholesale distribution

The new car industry is global, consisting of international supply chains organised around more than 100 car manufacturer brands. The Australian new car industry is fully integrated into these global supply chains as an importer of cars manufactured overseas and through foreign ownership of Australian car distributors. While the Australian industry has historically had a car and parts manufacturing sector, by the end of 2017 all new cars on sale in Australia will be manufactured overseas and imported, although some local parts manufacture will continue to service local and export markets.²⁸

Imports account for a significant proportion of new cars sold in Australia

Total motor vehicle imports in 2016 are estimated to be valued at approximately \$29 billion, while local motor vehicle manufacturing is valued at around \$7.7 billion (approximately \$5.8 billion of which was sold locally and \$1.9 billion in exports).²⁹

Of the 1.1 million new cars sold in Australia in 2016, approximately seven per cent were locally manufactured while the remaining 93 per cent were manufactured overseas and imported.³⁰ Just over three quarters of imports (77 per cent) originated from just five

²⁷ Australian Bureau of Statistics, 6530.0 Household Expenditure Survey, Australia: Detailed Expenditure Items, 2009–10.

²⁸ IBISWorld, *IBISWorld Industry Report C2311 Motor Vehicle Manufacturing in Australia*, October 2016.

²⁹ IBISWorld, *IBISWorld Industry Report C2311 Motor Vehicle Manufacturing in Australia*, October 2016.

³⁰ FCAI, *VFACTS National Report - New Vehicle Sales*, December 2016. Motor vehicle figures are broader than the definition

countries – Japan (28 per cent), Thailand (24 per cent), South Korea (14 per cent), Germany (7 per cent) and the USA (5 per cent).

Distribution of new cars

Practically all Australian new car distributors are subsidiaries of foreign car manufacturers and act as links between foreign manufacturers and their Australian authorised dealer networks.³¹ Australian car distributors (and in some cases manufacturers) wholesale new cars direct to end users such as larger fleet buyers from business and government. A car manufacturer's distributor also typically acts as the authorised distributor for manufacturer branded original equipment (OE) replacement parts (authorised parts³²), and to varying degrees, wholesales services such as car finance, extended warranties and other insurance products to their authorised dealer network.

The wholesale market exhibits low market concentration with a relatively large number of distributors. In 2016–17, the top ten car distributors by market share are expected to account for around 57 per cent of wholesale market sales. All of these distributors are subsidiaries of foreign car manufacturers.³³

In 2016–17, Australian motor vehicle distributors are expected to earn around \$44.7 billion in revenue from the wholesale of new and used vehicles.³⁴ Over this period, distributor profits are estimated at \$1.9 billion giving the industry a return on revenues of approximately five per cent.³⁵

Over the same period, car distributors are expected to sell around 57 per cent of their motor vehicles to dealerships networks, approximately 36 per cent to larger company commercial fleet buyers and the remaining seven per cent to governments and other buyers.³⁶

Sources of profit for car manufacturers

Car manufacturers, through their own activities and those of their subsidiary distributors in Australia, earn revenues and profits from a range of activities including the manufacture and sale of new cars, the wholesale of car finance and other financial services, and the manufacture and sale of replacement parts.

A typical stylised business model for car manufacturers is described in the international industry literature.³⁷ The model involves car manufacturers making and selling cars at low margins with the aim of generating ongoing profits from aftermarket sales, in particular the sale of replacement parts. Replacement parts can generate a higher proportion of car manufacturers' profits relative to new car sales due to their higher margins.³⁸ For example,

of new cars used in this study, including passenger, SUV, light commercial and heavy commercial motor vehicles.

³¹ IBISWorld, *IBISWorld Industry Report F3501 Motor Vehicle Wholesaling in Australia*, August 2016.

³² For the purposes of this study, an authorised part is a replacement part which is authorised for supply to the Australian market by a car manufacturer. It does not include parallel imports or aftermarket parts.

³³ IBISWorld, *IBISWorld Industry Report F3501 Motor Vehicle Wholesaling in Australia*, August 2016.

³⁴ IBISWorld, *IBISWorld Industry Report F3501 Motor Vehicle Wholesaling in Australia*, August 2016. Used vehicles comprise only a small proportion of wholesale revenues.

³⁵ IBISWorld, *IBISWorld Industry Report F3501 Motor Vehicle Wholesaling in Australia*, August 2016. The wholesale of motor vehicles is broader than the definition of new cars for the purposes of this study, including passenger, SUV, light commercial and heavy commercial motor vehicles.

³⁶ IBISWorld, *IBISWorld Industry Report F3501 Motor Vehicle Wholesaling in Australia*, August 2016.

³⁷ Autorité de la Concurrence, *Opinion no. 12-A-21 of 8 October 2012 on competition in the vehicle repair and maintenance sector and the spare parts manufacturing and distribution sector*, EU, 2012; IBM Institute for Business Value, IBM Global Business Services, *Performance in reserve, Protecting and extending automotive spare parts profitability by managing complexity*, 2008, p.1-2; Capgemini Consulting, *The Aftermarket in the Automotive Industry*, University of St. Gallen, Institute of Technology Management, 2010, p. 5-7; London Economics, *Developments in Car Retailing and Aftermarket Sales Under Regulation N 1400/2002*, Final Report to European Commission DG Competition, June 2006, p. 7.

³⁸ Capgemini Consulting, *The Aftermarket in the Automotive Industry*, University of St. Gallen, Institute of Technology Management, 2010, pp. 5-7.

research on the European and US new car markets indicates that while replacement parts sales may generate only 5 to 10 per cent of a car manufacturer's revenues they can account for 30 to 50 per cent of the manufacturer's overall profits.³⁹

These features of manufacturer profitability create incentives for manufacturers to compete strongly on new car sales in order to generate revenue and high returns from the sale of replacement parts. This issue is discussed in further in chapter 5.

Competition in the wholesale market

Competition in the new car wholesale market is segmented into sales between manufacturers and their dealer networks within vertically integrated supply chains, and sales outside these supply chains to large government and commercial fleet buyers. Sales between manufacturers and dealer networks are made under exclusivity arrangements and the terms and conditions set out in manufacturer-dealer agreements. Government and commercial fleet buyers in the wholesale market (almost half of new car sales in 2016–17) can shop across all models sold in Australia. As a result, manufacturers compete strongly when selling to government and commercial fleet buyers.

2.1.2. New car retailing

An authorised dealership is a business which has a franchise or 'dealership agreement' with a car manufacturer giving it the right to act, within a defined geographical area, as the primary seller of the manufacturer's cars and authorised replacement parts, and provider of authorised car servicing and repairs (see box 2.2).⁴⁰

There are approximately 1500 new car dealers operating 3500 outlets across Australia.⁴¹ Authorised dealers sell the majority of their cars to household consumers. It is estimated that households account for approximately 66 per cent of dealer retail sales (approximately 447 000 cars in 2016), general businesses, car-rental companies and taxi operators 29 per cent (approximately 195 000 cars), and government and other customers 5 per cent (approximately 30 000 cars).⁴² The Australian Automotive Dealer Association (AADA) notes that salary packaging companies, novated leasing companies and fleet lessor companies account for a significant proportion of dealer sales to both private and fleet buyers.⁴³

³⁹ Autorité de la Concurrence, *Opinion no. 12-A-21 of 8 October 2012 on competition in the vehicle repair and maintenance sector and the spare parts manufacturing and distribution sector*, EU, 2010; IBM Institute for Business Value, IBM Global Business Services, *Performance in reserve, Protecting and extending automotive spare parts profitability by managing complexity*, 2008, pp. 1-2.

⁴⁰ Some car manufacturers (typically higher end makes) also authorise dealers to act as authorised crash repairers for their brand (see section 2.2.2).

⁴¹ AADA submission, November 2016, p. 2.

⁴² FCAI, *VFACTS National Report - New Vehicle Sales*, December 2016; IBISWorld, *IBISWorld Industry Report G3911 Motor Vehicle Dealers in Australia*, February 2017.

⁴³ AADA submission, November 2016, p. 3.

Box 2.2: Dealer agreements

A dealer agreement is typically required to sell a car manufacturer's models in Australia. The agreement is a legal contract which establishes the terms and conditions the manufacturer and authorised dealer are required to meet for the period of the contract. Contracts typically last for several years and expire unless a new agreement is reached.

Holden describes the purpose of the dealer agreement as being: '... to outline and define how the manufacturer... and the Dealer... do business together and the standards and processes that are expected of them in representing the brand and details the area of primary representation that they are responsible for.'⁴⁴

The terms and conditions in dealer agreements vary across the industry. Key areas prescribed in agreements include:

- specifications of the dealer's facilities (i.e. car showrooms and service facilities)
- dealership ownership arrangements
- dealer management and performance criteria/indicators (i.e. car sales, servicing and customer satisfaction targets)
- dealer obligations relating to car sales, service and authorised parts
- expectations for customer service and support (including how manufacturer warranty claims are dealt with and costs are shared)
- conditions relating to multi-franchising and change of use of premises/facilities
- the geographical area (postcodes) where the dealer has primary rights to represent the brand and sales targets for that area (while a manufacturer/distributor determines the number and location of dealers required to achieve their overall sales targets, a dealer contract does not attempt to establish an exclusive area of operation/sales)
- any other special conditions that may apply to a given dealer.

Authorised dealers generate revenue from a range of activities outlined in their dealer agreement at the point of sale, post-sale and otherwise.

- Point of sale revenues can come from selling new and used cars, add on features and car accessories (such as window tinting, sports wheels and upgraded entertainment systems), insurance products (including extended warranties, consumer credit and life insurance), and by providing car finance.
- Post sale revenues can come from servicing cars and the sale of authorised replacement parts to their own customers (for services and repair) and to independent repair and service operators.
- Other revenues in the form of payments from car manufacturers (and financial penalties) can be triggered when dealers meet (or fail to meet) other performance indicators set out in an agreement (such as new car sales and servicing targets and minimum customer satisfaction ratings benchmarks).

Holden notes that car manufacturers are able to manage potential revenues available to a given authorised dealer by balancing the terms and conditions in the dealership contract noting that: 'Volume throughput (sales and service) needs to be carefully managed for the appointed dealers to ensure they get an acceptable return on the investment and the business is sustainable. This is to ensure dealers can generate enough profitability to reinvest in facilities, people and services to meet changing customer expectations. This can take a fine balance due to the highly competitive nature of the automotive industry.'⁴⁵

⁴⁴ GM Holden submission, November 2016, p. 3.

⁴⁵ GM Holden submission, November 2016, p. 4.

The AADA estimates current new car dealer revenues from all sources to be in excess of \$66 billion annually.⁴⁶ Other measures estimate dealer revenues from the sale of new and used cars and the provision of after-sale services at \$63.7 billion for 2016–17 (excluding revenues from the sale of parts and accessories). From these revenues, dealers are estimated to earn \$1.5 billion in profits over 2016–17 giving a return on revenues of approximately 2.4 per cent.⁴⁷

Emerging trends in Australia and overseas impacting on the traditional business models for new car retailing include retail market consolidation and the growth of car sharing services as an alternative to buying a new car (see box 2.3).

Box 2.3: Trends in car retailing⁴⁸

Consolidation amongst dealerships

Industry analysts have reported some consolidation in the new car retailing market in recent years with the number of dealers decreasing, and the average size of dealerships and revenue per dealership increasing. It has been reported that sector consolidation has been driven, in part, by larger, multi-dealership businesses acquiring dealerships, allowing them to maintain or increase their market share at the expense of the remaining operators. While market share concentration has remained relatively steady in recent years, it is expected to increase as these types of acquisitions continue. This acquisition strategy has enabled multi-dealership businesses to achieve greater economies of scale as they share costs across a greater number of dealerships and car sales which should assist the generation of higher profits per sale and/or lower retail prices for new cars in markets where they operate.

Growth in car sharing services

Australian consumers are increasingly being offered access to car sharing services which allow them to use a car without buying and maintaining their own vehicle. Car sharing services offer an alternative model to traditional car ownership whereby consumers pay (through a combination of flat membership fees and usage charges) to access cars stationed near to where they live. The car sharing service owns, insures, services and maintains fleets of cars, typically in densely populated urban areas. Industry analysts estimated there are currently 18 car sharing services operating Australia and generating an estimated \$84 million in revenues over 2016–17 with average annual growth rates of more than 20 per cent over the last five years.

Sources of profit for car dealers

A typical industry pricing model for authorised dealerships in Australia has been highlighted by independent industry commentators⁴⁹ and the AADA.⁵⁰ The stylised model describes lower margins on new car sales and higher margins on complementary products, such as the various add-ons often sold with cars (for example, car accessories, finance, extended warranties and consumer credit and life insurance) and aftermarket services (for example, repair and service work and authorised replacement parts). Table 2.2 provides an indicative

⁴⁶ AADA submission, November 2016, p. 3.

⁴⁷ IBISWorld, *IBISWorld Industry Report G3911 Motor Vehicle Dealers in Australia*, February 2017.

⁴⁸ IBISWorld, *IBISWorld Industry Report G3911 Motor Vehicle Dealers in Australia*, February 2017; *IBISWorld Industry Report OD5063 Car Sharing Providers in Australia*, December 2016; Choice Car Share Services April 2015 See: <https://www.choice.com.au/transport/cars/general/articles/car-sharing-vs-car-buying>, accessed May 2017.

⁴⁹ The Deloitte Motor Industry Benchmarking Report reports gross profit percentages for the top 30 per cent of dealers in the eProfitFocus database of more than 800 dealers. Reported gross profit margins for parts supply are around three times as high as for new car sales. See: https://www.eprofitfocus.com/media/233268/052535_Motor-Industry-Services-Benchmark-2016_Cars_Final-Art.pdf, accessed April 2017.

⁵⁰ AADA submission, November 2016, pp. 9-10. The AADA notes at para 4.2.5: 'While the finance and insurance and parts and service departments will generally operate at a net profit they would not do so without sufficient volume in vehicle sales which generates a significant proportion of the throughput of those departments'.

summary of average dealer margins across some of these product lines, highlighting the material differences in revenues and margins for different categories of goods and services typically sold by car dealerships.

Table 2.2: Estimated sources of profit for car dealers in Australia

	Revenue share	Gross profit margin	Contribution to gross profits
New vehicles	65%	7%	38%
Used vehicles	20%	10%	13%
Parts	8%	21%	13%
Service	7%	64%	36%
Total / average	100%	12%	100%

Note: Excludes other sources of revenue including car finance and consumer credit and life insurance

Source: AADA submission, November 2016, p. 11.

Competition in the retail market

Retail markets for the supply of new cars in Australia are generally competitive, as a result of a number of factors:

- As of 2016, there were around 67 car brands and over 210 models on sale in Australia with no car manufacturer capturing more than 18 per cent of total new car sales.⁵¹
- There are typically multiple car makes and models to choose from within any segment of the new car market (i.e. micro, light, small, medium, large, people mover, sports).⁵²
- There is a large number of new car dealerships (approximately 1500) dispersed throughout population centres competing for sales and market share.⁵³
- There is also intra-brand competition between authorised dealers within a manufacturer's network.⁵⁴ While dealer agreements give dealers primary rights to represent a brand within a geographical area, they typically do not establish exclusive areas for sales.
- There is low market concentration at the authorised dealer level with the four largest firms (owning multiple dealerships) accounting for around 15 per cent of new car sales, with the remaining 85 per cent shared amongst a range of dealership types including many smaller businesses operating single dealerships selling one brand of car.⁵⁵
- The used car market and the growth of car sharing services provide consumers with ready substitutes to purchasing a new car (see box 2.3).

However, competition varies across the country depending on a range of factors including the buyer, the car being sought and the number of dealers in an area. For example:

- Larger buyers (such as fleet buyers) may have more bargaining power, be less restricted to dealers in a given area and may have the option of buying in the wholesale market.

⁵¹ FCAI, *VFACTS National Report - New Vehicle Sales*, December 2016. The top 5 car manufacturers by sales in 2016 in Australia accounted for 51.3 per cent of all new cars sold that year: Toyota (17.8 per cent), Mazda (10.0 per cent), Hyundai (8.6 per cent), Holden (8.0 per cent) and Ford (6.9 per cent).

⁵² FCAI, *VFACTS National Report - New Vehicle Sales*, December 2016.

⁵³ AADA submission, November 2016, p. 2.

⁵⁴ The ACCC Consumer Survey found that of respondents who had recently purchased a new car, 24 per cent had visited one dealer, 19 per cent two, 17 per cent three and 21 per cent four or more dealers (ACCC Consumer Survey, p. 23).

⁵⁵ IBISWorld, *IBISWorld Industry Report G3911 Motor Vehicle Dealers in Australia*, February 2017.

- Single car buyers (typically small businesses or households) are likely to have less bargaining power and be limited to a smaller geographic area with fewer dealers and models to choose from.
- Buyers seeking a car type with more brands and models (i.e. medium sized passenger cars) will have more choice compared with buyers seeking a car type with fewer brands and models (i.e. luxury sports).

Consumers and the retail market

As already noted, for many consumers, buying a new car is a significant purchase. It can also be a complex decision that typically locks consumers into significant ongoing costs to operate, service, maintain and repair the car. Box 2.4 outlines some of the key costs and benefits a consumer may weigh up when choosing a car.

Box 2.4: The ‘whole of life’ costs and benefits of owning a new car

A consumer may consider a range of costs and benefits associated with buying and owning a car when making the upfront purchase decision of which car to buy.

The cost to a consumer of owning a car includes purchase, running and depreciation costs. A consumer can face trade-offs between these costs. For example, a given model may be relatively cheaper to buy but have higher repair and service costs, or may be more expensive to buy but come with lower fuel costs.

Purchase costs include the price of the car and any physical or service add-ons.

Running costs include:

- the ongoing costs of scheduled services and ad-hoc repairs, which can vary depending on whether the car is under warranty or not
- other recurring costs such as fuel, car insurance and registration
- the costs of ad-hoc crash repairs.

Depreciation costs are the loss of capital value as the car ages, reflected in the eventual resale or trade in value of the car.

The benefits derived by a consumer from owning a given car will depend on a range of factors including:

- the features of a given model (such as safety, reliability, security, fuel consumption, environmental impact)
- the level of protection offered under the manufacturer’s warranty
- the add-ons purchased or granted at the point of sale (capped-price or free servicing, extended warranty, road side assist)
- the costs, convenience, safety and reliability of ongoing post-sale services and support.

Consumers looking to buy a new car can be faced with volumes of technical, legal and financial information about the car itself, the purchase process and post-sale care arrangements, with this information spread across many sources. The degree to which consumers are interested in and can locate and effectively use this information will vary from buyer to buyer. How well-informed a consumer is about their car purchase will also depend on the practices of car manufacturers, dealers and other participants in the retail market.

Some key steps and types of information sought by consumers in the new car buying process are outlined in box 2.5.

Box 2.5: Informing consumers' car purchase decisions

The ACCC commissioned a consumer survey of 1500 new car buyers across Australia which detailed a number of key findings on how consumers inform themselves about their new car purchase (the ACCC Consumer Survey).⁵⁶

New car buyers are generally well-informed prior to purchase

- 55 per cent of new car buyers surveyed reported that they typically spent from one week to a month researching their purchase, while 31 per cent spent more than a month.
- New car buyers indicated that they most commonly used information on manufacturers' websites to inform their decisions (65 per cent) followed by in-person consultation with car sales-persons (54 per cent). They also indicated that they visited a median of two dealers and considered a median of two car models.

Information is generally easy to find and use

- Most new car buyers reported little difficulty in sourcing the information they required to inform their purchases. The types of information reported to be hardest to find related to:
 - the cost of spare parts (26 per cent)
 - reliability (16 per cent)
 - the environmental impact of the car (15 per cent)
 - post-sale servicing options and costs (14 per cent), and
 - the level of comfort offered by the car (10 per cent).
- More than half of new car buyers perceived that it was 'easy' or 'very easy' to compare different brands of cars (57 per cent). However those in regional areas were less likely to describe comparisons as 'easy' or 'very easy' than those living in metropolitan areas (50 per cent vs. 58 per cent).

Consumers are influenced at the point of sale

- Three-quarters of new car buyers reported that they received information from the sales-person before purchasing their car. Of these, two thirds felt that the information had some influence on their purchase decision.

In 2016, the Australian Securities and Investments Commission (ASIC) also conducted consumer research in relation to new car buyers (focussed on motor vehicle add-on insurance), which identified the following factors that may inhibit good decision-making by new car buyers:

- **decision fatigue**, the result of making a series of decisions, which can result in later decisions not being of the same quality as early decisions
- **information overload** when faced with complex decisions or lots of information—that is, the amount of information consumers have to process can adversely affect how they process that information and weaken the use of their critical decision-making.⁵⁷

Post-sale, consumers continue to seek and be provided with a range of information about their car as they make ongoing decisions about car maintenance, servicing and repairs. The processes consumers go through to make car servicing and repair decisions are discussed in section 2.2 below.

⁵⁶ ACCC Consumer Survey, *Consumer experiences of buying, servicing and repairing new cars*, Colmar Brunton, May 2017.

⁵⁷ ASIC submission, November 2016, pp. 7-8.

2.2. Aftermarket: car servicing and crash repairs

Once a consumer buys a new car they require a range of ongoing aftermarket services and parts to ensure the car is maintained and where necessary repaired. Car servicing and repairs, crash repairs and the replacement parts used in this work are supplied by a mix of manufacturer authorised and independent businesses in Australia.

2.2.1. Car servicing and repairs

Manufacturer car servicing requirements, including the replacement of certain high wear service parts, are set out in the log book and service manual. A consumer may choose to have their new car serviced at an authorised dealership service centre or by an independent repairer outside the authorised supply chain (see figure 2.1).⁵⁸

There are approximately 40 000 manufacturer authorised and independent car repair and service centres in Australia.⁵⁹ Authorised new car dealerships across the country typically operate a repair and service centre which aims to service their manufacturer's cars within the geographical area defined in their dealer agreements. The majority of these dealership service centres, as with the dealership business of which they are a part, are family-owned, partnership, or sole trader businesses, while a minority are operated by large multi-dealership businesses.

Independent repair and service businesses are equally diverse. Most independent repairers are small businesses operating as sole proprietors, partnerships or family businesses servicing cars in their local area. While there is a small number of large chain and franchise-based businesses operating national networks of independent service centres, these control a small share of the overall national repair and service market (see Table 2.3).

Table 2.3: Largest independent suppliers in repair and service markets, 2016–17

Business	Description	% of total revenue
Kmart Tyre & Auto Service	A subsidiary of Kmart with over 240 company owned service centres across Australia	2.0
Ultra Tune Australia Pty Ltd	A national franchise company with over 270 franchised service centres across Australia	1.8
Midas Australia Pty Ltd	More than 88 company-owned and franchised service centres across Australia.	1.0

Source: IBISWorld Industry Report S9419 Motor Vehicle Engine and Parts Repair and Maintenance in Australia.

⁵⁸ Aspects of new car servicing and repairs may also be undertaken by car owners themselves, although this is increasingly difficult to do as cars become more complex.

⁵⁹ IBISWorld, *IBISWorld Industry Report S9419 Motor Vehicle Engine and Parts Repair and Maintenance in Australia*, March 2017, p. 27.

Repair and service businesses (excluding crash repairs) were estimated to earn approximately \$16.1 billion in 2016–17, generating approximately \$900 million in profits and a return on revenues of 5.6 per cent.⁶⁰ Electrical servicing, repairs and installations businesses, a related type of car repair and service work, are expected to generate an additional \$2 billion in revenues over 2016–17, approximately \$207 million in profits and a rate of return on revenues of 10.4 per cent.⁶¹

There is limited data on the percentage of revenues or market shares from new car repairs and service accruing to each of authorised dealerships and independent repairers. However, the ACCC Consumer Survey indicates that authorised service centres perform the majority of repair and service work on new cars still under warranty.⁶²

A number of trends in car servicing and repairs are impacting the sector in Australia, including the growth of free and capped price servicing, the continued spread of technology in car manufacture and ongoing consolidation amongst operators (see box 2.6).

Box 2.6: Trends in car servicing⁶³

Consolidation of service providers

Industry analysts have noted a small increase in the number of repair and service operators overall in recent years due predominantly to an increase in small-scale businesses servicing the growing number of registered vehicles. There has been some consolidation amongst larger operators in the sector driven, in part, by consolidation amongst dealerships: as the number of dealers has decreased so too has the number of dealership service centres. This consolidation has been driven by larger, multi-dealership businesses acquiring dealerships as a means of increasing market share and achieving economies of scale (see box 2.3).

Reports indicate that larger operators have been able to improve profitability through this consolidation, and through greater economies of scale and their ability to invest heavily in the new tools, equipment and skills needed to repair increasingly complex and differentiated car models. However, smaller operators have faced increased costs and profit pressures from a range of sources including increased price competition from the spread of free or capped price servicing offers (see below), and the increased investment required in the tools, equipment, information systems and staff training needed to repair newer cars entering the market. Some smaller operators who could not make needed capital investments have exited the sector.

Rise of free or capped price servicing

Free or capped price servicing arrangements typically allow new car buyers to have their car serviced at authorised dealer service centres (within a certain time frame or distance travelled) for free or at a pre-agreed price. These agreements aim to provide servicing at a low price arranged at the time of sale and encourage consumers to return to the dealership network. These agreements (which typically only cover basic scheduled servicing) may also allow dealers to earn additional revenue through add-on sales (for example, parts) over the life of the agreement. Industry analysts have noted that these agreements have reduced sector revenues in recent years and driven greater competition between authorised dealerships and independent repairers servicing new cars.

⁶⁰ IBISWorld, *IBISWorld Industry Report S9419 Motor Vehicle Engine and Parts Repair and Maintenance in Australia*, March 2017. Motor vehicle engine and parts repair and maintenance businesses primarily repair motor vehicle engines and parts, and perform the regular maintenance and servicing of vehicles.

⁶¹ IBISWorld, *IBISWorld Industry Report S9411 Motor Vehicle Electrical Services in Australia*, September 2016.

⁶² The ACCC Consumer Survey found that 86 per cent of new car buyers reported taking their new car to the dealership where they purchased it or another dealership in the same network for routine services (ACCC Consumer Survey, p. 46).

⁶³ IBISWorld, *IBISWorld Industry Report S9419 Motor Vehicle Engine and Parts Repair and Maintenance in Australia*, March 2017; *IBISWorld Industry Report G3911 Motor Vehicle Dealers in Australia*, February 2017; Car Advice, <http://www.caradvice.com.au/299662/capped-price-servicing-faq-whats-offered-whats-covered-and-the-limitations/>.

Access to repair and service tools, information and parts

In order to repair and service a new car to manufacturer specifications, access is needed to a range of diagnostic tools, information and parts. These can include:

- *Diagnostic tools and information:* the tools, including complementary software, updates and codes needed to scan a car system and identify the condition of the car and faults needing service
- *Car repair information:* the technical specifications of car components, repair and service methods used to perform services and repairs as well as other information needed to reinitialise car systems once work is completed
- *Car parts and associated data and codes:* authorised replacement parts are supplied through manufacturer authorised parts distributors while non-authorised parts (including parallel imports and aftermarket parts) are supplied through non-authorised parts distributors.

Authorised dealers typically have access to diagnostic tools, software updates, codes, technical specifications and other information needed to repair and service their manufacturer's cars. Dealers are typically required to use authorised parts accessed through manufacturer distribution networks.

Independent repairers generally do not have the same level of access to this data and information, and instead gain access through a variety of sources including:

- car manufacturers, authorised dealers or other authorised agents
- third party car information aggregators
- the manufacturer's overseas information sharing networks (in the US or EU)
- informal networks (such as informal information sharing website or contacts with businesses inside authorised supply chains).

Submissions to this study argued that independent repairers are experiencing a range of barriers to accessing some of the tools, information and parts needed to repair and service new cars in Australia, and that these barriers are limiting competition and imposing a range of costs on consumers. These issues are discussed further in chapter 4.

Other submissions raised concerns about the high cost of authorised repair parts through the manufacturers' authorised distribution networks, and possible barriers experienced by independent repairers in accessing these parts. These issues are discussed in chapter 5.

Consumer choice of repairer

The type and timing of servicing required for a new car is based on the service protocols recommended by the manufacturer. Consumers are informed of these servicing requirements in various ways:

- New car logbooks and service manuals detail the car manufacturer's service requirements typically up to the first 200 000km. The log book tells the consumer when a service is required and what needs to be done. Authorised dealers and independent repairers use a range of methods to inform consumers of scheduled services (for example, windscreen stickers, reminder phone calls, text messages and emails).
- The manufacturer's warranty sets out minimum service requirements that consumers must comply with to avoid limiting or voiding a new car warranty. A manufacturer typically includes clauses noting that to avoid voiding or limiting the warranty, service or repair work must be carried out by qualified staff, according to the manufacturer's specification and using appropriate quality parts. However, subject to complying with these

requirements, consumers are not required to have their new car serviced and repaired within the authorised dealer network.

- Consumers receive information on car servicing requirements pre-sale, at the point of sale and post-sale from other sources including statements made by car dealers and information on manufacturer and industry websites.

Consumers may consider a range of factors when choosing where to get their new car serviced.⁶⁴ The price consumers pay for scheduled services varies significantly depending on a range of factors including the car model, the type of service and replacement parts used and the age and condition of the car. Authorised dealers and independent repairers often advertise fixed prices for different types of services covering a defined scope of work and types of parts, including minor, major, new car and log book services. In recent years, manufacturers and authorised dealers have been offering new car buyers free and fixed price servicing for periods of time from a few years up to the 'lifetime' of the car, to help provide consumers with certainty on the future cost of scheduled services (see box 2.6). Consumers may also consider the geographical convenience, the distance they have to travel and the likely time they expect to leave their car with the service centre.

Submissions to this study and ACCC research have identified some aspects of the information provided to consumers by manufacturers and dealers which may impact the ability of consumers to make informed choices about where to have their new car repair and service work carried out. This includes explicit or implicit misrepresentations made in logbooks and service manuals that authorised dealers must carry out services or repairs.

Key sources of consumer misunderstanding or confusion about their rights in relation to servicing and repairs are further discussed in chapter 3 (see section 3.2.2).

Competition in repair and service markets

Evidence gathered for this study indicates that markets for the repair and service of new cars still under warranty are less competitive than markets for the sale of new cars. Various factors facilitate competition in this sector:

- Authorised dealer service centres and independent repairers compete on a range of factors including the price of servicing, repairs and replacement parts, the quality and speed of their work, geographical convenience for customers, the provision of loan cars, guarantees and other complementary services.⁶⁵
- Owners of new cars still under warranty, particularly in urban areas, can typically choose between an authorised dealer's service centre and an independent repairer with the capability to perform new car or log book servicing that meets manufacturer and warranty requirements.⁶⁶
- There is some degree of intra-dealer competition for repair and service work. Dealer agreements, giving a dealer the right to act as the primary repairer of their model within a geographical area are typically 'non-exclusive' allowing one dealer to service cars sold by other dealers in the same network.⁶⁷

⁶⁴ ACCC Consumer Survey, pp. 49-52.

⁶⁵ ACCC Consumer Survey, pp. 49-52.

⁶⁶ For example, the manufacturer warranty may state that to avoid voiding or limiting the warranty, any servicing or repairs must be carried out by qualified staff, according to the manufacturer's specification and using appropriate quality parts.

⁶⁷ The ACCC Consumer Survey found that 18 per cent of respondents reported taking their new car to a dealership in the same network other than the dealership where they bought their car (ACCC Consumer Survey, p. 46).

- The trend of offering free or capped price servicing to new car buyers at the point of sale is putting downward pressure on prices in the sector and intensifying competition between dealers with these agreements and independent repairers.⁶⁸

Despite consumers having the right to choose who services and repairs their new car, the ACCC Consumer Survey indicates that almost nine out of ten consumers go to authorised dealer service centres while their cars are under warranty.⁶⁹ Consumers gave a range of reasons for this—many related to benefits of dealership servicing such as free/reduced price servicing (37 per cent); dealerships being more likely to service to manufacturer specifications (29 per cent) and cars being safe at dealerships (25 per cent). However, other reasons related to consumer misunderstanding of warranty and servicing requirements, such as views that dealership servicing is mandatory, either under warranty or according to the logbook (32 per cent).⁷⁰

This study has identified a number of factors impeding competition in repair and service markets including:

- consumer beliefs that manufacturer warranties require new cars to be serviced at a dealership to avoid voiding the warranty (chapter 3)
- barriers to independent repairers accessing technical information needed to repair and service new cars (chapter 4)
- the high costs of switching once consumers have purchased a particular brand and make of car (chapter 5).

2.2.2. Crash repairs

Many owners of new cars hold comprehensive car insurance. As a result, a significant proportion of crash repair work performed on new cars in Australia is paid for in whole or part by car insurers on behalf of their policy holders. Car insurers play a major role in the crash repair market alongside car owners, car manufacturers, and authorised and independent parts suppliers and crash repair businesses.

Unlike car servicing and repairs, most authorised dealers in Australia do not provide crash repair services. These are predominantly supplied by small and medium size businesses with varying degrees of commercial affiliation with car manufacturers and insurers.⁷¹

Manufacturer authorised repair networks

Some car manufacturers, typically higher end brands, licence a limited number of authorised dealers and crash repair businesses to act as manufacturer authorised repair networks (MARNs).⁷² Toyota Australia also operates and has announced plans to expand a national network of authorised and certified crash repairers.⁷³

⁶⁸ The ACCC Consumer Survey found that 37 per cent of respondents reported taking their new car to a dealership due to free/reduced price servicing (ACCC Consumer Survey, p. 46).

⁶⁹ The ACCC Consumer Survey found that 86 per cent of respondents reported taking their new car to the dealership where they purchased it or another dealership in the same network for routine services (ACCC Consumer Survey, p. 46).

⁷⁰ The ACCC Consumer Survey found that 23 per cent of respondents choose dealership servicing because it is believed to be mandatory under warranty and a further 9 per cent because it is believed to be mandatory according to the logbook (ACCC Consumer Survey, p. 49).

⁷¹ IBISWorld, *IBISWorld Industry Report S9412 Motor Vehicle Body, Paint and Interior Repair in Australia*, December 2016. There are also a small number of chain crash repair companies such as AMA Group, Car Craft Group and Capital S.M.A.R.T Repairs.

⁷² Mercedes Benz Melbourne. See: <http://www.mbmelbourne.com.au/en/desktop/home.html>, accessed May 2017.

⁷³ Australasian Paint and Panel, <http://www.paintandpanel.com.au/news/news/toyota-s-repair-network>, accessed May 2017.

Under the terms of a MARN licencing agreement, authorised crash repairers typically gain access to the manufacturer's diagnostic tools, data, software, codes and other information needed to repair the manufacturer's cars. Repairers also agree to use authorised parts sourced through manufacturer authorised Australian distribution channels (excluding the use of manufacturer branded parallel imports and new aftermarket parts).

Crash repairers which are not members of a MARN rely on a variety of sources to access diagnostic and repair tools, parts, codes, software and other repair information (such as technical specifications and repair methods) including:

- car manufacturers, authorised dealers or other authorised agents
- third party car information aggregators
- manufacturers' overseas information sharing networks (typically in the US or EU)
- informal networks (such as information sharing website and contacts with businesses inside authorised supply chains).

Insurer preferred provider networks

All car insurance companies in Australia operate their own insurer preferred repair networks (IPRNs). These are networks of independent repair businesses which have entered into agreements with a given insurer. IPRNs in Australia can vary in size from approximately 100 to 1000 crash repairers.⁷⁴ Under these agreements, insurers refer crash repair work to their preferred repairers in return for the repairers agreeing to various criteria relating to pricing schedules and technical, training and service standards.⁷⁵ Insurers also actively assist their IPRN repairers in gaining access to needed repair tools, information and parts.

Car insurance policies typically specify that new authorised replacement parts will be used in crash repairs for cars still under warranty.⁷⁶ Evidence presented to this study indicates that in most instances, insurers and crash repairers use authorised parts sourced through the manufacturers' authorised distribution channels. However, in some cases, manufacturer branded parallel imports and new aftermarket parts are also used where they are lower cost.

Once the car manufacturer warranty period expires, car insurance policies commonly allow for the use of new parts or parts consistent with the condition of the car. These can include manufacturer branded parallel imports, aftermarket parts and recycled and reconditioned second hand parts. Insurers typically state that all parts must meet manufacturer specifications and/or the relevant Australian Design Rules (ADRs).⁷⁷

Membership of a manufacturer and insurer authorised/preferred network is not mutually exclusive or a pre-requisite for a given repairer working on a make of car or doing insurance repairs. A given crash repair business may be in a MARN and one or more IPRN. Some repairers may not be a member of any network but may still perform insurance repairs and repair certain manufacturer's models.

There are various trends in crash repairs in Australia impacting on the sector, including the growth of insurer repair networks, the continued spread of technology in car manufacture and ongoing consolidation amongst crash repairers (see box 2.6).

⁷⁴ IBISWorld, *IBISWorld Industry Report S9412 Motor Vehicle Body, Paint and Interior Repair in Australia*, December 2016.

⁷⁵ Standards can relate to capacity and equipment levels (capability, response times, value added services); need for a repairer in a geographic area (claim volumes, potential growth, types of services offered); repair quality and customer service; use of management technology and software; historical performance on previous repairs; accreditation and shop presentation and customer facilities.

⁷⁶ AAMI Comprehensive Car Insurance Product Disclosure Statement, p. 37. See: www.aami.com.au/aami/documents/personal/car/comprehensive/pds-comprehensive.pdf, accessed May 2017.

⁷⁷ AAMI Comprehensive Car Insurance Product Disclosure Statement, p. 37.

Consumer choice of crash repairer

Consumers have the right to choose who repairs their new car (although this right may be impacted by the terms and conditions of car insurer policies and extended warranties).⁷⁸ The CCA's prohibition on exclusive dealing prevents a car manufacturer, dealer or insurer from requiring consumers to have their car serviced or repaired by a particular crash repairer.

Insurers are able to influence how crash repairs are undertaken where the new car owner holds comprehensive car insurance. For example, insurers typically have the right to decide whether to repair or write off a car.⁷⁹ Where repairs are undertaken, the consumer (policy holder) may agree to have the car fixed by a repairer in the insurer's IPRN, which may be a lower cost option for the car owner. Where the consumer prefers to use a repairer outside the IPRN, the insurer will typically agree to pay an amount up to the cost of repair quoted by one of their IPRN repairers, or make a cash payment to the owner for that amount leaving the consumer to have their car repaired outside the IPRN and cover any gap in costs.

Consumer choice of repairer can also be influenced by requirements in manufacturer and extended warranties which set out the requirements that consumers must comply with to avoid limiting or voiding a warranty.

Crash repair industry market structure

There are approximately 11 000 crash repair (or motor vehicle body, paint and interior repair) businesses operating across the country.⁸⁰ These businesses are estimated to earn approximately \$6.8 billion in revenues over 2016–17, generating \$573 million in profits and a return on revenues of 8.4 per cent.⁸¹

Crash repair revenues are estimated to primarily come from car body repairs (52 per cent), with vehicle painting accounting for approximately 19 per cent, glass repair and replacement 11 per cent, car wash and cleaning 8 per cent and upholstery and interior work 6 per cent.⁸²

It is estimated that car insurers account for over three quarters of all crash repair spending in Australia – with approximately 68 per cent of sector revenues from insurer spending within IPRNs and a further 9 per cent from insurer spending with repairers outside these networks. Households make up around 19 per cent of sector revenue (paying for their own repairs outside of insurance claims), while commercial and government fleet operators and dealers account for an estimated 4 per cent. There is no data available on the number of repairers in MARNs or the market shares of MARNs.⁸³

The crash repair sector exhibits a relatively low level of market concentration, although this finding is complicated by the fact that not all repairers can repair each kind of vehicle. The majority of crash repair businesses in Australia are small independent family-owned, partnership, or sole trader businesses. There are a small number of larger businesses operating multiple repair shops and a few national businesses operating chains of crash repair outlets. However, the three largest chain operators account for less than 8 per cent of the Australian crash repair market.⁸⁴

⁷⁸ ACCC, [Motor vehicle sales and repairs: a guide for industry to the Australian Consumer Law](#), 2013, p. 9.

⁷⁹ In case of a write off, insurers may choose to replace the car, or pay the owner an agreed or a determined 'market value'.

⁸⁰ Motor vehicle body, paint and interior repairs include repairing, panel beating or spray painting smashed or damaged motor vehicles, replacing, repairing or tinting automotive glass, and interior repairs, car wash or cleaning services. See: http://www.mtaa.com.au/images/docs/Motor_Vehicle_Body_Paint_and_Interior_repair.pdf, accessed May 2017.

⁸¹ IBISWorld, *IBISWorld Industry Report S9412 Motor Vehicle Body, Paint and Interior Repair in Australia*, December 2016.

⁸² IBISWorld, *IBISWorld Industry Report S9412 Motor Vehicle Body, Paint and Interior Repair in Australia*, December 2016.

⁸³ IBISWorld, *IBISWorld Industry Report S9412 Motor Vehicle Body, Paint and Interior Repair in Australia*, December 2016.

⁸⁴ IBISWorld, *IBISWorld Industry Report S9412 Motor Vehicle Body, Paint and Interior Repair in Australia*, December 2016.

Access to crash repair information and equipment

Crash repairers need access to a range of information and equipment from car manufacturers, dealers and other authorised agents to repair a given car model to the manufacturer's specifications.

The ability of independent crash repairers to access tools, information and parts raise similar issues as discussed in section 2.2.1 above.

Competition in crash repair markets

Evidence gathered for this study indicates that markets for crash repairs of new cars are less competitive than for sales of new cars. Various factors facilitate competition in markets for crash repairs of new cars:

- crash repairers (in MARNs, IPRNs and operating independently) compete on a range of factors including the price of repairs and replacement parts, the quality and speed of work, geographical convenience for customers, the provision of loan cars, guarantees and other complementary services
- new car owners, particularly in urban areas, can typically choose between a number of crash repairers (in manufacturer networks, insurer networks and independents) who are able to repair their car to manufacturer specifications
- the expansion of IPRNs is driving competition between independent crash repairers who wish to gain access to these networks, and between crash repairers in IPRNs and repairers outside insurer networks who quote for insurance work generally.

Key obstacles to greater competition in crash repair markets include:

- barriers experienced by crash repairers outside MARNs in accessing the car data, information, tools and training needed to repair and service new cars (chapter 4)
- search costs and complexity faced by consumers in locating and understanding the information necessary to select an appropriately trained and qualified crash repairer.

Draft findings

- Car manufacturers and authorised dealers are typically active in both the manufacture and supply of new cars and in the supply of aftermarket services, including car servicing, repairs and supply of parts and tools.
- Manufacturers and authorised dealers generally earn higher profit margins from aftermarket services than from new car sales. For dealers, although parts sales and repair and service account for 15 per cent of revenue, these aftermarket services contribute to 49 per cent of gross profit.
- A common pricing strategy for car manufacturers and authorised dealers is to discount new car prices to maximise sales of aftermarket services. This strategy reflects that consumers have more choices available at the time of the new car sale than they do in aftermarkets for repair, service and replacement parts after the sale.
- Retail markets for the supply of new cars in Australia are generally competitive, primarily indicated by low market concentration of car brands and dealers.
- Competition in markets for the supply of aftermarket services is less competitive as a result of factors including:
 - the ability and incentives of car manufacturers and their dealers to impede competition in profitable aftermarkets by controlling access to necessary inputs such as the technical information needed to repair and service a new car
 - consumer misunderstanding about warranty and servicing requirements (including the misconception that manufacturer warranties require new cars to be serviced at a dealership), and
 - high costs of switching once consumers have purchased a particular brand and make of car.

3. Consumer guarantees and warranties

Key points

- Consumers are having difficulty enforcing consumer guarantees when problems occur with new cars. A significant body of evidence suggests systemic failure in consumers enforcing consumer guarantees after the purchase of a new car.
- The ACCC views these issues as chiefly a compliance problem associated with manufacturers' complaints handling systems failing to adequately take consumer guarantees into account.
- There is also a dominant 'culture of repair' underpinning manufacturers' systems and policies for dealing with car defects and failures, even where cars have known and systemic mechanical failures which would entitle a consumer to a replacement or refund under the consumer guarantees.
- The ACCC has seen many examples of practices by manufacturers in dealing with consumer complaints that would raise concerns under the ACL provisions.
- The ACCC recently instituted proceedings in the Federal Court against Ford, and has accepted a court enforceable undertaking from Holden in relation to its concerns about alleged ACL non-compliance issues. The ACCC will continue to address non-compliance with the ACL.
- In addition, consumers are not receiving adequate information about consumer guarantees at the point of sale of a new car. This impacts the ability of consumers to accurately assess the value of any additional consumer protections offered by extended warranty products compared to the rights they already have under the consumer guarantees or the manufacturer's warranty.
- This study has identified five key issues contributing to the difficulties experienced by consumers in enforcing their consumer rights:
 - manufacturers' focus on warranty obligations to the exclusion of their consumer guarantee obligations
 - manufacturers' responses to 'major failures'
 - the widespread use of non-disclosure agreements by manufacturers when resolving complaints
 - the lack of effective independent dispute resolution options for consumers, and
 - particular features of the commercial arrangements between dealers and manufacturers.

3.1. Consumer rights and business obligations under the ACL

The ACL provides consumers with a set of statutory protections when buying a new car (as well as other types of goods and services), as outlined in chapter 1.⁸⁵ These are known as the **consumer guarantees**. For example, new cars must be of acceptable quality and fit for purpose. Car dealers and manufacturers are legally obliged to comply with the requirements of the consumer guarantees. For example, they must ensure the vehicle they supply matches the manufacturer's descriptions.

⁸⁵ Further statutory protections for consumers may be available under state or territory legislation. Appendix C contains a list of relevant legislation.

In addition, most car retailers provide a **manufacturer's warranty** with the sale of a new car. This means that if the vehicle is found to be defective, consumers may be entitled to seek redress under the terms of the manufacturer's warranty or another type of warranty sold by the dealer or a third party. Warranties are voluntary promises about what the consumer can expect from a good or service in terms of its quality and characteristics, or the remedies available to the consumer if they experience a problem.

The ACL requires that any 'warranty against defects', including a manufacturer's warranty, must include mandatory text to ensure consumers are aware that the warranty operates in addition to the consumer guarantees under the ACL.⁸⁶ This mandatory text is:

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

Some car retailers also sell consumers **extended warranties**. An extended warranty differs from a manufacturer's warranty in that, while a manufacturer's warranty is usually included in the price of the vehicle, a consumer may choose to pay extra for an extended warranty that, for example, runs for a number of years after the manufacturer's warranty has expired.

Importantly, manufacturers' warranties and extended warranties do not displace the consumer guarantees or statutory rights under state and territory legislation. Even if a consumer is not entitled to a remedy under the terms of a warranty provided by the manufacturer, dealer or a third party, they may be entitled to a statutory remedy under the ACL or state or territory legislation.

If a new car is defective or fails to perform as promised, a consumer may have recourse under one or more of these legal avenues (that is, under the consumer guarantees, state or territory legislation, the manufacturer warranty or an extended warranty).

If a new car fails to meet a consumer guarantee, the remedy available to the consumer will depend on whether the failure is 'major' or not. In broad terms, a **major failure** includes a circumstance where a consumer would not have purchased the car had they been fully aware of the nature and extent of the failure. If a new car suffers a major failure the consumer is entitled to elect the remedy of a refund, repair or replacement.

Figure 3.1 (below) provides a description of the consumer guarantees and the different types of new car warranties available to consumers.

Figure 3.2 (below) summarises the ACL remedies available to consumers for major and non-major failures.

⁸⁶ Regulation 90, Competition and Consumer Regulations.

Figure 3.1: Consumer guarantees and new car warranties

Consumer guarantees (statutory)

The consumer guarantees are **statutory rights that cannot be replaced, limited or removed by any agreement, contract or warranty**. They apply to both goods and services but are not intended for situations where the consumer has been careless or makes unreasonable demands.

Goods must:

- be of acceptable quality
- be fit for any purpose disclosed before sale
- match descriptions and samples
- have spare parts and repair facilities available
- come with full title and undisturbed possession
- not carry any hidden debts or extra charges
- satisfy any express warranty.

Apply to goods and services for an unspecified but reasonable period

Specified period

New car warranty (commercial)

The ‘new car warranty’ is **automatically offered with the purchase of a new car**. It is also known as the ‘manufacturer’s warranty’ and contains promises about the car and what remedies will be made available if something goes wrong.

New car warranties come with attached conditions that limit the coverage of the warranty and what the consumer can claim for.

New car warranties allow consumers a choice of repairer and spare parts, subject to the manufacturer’s maintenance and servicing standards being met.

Specified period

Extended warranty (commercial)

An extended warranty is an optional add-on warranty that is **usually sold separately to the car**. Consumers may buy one to continue receiving warranty protection after the new car warranty has expired. Extended warranties may be offered by the manufacturer, dealer or a third party.

The manufacturer’s extended warranty replicates the new car warranty for an additional period. A dealer or third party extended warranty will usually contain a different set of promises and the period of coverage will depend on the product.

Dealer or third party warranties usually contain more restrictive terms and conditions. For example, they may exclude certain parts from cover, set caps on claims or require the consumer to service or repair their car with a nominated repairer.

Extended warranties can cost hundreds to thousands of dollars, depending on the car, the coverage provided and the company supplying it.

Categories of warranties

Express warranty

Promises about the car’s quality, standard, condition, performance or characteristics.

Promises about the availability of services or parts for the car.

Warranty against defects

Promises about fixing a problem with a car by repairing, replacing or compensating the consumer.

The ACL requires that a warranty against defects must be in writing and provided to the consumer at the point of sale.

Both express warranties and warranties against defects can be part of a new car warranty or an extended warranty.

Figure 3.2: Statutory remedies available to consumers for cars which experience a failure

ACL consumer guarantees

A supplier guarantees:

- goods will be of acceptable quality
- goods will be fit for any purpose disclosed before sale
- goods will match their description
- goods will match the sample or demonstration model
- they will honour any express warranties
- you have title to the goods
- you have undisturbed possession of the goods
- there are no undisclosed securities on the goods.

A manufacturer guarantees:

- goods will be of acceptable quality
- goods will match their description
- they will honour any express warranties
- they will make available repair facilities or spare parts for a reasonable time.

A service provider guarantees:

- they will provide the services with due care and skill
- the services will be fit for any purpose disclosed before sale
- the services will be provided within a reasonable time.

Failures to meet the consumer guarantees

Non-major failures

These can normally be fixed or resolved in a reasonable amount of time.

The **supplier** chooses between a repair, replacement or refund.

- Repairs must be done within a reasonable time and without charge
 - If not, the consumer can request a free replacement or refund, or repair elsewhere and recover the costs from the supplier.
- The consumer may also recover damages from the supplier for any loss or damage they suffer.

Major failures

These cannot be fixed or are too difficult to fix within a reasonable time. A failure is major if:

- a reasonable consumer who was fully aware of the nature and extent of the failure would not have bought the good or service; or
- the failure prevents the consumer from using the good or service for the purpose that goods or services of that kind are commonly supplied for (or for a purpose they disclosed to the supplier before purchasing), and it cannot be fixed within a reasonable time; or
- the good or service is unsafe or creates an unsafe situation.

The **consumer** chooses between a repair, replacement or refund, or compensation for the drop in value of the product, from the supplier.

- The consumer may also recover damages from the supplier for any loss or damage they suffer.

Suppliers have a right to recover the costs of remedies from manufacturers, where the manufacturer is responsible for the failure.

In some cases, the consumer can approach the manufacturer to recover damages for both major and non-major failures.

In March 2017 Consumer Affairs Australia and New Zealand (CAANZ) released the ACL Review Final Report. The ACL Review Final Report makes two proposals to address uncertainties in the application of the law regarding ‘major failure’ that create barriers to parties resolving disputes earlier, quickly and economically (see box 3.1). These proposals are intended to enhance and provide greater clarity to existing ACL rights, not replace them.

Box 3.1: ACL Review – Proposals relating to major failure⁸⁷

The ACL Review proposes that the ACL be amended to specify that where a good fails to meet the consumer guarantees within a short specified period of time, a consumer is entitled to the remedies of a refund or replacement without needing to prove a ‘major failure’ (**Proposal 1**).

Proposal 1 would create a time-limited right for a consumer to choose a refund or replacement or opt for a repair without the need to demonstrate a major failure. This reform is aimed at providing increased certainty for consumers in asserting their rights to a refund, replacement or repair and to avoid cycles of failed repairs.

It also proposes that the ACL be amended to clarify that multiple non-major failures can amount to a major failure (**Proposal 2**).

Proposal 2 is intended to clarify that a consumer may establish a major failure where, for example, there are multiple issues with a new car that would be sufficient to deter a reasonable consumer from buying it.

The ACCC has recently accepted a court enforceable undertaking from Holden which includes a commitment to introduce a policy which creates a time-limited right, consistent with Proposal 1. Holden’s court enforceable undertaking also provides that, for the purpose of the undertaking, multiple minor failures can constitute a major failure, consistent with Proposal 2. Pursuant to the undertaking, Holden will:

- Enable owners of new Holden vehicles who experience a problem with their car that causes it to become immobile and no longer driveable within 60 days of its purchase, to claim a refund or replacement vehicle without the need to demonstrate a major failure.
- Improve and supplement Holden’s existing Consumer Law Compliance Training Program, for dealers and relevant staff, by ensuring that it includes further guidance/clarification about the fact that multiple failures of a vehicle may constitute a major failure entitling the customer to a refund or replacement rather than a vehicle repair.

The ACCC considers that this commitment from Holden is consistent with best practice ACL compliance.

⁸⁷ ACL Review, Final Report, March 2017, pp. 18-22.

Draft findings on consumer rights and business obligations under the ACL

- The ACL is Australia's national law for fair trading and consumer protection and plays a critical role in providing protections to consumers in their dealings with business and in the event that there is a problem with a good or service, including new cars. The consumer guarantees provided by the ACL cannot be displaced.
- Manufacturer warranties provided with the purchase of a new car, and extended warranties offered by the dealer or a third party, provide additional protection to consumers in some circumstances.
- Together, the ACL and state and territory legislation, along with manufacturers' warranties, collectively provide consumers with an extensive suite of consumer rights to remedies or other forms of redress in the event that a new car is defective or fails to perform as promised.
- The recent review of the ACL has proposed a number of amendments to enhance the law and provide greater clarity to address any uncertainties about the application of consumer guarantees. The proposed amendments include reforms aimed at assisting consumers understand and choose a remedy if things go wrong with a good or when a good, including a new car, has multiple and ongoing issues.
- While the proposed ACL reforms would strengthen and provide greater clarity about the application of consumer guarantees, the existing law already provides remedies for faulty cars.

Draft recommendations on proposed amendments to enhance the ACL

Draft recommendation 3.1

The ACCC supports the amendments proposed by CAANZ in the recent ACL Review to enhance the ACL and address any uncertainties about the application of consumer guarantees. Of particular relevance to issues arising in this study, the ACCC supports proposals 1, 2 (see box 3.1) and 3 (enhanced disclosure in relation to extended warranties – see box 3.2) as outlined in the final report on the ACL review.

3.2. Consumers' understanding of their rights

A new car is a significant purchase for most consumers and households. It is a relatively expensive and complex product that is usually purchased to safely meet their day to day transport needs for a number of years.

A good understanding of consumer guarantees and warranty rights will therefore help consumers to make informed decisions during and long after their purchase of a new car. For example:

- At the time of purchase, an understanding of consumer guarantee and warranty rights can assist consumers to make informed assessments of the value they may derive from additional warranty products such as an extended warranty offered by the dealer or a third party.
- When the car requires service or repair, an understanding of consumer guarantee and warranty rights can assist consumers to make informed decisions about the value they may derive from a particular choice of repairer or spare parts.
- In the event that the car is defective or fails to perform as promised, an understanding of consumer guarantee and warranty rights can assist consumers to enforce their rights and pursue available remedies, even when the warranty period has expired.

The 2016 Australian Consumer Survey indicates that 90 per cent of consumers are aware that laws exist to protect consumer rights when they purchase goods or services in Australia. A high proportion of survey respondents (71 per cent) also believed they have at least a moderate understanding of their rights.⁸⁸

For consumers who would like to know more about consumer guarantees, there are a variety of sources of information. The ACL website (consumerlaw.gov.au) publishes several guides on consumer rights and business obligations under the ACL. In 2013, ACL regulators published an industry specific guide on consumer rights in the car industry.⁸⁹ State-based fair trading agencies often provide information about consumer rights tailored to their jurisdiction. Some of this publicly available guidance also explains commercial warranty products in broad terms (for example, providing tips on what to look out for or what to avoid).

The ACCC website (acc.gov.au) also provides information to consumers about their consumer rights.

Manufacturers typically publish information about their warranties on their websites. They also provide this information in a handbook to new car owners. At the point of sale, dealers may also provide oral advice to assist consumers understand the manufacturer's warranty, as well as other available extended warranty products.

3.2.1. Key sources of consumer misunderstanding or confusion at the point of sale

While many consumers generally feel that they understand their consumer rights, and there is information available to consumers who would like to know more, submissions to this study indicated that consumers purchasing a new car may be confused by the distinction between consumer guarantees, manufacturer warranties and extended warranties at the point of sale.⁹⁰

There appear to be three main reasons for this:

- consumer fatigue at time of purchase
- focus on warranty protections at time of purchase, and
- limited information about consumer guarantees at time of purchase.

Consumer fatigue

The purchase of a new car is often time-consuming and complicated for consumers. Consumers gather extensive information and make a number of assessments in order to select between different car models and options. There may be differences of view between household members to be reconciled in finalising their choice. The transaction itself requires forms to be completed and contracts signed. If finance is arranged through the dealer, this also adds to the time and information demands on the consumer at the point of sale.

The consumer's main focus at the point of sale is on the selection of their preferred new car and extras and the negotiation of a good price and finance terms, where applicable.

⁸⁸ Australian Consumer Survey, 2016, pp. 21-22. The Australian Consumer Survey was introduced as part of the implementation of the ACL. The first survey was conducted in 2010-11, shortly before the law came into effect and the second survey was conducted after five years to assess its impact.

⁸⁹ ACCC, [Motor vehicle sales and repairs: a guide for industry to the Australian Consumer Law](#), 2013.

⁹⁰ Destroy My Jeep submission, November 2016, p. 3; CALC submission, November 2016, p. 3; MTA NSW submission, November 2016, pp. 2-4; AAA submission, November 2016, p. 20; AAAA submission, November 2016, pp. 20-23; ASIC submission, November 2016, pp. 6-12.

By the time a consumer has navigated this process, it may be difficult for them to also absorb and understand information about consumer guarantees, manufacturer warranties and extended warranties. For example, a consumer in this circumstance is unlikely to have the motivation or incentive to consider in detail, the features of an extended warranty product offered to them, and compare these to the rights they already have under the consumer guarantees and manufacturer warranty.

Both ASIC and the Consumer Action Law Centre (CALC) have recently published reports that discuss the effect of consumer fatigue on decisions about extended warranty products, at the point of sale.⁹¹ They state that by the time a consumer has purchased a car, they may be fatigued from having made a series of decisions, and unable to properly assess the information provided to them at the point of sale about the complex range of extended warranty products available. This can lead to the purchase of an extended warranty product which, in many circumstances, is unlikely to add any additional protections to consumers' existing rights under the consumer guarantees.

Focus on warranty protections

To the extent that consumers do consider the prospect that the new car may have a defect or fail to perform as promised, submissions to this study, and other recent surveys, suggest that discussions between the consumer and dealer at the point of sale are often limited to the protections offered by the manufacturer's warranty and/or an extended warranty product sold by the dealer.⁹² There are commercial incentives for this focus.

First, manufacturers compete on their warranty offerings and warranty coverage is a strong feature of new car advertising. A focus on warranty rights at the point of sale reinforces the value of the product that the manufacturer has offered and the consumer has chosen.

Second, dealers can earn substantial commissions on the sale of extended warranty products. It is in the commercial interest of dealers and third party suppliers of warranty products for consumers to overestimate the value of these products in order to increase sales. Consumers who are experiencing information overload and decision fatigue may be more vulnerable to persistent sales techniques and methods driven by commission-based remuneration.

The ACCC has been told, in response to the consumer and small business questionnaire conducted for this study, that some dealers and third party suppliers of extended warranties do not disclose important details about the extended warranty that would allow the consumer to assess its value to them, including the full cost of the product and any cover exclusions.⁹³ This makes it even more difficult for consumers to make informed purchasing decisions.

In submissions to this study, the Australian Automobile Association (AAA) and the Motor Traders' Association of NSW (MTA NSW) advocated for increased transparency and clarity of information at the point of sale of a car about extended warranties. They also suggested education or guidance to consumers and dealers to encourage more informed decision-making and better sales practices.⁹⁴ The Australian Automotive Aftermarket Association (AAAA) submitted that any rewards to dealers should be disclosed to the consumer in product disclosure statements.⁹⁵

⁹¹ Donating Your Money to a Warranty Company', August 2015: <http://consumeraction.org.au/wp-content/uploads/2015/08/DonatingYourMoneyToAWarrantyCompany.pdf>, accessed May 2017; ASIC Report 492: 'A market that is failing consumers: The sale of add-on insurance through car dealers', September 2016: <http://download.asic.gov.au/media/4042960/rep-492-published-12-september-2016-a.pdf>, accessed May 2017.

⁹² Destroy my Jeep submission, November 2016, p. 3; Consumer Market Study Questionnaire responses; ACCC Survey 'Consumer experiences of buying, servicing and repairing new cars', pp. 26-27.

⁹³ Consumer questionnaire responses, November 2016.

⁹⁴ AAA submission, November 2016, p. 20; MTA NSW submission, November 2016, pp. 2-4.

⁹⁵ AAAA submission, November 2016, p. 21.

The ACL Review has proposed a set of new requirements for the sale of extended warranties to assist consumers make informed purchasing decisions, which are outlined in box 3.2 below.⁹⁶

Box 3.2: ACL Review – Proposal 3: Enhance disclosure in relation to extended warranties⁹⁷

The ACL Review proposes that the following new requirements regarding the sale of extended warranties be inserted into the ACL:

- agreements for extended warranties to be clear and in writing
- additional information in writing about what the ACL offers in comparison to extended warranties
- a cooling-off period of ten working days (or an unlimited time if the supplier has not met their disclosure obligations) that must be disclosed and in writing.

Limited information about consumer guarantees at point of sale

Submissions to this study and ACCC research suggest that, given the focus on the manufacturer's warranty and the potential sale of an extended warranty discussed above, consumers are often not provided with sufficient information at the point of sale about the consumer guarantees.

In response to the consumer and small business questionnaire conducted for this study, many consumers said there was no or limited direct oral communication about warranties or consumer guarantees when they purchased a car (with more reports regarding the absence of consumer guarantees information).⁹⁸ Respondents also said that while information about warranties and consumer guarantees is contained in the car owner's handbook, the information about consumer guarantees is limited.

Destroy My Jeep, CALC, Lemon Vehicles in Aus, the AAA, the AAAA, ASIC, MTA NSW, the Motor Trade Association Queensland (MTAQ) and Ultra Tune Australia all raised concerns about the way in which consumer guarantees are described or not discussed at all at the point of sale.⁹⁹ These parties considered that as a consequence of this (and the focus on warranty rights), consumers can form the impression that they need to purchase warranties in order to have rights that in fact already exist under the consumer guarantees.

On the other hand, Automotive Dealer Services (ADS), the Federal Chamber of Automotive Industries (FAI), the AADA and manufacturers Mazda, Subaru, Holden and Toyota advised that their written statements about warranties against defects are worded in accordance with the requirements of the ACL; that is, they disclose that the manufacturer's warranty does not limit or otherwise impact consumers' statutory rights.¹⁰⁰ These statements sometimes extend beyond the mandatory wording for warranties against defects.

⁹⁶ ACL Review, Final Report, March 2017, pp. 23-26.

⁹⁷ ACL Review, Final Report, March 2017, pp. 23-26.

⁹⁸ The questionnaire did not ask about consumers' general awareness of their rights, in the absence of which only a limited number of consumers explicitly said that they were unsure about their rights or what is covered by warranties.

⁹⁹ Destroy My Jeep submission, November 2016, p. 3; CALC submission, November 2016, p. 3; AAA submission, November 2016, p. 20; ASIC submission, November 2016, pp. 6-12; AAAA submission, November 2016, pp. 11, 20-23, Ultra Tune submission, November 2016, p. 1; MTAQ submission, November 2016, pp. 2-4; Lemon Vehicles in Aus submission, November 2016, p. 2.

¹⁰⁰ Mazda submission, November 2016, p. 3; Subaru submission, November 2016, pp. 3-4; Holden submission, November 2016, pp. 8-10; Toyota submission, November 2016, pp. 2-5; FAI submission, November 2016, pp. 11 and 14; AADA submission, November 2016, pp. 20-21 and pp. 25-26.

FCAI and AADA further submitted that manufacturers require their dealers to orally explain to consumers their rights and the interaction between warranties and the consumer guarantees. ADS also submitted that dealers provide oral information about consumer guarantees.

While these written and oral statements by manufacturers and dealers are important, the submissions received from consumer groups and consumer responses to this study broadly suggest that consumer guarantees are not a prominent part of the information given to consumers at point of sale.¹⁰¹

Given the volume and complexity of information provided to consumers at the point of sale, oral explanations about consumer guarantees may not be enough to adequately inform them of their rights. As an example of improvements in this area, the ACCC notes Holden's August 2017 court enforceable undertaking to provide all new customers a letter, within 30 days of purchase, advising them of their statutory consumer guarantees.

Draft findings on consumer understanding about consumer guarantees at the point of sale of a new car

- Consumers are not receiving adequate information about consumer guarantees at the point of sale of a new car. The information provided is generally very limited and is usually not provided in a form consumers can retain, and refer to later.
- Many consumers face difficulties at the point of sale of a new car in understanding the application of the consumer guarantees to their new car purchase and the distinction between consumer guarantees and warranties. Such difficulties impact the ability of consumers to accurately assess the value of any additional consumer protections offered by extended warranty products compared to the rights they already have under the consumer guarantees or the manufacturer warranty.
- 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. Dealers have commercial incentives, as a result of commission-based remuneration, to maximise their sales of extended warranties.
- An oral explanation of consumer guarantees at the point of sale of a new car is not sufficient. Consumers need information in a form that can be referred to at any time during their ownership of their car. The ACCC considers that it is 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.

¹⁰¹ CALC submission, November 2016, p. 3; AAA submission, November 2016, p. 20.

ACCC action on consumer understanding of their rights

ACCC action 3.1

The ACCC will work with manufacturers and dealers to develop a concise and simple explanation of consumer guarantees and their interaction with warranties, which should, as industry best practice, be provided to consumers at the point of sale of a new car.

ACCC action 3.2

To assist consumers better understand their rights when it comes to new car defects and failures, the ACCC will work with other ACL regulators to publish an updated version of *Motor vehicle sales & repairs – an industry guide to the Australian Consumer Law* (August 2013)¹⁰² to ensure that this publication addresses the issues identified in this study, including specific guidance on criteria for determining a 'major failure'. Guidance may also be designed for use by businesses, including dealers, regarding their rights and obligations under the ACL.

3.2.2. Key sources of consumer misunderstanding or confusion about their consumer rights in relation to servicing and repairs

At the point of sale, consumers are provided with a range of information which influences their future decisions about where to get their new car serviced and repaired, and what spare parts to use. This information is generally provided in warranty booklets, logbooks and service manuals.

If this information is not clear, this can result in consumers choosing not to use independent repairers to repair and service their cars so as not to risk voiding their rights under warranty. Consumers have a right to choose who carries out repairs and service on their cars under the manufacturer's warranty, subject to the work being performed in accordance with the manufacturer's standards.

Submissions from the FCAI, VACC, Mazda, Holden and Toyota confirmed that manufacturer warranties do not require cars to be serviced by dealers only or for OE parts to be used.¹⁰³ They indicated that warranty claims are only denied in situations where an independent repairer or a non-OE part directly causes the damage or defect the subject of the claim.¹⁰⁴ Toyota noted that there are significant practical difficulties in establishing whether an independent repairer has used appropriate quality parts for vehicle servicing or repair, or whether repairs have been carried out according to manufacturer specifications.¹⁰⁵

VACC noted there is growing awareness among consumers that they have a choice of repairer under the manufacturer's warranty. The AAA and MTA NSW referred to public campaigns to increase consumer awareness, and Destroy My Jeep noted that independent repairers are directly informing consumers. MTA NSW submitted that manufacturers' warranty documents also advise of this right. VACC submitted there is 'little evidence' that consumers are told they will lose their warranty if they service at an independent repairer.¹⁰⁶

¹⁰² ACCC, [Motor vehicle sales and repairs: a guide for industry to the Australian Consumer Law](#), 2013.

¹⁰³ A description of terminology for types of car parts, including original equipment parts is provided at Box 5.1.

¹⁰⁴ Mazda submission, November 2016, p. 3; GM Holden submission, November 2016, pp. 9 and 12; FCAI submission, November 2016, pp. 11-12; Toyota submission, November 2016, pp. 1-6; VACC submission, November 2016, p. 8.

¹⁰⁵ Toyota submission, November 2016, p. 2.

¹⁰⁶ VACC submission, November 2016, p. 8; MTA NSW submission, November 2016, p. 4; AAA submission, November 2016, p. 21; Destroy My Jeep submission, November 2016, p. 4.

However, despite these views, the ACCC Consumer Survey found that around 30 per cent of survey respondents take their vehicle to a dealership for service or a repair because they believe it is compulsory according to their logbook or warranty, and around 30 per cent do it because they are worried about voiding their warranty.¹⁰⁷

Submissions from Autopolis, Lemon Vehicles in Aus, Bapcor, Ultra Tune and the AAAA raised similar concerns about the following types of misinformation to consumers in relation to servicing and repairs:¹⁰⁸

- Explicit misrepresentations by dealers at the point of sale of a new car or in manufacturer-prepared documents that the consumer must use OE parts or authorised dealers for servicing/repairs during the manufacturer's warranty.
- Implicit statements in manufacturer-prepared documents leading consumers to form the impression that the consumer must use OE parts or authorised dealers for servicing/repairs during the manufacturer's warranty.
- Strong recommendations against the use of non-OE parts or independent repairers on the basis of claims of their lower quality or capabilities as compared to OE parts or authorised dealers.

When consumers do choose to use independent repairers and/or non-OE parts, Destroy My Jeep, the AAAA and TJM Products, an aftermarket parts supplier, submitted that there is a real risk that warranty claims may be refused without a clear link being established between the defect and the use of the independent repairer or spare part.¹⁰⁹

Given the competing submissions on these issues the ACCC conducted its own review of a number of manufacturers' logbooks and service manuals to analyse the statements made to consumers about the impact that their choice of service and repairer, and replacement parts, may have on their manufacturer warranty. The ACCC's findings are set out in box 3.3 below.

¹⁰⁷ The ACCC Consumer Survey found that 90 per cent of respondents who chose to have their car repaired for their most recently experienced problem went to a dealer to undertake that repair. 86 per cent of respondents who did routine servicing on their car went to a dealer to do it (ACCC Consumer Survey, pp. 46, 49, 60 and 63.).

¹⁰⁸ Autopolis submission, November 2016, p.4; Lemon Vehicles in Aus submission, November 2016, p.2; Bapcor submission, November 2016, pp.7,13; UltraTune submission, November 2016, p.1; AAAA submission, November 2016, pp. 11, 16, 18, 21, 24-25.

¹⁰⁹ Destroy My Jeep submission, November 2016, p. 4; AAAA submission, November 2016, p. 16; TJM Products submission, November 2016, p. 1.

Box 3.3: Logbooks and service manuals – what do they say?

The ACCC reviewed logbooks and service manuals for 26 cars from nine manufacturers – Honda, Volkswagen, Mazda, Holden, Subaru, Peugeot, Toyota, Hyundai and Ford.

The ACCC found:

1. Explicit statements that authorised dealers must carry out services and repairs.
2. Statements to the effect that an ‘authorised’ dealer should stamp or otherwise confirm a routine service had been undertaken during the manufacturer’s warranty.
3. Statements strongly recommending dealers for maintenance or repair work, for example on the basis of expertise or a greater likelihood of undertaking work in accordance with warranty requirements. Only a limited number of these statements explicitly disclaimed that though dealers were recommended, it was not required.
4. References to dealers (instead of repairers generally) in the context of information about servicing or repairs.
5. Statements linking servicing at a dealer to a better chance of long-term reliability and performance of the car, or its resale value.
6. Statements recommending against the use of non-‘genuine’ parts because, for example, of claims that such parts are less likely to be suitable to the car and therefore may impact its functionality or safety, or result in the manufacturer’s warranty being voided.
7. Requests for the repairer to confirm that they had fitted ‘genuine’ parts as part of repair or servicing work.

Examples:

“A Duly Authorised Dealer must carry out any service or repairs and the service record in this booklet must be completed and stamped each time the vehicle is serviced.”

“Your dealer will complete a record of your vehicle's services in this booklet.”

“To keep your vehicle in proper operating condition and to assure peak performance at all times, the recommended maintenance services listed in the "Warranty and Service Booklet" should be performed by an authorised dealer.”

“Copy Parts. These are essentially cheaper copies of genuine parts or panels. Costs may be reduced by cutting parts of the production process or using thinner or lower quality metals. These products do not have to adhere to the Australian Design Rules (ADR's) and may affect the vehicles warranty and compromise the safety and design of your vehicle.”

The ACCC is concerned with many of the statements made in the logbooks and service manuals that it reviewed. Some statements are directly false – for example, the express statement that authorised dealers must carry out services and repairs. The ACCC considers that certain statements make representations that are likely to contravene the ACL, and may also raise competition concerns under the CCA.

Draft findings on consumers' understanding of their rights in relation to servicing and repairs

- The majority of consumers take their new cars to manufacturer authorised dealers for repairs and service. This appears to be, in part, the result of a mistaken belief that the manufacturer's warranty requires them to only use an authorised dealer.
- Contributing to this misunderstanding are direct and implied representations made by a number of manufacturers in their logbooks and service manuals to the effect that authorised dealers must carry out services or repairs (or that OE parts must be used). Many of these representations are likely to contravene the provisions of the ACL, and may also raise competition concerns under the CCA.

ACCC action on consumers' understanding of their rights in relation to servicing and repairs

ACCC action 3.3

Instances of misleading or deceptive conduct, or misrepresentations, in relation to the use of independent repairers or non-OE spare parts will be targeted through action by the ACCC, including enforcement action where appropriate.

3.3. The consumer experience of enforcing their rights

An awareness of consumer rights is important at all stages of car ownership, but is perhaps most crucial when a new car experiences a problem. In this circumstance a consumer needs to both be aware of their rights, including those remedies provided by the consumer guarantees, and able to readily enforce those rights.

The impact on consumers from a problem with their new car can be substantial.¹¹⁰ Many consumers are heavily reliant on their cars in their daily lives and this is disrupted when a problem occurs. If the car is not useable it can be expensive to rent or loan a replacement car. If the problem poses a safety risk to vehicle occupants or other road users, the costs to society of inadequate or delayed resolution can be substantial. For these reasons, it is important for manufacturers and dealers to meet their obligations under the ACL in a responsible and timely manner.

The FCAI and the Motor Trades Association of Australia (MTAA) submitted to this study that only a small proportion of new car purchases are the subject of consumer complaints.¹¹¹ Similarly, submissions from manufacturers including Mazda and Holden asserted that consumer complaint levels are low or that customer satisfaction is high when compared to the large number of new car purchases.¹¹²

Against these submissions, over the last two years, the ACCC has observed an upward trend in the number of consumers contacting the ACCC in relation to issues with cars, and has received over 10 000 contacts in total. New car retailers have featured in the ACCC's top ten most complained about traders for 20 out of the last 21 months preceding June 2017. In 2017, nearly 20 per cent of contacts received by the ACCC about consumer guarantee issues have concerned motor vehicles, the second largest industry category of such complaints received. This suggests that resolving consumer guarantee issues with new car retailers has been an issue for many consumers for some time.

¹¹⁰ Lemon Laws 4 Aus submission, November 2016, p. 2.

¹¹¹ FCAI submission, November 2016, p. 10; MTAA submission, November 2016, p. 16.

¹¹² Mazda submission, November 2016, p. 1-2; GM Holden submission, November 2016, p. 1.

Recent research undertaken by consumer organisations such as CHOICE has also raised a range of issues relating to the enforcement of consumer guarantee and warranty rights in the new car sector.¹¹³ CHOICE's 2016 survey of car owners found that about two thirds of them had experienced problems in the first five years after purchasing a car and that 15 per cent had been unable to resolve those problems.¹¹⁴

The evidence gathered by the ACCC in the course of this study supports a similar conclusion. Consumer responses to the market study questionnaire, submissions to the market study and information gathered by the ACCC during its investigations indicate that there are a number of systemic problems in the new car industry preventing consumers from obtaining the remedies they are entitled to under the consumer guarantees when their car experiences a problem.

The ACCC has seen evidence of manufacturers and some dealers not responding to consumer complaints about defective cars with sufficient regard to their ACL obligations. This leaves both manufacturers and dealers at risk of non-compliance with ACL requirements.

This issue is exacerbated by complaints handling systems that do not facilitate timely consumer redress. Reports to the ACCC suggest that many consumers are frustrated or fatigued by long delays in having their complaints resolved, and this may contribute to them giving up or settling for a remedy that is less than their legal entitlement.¹¹⁵

Some of the issues raised with the ACCC about the way in which manufacturers or dealers deal with complaints are:

- drivers being blamed for vehicle failures in the first instance
- a lack of transparency, with decisions to refuse a remedy not being put in writing and reasons not being provided
- consumer complaints and requests for remedies being ignored
- denial of consumer requests for remedy under warranty due to the expiry of the warranty, in circumstances where the consumer received incorrect or unclear information about the warranty start date.

Each of these circumstances, outlined in further detail in box 3.4 below, has the potential to raise issues of non-compliance with the ACL.

¹¹³ CHOICE, Lemon Car Report, p. 9-13; [Donating Your Money to a Warranty Company](#), August 2015, accessed May 2017.

¹¹⁴ CHOICE, [Lemons on wheels](#), 11 March 2016, accessed August 2016.

¹¹⁵ AAA submission, November 2016, pp. 15-18; Lemon Laws 4 Aus submission, November 2016, p. 2.

Box 3.4: Consumer reports to the ACCC

Blaming the driver

Shortly after purchasing a new car, a consumer began experiencing problems with the car's transmission which resulted in excessive jerking and shuddering while accelerating. The consumer took the car back to the dealer. The dealer diagnosed that the problem was due to the consumer's style of driving and advised the consumer to drive the car 'more like a man'. This advice was provided even though the car model owned by the consumer had a known defect with its transmission.

Lack of transparency

A consumer experienced significant problems with their new car and took it back to the dealer. The dealer referred the consumer to the manufacturer to request a refund or replacement car. The manufacturer always communicated with the consumer by phone, never in writing, and refused the consumer's request for a refund or a replacement car. The consumer requested that the manufacturer put its decision in writing and include written reasons for its refusal. The manufacturer refused to do this.

Ignoring a consumer's clear request for a remedy

A consumer experienced significant problems with their new car and took it back to the dealer several times. The problems could not be repaired, and the consumer requested a replacement car, stating that they believed the car had a major defect. The dealer referred the consumer's request to the manufacturer. The manufacturer ignored the request. Instead, the consumer was offered a trade-in on a goodwill basis, on condition that they sign a non-disclosure agreement. The consumer initially refused the offer and stated they were entitled to a free replacement. The manufacturer did not respond. Eventually, the consumer felt they had no choice but to accept the manufacturer's offer.

Denial of warranty due to discrepancy in commencement date

A consumer purchased a new car from a dealership, believing it came with a five year manufacturer warranty. The sales contract listed the car as a 'New Vehicle'. The consumer attempted to have a defective seatbelt repaired four years and 11 months after purchase, but was advised by the dealer that the new vehicle warranty had expired one month earlier. The dealer stated that the warranty commenced when the car was entered into their computer system as a 'Demo', two months prior to the consumer taking possession of the car. The dealer refused to provide a remedy under warranty and said that it was the consumer's fault for not ensuring the warranty period was detailed in the sales contract.

Based on submissions to this study and investigations by the ACCC in a range of matters, there appear to be five main issues contributing to the difficulties faced by consumers in enforcing consumer guarantees:

- manufacturers' focus on warranty obligations to the exclusion of their consumer guarantee obligations
- manufacturers' responses to 'major failures'
- the widespread use of non-disclosure agreements by manufacturers when resolving complaints
- the lack of effective independent dispute resolution options for consumers, and
- particular features of the commercial arrangements between manufacturers and dealers.

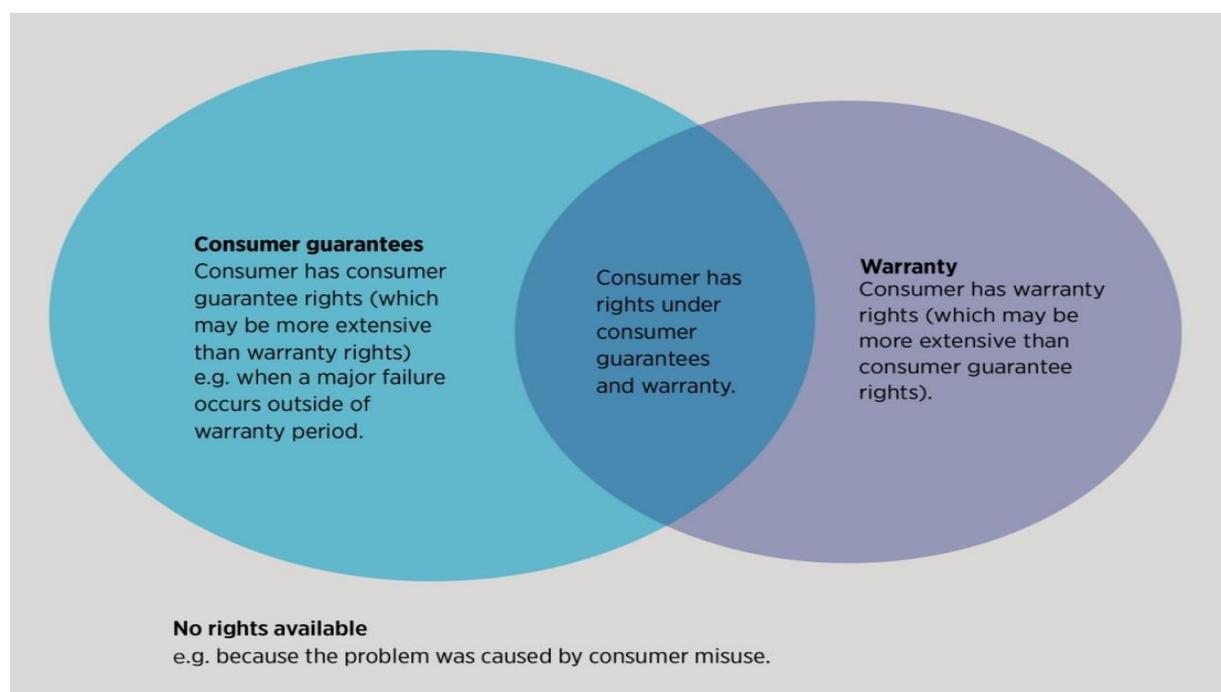
3.3.1. Manufacturers' focus on their warranty obligations to the exclusion of their consumer guarantee obligations

Consumer experiences suggest that car manufacturers' complaints handling policies will generally require dealers to check whether the car is under warranty, and whether the issue the subject of the consumer's complaint is covered by that warranty.

If the issue is covered by warranty, it is likely to be repaired, sometimes repeatedly, until the issue is resolved (unless there is a dispute about the use of an independent repairer or spare parts). If the issue is not covered by warranty, the manufacturer or its dealer network may offer a remedy (for example, an offer to repair) on what is asserted to be a discretionary and 'goodwill' basis.

Regardless of whether a problem with a new car is covered by warranty, or resolved under a manufacturer's 'goodwill' policy, the consumer may have entitlements under the consumer guarantee provisions. Indeed, a consumer may be entitled to a better remedy under these provisions than under the manufacturer's warranty or goodwill policies.

Figure 3.3: Remedies from consumer guarantees and warranties



Holden, Mazda, the FCAI and AADA submitted that manufacturers and dealers are aware of their ACL obligations and comply with these obligations. They noted that consumers may make warranty or consumer guarantee claims that are not always justified or clear in their merit. In these circumstances, the manufacturer or dealer may offer a goodwill remedy on a discretionary basis.¹¹⁶

Against this, a number of submissions to this study raised serious concerns about consumers not receiving appropriate remedies outside of warranty, even where they may be covered by the ACL.¹¹⁷ For example, Destroy My Jeep and Lemon Vehicles in Aus submitted that dealers and manufacturers ask consumers to cover the cost of repairs outside the

¹¹⁶ Mazda submission, November 2016, p. 4; Holden submission, November 2016, pp. 9-10; FCAI submission, November 2016, pp. 12-13; AADA submission, November 2016, pp. 23-24.

¹¹⁷ Destroy My Jeep submission, November 2016, p. 4; Lemon Vehicles in Aus submission, November 2016, p. 2; CHOICE submission, November 2016, p. 5; ADS submission, November 2016, pp. 4-7; SBDC submission, November 2016, pp. 1-3; MTAQ submission, November 2016, p. 2; AAA submission, November 2016, pp. 6.

warranty period. ADS submitted that manufacturers or dealers may provide discretionary assistance outside of warranty that links to their own specific policies rather than their ACL obligations.¹¹⁸ According to the AAA and the AAAA manufacturers may also offer extra discretionary support where a warranty is applicable depending on factors such as whether the consumer completed past servicing with an authorised dealer.¹¹⁹

The MTAQ noted:

It is challenging...for commercially oriented entities in a highly competitive marketing environment to understand and appreciate that 'new cars' are sold under the aegis of a statutory guarantee that has a 'reasonable' time span and that take precedence over the commercial treaties/agreements provided by the manufacturer's warranty and subsequently by the extended warranty [sic]¹²⁰

Questionnaire responses from consumers also raised concerns about the availability of remedies outside of warranty terms and the provision of alternative remedies to what the consumer may have been entitled to under the ACL.

Similarly, the ACL Review Report noted a level of concern that traders may approach consumer claims for remedies not from the perspective of whether a reasonable consumer would have bought the good if they had known of the full nature and extent of the failure at the time of purchase (that is use the "reasonable consumer test" for remedies in the consumer guarantee provisions in the ACL), but according to the trader's own specifications for failure.¹²¹

The ACCC is concerned that manufacturers' interactions with consumers when a complaint is received usually take place within the manufacturer's warranty framework to the exclusion of the consumer guarantees.

ACCC investigations confirm that in dealing with consumer complaints or enquiries about cars that have experienced a failure, manufacturers and dealers predominantly refer to their warranty or 'goodwill' policies, much as they did prior to the introduction of the ACL in 2011. However, warranty obligations and goodwill policies are voluntary in nature and subject to terms and conditions, and are generally not closely aligned with the ACL framework.

Major manufacturers, Ford and Holden, have been the subject of recent ACCC investigations into alleged ACL non-compliance issues, with the following outcomes:

- **ACCC instituted proceedings against Ford:** In July 2017, the ACCC instituted proceedings in the Federal Court against Ford for alleged contraventions of the ACL as outlined in box 3.5.
- **ACCC accepted court enforceable undertaking from Holden:** In August 2017, the ACCC accepted a court enforceable undertaking offered by Holden in relation to its concerns as outlined in box 3.6.

¹¹⁸ ADS submission, November 2016, pp. 4-7.

¹¹⁹ AAA submission, November 2016, p. 21, AAAA submission, November 2016, p.18.

¹²⁰ MTAQ submission, November 2016, p. 2.

¹²¹ ACL Review, Final Report, March 2017, p 17.

Box 3.5: Case study – ACCC institutes proceedings against Ford¹²²

On 26 July 2017, the ACCC instituted proceedings against Ford Motor Company of Australia Limited (Ford) alleging that it engaged in unconscionable and misleading or deceptive conduct, and made false or misleading representations in its response to customer complaints.

The customer complaints were about Ford's Focus, Fiesta and EcoSport vehicles supplied in Australia between 2011 and 2016, which featured a type of transmission known as PowerShift Transmission (PST).

The ACCC alleges that about half of the 70 000 vehicles sold had at least one repair relating to the PST. Customers made complaints to Ford and its dealers about their car's excessive shuddering and jerking when accelerating, loss of gear selection and sudden loss of power and/or excessive noisiness from the PST.

From 2011 to May 2015, Ford allegedly refused to provide a refund or replacement vehicle to consumers, even after vehicles had undergone multiple repairs that had not fixed the issue. In most cases, Ford only provided replacement vehicles in accordance with its "PowerShift Ownership Loyalty Program", which required consumers to make a significant payment towards a replacement vehicle.

The ACCC alleges that Ford misrepresented to customers who made complaints that the issues with their vehicles were caused by the way the driver handled the vehicle, even though Ford was aware of systemic issues with the vehicles from at least 2013.

It is also alleged that in most cases Ford refused to provide a refund or a replacement vehicle unless customers participated in the PowerShift Ownership Loyalty Program by making a substantial payment for a replacement vehicle, which was on average \$7000. As a result, customers who could not afford to make these payments felt that they had no option but to continue to use their vehicles.

The ACCC alleges that Ford's conduct towards customers who had complained of issues with their vehicles was unconscionable. It is also alleged that Ford then on-sold vehicles surrendered as part of the PowerShift Ownership Loyalty Program to wholesalers and customers, without disclosing the systemic or specific issues experienced with those vehicles.

The ACCC is seeking declarations, injunctions, pecuniary penalties, consumer redress orders, corrective advertising, and compliance program obligations.

Ford rejects the ACCC's claims and has stated its intention to defend these proceedings in court.

¹²² ACCC media release MR121/17, <https://www.accc.gov.au/media-release/accc-takes-action-against-ford>

Box 3.6: Case study – Holden’s court enforceable undertaking to address the ACCC’s ACL non-compliance concerns

On 2 August 2017 the ACCC accepted a court enforceable undertaking from Holden in relation to alleged misrepresentations to consumers and Holden dealers about their rights and obligations under the consumer guarantee provisions of the ACL.

Holden designs, manufactures and distributes motor vehicles in Australia through its network of authorised dealers.

The ACCC was concerned that Holden:

- misrepresented to consumers about their entitlements to remedies under the consumer guarantees in circumstances where Holden’s manufacturer’s warranty did not apply or provided for a remedy that was less extensive than that provided by the consumer guarantees
- misrepresented to its dealers that Holden had discretion to determine whether a remedy would be granted after the expiration of the manufacturer’s warranty, and whether Holden would indemnify dealers for providing remedies to consumers for faults.

The ACCC considered that this conduct was likely to contravene sections 18 and 29(m) of the ACL.

The ACCC has accepted a section 87B undertaking from Holden in which, until 31 December 2020, Holden will:

- refrain from making representations of the kind investigated by the ACCC
- upgrade its consumer law compliance program, including by engaging an independent third party to conduct an external review
- upgrade its complaints handling system
- reiterate to all Holden staff and Holden dealers that they are required to comply with the ACL and require them to undertake training
- publish on its website a customer service charter
- notify all new customers by letter of their statutory consumer guarantee rights
- provide consumers with the ability to obtain information about any issues with their vehicle by contacting Holden and providing their vehicle identification number
- amend its dealer policies and procedures to ensure they comply with the ACL
- appoint a compliance officer to monitor the implementation of the consumer law compliance program and complaints handling system and conduct annual external reviews of these programs
- undertake a mystery shopping program
- engage an external reviewer to conduct a review of past complaints, and where appropriate provide a remedy
- implement a policy whereby a consumer is entitled to a remedy if they experience a defect within 60 days of purchasing their new vehicle that causes it to become immobile and no longer driveable.

3.3.2. Manufacturers' responses to 'major failures'

A number of parties made submissions to this study about practical difficulties in identifying and dealing with a major failure, with some parties calling for clarification of the meaning of 'major failure' for motor vehicles under the ACL.¹²³ The ACCC notes that the ACL Review makes two proposals which aim to address uncertainties in the application of the law regarding 'major failure' (Proposals 1 and 2, see box 3.1) as it applies to goods and services generally.¹²⁴

Importantly, the ACL does not require an involved process of diagnosis to determine whether a failure is 'major'. Rather, it only requires establishing a reasonable consumer would not have bought the good had they been fully aware of the nature and extent of the failure ('reasonable consumer test'). The ACL Review proposes working with stakeholders to provide more specific guidance on the application of the ACL consumer guarantees, including exploring how durable a good should be in order to meet the reasonable consumer test.¹²⁵

Mazda, Holden and the FCAI submitted that it can be difficult to tell if a failure is a major failure or due to consumer misuse.¹²⁶ The FCAI also submitted that the current provisions of the ACL make no allowance for the use a consumer has had of the car. Submissions from the MTAQ, MTASA, the AADA and MTAA made similar comments.¹²⁷

Against this, Destroy My Jeep, Lemon Laws 4 Aus, ADS and SBDC submitted that they are aware of many examples of consumers being denied a refund or replacement in response to major failures. AAA and CHOICE noted that the dealer or manufacturer may continue attempting repairs in response to a major failure, or minor failures that are recurring or multiple in number. Other submissions also raised difficulties in consumers' ability to receive an appropriate remedy in response to major failures, or the provision of lesser, alternative remedies instead.¹²⁸

ACCC investigations and the reports it receives from consumers raise similar concerns. The consumer guarantee provisions of the ACL entitle consumers to a clear set of remedies when a major failure occurs. If manufacturers or dealers provide alternative remedies in response to a major failure, they are at risk of non-compliance with the ACL.

The ACCC has carefully considered submissions from the FCAI and manufacturers to the effect that there are low numbers of consumer complaints relative to the numbers of new cars sold each year, and that manufacturers and dealers are aware of and properly respond to claims made under the consumer guarantee provisions. However, based on previous investigations and the evidence and submissions to this study, the ACCC is concerned by what appears to be a dominant 'culture of repair' underpinning manufacturers' systems and policies for dealing with car defects and failures. The ACCC is especially concerned where cars have known major systemic mechanical failures and where consumers are asked to come in for repeated unsuccessful repairs under warranty. Under the consumer guarantees, these consumers are entitled to a free replacement or refund.

¹²³ Mazda submission, November 2016, p. 4; FCAI submission, November 2016, p. 12; MTAA submission, November 2016, p. 18; AAA submission, November 2016, p. 19; CALC submission, November 2016, p. 2; SBDC submission, November 2016, p. 3; Lemon Vehicles in Aus submission, November 2016, p. 1.

¹²⁴ ACL Review, Final Report, March 2017, pp. 18-22.

¹²⁵ ACL Review, Final Report, March 2017, pp. 16-23.

¹²⁶ Mazda submission, November 2016, p. 4; Holden submission, November 2016, pp. 9-10; FCAI submission, November 2016, pp. 12-13.

¹²⁷ MTAQ submission, November 2016, p. 3; MTASA submission, November 2016, p. 15; AADA submission, November 2016, pp. 21, 23-24; MTAA submission, November 2016, pp. 17-21 and 23.

¹²⁸ Destroy My Jeep submission, November 2016, pp. 3-4 and 8; Lemon Laws 4 Aus submission, November 2016, pp. 1 and 3; ADS submission, November 2016, pp. 4-7; SBDC submission, November 2016, pp. 1-3; CALC submission, November 2016, p. 2; CHOICE submission, November 2016, p. 5; AAA submission, November 2016, pp. 6, 15-18.

As noted above, the ACCC has recently accepted a court enforceable undertaking from Holden which includes a commitment to introduce a policy to allow consumers to claim a vehicle refund or replacement without the need to demonstrate a major failure, if a defect causes the vehicle to become immobile and no longer driveable, within 60 days, as outlined in box 3.7 below.¹²⁹ The ACCC welcomes this development and notes that it will provide an immediate remedy for consumers in these circumstances.

Box 3.7: Holden to introduce a 60 day policy to refund or replace vehicles without the need to prove a ‘major failure’

The ACCC considers that the 60 day policy to be implemented by Holden is consistent with best practice ACL compliance. Holden’s 60 day policy is an example of a manufacturer policy which creates a time limited right for a consumer, whose vehicle fails to comply with a consumer guarantee, to reject the vehicle and claim a refund or replacement without the need to prove that the vehicle has a major failure.

Such a policy provides increased certainty for consumers in asserting their rights and allows for disputes to be resolved earlier, quickly and economically, avoiding the potential for consumers to become trapped in a cycle of failed repairs.

The 60 day policy was inserted in anticipation of the proposed reform to the ACL relating to major failure within a short specified period (see box 3.1, Proposal 1), although the ACL Review did not specify what the specific timeframe for this amendment should be at this stage.

Further discussion of Holden’s commitments provided by way of a court enforceable undertaking to the ACCC is provided in box 3.6.

3.3.3. Widespread use of non-disclosure agreements when resolving complaints

A non-disclosure or confidentiality agreement is an agreement between a consumer, and one or both of a manufacturer and a dealer, that the consumer will not disclose details of a settlement that has been reached to resolve a problem with their car.

The CHOICE Lemon Car Report 2016¹³⁰ noted that 16 per cent of survey respondents were asked to sign a non-disclosure agreement to receive a remedy. ACCC investigations confirm that the use of non-disclosure agreements is widespread.

The FCAI and AADA made submissions to this study suggesting that the ACCC should not be concerned with settlements being entered into on a confidential basis.¹³¹

However, the ACCC considers that the wide use and observance of non-disclosure agreements is concerning because they:

- deny other consumers the opportunity to learn from others who have experienced a similar failure when enforcing their own rights

¹²⁹ Note, Holden’s August 2017 court enforceable undertaking also includes other improvements, including to improve and supplement Holden’s existing Consumer Law Compliance Training Program, for dealers and relevant staff, by ensuring that the training includes further guidance/clarification about the fact that multiple failures of a vehicle may constitute a major failure entitling the customer to a refund or replacement rather than a vehicle repair.

¹³⁰ CHOICE, ‘Turning lemons into lemonade: consumer experiences in the new car market’, 15 March 2016; available at <https://www.choice.com.au/transport/cars/general/articles/lemon-cars-and-consumer-law>, accessed May 2017.

¹³¹ AADA submission, November 2016, p. 27; FCAI submission, November 2016, pp. 14-15.

- substantially reduce information in the market for new buyers about defects that are common to a particular make or model of car, and about the performance of the manufacturer or dealer in resolving problems
- suppress incentives for manufacturers to compete on the basis of vehicle quality and the post-sales customer services they offer through their dealer network
- suggest that consumers are not entitled to their consumer guarantee and manufacturer warranty rights unless a non-disclosure agreement is signed, when this is not the case – consumer guarantees cannot be displaced or made subject to conditions.

As a consequence, some consumers may end up buying a car that they would not have purchased had they known more about common defects or failures and the manufacturer's track record in offering ACL-compliant remedies.

The use and observance of confidentiality agreements is particularly concerning where they suppress dissemination of safety risks with the potential to adversely impact all road users.

Consumers are legally entitled to rely on consumer guarantees irrespective of whether they agree to sign confidentiality agreements. Dealers and manufacturers who insist that consumers sign a confidentiality agreement before providing a remedy may be at risk under the provisions of the ACL which prohibit misrepresentations. The ACL voids any contractual terms that purport to exclude, modify or restrict the consumer guarantees.

Box 3.8: ACL Review – Non-disclosure agreements

The ACL Review discussed the use of non-disclosure agreements and noted that there are sufficient concerns about their wider impacts to warrant close monitoring to determine whether future legislative change is required. It noted that consumers may be persuaded to sign such agreements where the process to obtain a remedy would otherwise be too onerous or difficult.¹³²

3.3.4. Lack of effective independent dispute resolution options

When a manufacturer's own complaints handling systems and policies cannot resolve a dispute about a new car's defects or failures, the consumer or the manufacturer or dealer may turn to independent dispute resolution. Figure 3.4 summarises the current dispute resolution options available to businesses and consumers in Australia.

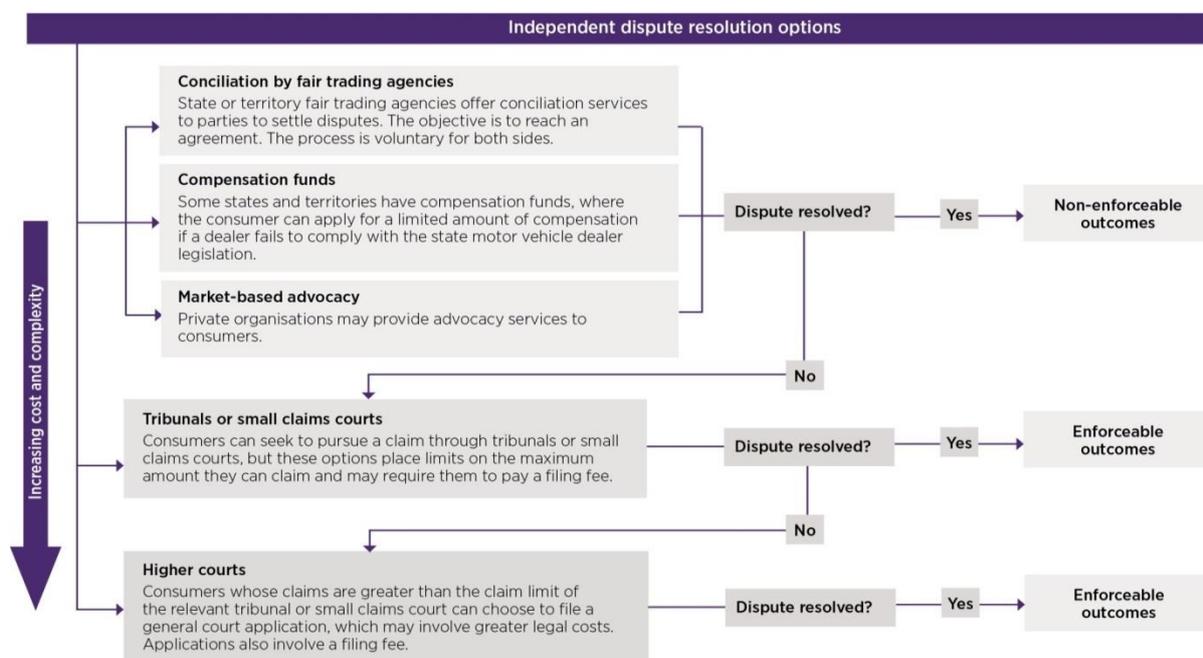
When independent dispute resolution options are effective in ensuring consumers receive the remedies they are entitled to under the ACL, they create an incentive for manufacturers and dealers to review and adapt their own complaints handling systems and policies to ensure that they are fully ACL-compliant.

Conversely, if independent dispute resolution options are not fully effective in requiring the provision of remedies in accordance with consumer rights under the ACL, there is little incentive for a manufacturer or dealer to offer ACL-complaint remedies at an earlier stage in a dispute. This greatly undermines the application of the ACL to the new car retailing industry.

Stakeholder submissions to this study and information received during ACCC investigations suggest that consumers currently lack the independent dispute resolution options they need to enforce their ACL rights. This has the potential to result in substantial detriment to consumers and other road users when manufacturers fail to provide an appropriate remedy in a timely manner.

¹³² ACL Review, Final Report, March 2017, pp. 84-85, 97.

Figure 3.4 Independent dispute resolution options in Australia



Submissions to this study and information received during ACCC investigations suggest the following serious shortcomings with the currently available independent dispute resolution options.

Voluntary conciliation models involve compromise on ACL entitlements

The AAA and CALC raised concerns that the voluntary conciliation model adopted by state or territory fair trading agencies encourages consumers to compromise with the dealer or manufacturer rather than to pursue their legal rights.¹³³ As a result, conciliation may not provide the full remedy that the consumer is entitled to under the ACL.

Some consumers have also reported to the ACCC that tribunal members discounted the refund owed to them for major failures based on concessions for the age of the vehicle or the number of kilometres it had travelled, though the ACL entitles a consumer to a full refund if the criteria for a 'major failure' is met.

¹³³ AAA submission, November 2016, p. 15 CALC submission, Queensland Inquiry into 'Lemon' Laws - Inquiry into consumer protections and remedies for buyers of new motor vehicles, pp. 4-5: <http://consumeraction.org.au/lemon-laws-an-inquiry-into-consumer-protections-and-remedies-for-buyers-of-new-motor-vehicles/>.

Box 3.9: Case study – Conciliation by Western Australian Department of Commerce

The Western Australian Department of Commerce conducts voluntary non-binding conciliations between consumers and car dealers or repairers.

The Department of Commerce employs four conciliators and two technical officers to conduct conciliations. Technical officers are trained mechanics and their function is to clarify the facts of the case. Technical officers may physically examine cars and deliver written reports to conciliators as well as conciliating disputes themselves. Conciliators contact each party separately and try to guide them towards a mutually acceptable settlement that accords with each party's legal rights and responsibilities. Conciliation has been successfully employed to deal with complaints about accessing repairs within warranty periods, vehicle emission performance, systemic manufacturing defects, quality of repairs, contractual disputes and consumer rights under the ACL.

Around half of the disputes which commence the conciliation process reach an agreed settlement. The remaining half of the disputes are unable to be resolved, referred elsewhere or do not proceed due to, for example, insufficient evidence.

Low claim limits

New car disputes may be for amounts higher than the jurisdictional limits for a tribunal or small claims court.¹³⁴ Lemon Laws 4 Aus and the AAA submitted that consumers whose claims exceed the relevant limit must reduce the value of their claim in order to access simplified procedures.¹³⁵ The only way to pursue the full amount is to engage in more costly and complex court proceedings.

Inconsistencies and errors in interpreting ACL concepts

Courts and tribunals across different jurisdictions do not always interpret or apply the law consistently in disputes involving cars. The ACCC is aware of examples of independent dispute resolution decisions that involve inconsistencies in interpreting ACL concepts.

Consumers may experience resource challenges

Despite the 'reasonable consumer test', dispute resolution bodies often judge whether a defect amounts to a major failure through a detailed technical assessment of the defect. Courts and tribunals appear reluctant to award a remedy to the consumer without expert evidence by a qualified mechanic to support their claim.¹³⁶

CALC, SBDC and the AAA noted obtaining expert reports can be expensive, sometimes exceeding the value of the repair in dispute.¹³⁷ Consumers have also indicated that it is difficult to find appropriately qualified experts who are willing to provide a report in a case against a manufacturer.¹³⁸ The cost and effort involved in obtaining expert evidence causes some consumers to abandon their case or to proceed with insufficient evidence.¹³⁹ In contrast, manufacturers have ready access to staff with expertise to prepare evidence in support of their claims.¹⁴⁰

¹³⁴ Please refer to Table D1 in Appendix D for a list of jurisdictional claim limits for consumer guarantee disputes for tribunals and small claims courts in each jurisdiction.

¹³⁵ Lemon Laws 4 Aus submission, November 2016, pp. 1-3; AAA submission, November 2016, p. 16 (Case Study 2).

¹³⁶ Stephen Coronos, [Why Australia Needs a Motor Vehicle Lemon Law](#), p. 643, accessed May 2017.

¹³⁷ CALC submission, November 2016, p. 4; SBDC submission, November 2016, p. 2; AAA submission, November 2016, p. 15.

¹³⁸ Information provided to the ACCC in the course of enforcement investigations; AAA submission, November 2016, p. 15.

¹³⁹ *Hereford v Automobile Direct Wholesale Pty Ltd* [2015] NSWCATCD 58 (10 April 2015).

¹⁴⁰ AAA submission, November 2016, p. 15.

CALC submitted that all jurisdictions should provide consumers with access to qualified independent vehicle assessors during conciliation. This was recommended in the Victorian Government's recent Access to Justice Review and already takes place in NSW and WA.¹⁴¹ See box 3.10 below for an example of independent assessors being employed by a state regulator for conciliation.

Dealers and manufacturers may be able to run their case more effectively than consumers because they are more experienced and better resourced. For example, consumers have reported difficulties accessing records of previous tribunal decisions regarding similar faults. In contrast, manufacturers have ready access to information about any relevant litigation they have previously been involved in.

The ACCC notes that the ACL Review proposed an expanded 'follow-on' provision in the ACL that will enable private litigants to rely on admissions by the defendant in earlier court or tribunal proceedings in supporting their ACL claim (Proposal 17).¹⁴² If implemented, this provision may ease some of the evidentiary difficulties experienced by consumers.

Consumers may be deterred due to complexity or fatigue

AAA submitted that consumers are often deterred from engaging in tribunal and court proceedings by the complexity and length of the process.¹⁴³ CALC submitted that consumers are intimidated by manufacturers' lawyers as well as the legal process.¹⁴⁴ Consumer reports to the ACCC suggest that consumers may have difficulties preparing the forms required to lodge proceedings.

Matters can take years to resolve and require a high level of commitment. Consumer reports to the ACCC suggest that consumers decide not to take tribunal or court action due to their work, family or other commitments or because they believe the process will be too stressful or take too long. This decision often follows a significant investment of time and energy into an unsuccessful attempt to resolve the dispute directly with the dealer or manufacturer.¹⁴⁵

Consumers who do engage in tribunal or court proceedings must be prepared to spend significant time preparing for and attending meetings or hearings, sometimes incurring lost wages. Several submissions noted that car disputes impose costs by impacting on consumers' daily activities, wellbeing and access to services.¹⁴⁶

Over time, the direct and indirect costs consumers incur to participate in dispute resolution mount up. Some consumers may withdraw or agree to settle on terms that are less than they might otherwise have achieved because the cost to continue is too high relative to the perceived benefits.

¹⁴¹ CALC submission, November 2016, p. 4; Victorian Department of Justice and Regulation, *Access to Justice Review: Volume 1 Report and Recommendations*, August 2016, p. 287.

¹⁴² ACL Review, Final Report, March 2017, pp. 80-82.

¹⁴³ AAA submission, November 2016, p. 15.

¹⁴⁴ CALC submission, November 2016, p. 3.

¹⁴⁵ CHOICE, 'Turning lemons into lemonade: consumer experiences in the new car market', 15 March 2016, p. 13.

¹⁴⁶ Lemon Laws 4 Aus submission, November 2016, p. 2; CALC submission, November 2016, p. 3-4; AAA submission, November 2016, p. 15.

Box 3.10: Complexity and length of tribunal proceedings¹⁴⁷

Three years after purchasing a new car, following a lengthy dispute with the dealer and manufacturer, a consumer filed a tribunal application. The consumer alleged the car was of unacceptable quality and sought a payment of \$25 000 (the tribunal's jurisdictional limit) from the manufacturer. The consumer had no legal representation and the manufacturer was represented by a barrister.

The tribunal proceeding lasted more than two years from October 2010 to April 2013, including mediation, a compulsory conference, nine directions hearings, a non-compliance application, an application to dismiss, two sets of tribunal orders with detailed reasons, and an application by the manufacturer to strike out the proceedings.

Days before the final hearing, the consumer sought to withdraw their initial application and did not attend the final hearing. As a result, the proceeding was dismissed.

3.3.5. Commercial arrangements between manufacturers and dealers

When a consumer experiences a problem with their new car, their first point of contact is generally the dealer. According to CHOICE, a majority of consumers do not escalate their complaint beyond the dealer, which makes it important for dealers to resolve complaints satisfactorily.¹⁴⁸

Dealers have more direct responsibility than manufacturers to provide remedies under the ACL, and are entitled to then seek reimbursement for those remedies from the manufacturer where the manufacturer is responsible for the failure. Dealers are also franchisees that are required to comply with the policies and procedures set by their franchisor, the manufacturer. Dealers respond to consumer guarantee or warranty claims within this framework.

FCAI, Honda and Mazda submitted that an assessment of a consumer's claim generally involves both the dealer and the manufacturer.¹⁴⁹ ADS noted dealers need prior approval from the manufacturer before providing a remedy.¹⁵⁰ For example, there may be stringent requirements by the manufacturer to establish the remedy was warranted before it approves reimbursement. There may also be predetermined maximum amounts that dealers are permitted to spend on warranty repairs without further approval by manufacturers.¹⁵¹ AADA noted that manufacturers have progressively relaxed prior approval limits over the last decade, but dealers still need to operate within the confines of their Dealer Agreement.¹⁵²

Dealers may believe that if they do not comply with these requirements, their franchise agreement will be put at risk or they may incur losses. Several other stakeholders also raised concerns about constraints on dealers' ability to provide ACL or warranty remedies to consumers due to the nature of their relationships with manufacturers.¹⁵³

¹⁴⁷ Rae v Volkswagen Group Australia Pty Ltd [2013] QCAT 290 (23 May 2013).

¹⁴⁸ CHOICE, 'Turning lemons into lemonade: consumer experiences in the new car market', 15 March 2016, pp. 9 and 11.

¹⁴⁹ FCAI submission, November 2016, pp. 13-14; Honda submission, November 2016, pp. 9-10; Mazda submission, November 2016, p. 4.

¹⁵⁰ ADS submission, pp. 4-5 and 7.

¹⁵¹ Car Solutions submission, November 2016, p. 3.

¹⁵² AADA submission, November 2016, p. 24.

¹⁵³ SBDC submission, November 2016, pp. 5-6; MTASA submission, November 2016, p. 15; MTAQ submission, November 2016, p. 3; MTAA submission, November 2016, pp. 4, 9-11, 15, 17 and 21-22; OSBC submission, November 2016, pp. 1-4; AADA submission, November 2016, pp. 7-9 and 24-25.

The Small Business Development Corporation (SBDC) submitted dealers may not be adequately reimbursed by the manufacturer for remedies they provide to consumers, in circumstances where the manufacturer is liable for the defect. The dealer may be reluctant to offer remedies without certainty of being indemnified, which may reduce consumers' access to appropriate or timely remedies.¹⁵⁴

MTAA, the Motor Trade Association of South Australia (MTASA) and SBDC suggested that the ACL be reformed to make it easier to hold manufacturers to account for consumer guarantee failures they are liable for. The MTAA also suggested reforms to the Franchising Code of Conduct.¹⁵⁵

The ACCC acknowledges that dealers may find it challenging to simultaneously meet their ACL obligations, safeguard their own financial interests and maintain a long term commercial relationship with the manufacturer. Notwithstanding these challenges, it remains the responsibility of dealers to meet their legal obligations, and for manufacturers in turn to meet theirs and not to adopt commercial arrangements that stifle this.

Consumers are entitled to claim a remedy directly from dealers if the products do not meet one or more of the relevant consumer guarantees. Dealers cannot circumvent their obligations by referring consumers to the manufacturer.

Further information about the complex arrangements between manufacturers and authorised dealers is provided in chapter 2 (see box 2.2 for an overview of dealer agreements).

¹⁵⁴ SBDC submission, November 2016, pp. 5-6.

¹⁵⁵ SBDC submission, November 2016, p. 6; MTASA submission, November 2016, p. 15; MTAA submission, November 2016, pp. 11, 15, 17.

Draft findings on the consumer experience of enforcing their rights

- A significant body of evidence suggests systemic failures in the ability of consumers to enforce their consumer guarantee rights after the purchase of a new car. The ACCC has seen many examples of practices by manufacturers in dealing with consumer complaints that raise concerns under the ACL provisions, including the failure of manufacturers' complaints handling systems to adequately take consumers' ACL rights into account.
- The ACCC has identified five key issues contributing to the difficulties experienced by consumers in enforcing their consumer guarantees:
 - manufacturers' focus on warranty obligations to the exclusion of their consumer guarantee obligations
 - manufacturers' responses to 'major failures'
 - the widespread use of non-disclosure agreements by manufacturers when resolving complaints
 - the lack of effective independent dispute resolution options for consumers, and
 - particular features of the commercial arrangements between manufacturers and dealers.
- Manufacturers' complaint handling systems require dealers to check whether a car is under warranty before decisions are made as to an appropriate response to the customer's complaint. This means interactions with the consumer take place within the manufacturer's warranty framework to the exclusion of the consumer guarantees.
- There is a dominant 'culture of repair' underpinning manufacturers' systems and policies for dealing with car defects and failures, even where cars have known and systemic mechanical failures which would entitle a consumer to a replacement or refund under the consumer guarantees.
- The widespread use of non-disclosure agreements when resolving consumer complaints suggests that consumers are not entitled to their consumer guarantee and warranty rights unless a non-disclosure agreement is signed when this is not the case. Non-disclosure agreements also substantially reduce information in the marketplace for new buyers about defects and safety issues that are common to a particular car.
- Independent dispute resolution options are providing little incentive for manufacturers to improve their ACL compliance. These options do not effectively enable consumers to obtain the remedies they are entitled to under the consumer guarantees. This creates little incentive for a manufacturer or dealer to offer these remedies at an earlier stage in a dispute.
- Given the nature of commercial relationships between dealers and manufacturers, 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. These commercial arrangements can have the effect of denying or making it difficult for consumers to readily access the remedies to which they are entitled.

ACCC action on the consumer experience of enforcing their rights

The ACCC has recently instituted proceedings in the Federal Court against Ford, and it has also accepted a court enforceable undertaking from Holden, in relation to its concerns about alleged ACL non-compliance issues.

ACCC action 3.4

Manufacturers' complaints handling systems, policies and practices that do not comply with the consumer guarantee requirements of the ACL will continue to be targeted through action by the ACCC and fair trading agencies, including enforcement action where appropriate.

Such action may also address any instances of non-compliance by dealers. The ACCC is particularly concerned about manufacturers and dealers engaging in conduct that may be misleading or unconscionable.

4. Accessing technical information to repair and service new cars

Key points

- Traditionally, information to repair and service cars was provided in paper workshop manuals. Today, real-time access to digital files and codes, which vary from car to car, is needed to complete many aspects of a repair or service. Car manufacturers generally own and control this technical information and in many cases are the only source.
- As discussed in chapter 2, car manufacturers have the incentive to deny or delay access by independent repairers to the technical information necessary for them to effectively compete with authorised dealers and preferred repairer networks.
- Evidence to this study suggested consumers may be unaware that repair and service work cannot, at times, be completed by independent repairers for want of technical information or access to the diagnostic tools necessary to access or use that technical information. Consumers realise costs—inconvenience, delays and unexpected expenses—when their car must be taken to a dealer, who does have access to the technical information or proprietary diagnostic tool required.
- In an attempt to address some of these issues, in 2014, key industry associations agreed to a set of aims and principles to ensure ‘a fair and reasonable competitive market within the car service and repair industry.’ The *Agreement on Access to Service and Repair Information for Motor Vehicles* (Heads of Agreement) placed voluntary obligations on car manufacturers to, in general, share with independent repairers, on commercially fair and reasonable terms, the same technical information they provide to their dealers.
- Despite the Heads of Agreement, many stakeholders in the independent sector submitted to this study that independent repairers remained unable to readily access technical information and diagnostic tools from car manufacturers to repair and service new cars. Against this, the FCAI submitted that technical information is available to independent repairers, often directly from car manufacturers, and that only two independent repairers had lodged complaints with it about an inability to access technical information.
- To assess this issue, the ACCC considered submissions, undertook site visits and commissioned an independent expert to assess several examples where the independent sector had asserted that technical information was purportedly not available to independent repairers. The independent expert found that in several of the examples, access to technical information required to repair a car was not available from car manufacturers to independent repairers.
- The ACCC has concluded that, broadly, most car manufacturers in Australia are not fully sharing technical information with independent repairers consistently with the Heads of Agreement. The ACCC has also found that the net effect of the Heads of Agreement in improving access to technical information for independent repairers has been limited.
- In other jurisdictions, recent regulatory interventions have made the technical information, and, as a consequence, the diagnostic tools, necessary for independent repairers to repair and service new cars more widely available. In the US, recent state legislation has stimulated additional voluntary changes to further improve access to technical information and diagnostic tools for independent repairers.
- Due to the limited effect of the Heads of Agreement to achieve its objectives, and consistent with developments in other jurisdictions, the ACCC considers that regulatory intervention is needed to ensure technical information is made available on commercially fair and reasonable terms to enable a competitive car repair and servicing industry.

The issue of access to technical information by independent repairers has been contentious for many years. The ACCC received many submissions from participants in the independent automotive repair and maintenance sector (referred to in this study as the ‘independent sector’), which includes independent repairers, manufacturers and suppliers of aftermarket parts and tools, aftermarket diagnostic tool manufacturers and commercial publishers of technical information. The ACCC also received submissions from industry associations representing interests in the independent sector, and insurers. These submissions generally claimed that car manufacturers are imposing barriers on access to the technical information needed to repair and service new cars. Car manufacturers and industry associations representing their interests, and those of dealers, contended that technical information is available, and that access to technical information has been facilitated through a voluntary agreement negotiated within the industry in 2014 (the Heads of Agreement).¹⁵⁶ The Heads of Agreement is further discussed at section 4.1.2.

The ACCC’s focus in this study was to investigate these competing views and to assess whether, and to what extent, barriers exist and if so whether they:

- (a) influence competition between independent repairers and authorised dealers or preferred repairer networks and
- (b) impose any additional costs on consumers.

As part of this focus, the ACCC also examined the effect of the Heads of Agreement in facilitating access to technical information for independent repairers. The Hon. Michael McCormack, MP, Minister for Small Business, has indicated the ACCC’s findings about access to technical information will ‘help the Government and industry determine what actions, if any, are needed in the future.’¹⁵⁷

This chapter is primarily focused on access to technical information by independent repairers; however, it also discusses issues associated with access to proprietary diagnostic tools, or access by aftermarket diagnostic tool manufacturers or commercial publishers to technical information, as necessary. This chapter is structured as follows:

- summary of the background and regulatory framework to this issue
- overview of the problems, and associated impacts, as reported by the independent sector and consumers in independent repairers accessing technical information
- the responses of car manufacturers and authorised dealers to the issue
- the industry’s views on the effect of the Heads of Agreement
- the ACCC’s further research, analysis and evaluation of the issues and potential impacts raised by stakeholders, and the ACCC’s recommendations for change.

4.1. The changing nature of technical information

New cars require regular servicing to maintain the efficient functioning of their electronic and mechanical parts. New cars may also require repairs when an electronic, mechanical or computerised component no longer performs the function it was designed to do.

Repairing or servicing a car is no longer just about a car’s mechanical components: today’s new cars contain in excess of 10 million lines of computer code—more code than is used to operate the avionics and on-board support systems of modern airliners. New cars are now effectively ‘computers on wheels’ and require sophisticated software to work.¹⁵⁸

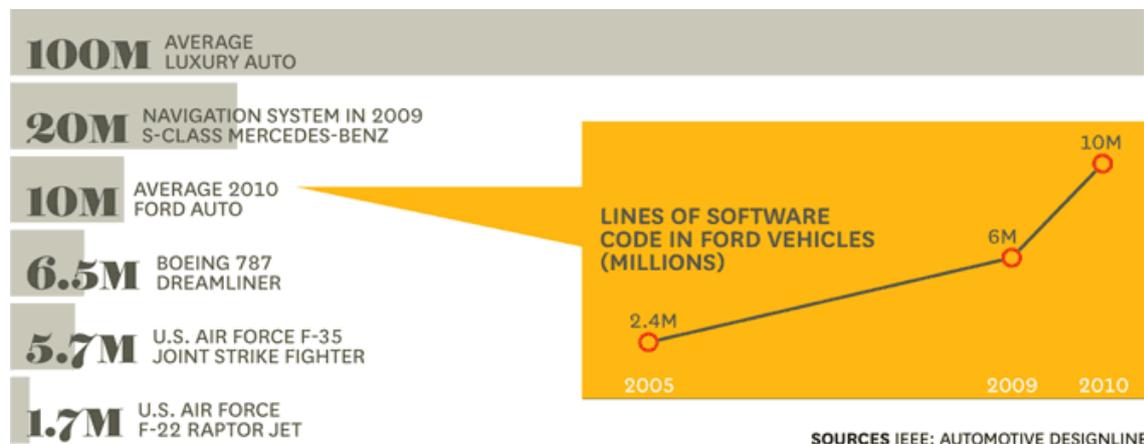
¹⁵⁶ FCAI, AAA, AAAA, AADA, MTAA/AMIF, [Agreement on access to service and repair Information for motor vehicles](#), December 2014.

¹⁵⁷ The Hon. Michael McCormack, MP, [Wheels fall off Leigh’s logic](#), 11 November 2016, accessed 17 July 2017.

¹⁵⁸ Robert N. Charette, This Car Runs on Code, [IEEE Spectrum](#), 1 February 2009; David Sedgwick, [Cars become computers](#)

Figure 4.1 compares the lines of code needed to operate various types of aircraft and new cars.

Figure 4.1: Millions of lines of code in modern aircraft and new cars compared



Source: John Paul MacDuffie and Takahiro Fujimoto, [Why dinosaurs will keep ruling the auto industry](#), Harvard Business Review, June 2010.

It is not only the complexity of the information required to repair and service a new car that has increased. The volume of information required has also increased. Figure 4.2 is a picture provided by the VACC showing that in 2000, the workshop manual for a Toyota Tarago, a typical family car, consisted of three volumes. The VACC reported that by 2010 this had increased to 31 volumes.

Figure 4.2: Toyota Tarago workshop manual—2000 versus 2010



Toyota Tarago workshop manuals: 2000 v 2010

Source: VACC supplementary submission (April 2017), p. 8.

While workshop manuals explain to a mechanic how to complete a physical process—such as to repair or replace a malfunctioning part—car manufacturers now also issue digital files and codes, such as recalibration codes and updates, to fix problems that may arise from the operation of the car’s software. These files are used in conjunction with diagnostic tools, which can assist in determining problems and finding solutions to repair a new car.

Box 4.1 outlines the types of technical information needed to repair and service a new car.

[on wheels](#), Automotive News, 21 April 2014, accessed 17 July 2017.

Box 4.1: Technical information needed to repair and service a new car

Technical information

Technical information includes all the data and information needed to repair and service a new car.

Consistent with the PC's description of the distinction between data and information, data refers to 'representations of facts that are stored or transmitted as qualified or quantified symbols' and may have no inherent meaning.¹⁵⁹ Information is the 'meaning resulting from the interpretation of facts conveyed through data (and other sources)' and can be derived from data after it has been 'presented in context and interpreted.'¹⁶⁰

Technical information to repair and service a new car includes, but is not limited to:¹⁶¹

- information or data outputs for diagnosis, body repair, servicing, inspection, periodic monitoring, re-programming and reinitialisation of the car or its components
- dimensions and tolerances for mechanical parts
- initialisation and reset codes for computerised systems
- calibration files for electronic control units (ECUs)
- specifications for oils and lubricants
- diagrams of wiring looms and voltages for electronic components
- repair manuals, body repair manuals and wiring diagrams
- electronic logbooks or service histories
- supplements or updates, including software updates, to any of the above.

Technical information to repair and service new cars also includes on-board diagnostic data, with information reported or data output from the car.¹⁶²

Technical information for a particular make and model of car may change over time as new materials are used to produce mechanical parts or as the appropriateness of certain repair and servicing techniques are tested. Further, technical information is not generally substitutable between different makes and models of cars.

Diagnostic tools

Many of the types of technical information outlined above require the use of a diagnostic tool to retrieve data from the car and display the information to the repairer, or the diagnostic tool is used to manipulate the electronic components of a car, either by entering a code or uploading new software. Diagnostic tools may be generic (made by an aftermarket diagnostic tool manufacturer) or proprietary (made or authorised by the car manufacturer, or with its branding).

Proprietary diagnostic tools may only work with a specific manufacturer's cars, and may include features and capabilities not available in aftermarket diagnostic tools due to the manufacturer's control over technical information about their own cars. However, aftermarket diagnostic tools may work across different car makes. Diagnostic tools also require periodic software updates to communicate with new models of cars.

A full outline of the types of information and data to repair and service new cars the ACCC is aware of can be found in **Appendix E**.

¹⁵⁹ PC, [Data availability and use: Inquiry Report](#), March 2017, pp. 54–55.

¹⁶⁰ PC, [Data availability and use: Inquiry Report](#), March 2017, pp. 54–55.

¹⁶¹ CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012, p. iv; FCAI, AAA, AAAA, AADA, MTAA/AMIF, [Agreement on access to service and repair information for motor vehicles](#), December 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, p. 29.

¹⁶² CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012, p. iv; FCAI, AAA, AAAA, AADA, MTAA/AMIF, [Agreement on access to service and repair information for motor vehicles](#), December 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, p. 29.

The increasing computerisation of cars is also affecting car manufacturers' distribution networks for technical information. Where workshop manuals were once sold in printed volumes (see figure 4.2, above), they may now be available solely in digital form through a car manufacturer's website or on CDs, DVDs or flash drives. Similarly, the digital files required for repairing and servicing cars are also distributed in a machine readable form.

Due to the increasing technological sophistication of new cars, with computers and software monitoring and controlling car components that were previously purely mechanical, the ability to access comprehensive technical information to repair and service new cars, particularly digital files, and appropriate diagnostic tools, becomes critical to ensure cars are properly repaired and serviced.

4.1.1. The sharing of technical information is not specifically regulated

As outlined in chapter 1, the CCA and ACL contain general prohibitions against particular types of harmful conduct in trade and commerce, including prohibitions against anti-competitive conduct, exclusive dealing and acting unconscionably. However, at present, there are no Australian laws that specifically regulate the sharing of technical information held by car manufacturers, nor do laws create a positive obligation for such information and data to be shared or address whether a consumer or business owns data and information generated by the technology in a new car.¹⁶³

General statutory protections in the CCA and the *Privacy Act 1988* (Cth) may apply in some circumstances when trying to access certain types of information and data, or proprietary diagnostic tools. Further, state and territory laws require cars to meet the standards for registration, which in most cases are the ADRs.¹⁶⁴ If a new car is to be resold, it may also require a certificate of roadworthiness.¹⁶⁵ Both the standards for registration and roadworthiness certification may refer to the manufacturer's original specifications.¹⁶⁶

4.1.2. Stakeholder and government engagement has been increasing

The ACCC and other ACL regulators have received increasing reports in relation to this issue. Reports have related to a variety of types of technical information, including access to proprietary diagnostic tools, workshop manuals and reset codes, and updating and reading electronic logbooks. In addition to the reports the ACCC has received, stakeholders and the Australian Government have used other processes, outlined below, to examine issues around accessing technical information, and attempts have been made to resolve problems.

2012 Commonwealth Consumer Affairs Advisory Council review

In March 2011, the Hon. David Bradbury, MP, then Parliamentary Assistant to the Treasurer, requested the Commonwealth Consumer Affairs Advisory Council (CCAAC) report on a number of matters including the evidence of a lack of access to repair information and evidence of consumer detriment from this practice, if any, as well as the nature and effectiveness of international approaches and the views of stakeholders.¹⁶⁷

¹⁶³ For further discussion about the 'ownership' of data see: PC, [Data availability and use: Inquiry report](#), 31 March 2017, pp. 53, 65.

¹⁶⁴ For example: *Road Safety Act 1986* (Vic), ss 5 and 10; VicRoads, Vehicle Information Standards; *Road Safety (Vehicles) Regulations 2009* (Vic), Schedule 2.

¹⁶⁵ For example: *Road Safety (Vehicles) Regulations 2009* (Vic), rr 220 and 266.

¹⁶⁶ For example: VicRoads, Vehicle Standards Information: Roadworthiness Requirements, December 2012.

¹⁶⁷ CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012, p. 36.

In its final report, published in 2012, 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.*¹⁶⁸

CCAAC made a number of recommendations, including that industry should develop processes within a reasonable period of time to ensure a mechanism for independent repairers to access repair information.¹⁶⁹ CCAAC also recommended that if industry was unable to arrive at an effective outcome and access to repair information became a barrier to competition in the market for repairs, then the Government should consider regulatory intervention.¹⁷⁰ The Government supported these recommendations.¹⁷¹

2014 Heads of Agreement

In 2014, the Hon. Bruce Billson, MP, then Minister for Small Business, worked with key industry associations to develop a voluntary agreement for the sharing of repair information.¹⁷² In December 2014, the AAA, AAAA, AADA, FCAI and MTAA signed the Heads of Agreement to facilitate the sharing of technical information.¹⁷³

The Heads of Agreement aims to provide a safeguard ensuring that repair and service information is available in a timely manner to the consumer's repairer of choice.¹⁷⁴ The Heads of Agreement further outlined the obligations of the signatories to develop separate enabling documents—known as codes of practice—with their members to enact the principles of the agreement.¹⁷⁵

2015 codes of practice

Accordingly, in February 2015 the FCAI established its own voluntary code of practice to cover its own members—car manufacturers.¹⁷⁶ Other signatories to the Heads of Agreement, representing other stakeholders in the industry, also established voluntary codes of practice;¹⁷⁷ however, the *Voluntary Code of Practice – Access to Service and Repair Information for Motor Vehicles* (FCAI Code) is the sole instrument directly outlining a process for independent repairers to access technical information controlled by car manufacturers.

The objectives of the FCAI Code include the provision of an information pathway and a means of access to technical information that may be used by parties outside the dealer network.¹⁷⁸

¹⁶⁸ CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012, p. iii.

¹⁶⁹ CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012, p. vi.

¹⁷⁰ CCAAC, [Sharing of repair information in the automotive industry: Final report](#), 27 November 2012, pp. vi-vii.

¹⁷¹ The Hon. David Bradbury MP, [Improving Choice of Automotive Repairers for Consumers](#), 10 June 2013

¹⁷² The Hon. Bruce Billson, MP, [Signing of the historic right to repair Heads of Agreement](#), 15 December 2014.

¹⁷³ The Hon. Bruce Billson, MP, [Signing of the historic right to repair Heads of Agreement](#), 15 December 2014.

¹⁷⁴ FCAI, AAA, AAAA, AADA, MTAA/AMIF, [Agreement on access to service and repair Information for motor vehicles](#), December 2014, p. 2.

¹⁷⁵ FCAI, AAA, AAAA, AADA, MTAA/AMIF, [Agreement on access to service and repair Information for motor vehicles](#), December 2014, p. 7, clause g.

¹⁷⁶ FCAI, [The Voluntary Code of Practice for Access to Service and Repair Information for Motor Vehicles](#), February 2015.

¹⁷⁷ 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](#); MTAA/AMIF, [Access to Service and Repair Information—Code of Conduct](#), April 2015; AAAA, [Vehicle Data Sharing Code of Practice](#), April 2015.

¹⁷⁸ FCAI, [The Voluntary Code of Practice for Access to Service and Repair Information for Motor Vehicles](#), February 2015, clause 1.2.

4.2. There are competing claims about independent repairers' access to technical information

Technical information to repair and service new cars is generally shared by car manufacturers with their dealer networks. A usual term in a franchise agreement between a car manufacturer and a dealer is that the manufacturer agrees to provide the dealer with such technical information and diagnostic tools, including training, as is reasonably needed to assist the dealer in carrying out their obligations under the agreement. Dealer's obligations typically include making ongoing investments in equipment, training and special tools to be able to service cars,¹⁷⁹ and to complete warranty, recall and other work, in accordance with the policies and procedures of the car manufacturer.

Independent repairers have reported a different process and experience for obtaining access to technical information. A diverse range of stakeholders from the independent sector made submissions to this study. Many reported that independent repairers have experienced one or more of the following barriers when trying to access technical information (or diagnostic tools) from car manufacturers:¹⁸⁰

- being denied access to specific types of technical information or proprietary diagnostic tools to repair or service new cars, that is, the information or diagnostic tool exists, but access is restricted by the car manufacturer who refuses to provide it (in full or in part)
- experiencing delays when a car manufacturer releases technical information about a new car to independent repairers, for example, car manufacturers releasing information to independent repairers months or years after the car model is first sold in the Australian market while dealers get immediate access
- experiencing administrative, resourcing or other costs, or delays, in obtaining the information, for example, the car manufacturer requires communications through email addresses with delayed response times
- independent repairers and consumers being denied access by car manufacturers to view or update electronic logbooks.

The FCAI submitted that technical information is available, as evidenced by the high proportion of the total car fleet that is repaired or serviced by independent repairers.¹⁸¹ The AADA and the FCAI stated that it could also be obtained from other sources, such as commercial publishers and special-interest forums.¹⁸²

Some car manufacturers submitted that they make available technical information to independent repairers through their websites, dealer network or an email address.¹⁸³ Independent repairers and commercial publishers of technical information stated that despite sources of information other than car manufacturers, they continued to encounter gaps in accessing the technical information required to repair and service new cars.¹⁸⁴

¹⁷⁹ AADA submission, November 2016, pp. 32, 36.

¹⁸⁰ AAAA supplementary submission 1, February 2017; Bapcor supplementary submission, March 2017; KTAS supplementary submission 1, March 2017; GPC Asia Pacific supplementary submission, April 2017; Repco (Auto Care Ocean Grove – Emma Harper) supplementary submission, March 2017; Repco (Gejay Automotive – Gary Pinner) supplementary submission, March 2017; Repco (Highton Automotive Services - Mark Awramenko) supplementary submission, March 2017; Repco (Drysdale Motors - Noel Harper) supplementary submission, March 2017; Repco (Woodward's Auto Repairs Alan Woodward) supplementary submission, March 2017; Ultra Tune supplementary submissions 1, 2 and 3, February, March, April 2017; VACC supplementary submission 1, February 2017. Initial submissions: AAAA submission, November 2016; Bapcor submission, November 2016; GPC Asia Pacific submission, November 2016.

¹⁸¹ FCAI submission, November 2016, p. 26.

¹⁸² FCAI submission, November 2016, pp. 26, 28; AADA submission, November 2016, p. 32.

¹⁸³ GM Holden submission, November 2016, p. 15; Toyota submission, November 2016, p. 7; FCAI letter and attachment to the ACCC, December 2016.

¹⁸⁴ For example: Repco (Auto Care Ocean Grove - Emma Harper) supplementary submission, pp. 2–3; Repco (Woodward's Auto Repairs - Alan Woodward) supplementary submission, p. 2 and Attachment 2; VACC supplementary submission 2, April 2017, p. 4.

4.2.1. Independent repairers' reported position: technical information availability from official sources is inconsistent

The AAAA submitted that, as a general rule, the responsibility for the supply of technical information sits with the relevant car manufacturer.¹⁸⁵ The MTAA submitted that consumers can only exercise their right to choose a repairer if they can reasonably expect their chosen repairer has access to the technical information needed to complete the repair or servicing.¹⁸⁶ The VACC submitted that, for the purposes of its OurAuto Tech Centre, a commercial publisher of technical information, it would be 'ideal' to source technical information from the car manufacturer in Australia.¹⁸⁷

A number of consumers and small businesses also provided their views and examples of difficulties accessing technical information to the ACCC's consumer and small business questionnaire response to the Issues Paper. Of the respondents, 28 of 85 consumers (33 per cent) and 186 of 229 small businesses (81 per cent) reported dissatisfaction with accessing technical information.¹⁸⁸ In addition, 12 of 85 consumers (14 per cent) and 114 of 229 small businesses (50 per cent) reported dissatisfaction with accessing or updating electronic logbooks or servicing records.¹⁸⁹

On the basis of materials submitted to the ACCC, box 4.2 below, outlines the types of technical information stakeholders predominantly reported problems accessing and their uses. These materials now tend to be digital files rather than printed, and predominantly procedural, documents.

Box 4.2: Common types of technical information stakeholders reported problems accessing and their uses

Defined below are common types of technical information that stakeholders have reported problems accessing, and their uses. Further information can be found in **Appendix F**.

Electrical circuit and wiring diagrams:¹⁹⁰ a schematic layout of a car's wiring and components, with specifications showing voltages for electronic components.¹⁹¹ This type of technical information is used to diagnose and repair problems with a car's electronics.

Lubricant specifications:¹⁹² a description of the type—synthetic, part synthetic or mineral—and viscosity of oil recommended by a car manufacturer for use in lubricating different car components e.g. crankcase, automatic transmission, differential, 4WD transfer, 4WD differential or power steering.¹⁹³

Pass-through information:¹⁹⁴ allows the reprogramming of ECUs, insertion of reinitialisation codes, and uploading of software updates to be carried out using a generic

¹⁸⁵ AAAA supplementary submission 1, February 2017, p. 4.

¹⁸⁶ MTAA supplementary submission, April 2017, p. 3.

¹⁸⁷ VACC supplementary submission 2, April 2017, p. 4.

¹⁸⁸ Small business questionnaire responses – Part 1 and Part 2, November 2016; Consumer questionnaire responses, November 2016.

¹⁸⁹ Small business questionnaire responses – Part 1 and Part 2, November 2016; Consumer questionnaire responses, November 2016.

¹⁹⁰ For example: AAAA submission, November 2016, p. 57; GPC Asia Pacific submission, November 2016, p. 4; MTAA submission, November 2016, pp. 39–43; MTAA supplementary submission, April 2017, p. 4.

¹⁹¹ AAA submission, November 2016, p. 29; AAAA submission, November 2016, p. 51.

¹⁹² For example: AAA submission, November 2016, p. 27; AAAA submission, November 2016, p. 58; Bapcor submission, November 2016, p. 13; MTAA submission, November 2016, p. 28; AAAA supplementary submission, December 2016, p. 16.

¹⁹³ Castrol (AU), [Engine oil](#), 2017; Caltex (AU), [Oil & Product Finder](#), 2017.

¹⁹⁴ For example: Anonymous business 1 submission, November 2016, pp. 1–2; MTAA submission, November 2016, p. 39; VACC supplementary submission 1, February 2017, p. 4; MTAA supplementary submission, April 2017, p. 4.

pass-through enabled diagnostic tool via a car's on-board diagnostic port in conjunction with a personal computer in real time by connecting the car to the manufacturer's web server.¹⁹⁵ It is increasingly required for updating the computerised systems in new cars.

Reinitialisation codes:¹⁹⁶ where an ECU loses power or a battery is disconnected and reconnected, a car's systems may need to be reset, potentially with the use of a PIN.¹⁹⁷

Service campaign information and technical service bulletins:¹⁹⁸ notifications to customers to address technical issues with a car not related to safety or compliance, but may include emissions issues.¹⁹⁹ Technical service bulletins are instructions issued by car manufacturers to dealers on procedures to service/repair cars where unanticipated problems have regularly arisen on a particular model of car in order to avoid future problems.²⁰⁰

Software updates or calibration files for new cars and their components:²⁰¹ new instructions for various car systems to improve their operation or remedy an existing software-based problem, for instance, a car manufacturer may release a software update for a car's automatic transmission to improve its shifting performance.²⁰² The software updates may be in the form of codes and files required to recalibrate ECUs (e.g. powertrain, engine, emissions, transmission, and advanced driver assistance systems).²⁰³ These materials can be uploaded to the car using a car manufacturer's proprietary diagnostic tools, and increasingly using generic pass-through enabled tools (see above).

Electronic logbooks:²⁰⁴ digitally stored information about the car, such as manufacturer's specifications regarding servicing and its service history. It may be stored in the car's on-board diagnostic system, in the cloud, in the car's key or in another electronic form.

Independent repairers also raised concerns with access to the diagnostic tools needed to read fault codes from the on-board diagnostic system of a car and to upload software updates and enter reinitialisation codes, particularly where the tool was of a proprietary nature.²⁰⁵ Independent repairers and an aftermarket diagnostic tool manufacturer also raised concerns about car manufacturers restricting third party diagnostic tools from being used with new cars, particularly by denying access to OE approved data servers.²⁰⁶

¹⁹⁵ 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.

¹⁹⁶ AAA submission, November 2016, p. 27; AAAA submission, November 2016, p. 57; MTAA submission, November 2016, pp. 39–43; VACC submission, November 2016, p. 11; AAAA supplementary submission 1, February 2017, p. 11; VACC supplementary submission 1, February 2017, p. 4; MTAA supplementary submission, April 2017, p. 4; AAAA supplementary submission, December 2016, p. 16.

¹⁹⁷ AAAA submission, November 2016, p. 57.

¹⁹⁸ AAAA submission, November 2016, p.56; AAAA supplementary submission 1, p. 11; VACC supplementary submission 1, February 2017, p.4; MTAA supplementary submission, April 2017, p.4; AAAA supplementary submission, December 2016, p. 16.

¹⁹⁹ Volkswagen, [Recall/Service Campaign lookup](#), 21 March 2017; VACC supplementary submission 1, February 2017, p. 4.

²⁰⁰ AAAA submission, November 2016, p.56 ; VACC supplementary submission 1, February 2017, p. 4.

²⁰¹ For example: AAA submission, November 2016, p. 27; AAAA submission, November 2016, pp. 57–58; VACC supplementary submission 1, February 2017, p. 4; KTAS, supplementary submission 1, March 2017, pp. 1–4; AAAA supplementary submission, December 2016, p. 16; AAAA supplementary submission 1, February 2017, p. 11; Bapcor submission, November 2016, p. 14; Steve Sorensen Mechanical submission, November 2016, p. 2.

²⁰² AAAA submission, November 2016, p. 58; AAAA supplementary submission 1, February 2017, Appendix 8, p. 9.

²⁰³ Bosch Diagnostics, [J2534 FAQ](#), 2017; AAAA submission, November 2016, p. 57.

²⁰⁴ For example: AAAA submission, November 2016, p. 45; Carsales submission, November 2016, p. 9.

²⁰⁵ For example: Ultra Tune supplementary submission 2, March 2017; Ultra Tune supplementary submission 3, April 2017, p. 2; AAAA submission, November 2016, p. 41; GPC Asia Pacific submission, November 2016, p. 8.

²⁰⁶ For example: VACC supplementary submission 1 and Attachment A, February 2017; Anonymous business 1 submission, November 2016; and a number of independent repairers who use Autologic's aftermarket diagnostic tools emailed in a number of examples where they had been unable to upload software updates, such as calibration files for ECUs, or enter reinitialisation codes in new cars.

The VACC submitted that the breadth, depth and availability of different types of technical information varies considerably between car manufacturers.²⁰⁷ Stakeholders' experience of the issue also differed based on the type of technical information needed to remedy the distinct problem encountered with the new car.

A number of stakeholders noted that some car manufacturers with a presence in Australia have an entry on the FCAI website to indicate how technical information can be obtained electronically by independent repairers.²⁰⁸ Some car manufacturers, such as Holden, were reported as providing most of the repair, service and programming information and data independent repairers need to repair and service cars through a website (or web-based servers in the case of pass-through information),²⁰⁹ however, some stakeholders reported that gaps remained.²¹⁰ Other car manufacturers were reported as providing inadequate or no access to technical information to repair and service new cars to independent repairers.²¹¹

Further, stakeholders submitted that when many car manufacturers' Australian, EU and US internet presences were compared for the same technical information about equivalent makes, models and year models of cars sold in Australia, there was a significant difference in the technical information provided by car manufacturers across these jurisdictions.²¹²

Submissions from the MTAA and Kmart Tyre and Auto Service (KTAS) reported that few car manufacturers offered both Australian model information and pass-through access (defined in box 4.2) to independent repairers in Australia.²¹³ In many instances, these submissions reported that web-based access to technical information for independent repairers by car manufacturers was not available at all. A table summarising this information is provided in Appendix F.

The MTAA submitted that while many car manufacturers are providing improved access to technical information since the Heads of Agreement (see below), there remained 'a lack of consistency, commonality and significant blockages with key areas including some data'.²¹⁴

Table 4.1 summarises submissions from the AAAA, KTAS and the MTAA on the availability of different types of technical information from the manufacturers of the top ten car makes in Australia, based on their Australian internet presence, for Australian model cars. Table 4.1 compares the availability of pass-through information, technical service bulletins, reinitialisation codes and software updates (these are defined in box 4.2).

²⁰⁷ VACC supplementary submission 2, April 2017, p. 3.

²⁰⁸ AAAA submission, November 2016, p.44; VACC submission, November 2016, p.13; SBDC submission, November 2016, p.5.

²⁰⁹ AAAA supplementary submission 1, February 2017, p. 8; MTAA supplementary submission, March 2017, p. 5.

²¹⁰ For example: Repco (Auto Care Ocean Grove - Emma Harper) supplementary submission, March 2017, pp. 2–3; Repco (Woodward's Auto Repairs - Alan Woodward) supplementary submission, March 2017, p. 2 and Attachment 2.

²¹¹ AAAA supplementary submission 1, February 2017, p. 8; KTAS supplementary submission 2, March 2017, Attachment 1G.

²¹² KTAS, supplementary submission 2, March 2017, Attachment 1G; MTAA supplementary submission, March 2017, p. 5; ICA supplementary submission, pp. 1–2; VACC supplementary submission 2, April 2017, p. 3.

²¹³ As reported in MTAA, supplementary submission, April 2017, pp. 5–6 and KTAS, supplementary submission, April 2017.

²¹⁴ MTAA supplementary submission, April 2017, p. 4.

Table 4.1: Aggregated reported comparison of the availability of technical information from car manufacturers' Australian-model websites, by top ten makes (2016)

Make	Pass-through	Technical service bulletins	Reinitialisation codes	Software updates
Toyota	No	No	No	No
Mazda	No	No	No	No
GM Holden	Yes	Yes	Yes	Yes
Hyundai ²¹⁵	Unknown	Unknown	Unknown	Unknown
Mitsubishi	No	No	No	No
Ford	No	No	No	No
Nissan	No	No	No	No
Volkswagen	Yes	Yes	Yes	Yes
Honda	No	No	No	No
Subaru	No	No	No	No

Sources: MTAA, supplementary submission (April 2017), pp. 5–6; KTAS, supplementary submission (April 2017); AAAA supplementary submission 1 (February 2017), Appendix 8.

In supplementary submissions, the AAAA, Bapcor, GPC Asia Pacific, KTAS, Ultra Tune and the VACC, as well as a number of individual independent repairers, each submitted specific examples of problems they had experienced or complaints received from their members about trying to access technical information for certain makes and models of cars.²¹⁶ The total number of examples submitted was in excess of 500 cases. These examples, as well as the reported problems from initial submissions from the independent sector, can broadly be categorised as reporting that independent repairers experience problems with:²¹⁷

- being denied access to specific technical information or proprietary diagnostic tools
- experiencing a delay in when a car manufacturer releases technical information about a new car to independent repairers as compared to dealers
- experiencing unreasonable administrative, resourcing or other costs, or delays, in seeking the technical information
- being denied access to view or update electronic logbooks.

²¹⁵ Hyundai reported to the ACCC in email correspondence that independent repairers in Australia have had access to Hyundai's European portal since October 2016, however, it is unknown what level of compatibility this website has with Australian model cars.

²¹⁶ AAAA supplementary submission 1, February 2017; Bapcor supplementary submission, March 2017; KTAS supplementary submission 1, March 2017; GPC Asia Pacific supplementary submission, April 2017; Repco (Auto Care Ocean Grove - Emma Harper) supplementary submission, March 2017; Repco (Gejay Automotive – Gary Pinner) supplementary submission, March 2017; Repco (Highton Automotive Services - Mark Awramenko) supplementary submission, March 2017; Repco (Drysdale Motors - Noel Harper) supplementary submission, March 2017; Repco (Woodward's Automotive Repairs - Alan Woodward) supplementary submission, March 2017; Ultra Tune supplementary submissions 1, 2 and 3, February, March, April 2017; VACC supplementary submission 1, February 2017.

²¹⁷ AAAA supplementary submission 1, February 2017; Bapcor supplementary submission, March 2017; KTAS supplementary submission 1, March 2017; GPC Asia Pacific supplementary submission, April 2017; Repco (Auto Care Ocean Grove - Emma Harper) supplementary submission, March 2017; Repco (Gejay Automotive - Gary Pinner) supplementary submission, March 2017; Repco (Highton Automotive Services - Mark Awramenko) supplementary submission, March 2017; Repco (Drysdale Motors - Noel Harper) supplementary submission, March 2017; Repco (Woodward's Automotive Repairs) supplementary submission, March 2017; Ultra Tune supplementary submissions 1, 2 and 3, February, March, April 2017; VACC supplementary submission 1, February 2017. Initial submissions: AAAA submission, November 2016; Bapcor submission, November 2016; GPC Asia Pacific submission, November 2016.

4.2.2. The car manufacturers' position: technical information is generally available

Initial submissions from the AADA, the FCAI and car manufacturers indicated that technical information was available to independent repairers. In further submissions additional information was provided which nuanced some of these statements. Key responses were:

- The FCAI submitted that technical information is available and that over 60 per cent of the 17 million cars in Australia are being serviced by independent repairers, with 'very few requests' for information from independent repairers being made to the FCAI.²¹⁸
- The FCAI also referred to commercial publishers of technical information, such as the MTAA/VACC's Tech-on-Line tool, as sources of information available to independent repairers,²¹⁹ and the AADA and FCAI stated information could also be obtained from special interest forums.²²⁰
- The MTASA submitted that market forces are addressing shortfalls in technical information, for instance, through paid subscription services and commercial publishers of technical information.²²¹
- Holden submitted that consumers and independent repairers can access the same repair, service and programming information as dealers through its website and that it was reviewing third-party requests for a licence to its data feeds.²²²
- Mazda, Toyota and Subaru stated each makes available a number of manuals on their websites.²²³
- The National Motor Vehicle Theft Reduction Council (NMVTRC) submitted that vehicle security information, related to keys and immobiliser systems, should be protected,²²⁴ and Holden was also concerned that some technical information it made available could be misused.²²⁵
- In relation to diagnostic tools, the FCAI submitted that many proprietary diagnostic tools are available, however, independent repairers can also use aftermarket diagnostic tools.²²⁶

In a further submission, the FCAI presented a document which responded to 45 complaints made by the AAAA about difficulties experienced by its independent repairer members in accessing technical information from a variety of car manufacturers.²²⁷ The FCAI maintained that in most instances the information was available to independent repairers, in accordance with the Heads of Agreement (see 4.2.4, below). However, in a number of instances, such as those related to technical information deemed 'security-related' and technical service bulletins, car manufacturers and the FCAI acknowledged they did not provide the information to independent repairers. In other instances, some manufacturers stated that responding to inquiries for technical information through an email address, as well as providing that material on CDs or DVDs, was adequate.²²⁸

²¹⁸ FCAI submission, November 2016, p. 26.

²¹⁹ FCAI submission, November 2016, p. 28.

²²⁰ AADA submission, November 2016, p. 32; FCAI submission, November 2016, p. 26.

²²¹ MTASA submission, November 2016, p. 18.

²²² GM Holden submission, November 2016, pp. 14–15.

²²³ Mazda submission, November 2016, p.5; Toyota submission, November 2016, p.7; Subaru submission, November 2016, p.5.

²²⁴ NMVTRC submission, November 2016, pp. 2–3.

²²⁵ GM Holden submission, November 2016, p. 16.

²²⁶ FCAI submission, November 2016, p. 23.

²²⁷ FCAI letter and attachment to the ACCC, December 2016.

²²⁸ FCAI letter and attachment to the ACCC, December 2016.

As part of this study, the ACCC requested the FCAI to respond to 22 specific examples of problems, relating to 19 different cars from 12 manufacturers, some stakeholders reported independent repairers had experienced in accessing technical information (or problems with accessing diagnostic or special tools).²²⁹ The FCAI was asked to indicate if information, data or the diagnostic tool could be accessed in Australia from the relevant car manufacturer, how it could be accessed and if it could not be accessed, why, and whether it could be accessed in the US or EU.²³⁰ Car manufacturers' responses, collated by the FCAI,²³¹ ranged from the specific to the general and can be summarised as:

- Two manufacturers (Holden and Volkswagen) said they made repair and servicing information and diagnostic software, including programming (digital) files, available on their technical websites to independent repairers, which is the same or mostly the same material they make available to dealers, and had done so for some time.²³²
- One manufacturer (Hyundai) said they had recently made repair and servicing information and other digital files available to independent repairers through their European technical website (since October 2016).²³³
- One manufacturer (Mazda) stated they had recently (since November 2016) made available to independent repairers, on a website, access to repair and service manuals.²³⁴
- One manufacturer (Kia) stated that they would make available to independent repairers a website giving access to technical information by the third quarter of 2017.²³⁵
- Four manufacturers (Audi, Honda, Ford and Subaru) refused to supply the information requested in the examples provided by the ACCC on security-related grounds, or on the basis of claimed exemptions in the FCAI Code (see below).²³⁶
- Three manufacturers (Nissan, Chery and Mitsubishi), stated that the technical information could be obtained by sending an email to a specified address or contacting a dealer.²³⁷
- One manufacturer (Holden) stated that proprietary diagnostic tools could be obtained from a dealer.²³⁸
- Four manufacturers (Ford, Nissan, Honda and Subaru), stated that proprietary diagnostic tools were not made available outside their respective dealer networks.²³⁹

These responses from the car manufacturers clearly indicate that access to the technical information required to remedy the 22 examples provided to the FCAI was not uniformly available from the car manufacturers. The ACCC notes that, in addition to these responses, based on initial submissions, Toyota stated that it has made available to independent repairers, on a website for a number of years, access to repair and service manuals.²⁴⁰

²²⁹ It was not possible to verify each of the 500 examples of problems accessing technical information submitted by stakeholders to test whether the information was available from manufacturers in Australia. However, 22 examples were selected and provided to FCAI for response based on common complaint types.

²³⁰ The letter to FCAI and examples provided to FCAI and the technical expert are available at www.accc.gov.au/newcars.

²³¹ FCAI supplementary submission, May 2017.

²³² GM Holden submission, November 2016, p. 15; FCAI supplementary submission, May 2017, Attachment 2; FCAI supplementary submission, May 2017, Attachment 9.

²³³ FCAI supplementary submission, May 2017, Attachment 4, since October 2016. Hyundai confirmed to the ACCC that this information became available to Australian independent repairers in October 2016.

²³⁴ FCAI supplementary submission, May 2017, Attachment 3, since November 2016.

²³⁵ FCAI supplementary submission, May 2017, Attachment 8, due in the third quarter of 2017.

²³⁶ FCAI supplementary submission, May 2017, Attachments 1, 10, 11, 13, 16.

²³⁷ FCAI supplementary submission, May 2017, Attachments 5, 6, 7.

²³⁸ FCAI supplementary submission, May 2017, Attachment 2.

²³⁹ FCAI supplementary submission, May 2017, Attachments 5, 10, 13 and 16.

²⁴⁰ Toyota submission, November 2016, p. 7.

Mazda submitted that it makes their proprietary diagnostic tool available to independent repairers through their dealer network.²⁴¹

In addition, the ACCC notes that no car manufacturer who refused to provide access to the requested information or proprietary diagnostic tool explained whether the same or equivalent technical information or diagnostic tool could be accessed in other jurisdictions and the reasons for the difference in treatment. The FCAI did not clarify why some manufacturers offered the required technical information and diagnostic tools, while others did not.

4.2.3. Independent repairers' reported response: unofficial sources are unreliable or transitory and there are other solutions

Several stakeholders from the independent sector acknowledged that independent repairers can, periodically, obtain technical information from sources other than manufacturers, including from commercial publishers of technical information and internet forums, as well as personal relationships with dealers. However they suggested the information could be incomplete and transitory. Commercial publishers of technical information have stated they had difficulty obtaining comprehensive technical information from manufacturers in Australia, or licencing such material.²⁴² The ACCC is also aware that Autologic, an aftermarket diagnostic tool manufacturer, has been able to obtain licences for certain car brands in other jurisdictions, but these arrangements do not extend to Australia.²⁴³ Independent repairers and others also noted obtaining information from informal unverified sources, such as internet forums or through personal relationships with a dealer, were time consuming and potentially unreliable.²⁴⁴

Some independent repairers reported they had tried to access car manufacturers' technical websites based in the EU or the US. In many instances they were prevented from doing so when entering the car's vehicle identification number, or using an Australian address or credit card number.²⁴⁵ In one instance, an independent repairer submitted his paid access to Volvo's European website was suspended after seeking assistance from Volvo Australia.²⁴⁶ MTANSW submitted that while repairers can often gain access to car manufacturer's technical websites in other jurisdictions, the information is usually specific to those other regions and not Australia.²⁴⁷ Mitsubishi confirmed that the online technical information it provides in the EU and US is not relevant in Australia as the information is for left-hand drive markets.²⁴⁸

In relation to diagnostic tools, some independent repairers reported that the generic diagnostic tool could not perform the same functions as the proprietary diagnostic tool.²⁴⁹ An aftermarket diagnostic tool manufacturer submitted that its product may not be able to fill the void when it comes to programming and updates for new cars, as to do so requires a connection to the car manufacturer's data servers.²⁵⁰

²⁴¹ Mazda submission, November 2016, p. 3.

²⁴² VACC supplementary submission 2, April 2017, pp. 3–4; Anonymous business 1 submission, pp. 1–2.

²⁴³ Autologic, [Autologic Enters Into Licensing Agreement With Volvo For Diagnostic Data](#), 1 December 2016.

²⁴⁴ Repco (Auto Care Ocean Grove - Emma Harper) supplementary submission, March 2017 p. 2; Repco (Drsydale Motors - Noel Harper) supplementary submission, March 2017, p. 1; GPC Asia Pacific submission, November 2016, p. 4; VACC submission, November 2016, p. 13.

²⁴⁵ AAAA submission, November 2016, p. 53; Repco (Woodward's Auto Repairs - Alan Woodward) supplementary submission, March 2017, p. 1.

²⁴⁶ Wayne Horton (Euroworld) submission, February 2017, p. 1.

²⁴⁷ MTANSW submission, November 2016, p. 6.

²⁴⁸ FCAI supplementary submission, May 2017, Attachment 6.

²⁴⁹ AAAA submission, November 2016, pp. 39 and 55; MTAA submission, November 2016, p. 44.

²⁵⁰ Anonymous business 1, November 2016, p. 1.

Submissions from stakeholders also stated that where security concerns are raised, there are other options available to allay those concerns, rather than prohibiting all access by independent repairers to technical information, and that restricting access may cause unsafe situations to arise.²⁵¹ The MTAA suggested an accreditation process be established to access technical information deemed to be security-related.²⁵² Processes alternative to a denial of access, as used in other jurisdictions, are discussed below.

4.2.4. Mixed views on the effect and operation of the Heads of Agreement

Several stakeholders submitted that the Heads of Agreement has had little, or no, effect on access to technical information.²⁵³ The FCAI submitted the Heads of Agreement was in the early stages of implementation,²⁵⁴ and the AADA submitted the Heads of Agreement had put in place an opportunity for independent repairers to access information and data.²⁵⁵ Holden and the MTAA perceived it had increased accessibility to varying degrees.²⁵⁶

Purpose of the Heads of Agreement

The Heads of Agreement was intended to provide a pathway for independent repairers to access technical information from car manufacturers. The Heads of Agreement states that its aim is for the signatory parties to 'endeavour to work collaboratively to ensure there continues to be a fair and reasonable competitive market within the vehicle service and repair industry'.²⁵⁷

The Heads of Agreement outlines the principles agreed to by industry associations in relation to the sharing of technical information, which includes:

...The repairer should be able to access all information required for the diagnosis, body repair, servicing, inspection, periodic monitoring, and reinitialising of the vehicle, in line with the service and repair information manufacturers provide their authorised dealers and repairers.

That motor vehicle component manufacturers and [OEMs] have a right to protect intellectual property and should be able to obtain a return on product development and capital investment in unique or proprietary technologies...

...Service and repair information will be made available on commercially fair and reasonable terms...

...The automotive industry, as a whole, is committed to improve accessibility to service and repair information for the benefit of Australian consumers; acknowledges the nation's ongoing reliance on road-based transportation and mobility systems; and recognises the inability of any one part of the sector alone to meet consumer demand for such services in current market conditions.

²⁵¹ AAA submission, November 2016, p. 6; AAAA submission, November 2016, p. 63.

²⁵² MTAA submission, November 2016, p. 31; MTAA supplementary submission, April 2017, pp. 3, 7–15.

²⁵³ AAA submission, November 2016, p. 35; AAAA submission, November 2016, p. 69; Bapcor submission, November 2016, p. 17; GPC Asia Pacific submission, November 2016, p. 3; Autopolis submission, November 2016, p. 5; Anonymous business 1 submission, November 2016, p. 2; AAAA supplementary submission 1, February 2017, p. 4; Repco (Auto Care Ocean Grove - Emma Harper) supplementary submission, March 2017, p. 3; Repco (Highton Automotive Services - Mark Awramenko) supplementary submission, March 2017, p. 3; Repco (Drysdale Motors - Noel Harper) supplementary submission, March 2017, p. 2; Repco (J&F Motors - Steven Groc) supplementary submission, March 2017, p. 4; Repco (Woodward's Auto Repairs - Alan Woodward) supplementary submission, March 2017, p. 3.

²⁵⁴ FCAI submission, November 2016, p. 30.

²⁵⁵ AADA submission, November 2016, p. 35.

²⁵⁶ GM Holden submission, November 2016, p. 16; MTAA submission, November 2016, p. 34.

²⁵⁷ FCAI, AAA, AAAA, AADA, MTAA/AMIF, [Agreement on access to service and repair information for motor vehicles](#), December 2014, p. 3.

The aftermarket component and repair industries acknowledge the importance of obtaining and using the service and repair information that is provided by OEM's to ensure that repairs are carried out correctly to assure the safety of consumers and will advocate and encourage the use of the information consistent with OEM specifications...²⁵⁸

Stakeholders' views on the effect of the Heads of Agreement on accessing technical information

The ACCC has received complaints from stakeholders about the effectiveness of the Heads of Agreement and voluntary codes of practice before the commencement of this study. It also received a number of submissions on this issue.

The AAA submitted that the Heads of Agreement has not been able to resolve disagreements between the signatory parties and has not produced measurable outcomes for independent repairers and consumers.²⁵⁹ The AAA stated they were not aware of any examples where the agreement had a direct effect on access to technical information.

The AAAA submitted that the Heads of Agreement has failed as, in particular, the FCAI's subsidiary code does not comply with the Heads of Agreement; further there is no measurement or monitoring of compliance with the Heads of Agreement, there is no dispute resolution mechanism or steering committee infrastructure, no ability to resolve issues in real time and no government oversight of the process.²⁶⁰ GPC Asia Pacific submitted the Heads of Agreement is not functioning to ensure independent repairers can access technical information.²⁶¹ A number of smaller independent repairers were of the view that the Heads of Agreement had made it harder for them to obtain technical information from both official and informal channels.²⁶²

The VACC submitted that while a number of car manufacturers in Australia provide access to technical information, certain types of information continue to be restricted—such as technical service bulletins and software updates, but that overall the Heads of Agreement has 'marginally' improved access.²⁶³ The MTAA submitted the Heads of Agreement should be enhanced,²⁶⁴ and that many types of technical information were not addressed in the Heads of Agreement.²⁶⁵

The AADA and the FCAI submitted that there had been very low take up rates for technical information provided by car manufacturers under the Heads of Agreement.²⁶⁶ The FCAI stated that there have been no substantive allegations of systemic activity by the FCAI's members to deny access and the isolated examples of problems raised under the Heads of Agreement process had been resolved.²⁶⁷ The AADA submitted that there is no evidence or substantiated claims that independent repairers cannot access the technical information required under the Heads of Agreement.²⁶⁸ The MTASA also submitted that there is no evidence of a need for further action beyond the Heads of Agreement.²⁶⁹

²⁵⁸ AAA, AAAA, AADA, FCAI, MTAA/AMIF, [Agreement on access to service and repair information for motor vehicles](#), December 2014, pp. 4–5, clauses 1, 4, 5, 8, 10 and 11.

²⁵⁹ AAA submission, November 2016, pp. 7, 32, 33.

²⁶⁰ AAAA submission, November 2016, p. 69.

²⁶¹ GPC Asia Pacific submission, November 2016, p. 6.

²⁶² Repco (J&F Motors - Steve Grocl) supplementary submission, March 2017, p. 4.

²⁶³ VACC submission, November 2016, pp. 13–14.

²⁶⁴ MTAA submission, November 2016, p. 48.

²⁶⁵ MTAA supplementary submission, April 2017, p. 4.

²⁶⁶ AADA submission, November 2016, p. 35; FCAI submission, November 2016, p. 29.

²⁶⁷ FCAI submission, November 2016, p. 29.

²⁶⁸ AADA submission, November 2016, p. 35.

²⁶⁹ MTASA submission, November 2016, p. 5.

Holden and Mazda submitted the Heads of Agreement has assisted consumers and independent repairers with accessing technical information,²⁷⁰ while Toyota and Subaru each submitted they comply with the Heads of Agreement.²⁷¹

The FCAI submitted that the portal it maintains on its website—with links to the technical websites and email addresses of some car manufacturers—is not the sole source of technical information in Australia.²⁷² The AAAA submitted that, as part of a meeting of the Steering Committee under the Heads of Agreement, the FCAI informed signatory industry associations that the website links would enable subscription to car manufacturers' technical information.²⁷³

An outline of the ACCC's review of links to car manufacturers' technical websites from the FCAI's website and the changing availability of technical information over the course of this study is further discussed in section 4.5.

Stakeholders' concerns about the operation of the Heads of Agreement

Some stakeholders suggested that the way the exclusions and the dispute resolution and governance mechanisms operate under the Heads of Agreement are unclear and that the lack of a formalised and binding dispute resolution mechanism impedes the resolution of disputes. It was also submitted that many terms within the Heads of Agreement are not defined.

Exemptions

Evidence from stakeholders suggested there is a lack of clarity among the five signatory industry associations as to how the Heads of Agreement should operate, and how the exemptions and dispute resolution mechanisms under the agreement should work. In relation to exemptions, it is unclear what types of technical information these apply to—the FCAI submitted that technical service bulletins are exempt from the agreement—and it appears to be for the signatory industry association to decide what is exempted based on their own voluntary code of practice.²⁷⁴ The FCAI submitted that all parties to the Heads of Agreement had agreed to the exemptions in the Heads of Agreement.²⁷⁵

The VACC submitted that generally most participants only provide certain types of technical information and not access to technical service bulletins or software updates, and that this is a grey area in the Heads of Agreement.²⁷⁶ The VACC suggested that principle 4 of the Heads of Agreement, relating to the information an independent repairer should be able to access from a car manufacturer, may permit this practice.²⁷⁷

The FCAI submitted that information and data sharing should not contravene intellectual property rights.²⁷⁸ The AAAA submitted that the sharing of information and data should not contravene the intellectual property rights of car manufacturers and that this is protected in information and data sharing arrangements in other jurisdictions.²⁷⁹ The AAAA also submitted that certain security-related information may need additional protections when being shared; however, this issue has been resolved in the US through the secure data

²⁷⁰ GM Holden submission, November 2016, p. 16; Mazda submission, November 2016, p. 5.

²⁷¹ Toyota submission, November 2016, p. 7; Subaru submission, November 2016, p. 5.

²⁷² FCAI submission, November 2016, p. 28.

²⁷³ AAAA supplementary submission 1, February 2017, p. 8.

²⁷⁴ FCAI submission, November 2016, p. 27.

²⁷⁵ FCAI submission, November 2016, p. 29.

²⁷⁶ VACC submission, November 2016, p. 13.

²⁷⁷ VACC submission, November 2016, p. 14.

²⁷⁸ FCAI submission, November 2016, p. 27.

²⁷⁹ AAAA submission, November 2016, p. 63.

release model (SDRM),²⁸⁰ a process through which independent repairers can undergo vetting and obtain a licence to access security-related information held by car manufacturers.

Dispute resolution mechanisms, monitoring and feedback

Stakeholders have also raised concerns about dispute resolution and monitoring under the Heads of Agreement. The 2015 Senate report on the Future of Australia's Automotive Industry noted industry concerns about the effectiveness of this voluntary instrument and concerns that continuous monitoring of access to information and data is needed.²⁸¹

The AAA submitted that disputes under the Heads of Agreement are difficult to resolve and are characterised by claims and counterclaims and it cannot readily resolve disagreements.²⁸² The AAAA submitted that compliance with the Heads of Agreement is not monitored or measured; there is no steering committee infrastructure, no mechanism to resolve problems in real time and no government oversight.²⁸³ The AAAA also submitted there is no mechanism for independent repairers to provide feedback to car manufacturers about the content and value of their technical websites.²⁸⁴

Stakeholders' concerns about the operation of the FCAI Code

As outlined above, each signatory industry association developed separate enabling documents—known as codes of practice—to give effect to the Heads of Agreement and to place voluntary obligations on their own members. The FCAI Code is the sole instrument creating a process directly outlining how independent repairers can access technical information from car manufacturers.

The AAAA submitted that the FCAI Code does not comply with the Heads of Agreement.²⁸⁵ The AAAA submitted that the FCAI Code is non-compliant as it: makes participation by the FCAI's members in the FCAI Code voluntary, the FCAI has used its own definitions for a number of concepts in the Heads of Agreement e.g. the meaning of 'commercially reasonable prices' and 'repair information', and introduces a dispute resolution mechanism that does not appear capable of obtaining commercially viable outcomes for complainants in a reasonable amount of time.²⁸⁶ The AAAA is also concerned that the FCAI Code may limit the scope and coverage of the voluntary obligations to a greater extent than under the Heads of Agreement.²⁸⁷ The FCAI submitted that only two independent repairers had lodged a complaint with it under the FCAI Code about an inability to access technical information.²⁸⁸

²⁸⁰ AAAA submission, November 2016, p. 63.

²⁸¹ Australian Senate Economic References Committee, [Future of Australia's automotive industry: Driving jobs and investment](#), December 2015.

²⁸² AAA submission, November 2016, p. 32.

²⁸³ AAAA submission, November 2016, p. 69; AAAA supplementary submission 1, February 2017, p. 6.

²⁸⁴ AAAA submission, November 2016, p. 70.

²⁸⁵ AAAA submission, November 2016, p. 69.

²⁸⁶ AAAA supplementary submission 1, February 2017, p. 5.

²⁸⁷ AAAA supplementary submission 1, February 2017, p. 5.

²⁸⁸ FCAI submission, November 2016, p. 26.

The ACCC notes that the application of the principles of the Heads of Agreement and the FCAI Code appear to be inconsistent. As outlined above, in response to a request from the ACCC providing specific examples of information independent repairers had reported as inaccessible from car manufacturers, Ford stated it was not required to make available the technical information requested by the ACCC because of the operation of the FCAI Code.²⁸⁹ However, Ford appeared to make this information available in other jurisdictions, and other car manufacturers in Australia appeared to make similar information available consistent with the Heads of Agreement. Ford did not give a reason for the difference in approach.

4.3. Claims about impacts on competition and consumers

Several stakeholders submitted that barriers to accessing technical information are having the following impacts:²⁹⁰

- a reduction in competition in car repair and servicing markets because independent repairers cannot compete with authorised dealers and preferred repairer networks on an even playing field
- a reduction in competition in the car repair and servicing markets because commercial publishers of technical information and aftermarket diagnostic tool manufacturers cannot obtain technical information to develop products to compete with car manufacturers' or to facilitate access to car manufacturers' technical information by independent repairers
- additional costs (time and monetary) being incurred by independent repairers, including from absorbing the labour and other costs of searching for information
- a loss of customers from independent repairers, with flow on effects to the wider independent sector
- reduced service quality.

Stakeholders also submitted that impacts on competition may lead to consumer detriment, such as higher prices, decreased road safety, and inconvenience where a car cannot be serviced or repaired by the consumer's preferred mechanic.²⁹¹ However, both the AADA and the FCAI submitted that if independent repairers cannot compete with dealers, it is for reasons other than access to technical information.²⁹²

4.3.1. Impacts on independent repairers

The AAAA is an industry association representing independent manufacturers, distributors, wholesalers, importers and retailers of automotive parts and accessories, tools and equipment, as well as providers of vehicle service, repair and modification services in Australia. In a recent survey of its members, respondents stated they generally found the information they needed from an industry contact, a dealer, trial and error or the internet.²⁹³ Respondents to the AAAA survey estimated that problems accessing technical information resulted in an additional 24 hours of labour per week per workshop, which was generally not passed on to the customer, and that this led to lower profit margins.²⁹⁴

²⁸⁹ FCAI, supplementary submission, May 2017, Attachments 11 and 13.

²⁹⁰ For example: AAA submission, November 2016, pp. 12, 27; MTAA supplementary submission, April 2017, pp.3–4; Bapcor submission, November 2016, p. 16; Bapcor supplementary submission, March 2017; KTAS supplementary submission 1, March 2017, p. 4.

²⁹¹ For example: AAA submission, November 2016, p. 27; AAAA submission, November 2016, pp. 49–50; GPC Asia Pacific submission, November 2016, p. 4; AAAA supplementary submission, December 2016, p. 30.

²⁹² AADA submission, November 2016, p. 35; FCAI submission, November 2016, p. 29.

²⁹³ AAAA supplementary submission, December 2016, p. 24.

²⁹⁴ AAAA submission, November 2016, p. 12.

The AAAA submitted that up to 11 per cent of cars are affected by problems with accessing technical information and that the problem, and its impact, is getting worse.²⁹⁵ The AAAA's members reported that a workshop experiences issues relating to lack of access to technical information at least six times a week and that 23 per cent of the cars experiencing problems were reported as being within their new car warranty period.²⁹⁶

The AAAA also submitted that problems accessing technical information act as a barrier to entry into the sector.²⁹⁷ The AAA submitted that if car manufacturers restrict access to technical information independent repairers may be unable to repair and service new cars, putting their viability at risk.²⁹⁸ The MTAA submitted that in a survey of independent repairers conducted by the VACC, over 57 per cent of respondents had experienced significant or moderate disruption to their business from the process of trying to access technical information.²⁹⁹ The MTAA claimed this is adding costs, reducing service levels and causing consumer detriment, while causing independent repairers to lose customers.³⁰⁰

The ACCC Consumer Survey found that 14 per cent of new car buyers elected to have their car serviced by an independent repairer, and 10 per cent had their cars repaired by an independent repairer.³⁰¹ Of those that used an independent repairer to repair their car, about one-third of respondents reported that their mechanic indicated they had problems with accessing technical information to repair the car.³⁰² A smaller proportion of respondents (5 per cent) who had their car serviced by an independent repairer reported that their mechanic indicated experiencing similar problems.³⁰³

Some independent repairers submitted they were concerned that when they were unable to obtain technical information from a car manufacturer, and were required to tell a customer to take their car to a dealer, they would lose future business as customers would no longer have confidence in them to repair or service their car.³⁰⁴ Where a lack of access to technical information prevented the car from being repaired or serviced, respondents to the AAAA survey stated they would return the car to the customer in most cases (66 per cent), but in many cases they would have the car towed to a dealer to complete the repair (29 per cent).³⁰⁵ Independent repairers submitted that they often absorbed the costs of taking a car to a dealer for fear of harming the reputation of their workshops.³⁰⁶

GPC Asia Pacific submitted that independent repairers using its Repco branding had reported a lack of access to technical information impacted them by increasing costs and had prevented them from serving customers.³⁰⁷ Bapcor submitted that if information and data are not shared, the independent repairer network will be 'destroyed' over time.³⁰⁸ Autopolis submitted that ordinarily car manufacturers should support independent repairers and accept that dealers cannot service the whole market; however, this consideration is

²⁹⁵ AAAA supplementary submission 1, February 2017, p. 4.

²⁹⁶ AAAA submission, November 2016, pp. 61–62.

²⁹⁷ AAAA submission, November 2016, p. 63.

²⁹⁸ AAA submission, November 2016, p. 27.

²⁹⁹ MTAA supplementary submission, April 2017, p.3.

³⁰⁰ MTAA supplementary submission, April 2017, pp.3–4.

³⁰¹ ACCC Consumer Survey, p. iv.

³⁰² The ACCC Consumer Survey notes that the base size (n=30) is small for this measure, which may impact the ability to detect significant differences or to make comparisons across groups (p.66).

³⁰³ ACCC Consumer Survey notes that the base size (n=167) is small for this measure, which may impact the ability to detect significant differences or to make comparisons across groups (p. 53).

³⁰⁴ Bapcor supplementary submission, March 2017; KTAS supplementary submission 1, March 2017, p. 4.

³⁰⁵ AAAA supplementary submission, December 2016, p. 25.

³⁰⁶ KTAS supplementary submission 2, March 2017, p. 2; KTAS site visit.

³⁰⁷ GPC Asia Pacific submission, November 2016, p. 7.

³⁰⁸ Bapcor submission, November 2016, p. 16.

subsumed by the need to increase revenues.³⁰⁹ Box 4.3 outlines some issues independent repairers may experience when they cannot access technical information or appropriate diagnostic tools.

Box 4.3: Case study – insufficient substitutes for the supply of technical information or proprietary diagnostic tools from the car manufacturer

In February 2017, ACCC staff visited an independent workshop based in Melbourne to better understand how access to technical information problems affects small businesses.

Workshop technicians discussed with the ACCC how several new aftermarket diagnostic tools were unable to communicate with different new cars. The workshop had attempted to purchase car manufacturers' diagnostic tools; however, neither the relevant car manufacturers nor their dealers were willing to sell it to them. The workshop owner explained that where the aftermarket diagnostic tools were unable to communicate with a new car, it must be taken to a dealer to be able to complete the service or repair, or the customer informed that the workshop cannot service or repair the car.

The workshop had attempted other methods to update their equipment to communicate with new cars. The workshop purchased a pass-through device overseas. It is an industry standard device which plugs into the car and can connect to a car manufacturer's web server to download reprogramming files, reinitialisation codes and software updates (see box 4.2). However, car manufacturers in Australia have refused to provide the workshop with access to these materials. While these materials are available in the US and EU, the workshop reported it was geo-blocked from accessing them from the car manufacturers' foreign web servers.

Think Software submitted that poor information sharing by car manufacturers has safety impacts on auto wreckers.³¹⁰ Think Software stated that it can be unclear what types of new metals are used in cars, and when high heat is applied, it may change the composition of the metal, rendering it dangerous.³¹¹

4.3.2. Impacts on commercial publishers of technical information and aftermarket diagnostic tool manufacturers

The VACC, who operate the VACC OurAuto Tech Centre—a subscription based commercial publisher of technical information, submitted that third party aggregators play an important role in the market, particularly as Australia is a complex market for cars, with comparatively low car sales spread over '50 different manufacturers and 365 different models.'³¹² The FCAI submitted that competition between commercial publishers of technical information means the quality of information being provided is of a high standard.³¹³

A commercial publisher of technical information and an aftermarket diagnostic tool manufacturer stated, however, that they have difficulties in obtaining technical information from car manufacturers and this can affect the services they provide to customers. The VACC submitted that it would be 'ideal' to source information from car manufacturers in Australia that is pertinent to the local market, however, it is able to source information that it is confident about from third party providers of content based abroad.³¹⁴ An aftermarket diagnostic tool manufacturer submitted that the complexity of new cars requires programming files to be validated and securely delivered, which can only be done with the

³⁰⁹ Autopolis submission, November 2016, p. 5.

³¹⁰ Think Software Consulting submission, November 2016, p. 4.

³¹¹ Think Software Consulting submission, November 2016, p. 4.

³¹² VACC supplementary submission 2, April 2017, p. 4.

³¹³ FCAI submission, November 2016, p. 28.

³¹⁴ VACC supplementary submission 2, April 2017, p. 4.

assistance of the car manufacturer.³¹⁵ Box 4.4 details the experience of VACC's OurAuto Tech Centre in attempting to obtain technical information for Australian models of cars from overseas.

Box 4.4: Case study – the international search for technical information about local cars

In March 2017, the ACCC conducted a site visit to the VACC's Tech Centre in Melbourne. The Tech Centre is akin to a library, staffed by trained automotive technicians instead of librarians, who find technical information for their members. The Tech Centre contains a vast volume of paper-based manuals and relevant technical publications that have been obtained from various sources, such as car manufacturers in Australia and abroad.

The VACC outlined that, with the move to digitisation, many of the workshop manuals and wiring diagrams they needed were becoming more difficult to obtain. In this environment, VACC has engaged with providers of online content from abroad, some of which have arrangements with car manufacturers' distributors in other jurisdictions, to try to obtain the materials they need to keep their resources current. Additional value is added by work from the Tech Centre's staff to adapt the material to local conditions to ensure they can provide relevant and standardised local content. The VACC reported that due to encountering restrictions from car manufacturers on the release of technical service bulletins, software updates and service campaign information, they are unable to provide this type of information via their technical offering.

Holden submitted that there may be issues around accuracy and relevance to Australian specifications of some material provided by commercial publishers of technical information.³¹⁶ Holden also stated that, from its perspective, the level of internal support needed to facilitate contracts/licences, physical data transfers, interpretation and issues with data completeness and accuracy in relation to commercial publishers of technical information were challenges.³¹⁷

4.3.3. Impacts on consumers

The AAA, the AAAA and GPC Asia Pacific submitted that barriers to accessing technical information by independent repairers restrict choice and increase costs for consumers.³¹⁸ A survey by the AAA, and the ACCC Consumer Survey, found that cost was an important factor for consumers in deciding where to service their car.³¹⁹ The AAAA submitted that, in addition to potentially increased labour costs, the average consumer pays a further \$46 in non-labour costs where independent repairers do not have access to the relevant technical information from a car manufacturer.³²⁰

The Auto Care Association submitted that right to repair laws in the US, which they claim increased the sharing of technical information, have saved US consumers \$US26 billion per year.³²¹

KTAS submitted that a lack of access to technical information has led to additional labour hours in identifying problems and finding a solution, which increases the time a consumer

³¹⁵ Anonymous business 1, November 2016, p. 1.

³¹⁶ GM Holden submission, November 2016, p. 15.

³¹⁷ GM Holden submission, November 2016, p. 15.

³¹⁸ AAA submission, November 2016, p. 27; AAAA submission, November 2016, p. 50; GPC Asia Pacific submission, November 2016, p. 4.

³¹⁹ AAA submission, November 2016, p. 27; ACCC Consumer Survey, pp. 49, 52.

³²⁰ AAAA supplementary submission, December 2016, p. 30.

³²¹ Auto Care Association submission, November 2016, p. 2.

does not have access to their car.³²² A number of small businesses made similar claims.³²³ GPC Asia Pacific submitted that consumer detriment is experienced when extra time, cost or inconvenience arises due to an independent repairer being unable to commence or complete a repair where it is unable to access relevant technical information.³²⁴ This is generally realised when a car must be taken to a dealer, who has access to the required technical information.³²⁵

The MTAA submitted that consumers can be disadvantaged if they cannot use an independent repairer in their area due to the repairer's problems accessing technical information.³²⁶ GPC Asia Pacific and the MTAA submitted this may particularly disadvantage regional and rural consumers who may need to drive long distances to the nearest dealer.³²⁷ The MTASA submitted independent repairers' access to technical information does not restrict or influence purchasing decisions in the new car retailing market; however, regional and rural consumers may face additional difficulties in accessing servicing and warranty services.³²⁸

The AAAA submitted that withholding technical information impacts household expenditure, safety on the roads, and the Australian economy.³²⁹ The AAA stated that any increase in repair and service costs due to a reduction in competition, such as through limiting access to technical information, can have serious implications for affordability and safety.³³⁰ GPC Asia Pacific submitted that safety may be compromised if costs for consumers become too high.³³¹ Bapcor submitted that problems accessing technical information from car manufacturers would also restrict consumers from undertaking routine maintenance activities.³³² The Insurance Council of Australia (ICA) submitted the availability of information and data is critical for consumer safety.³³³ CHOICE submitted that these issues will have significant impact on consumers' rights and also the costs of car repair and maintenance.³³⁴ Box 4.5, below, outlines some of the unexpected costs consumers and independent repairers may face when an independent repairer is unable to access technical information.

In relation to electronic logbooks, the AAA submitted that access is crucial for warranty requirements.³³⁵ The AAAA submitted that consumers rely on logbooks to prove a car has been serviced in accordance with the manufacturer's specifications. The AAAA, the MTAA and Car Solutions submitted that an incomplete logbook may affect the car's resale value.³³⁶ The VACC submitted that electronic logbooks may be stored on a car's key, requiring the use of a specialised car manufacturer's tool, which may limit access to the information by independent repairers.³³⁷ Bapcor submitted only dealers have access to electronic logbooks,

³²² KTAS supplementary submission 1, March 2017, p. 4.

³²³ Repco (Auto Care Ocean Grove - Emma Harper) supplementary submission, March 2017; Repco (Highton Automotive Services - Mark Awramenko) supplementary submission, March 2017; Repco (Drysdale Motors - Noel Harper) supplementary submission; March 2017; Repco (J&F Motors - Steven Grocl) supplementary submission, March 2017; Repco (Woodward's Auto Repairs - Alan Woodward) supplementary submission, March 2017; Ultra Tune supplementary submissions 1 and 2, February and March 2017.

³²⁴ GPC Asia Pacific submission, November 2016, p. 5.

³²⁵ GPC Asia Pacific submission, November 2016, p. 5.

³²⁶ MTAA submission, November 2016, p. 31.

³²⁷ GPC Asia Pacific submission, November 2016, p. 4; MTAA submission, November 2016, p. 31.

³²⁸ MTASA submission, November 2016, pp. 18-19.

³²⁹ AAAA submission, November 2016, p. 49.

³³⁰ AAA submission, November 2016, pp. 6, 27.

³³¹ GPC Asia Pacific submission, November 2016, p. 4.

³³² Bapcor submission, November 2016, p. 15.

³³³ ICA submission, November 2016, p. 2.

³³⁴ CHOICE submission, November 2016, p. 10.

³³⁵ AAA submission, November 2016, p. 29.

³³⁶ AAAA submission, November 2016, p. 42; Car Solutions submission, November 2016, p. 4; MTAA submission, November 2016, p. 30.

³³⁷ VACC submission, November 2016, p. 12.

and that independent repairers should have equal access.³³⁸ The MTAQ submitted storage and ownership of logbook data was likely to become an issue needing future resolution.³³⁹

The FCAI submitted the current voluntary system protects consumers and intellectual property owners by preventing the sharing of certain information.³⁴⁰ The AADA and the FCAI submitted that consumers can access electronic logbooks through a personalised online account or a dealer.³⁴¹ A number of manufacturers stated they do not use,³⁴² or do not intend to introduce, electronic logbooks as a primary record of the car's maintenance history.³⁴³

Box 4.5: Case study – unexpected costs for independent repairers and consumers

In March 2017, the ACCC visited a KTAS workshop in Melbourne to better understand the flow on effects to consumers when independent repairers cannot access technical information.

Workshop technicians demonstrated the problems they had with accessing technical information for a Volkswagen Polo. They understood it had a problem with the alternator. The aftermarket diagnostic tool could report the actual output voltage of the alternator. However, the technician needed to compare the actual voltage to the manufacturer's specifications to determine if the alternator was not performing as it should be. This information could not be obtained from Volkswagen. The workshop reported it had three options: replace the alternator and compare before and after values, keep searching for the information from other sources, or take the car to a dealer. Each of these options involved additional costs for KTAS and would create unexpected costs for the consumer— inconvenience, delays in getting their car back, additional expenses in taking the car to a dealer, or potential expenses in paying for a new part, even where some expenses may be absorbed by KTAS.

In another example, a Nissan X-Trail was experiencing unknown problems. Generally, for safety, the battery and other systems would be disconnected. In this model car, however, disconnecting these components would have unintended consequences. As the car uses a 'fly-by-wire' acceleration system, rather than a cable connected pedal, the disconnection of these systems could cause the car to forget the pedal settings, requiring recalibration.

The workshop's technicians demonstrated to the ACCC that the recalibration information could not be obtained from the car manufacturer's website, rather, the process for completing the recalibration could be found on the website of an aftermarket manufacturer of engine and fuel system cleaning products.

As this example shows, as cars become more technologically advanced, basic procedures like disconnecting the battery and other systems may cause unknown consequences. Information about those consequences, and their remedies, are often controlled by car manufacturers. Not being aware of these consequences may create unexpected costs for consumers when they complete basic maintenance on their own cars, as well as additional costs for independent repairers.

³³⁸ Bapcor submission, November 2016, p. 15.

³³⁹ MTAQ submission, November 2016, p. 4.

³⁴⁰ FCAI submission, November 2016, pp. 29–30.

³⁴¹ AADA submission, November 2016, p. 32; FCAI submission, November 2016, p. 24.

³⁴² Mazda submission, November 2016, p. 5; Subaru submission, November 2016, p. 4.

³⁴³ GM Holden submission, November 2016, p. 13–14.

4.4. Analysis: Access to technical information from car manufacturers varies in consistency

As part of this study, the ACCC sought to inform itself about reported problems with accessing technical information in several ways. As illustrated above, many aspects of the submissions engaged in claim and counter claim. The ACCC conducted a number of site visits to better understand the way independent repairers and commercial publishers of technical information experience problems with accessing technical information and its impact on them. The ACCC also requested stakeholders to provide specific examples of problems with accessing technical information, and asked the FCAI to comment on 22 examples based on common complaint types (outlined at 4.2.2, above).

In addition to these activities, the ACCC engaged Cartech, a technical expert, to review 12 of the examples provided to the FCAI. The ACCC also asked the technical expert to comment on the responses collated by the FCAI from car manufacturers to the examples. The findings of the technical expert are provided in box 4.6.

Box 4.6: Case study – the findings of the technical expert engaged by the ACCC

Cartech, a technical expert in the automotive sector, simulated what a competent and well-resourced independent repairer with appropriate qualifications might experience in trying to access technical information or proprietary diagnostic tools from car manufacturers. It did this by trying to access information on 12 particular issues in specific car makes/models that were reported to the ACCC by independent repairers as being subject to restricted technical information access.

Cartech produced two reports: one without receiving the manufacturers' responses to the reported issues,³⁴⁴ and one after being able to consider the manufacturer's responses.³⁴⁵

Cartech's initial report (3 July 2017)—without car manufacturers' responses

Cartech found in its initial report that in only two of the 12 examples could it obtain the technical information required without significant delay. In relation to the remaining 10 examples Cartech found:

- In seven examples, it was unable to access sufficient technical information from the manufacturer through its official channels (e.g., dealers' parts or servicing departments, websites or email addresses) to facilitate a repair of the reported issue in the car.
- In two examples, it was able to access sufficient information from the manufacturer's official channels to facilitate a repair of the reported issue in the car; however, there was a delay of over two weeks in gaining access.
- In a further example, Cartech could have gained access to sufficient information if it had purchased a proprietary diagnostic tool (which was not cost effective for the purposes of the investigation).

Cartech's supplementary report (12 July 2017)—with car manufacturers' responses

In the supplementary report, Cartech considered manufacturers' responses as to the availability of the technical information required to repair the 12 examples, and whether it would facilitate repair of the car. Cartech found:

- In three examples, Cartech confirmed the manufacturers' responses as facilitating access to technical information without significant delay. In one example, Cartech changed its initial assessment that it was unable to gain timely access to the required

³⁴⁴ See Cartech report, 3 July 2017 for further information about Cartech's qualifications and details of the report.

³⁴⁵ Cartech supplementary report, 12 July 2017.

information as the assessment was undertaken of a different model variant (which then changed the availability of information).

- In four examples, Cartech followed the same or a similar process as outlined by the manufacturer; however, access to the technical information was subject to delays (ranging from five days to more than two weeks). Cartech noted that in one example the manufacturer's source, as provided in the FCAI supplementary submission, was not broadly advertised (on the FCAI website or otherwise).
- In two examples, Cartech confirmed the manufacturers' responses that the requested technical information was not available on security-related grounds, confirming Cartech's findings in its first report.
- In three examples, Cartech followed the same or a similar process as outlined by the relevant manufacturer to attempt to obtain the information, but was unable to access it (for example, the relevant manufacturer had claimed the technical information or diagnostic tool could be obtained from a dealer, however, the dealers contacted did not supply the requested material to Cartech).

4.4.1. Independent repairers continue to experience problems accessing technical information for new cars

The ACCC is satisfied, on the basis of the evidence provided by stakeholders and the findings of the technical expert that problems continue to be experienced by independent repairers in accessing technical information, and to some degree proprietary diagnostic tools, for the repair and servicing of new cars. This is impacting competition in the affected aftermarkets, particularly as the nature of technical information to repair and service new cars is rapidly changing, with access to digital files and codes, and appropriate diagnostic tools, now often necessary to complete a car repair or service.

As observed, car manufacturers generally own and control the technical information required to repair and service new cars and in many instances are the only source of the technical information. As outlined in chapter 2, car manufacturers have an incentive to steer consumers to their authorised dealers and preferred repairer networks, who generate revenues from the sale of aftermarket services, including repairs, servicing and parts.

Based on submissions to this study, and the ACCC's own research, it appears that few car manufacturers provide the access required to repair or service new cars in the same or similar form as that provided to their authorised dealers and preferred repairers. The ACCC notes that the responses of manufacturers to example problems provided by the ACCC also indicate that the supply of technical information from manufacturers to independent repairers is inconsistent. Cartech's findings add further weight that in many instances independent repairers are denied access or experience delays in trying to access technical information from car manufacturers. In some instances, no other appropriate sources of technical information exist.

As noted earlier, in some cases, the relevant technical information may be available through a car manufacturer's website or email address but may not be well publicised. In other cases it may be that some independent repairers are unaware of how to access or use these materials—and industry associations such as the AAAA and the MTAA have a role to play in educating independent repairers about accessing technical information and working with car manufacturers to publicise the process to access these materials. However, the evidence before the ACCC supports that, in the Australian context, car manufacturers have generally not made the same or similar technical information available to independent repairers, with real-time digital access, as they have to dealers.

Intermediaries, such as commercial publishers of technical information, have indicated they cannot obtain all the technical information demanded by independent repairers. Further, access to the proprietary diagnostic tools needed to repair and service cars is inconsistent, and aftermarket diagnostic tool manufacturers encounter barriers in accessing technical information from car manufacturers to develop their own products. In addition, informal sources of technical information, such as car manufacturer's overseas websites, internet forums or personal relationships are unreliable, incomplete, not applicable to Australian models, or offer no security of ongoing supply. Accordingly, other sources of technical information may be partly available; however, most are at present poor substitutes for supply of comprehensive technical information from the car manufacturer.

The ACCC acknowledges that car manufacturers, the NMVTRC, the FCAI and the AADA may have legitimate concerns about the sharing of some security-related technical information, and these concerns are shared by other stakeholders in the industry. However, the ACCC notes that such technical information is regularly shared in other jurisdictions (see 4.7.1, below).

Draft findings on problems with accessing technical information for new cars

- The nature of technical information to repair and service new cars is rapidly changing, with digital files and codes, and appropriate diagnostic tools, now often necessary to complete a car repair or service.
- Independent repairers have continuing problems accessing technical information for new cars. Few car manufacturers provide equivalent access to the technical information provided to their authorised dealers and preferred repairer networks, and many provide very little or no information at all.
- Independent repairers may be able to obtain technical information from sources other than the car manufacturer in Australia; however, the information is commonly incomplete, not applicable to Australian models, or offers no security of ongoing supply.
- Car manufacturers may have legitimate concerns about the sharing of some security-related technical information to repair and service new cars. Regardless, in other jurisdictions this information and data is securely shared with independent repairers.

4.5. Analysis: The Heads of Agreement is not a suitable instrument to facilitate the sharing of technical information

The existing Heads of Agreement and codes of practice governing technical information sharing are, in general, ineffective in providing access that is consistent with their stated aims and principles. Key industry associations, including the FCAI, voluntarily agreed to these aims and principles to ensure there continues to be 'a fair and reasonable competitive market within the car service and repair industry.'³⁴⁶ Accordingly, the aims and principles of the Heads of Agreement are an appropriate standard against which to assess the progress of technical information sharing in the new car retailing industry.

³⁴⁶ FCAI, AAA, AAAA, AADA, MTAA/AMIF, [Agreement on access to service and repair Information for motor vehicles](#), December 2014, p. 3.

The principles of the Heads of Agreement place voluntary obligations on car manufacturers to, in general, share with independent repairers, on commercially fair and reasonable terms, the same technical information to repair and service cars they provide to their dealers. The key principle underpinning this provides:

*The repairer should be able to access all information required for the diagnosis, body repair, servicing, inspection, periodic monitoring, and reinitialising of the vehicle, in line with the service and repair information manufacturers provide their authorised dealers and repairers*³⁴⁷

The Heads of Agreement also acknowledges the importance of ongoing training and of using information from the car manufacturer to ensure repairs are carried out correctly to assure the safety of consumers. The requirement to use manufacturer's specifications is also reflected in state and territory laws for certifying cars for registration and their roadworthiness.

The FCAI website contains links to car manufacturers' technical websites.³⁴⁸ This was an initiative launched by the FCAI following the Heads of Agreement. The links to these technical websites indicate which car manufacturers are providing access to at least some types of technical information required by independent repairers. However, an ACCC review of the FCAI website found that not all car manufacturers are listed.³⁴⁹ Further, a link on the FCAI's website does not, in and of itself, necessarily indicate the manufacturer is behaving consistently with the principles of the Heads of Agreement, or providing the same access to technical information as they do to their authorised dealers or preferred repairer networks.

The ACCC notes that:

- 20 car manufacturers have a presence on the FCAI's website, in the form of a website or email address.
- Those car manufacturers who had a website listed, rather than an email address, represented about 75 per cent of the market share for new passenger cars and about 54 per cent of market share for new sports utility vehicles.³⁵⁰ This suggested that some types of technical information for new cars are available to independent repairers through a car manufacturer's technical web site.
- However, for almost 25 per cent of new passenger cars and over 45 per cent of new SUVs, including for many of the most popular brands, website based access was not available.³⁵¹
- Further, submissions indicated that these websites may not provide access to digital files and codes, such as reinitialisation codes and software updates, needed to repair and service new cars (see 4.2, above).³⁵²
- A website presence is preferable for independent repairers as it is less likely to cause delays in accessing technical information and is generally consistent with the online access provided to authorised dealers and preferred repairer networks.³⁵³

³⁴⁷ FCAI, AAA, AAAA, AADA, MTAA/AMIF, [Agreement on access to service and repair Information for motor vehicles](#), December 2014, p. 4, clause 4.

³⁴⁸ FCAI, FCAI member service and repair information, <https://www.fcai.com.au/service-repair/member-service-repair>, accessed 17 July 2017.

³⁴⁹ See Appendix F.

³⁵⁰ Tables detailing this information can be found in Appendix F.

³⁵¹ Tables detailing this information can be found in Appendix F.

³⁵² As reported in MTAA, supplementary submission, April 2017, pp. 5–6; KTAS, supplementary submission, April 2017; AAAA supplementary submission 1, February 2017, Appendix 8.

³⁵³ For example: MTAA supplementary submission (April 2017), pp. 5–6; Cartech report 3 July 2017, p. 69.

The ACCC also notes that a number of car manufacturers, over the course of this study, have made some additional technical information available online. For instance, Mazda has made its repair manuals available online since November 2016.³⁵⁴ Kia has indicated in correspondence to the ACCC it will make a website available in the third quarter of 2017.³⁵⁵ Hyundai now makes available access by Australian independent repairers to its European website.³⁵⁶ Hyundai stated that this website has been accessible by Australian independent repairers since October 2016, however, as outlined above (see table 4.1), it is unclear the extent to which this technical information is applicable to Australian model cars.

While these recent developments are welcome, it is evident that most car manufacturers in Australia are still not fully sharing technical information consistently with the aims and principles of the Heads of Agreement, despite it being in operation since late 2014. As outlined above, only Holden, and to a large extent Volkswagen, appear to be providing access to a significant proportion of the types of technical information independent repairers need to repair and service new cars. Access to digital files remains a particular problem.

4.5.1. The Heads of Agreement has several shortcomings

The ACCC considers that the Heads of Agreement has several shortcomings which hinder its aims and principles from being achieved in a fair and efficient way:

- It is not directly binding on car manufacturers and other industry participants (e.g. coverage of car manufacturers is established through FCAI membership and voluntary agreement to be bound by the FCAI Code and not all car manufacturers are members).
- Definitions and exclusions are open to wide interpretation by the signatory parties (e.g. the FCAI Code defines repair and service information to exclude a number of types of information and data).
- Dispute resolution under the Heads of Agreement cannot be accessed directly by an independent repairer.
- There is no binding dispute resolution mechanism between the signatory industry associations, for instance compulsory and binding mediation and arbitration by an independent third party.
- There is no clear process or secretariat for the governance of the Heads of Agreement.
- Treatment of security-related information, which could be addressed in a less restrictive way, such as by establishing a process to release the information and data securely.
- There is no enforcement mechanism, such as the use of penalties, to require signatory industry associations to behave consistently with the principles of the Heads of Agreement (and in turn to put pressure on their members through processes in their own codes of practice).
- Further, the formalisation of the Heads of Agreement may have reduced the flow of information and data from car manufacturers to independent repairers.

³⁵⁴ FCAI supplementary submission, May 2017, Attachment 3.

³⁵⁵ FCAI supplementary submission, May 2017, Attachment 8.

³⁵⁶ FCAI supplementary submission, May 2017, Attachment 4.

It is also unclear the extent to which the Heads of Agreement was intended to facilitate access to proprietary diagnostic tools, even though in many instances these are required to be able to use the technical information obtained from the car manufacturer. The FCAI submitted that:

Pursuant to the Code, each participating member agrees to make repair information available to independent repairers at commercially reasonable prices and provide access to special tools, such as diagnostic tools and equipment.³⁵⁷

However, the ACCC notes that notes that the FCAI Code,³⁵⁸ which was developed to enact the aims and principles of the Heads of Agreement on car manufacturers, treats diagnostic tools differently to technical information.

Taking into consideration all of the submissions and material provided by stakeholders, the technical expert's report and the ACCC's site visits, the ACCC has concluded that the net effect of the Heads of Agreement, across the industry, in improving access to technical information has been limited, and that the Heads of Agreement is ineffective in providing access that is consistent with its stated aims and principles.

Draft findings on the Heads of Agreement and codes of practice

- Key industry associations, including the FCAI, have voluntarily agreed to a set of aims and principles to ensure there is 'a fair and reasonable competitive market within the car repair and service industry.' The principles of the Heads of Agreement place voluntary obligations on car manufacturers to, in general, share with independent repairers, on 'commercially fair and reasonable' terms, the technical information they provide to their dealers.
- Broadly, most car manufacturers in Australia are not fully sharing technical information consistently with the aims and principles of the Heads of Agreement.
- The Heads of Agreement has several shortcomings which hinder its aims and principles of improving access to technical information from being achieved in a fair and efficient way.
- The ACCC has concluded that the net effect of the Heads of Agreement, across the industry, in improving access to technical information for new cars has been limited, and that the Heads of Agreement is ineffective in providing access that is consistent with its stated aims and principles.

³⁵⁷ FCAI submission, November 2016, p. 26.

4.6. Analysis: Consumers benefit from competitive aftermarkets for the repair and servicing of new cars

The ACCC has sought to understand the impacts of restricted access to technical information on consumers, and, in particular, whether it leads to higher prices for repairing and servicing new cars or has any other flow on effects.

As discussed in chapter 2, competition between car manufacturers, through their authorised dealers, tends to focus on lowering new car prices to drive demand and capture aftermarket sales. This business model will only tend to be profitable overall if higher prices can be achieved in aftermarkets for the repair and servicing of new cars, including as a result of restricted competition. Manufacturers therefore face incentives to deny or delay access by independent repairers to technical information to steer repair and service work to dealerships and preferred repairer networks. Box 4.7, below, provides the ACCC's view on the potential short and long term effects restricted access to technical information may have on competition in the aftermarket.

Box 4.7: Potential short and long term impacts on competition of independent repairers' restricted access to technical information

The ACCC has considered whether competition between car manufacturers in the sale of new cars may, in the longer run, undermine strategies that different manufacturers could adopt to restrict independent repairers' access to technical information. The ACCC has also considered whether competition will reduce the harm that consumers experience.

Consumer switching may act as a disincentive for car manufacturers to restrict independent repairers' access to technical information. This may occur if consumers become aware of increased costs in aftermarkets as a result of independent repairers' restricted access to technical information, and switch their future new car purchases to manufacturers which do not engage in this practice.

In the short term, such discipline is not likely to be effective as consumers who would like to switch to a manufacturer that does share technical information with independent repairers would experience high switching costs, particularly if they had recently bought a new car. New cars are expensive and it is costly, in this context, for consumers to avoid high prices in aftermarkets. In the longer term, however, consumers may become more aware of later aftermarket costs and purchase new cars which can be less expensively-serviced and repaired. Consumer research suggests that the discipline imposed by switching is relatively weak: the ACCC Consumer Survey found that consumers are far more aware of new car prices than those for repairs and servicing. For instance, the 18 per cent of respondents who considered the cost of spare parts when buying a new car reported that information about those costs were hard to find.³⁵⁹

A second consideration is whether, even in the absence of switching, competition for new car sales may reduce consumer detriment caused by car manufacturers not sharing technical information with independent repairers. To the extent that aftermarket prices are high, manufacturers may further discount the upfront price of new cars or offer commitments regarding the longer term costs of car ownership (such as longer warranties or commitments on service pricing). The issue then becomes one of a consumer choosing a bundle involving the car and related services from a single supplier. The ACCC's view is that the competitive discipline imposed by independent repairers on competition in aftermarkets therefore remains valuable and of benefit to consumers. Otherwise consumers might be locked into a price structure favouring high prices for repairs and servicing. Consumers are likely to benefit when they can use a competitive aftermarket to observe the costs of repairs and servicing separately to a bundled purchase of the car and related post-sale services.

³⁵⁹ ACCC Consumer Survey, May 2017, pp. 11, 13.

Information has been provided by stakeholders to quantitatively estimate some of the costs of restricted access to technical information on competition and consumers. In addition, anecdotal evidence has been provided of consumers and independent repairers experiencing significant detriment in the form of increased costs and inconvenience due to these practices.

The evidence suggests awareness of the problem among consumers is probably low. The number of consumers who reported in the ACCC Consumer Survey that their independent repairer experienced problems with accessing technical information was limited; however, this may be a result of industry-wide practices, where independent repairers do not explain to customers the problems they have experienced in accessing technical information. In general, however, the kinds of detriments experienced by consumers when they choose an independent repairer who cannot access the technical information needed include: inconvenience, taking the car to both an independent repairer and a dealer (and potentially paying both), and delays in having their car repaired or serviced.

Draft findings on impacts on competition and consumers

- As discussed in chapter 2, car manufacturers have an incentive to limit access by independent repairers to technical information to steer service work to authorised dealers and repair work to preferred repairer networks.
- This is impacting the ability of independent repairers to effectively and efficiently compete in the aftermarkets for the repair and servicing of new cars.
- It is also causing detriment to consumers in the form of increased costs, inconvenience and delays when having their new car repaired or serviced.
- Consumer switching in the new car market is unlikely to provide strong competitive discipline on manufacturers and dealers in aftermarkets, and any benefit of competition in the sale of new cars to consumers does not offset the impact of less competitive aftermarkets. The ACCC's view is that consumers benefit from competitive aftermarkets for the repair and servicing of new cars.

4.7. Analysis: Options to improve the sharing of technical information

There are a number of options that may improve the sharing of technical information. The MTAA submitted the Heads of Agreement could be enhanced, for instance, with a licencing or accreditation arrangement.³⁶⁰

Insurance Australia Group Limited (IAG) submitted that access to technical information should take place through an open platform that allows fair competition between service providers, and that a proprietary model under the control of a single stakeholder would be detrimental to consumers and limit innovation and potential productivity gains.³⁶¹

The AAAA and GPC Asia Pacific submitted that the Heads of Agreement should be replaced with a mandatory system.³⁶² The AAAA submitted it would prefer a US model in Australia, as it would benefit consumers and would offer a model of industry-funded light touch regulation.³⁶³ Toyota submitted that any mandatory system to provide this information would increase car manufacturers' costs, which would be passed on to consumers.³⁶⁴ In addition to

³⁶⁰ MTAA supplementary submission, April 2017, p. 7.

³⁶¹ IAG submission, November 2016, p. 8.

³⁶² AAAA submission, November 2016, p. 69; GPC Asia Pacific submission, November 2016, p. 8.

³⁶³ AAAA submission, November 2016, p. 70.

³⁶⁴ Toyota submission, November 2016, p. 8.

these submissions, the ACCC is aware of mandatory approaches used abroad to improve the sharing of technical information, which are discussed below.

4.7.1. International approaches to sharing technical information

The problems experienced in Australia are not unique. In response to similar problems in the EU and the US, authorities have taken regulatory action to encourage competition in markets for the repair and servicing of cars. Governments in Brazil, China, South Korea and South Africa have also recently considered or enacted legislation to mandate the sharing of technical information.³⁶⁵ An outline of the EU and US models can be found in Appendix G.

Regulatory interventions in other jurisdictions have made the technical information necessary for independent repairers to repair and service new cars more widely available. EU regulations requiring independent repairers to have 'easy, restriction-free and standardised access' to information and data to repair and service new cars have generally been successful in meeting those aims, according to a study commissioned by the European Commission.³⁶⁶ The US voluntary National Automotive Service Task Force (NASTF) model has recently been supplemented with state legislation and further voluntary national changes to improve access.³⁶⁷

The EU and the US models are specific to their regulatory environments and geographically distinct markets, however, both have several common features, which should be considered in the Australian context. Both require car manufacturers, at a fair and reasonable price, to make available to independent repairers the same technical information they make available to their dealer networks. Both models also recognise the role of commercial publishers of technical information and aftermarket diagnostic tool manufacturers in reducing informal barriers for independent repairers to access technical information. Further, the EU and US have established accreditation and authorisation processes to ameliorate the perceived risks associated with sharing security-related technical information. However, outright adoption of foreign technical information sharing models may not be appropriate.

Draft findings on options to improve the sharing of technical information

- In foreign jurisdictions, regulatory interventions have made the technical information necessary for independent repairers to repair and service new cars more widely available.
- EU regulations requiring independent repairers to have 'easy, restriction-free and standardised access' to information and data to repair and service new cars have generally been successful in meeting those aims. In the US recent state legislation has stimulated further voluntary national changes to improve access.
- The EU and the US models are specific to their regulatory environments and geographically distinct markets. Elements of these models, such as secure processes to access security-related information and access to technical information by intermediaries to develop informational products and diagnostic tools, should be considered in Australia. However, outright adoption of other models may not be appropriate.

³⁶⁵ Mavis Courmane, 'Repair and Maintenance Information (RMI) legislation in China', Cognitran, 2016; AAAA supplementary submission 2, February 2017, p. 4.

³⁶⁶ 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.

³⁶⁷ *An Act Relative to Automotive Repair*, Mass Gen Laws, ch 93K (2013). (Mass Gen Laws, ch 93K); AAIA, CARE, Alliance and Global Automakers, [Memorandum of Understanding](#), 15 January 2014.

4.8. Recommendations for change

Independent repairers continue to encounter problems accessing technical information, and at times proprietary diagnostic tools, from car manufacturers. These problems are becoming particularly acute as increasing access to digital files and codes, and diagnostic tools, is required to repair and service new cars. The reasons for access problems are that car manufacturers are generally the owners and only source of most types of technical information and have the incentive to steer consumers to authorised dealers and preferred repairer networks, who generate revenues from the sale of aftermarket services, including repairs, servicing and parts. This situation contributes to the outcome that few car manufacturers provide the kind of access required to repair or service new cars that would facilitate effective competition between affiliated entities and independent repairers. Taking into account the many reports of the impacts of this behaviour on independent repairers and consumers, the ACCC's view is that consumers benefit from competitive aftermarkets for the repair and servicing of new cars.

While industry has made some attempts to improve the sharing of technical information with independent repairers, the Heads of Agreement has not been an effective instrument through which to do this. The Heads of Agreement has a number of shortcomings which do not address the incentives for car manufacturers to deny or delay access to technical information. These issues have arisen in overseas jurisdictions and regulatory interventions have made technical information in those jurisdictions more widely available.

Accordingly, the ACCC recommends (Draft recommendation 4.1) that a mandatory scheme be introduced to facilitate the sharing of technical information by car manufacturers in Australia. This mandatory scheme should address the shortcomings of the Heads of Agreement and adopt aspects of regulatory interventions in other jurisdictions, such as a process for the secure release of technical information and access for intermediaries. The ACCC has not sought to specify what particular form of mandatory scheme should be adopted. This will require careful consideration of the costs and benefits of alternative approaches and is beyond the scope of this study.

Draft recommendations on access to technical information for new cars

Draft recommendation 4.1

A mandatory scheme should be introduced for car manufacturers to share with independent repairers technical information, on commercially fair and reasonable terms. The mandatory scheme should provide independent repairers with access to the same technical information which car manufacturers make available to their authorised dealers and preferred repairer networks.

The mandatory scheme should place an obligation on car manufacturers and other industry participants to achieve the aims and principles set out in the Heads of Agreement (including those in relation to training and reinforcing existing statutory obligations on independent repairers to ensure repairs and servicing are carried out correctly to car manufacturers' specifications to assure the safety of consumers).

The mandatory scheme should, subject to the type of regulation used, address the following operational matters:

Real time access

- Car manufacturers should make available to independent repairers, in real time, the same digital files and codes, such as software updates and reinitialisation codes, made available to dealers to repair or service new cars.

Coverage

- Obligations on sharing technical information should apply to all car manufacturers in Australia.

- Consideration should be given to including options for relevant intermediaries to access technical information from car manufacturers on commercially fair and reasonable terms.

Definitions

- All relevant terms, conditions and exclusions should be defined in the regulation, for instance, defining diagnostic tools and their relevance to facilitating access to technical information, as well as defining security-related information.

Dispute resolution

- Any dispute resolution processes should be timely and accessible by all relevant stakeholders.
- Any dispute resolution processes should be subject to compulsory mediation and binding arbitration by an independent external party.

Governance/consultation

- Key stakeholders should meet regularly to discuss the rapidly changing nature of repair and service information.

Security-related information and data

- Similar to the EU or US models, a process for the secure release of security-related technical information should be established or authorised under the mandatory scheme.

Enforcement

- Appropriate options to enforce the terms of any regulation, if appropriate, should be included (e.g. penalties).

5. Parts needed to repair and service new cars

Key points

- Parts to repair and service new cars are supplied by car manufacturers and dealers, authorised resellers (usually dealers) and other independent parts suppliers.
- Some parts, mostly related to the security and safety of the vehicle, can only be supplied by manufacturers through authorised channels. Other parts are potentially more available through sources such as parallel imports, independent aftermarket supply or parts recycling.
- Manufacturer-authorised branded parts can generally be accessed through authorised channels, as supply is generally very profitable. Access is sometimes restricted to certain kinds of parts for legitimate reasons; for example to reduce risk of theft of cars or of intellectual property. However, manufacturers and dealers can steer more service or repair work back to authorised suppliers by denying access to parts. This may reduce competition and raise prices.
- The ACCC has also considered claims of high pricing of parts supplied through authorised channels. Competition at both manufacturer and dealer levels leads to lower new car prices and higher prices for parts. Once a new car is purchased, consumers are encouraged and sometimes contractually required to source parts through the authorised channel. This pattern of pricing could result in some market distortions, although it is less clear that it creates material consumer detriment across the pricing of new cars and parts considered together.

Two key issues were raised with the ACCC about how effectively markets are operating for the supply of parts used in the repair and servicing of new cars:

- whether there was reasonable access to the parts needed to repair or service new cars
- whether prices for parts acquired through manufacturer-authorised distribution channels were excessive.³⁶⁸

Independent repairers, network chains, and their representative body the AAAA, and insurers address these issues in submissions. Representatives of car manufacturers and dealers stated that they were not aware of any systematic issues with accessing the appropriate parts required to repair or service a new car.

³⁶⁸ In the market study [Issues Paper](#) (October 2016), the ACCC also raised the issue of tools necessary to repair and service vehicles. Access to technical information and the diagnostic tools needed to successfully use this information are discussed in Chapter 4. Few submissions were received on non-diagnostic tools and this Chapter consequently focuses on parts.

5.1. Car parts needed for repair and service

Car parts include physical parts and accessories that are added to the interior or exterior of the car. Parts are needed for new cars in some cases to service the car and in other cases for repairs. Table 5.1 below lists common types of parts needed for servicing and repairs.

Table 5.1: Common types of car parts needed for servicing and repairs

Parts needed for servicing	Parts needed for repairs
Engine oil	Body parts (e.g. bumpers and fenders)
Brake pads	Headlamps and globes
Oil and air filters	Windscreens
Brake fluid	Branding nameplates
Engine coolant	Mirrors

Car parts for a particular car brand may be sourced from manufacturer-authorized suppliers, or other suppliers, and the issue of how parts are labelled or described is an ongoing source of contention within the industry (see box 5.1).

Box 5.1: Sources and types of car parts³⁶⁹

Stakeholder submissions indicated that there is no common agreement about the labelling of different kinds of parts – particularly about the use of the word ‘genuine’. The following list describes the ACCC’s understanding of the different parts types, although other categorisations are possible.

Original equipment—car manufacturer branded

OE car-manufacturer branded parts are the parts that are used by the car manufacturer in assembling the new car. These parts may be made by the car manufacturer or by ‘Tier 1’ suppliers—companies that supply directly to the car manufacturer for installation in new cars in the car manufacturer’s brand.³⁷⁰ These are also the parts that are generally only available to purchase through an authorised source, commonly the new car dealer. They are sold for the domestic Australian market and typically have the car manufacturer’s branding for the Australian market. When supplied through the manufacturer’s authorised distributors, these are labelled as ‘genuine’ parts.

The ACCC understands that OE-branded parts are the only parts that can be used for repairing the inside parts of cars, including critical safety and security systems such as the locking mechanisms, airbags and engine.

Original equipment—automotive component supplier branded

OE parts may also be automotive component supplier branded.³⁷¹ Automotive component suppliers sell parts to car manufacturers for installation in new cars, and may also be active on the aftermarket in their own right, selling the same part in their own branding. This may

³⁶⁹ AAAA submission, November 2016, p. 34; Bapcor submission, November 2016, p. 12; FCAI submission, November 2016, p. 20.

³⁷⁰ For example, Takata is an automotive parts company based in Japan who makes car safety equipment, such as airbags and seatbelts. It is a Tier 1 supplier who supplies its products to a number of manufacturers including Toyota. When Toyota replacement parts are sold, they will be in Toyota’s branding, but the product inside will be manufactured by the Tier 1 supplier.

³⁷¹ For example, Hella is an automotive parts supplier based in Germany. It is an automotive component supplier of headlamps and lighting to manufacturers. Hella may sell headlamps to Ford, for instance, which would be sold by Ford dealers in Ford branding. The same headlamps may also be available on the market in Hella packaging and perform the same function and work the same way in the model of car that uses the headlamps.

occur for car parts that are not related to internal safety and security systems, such as headlamps. These products may be sold by independent suppliers. Car manufacturers and automotive component suppliers may have licensing arrangements about the selling of automotive component supplier branded car parts being limited for a period of time with preference given to the selling of the car manufacturer's packaged spare part.

Parallel import—car manufacturer branded

Parallel import parts are OE car manufacturer branded parts that are sold through an authorised channel in a market other than Australia, and are subsequently imported by an entity other than the car manufacturer for sale in Australia. In many instances, these parts will be functionally the same as the original equipment car manufacturer branded parts for domestic sale in Australia. These products may be sold by independent suppliers.

Recycled/reconditioned/salvaged

Recycled, reconditioned or salvaged parts are car parts that have been recovered from other cars, some of which may have been declared a total economic loss and written off by an insurer.

Evidence from insurers and independent repairers suggests these parts are only used in non-safety or non-security critical applications, such as replacing the panels of older cars following a collision or internal trim components.

Aftermarket

Aftermarket parts are parts that are developed and made by an entity other than the OE manufacturer or car manufacturer and designed to fit and be used in a car. They meet the car manufacturer's specifications, but generally are designed for different price points to differentiate on quality.

For instance, an aftermarket parts company may make car radios or speakers designed for different car makes and models. The speakers may meet or exceed the specifications of the car manufacturer.

Counterfeit

Counterfeit parts are fake parts purporting to bear the branding of the car manufacturer, Tier 1 supplier or other aftermarket suppliers. These parts are of unknown origin. They may look similar to the relevant car parts, but do not meet the car manufacturer's design specifications and may differ in terms of the strength and durability of the metal or alloy used or in some other property necessary for the reliability and usability of the part.

Parts described by manufacturers as 'genuine' are OE manufacturer parts supplied through manufacturer-authorized Australian distributors and sold by authorised dealers and resellers.³⁷² Dealers will use the parts in servicing and repairing vehicles, and also sell parts at retail (directly to consumers) and wholesale (to other repairers). OE parts may also be available through other channels including third party parts suppliers and online.³⁷³

5.2. Access to parts needed to repair and service cars

5.2.1. Concerns raised about barriers to accessing specific parts

A number of stakeholders indicated that some manufacturers limit access to specific car parts. For example, the MTAA submission indicated that some European manufacturers are restricting parts sales to independent repairers for 'security reasons', including locking sets and emergency keys, radio controls, electronic steering locks and electronic ignition switches. The MTAA notes that if these parts are not provided to repairers it imposes significant limitations on the ability to repair and service vehicles.³⁷⁴

³⁷² As the AAAA notes, 'genuine' can also mean 'not fake', and therefore applied to aftermarket parts as well.

³⁷³ MTAA submission, November 2016, p. 24.

³⁷⁴ MTAA submission, November 2016, p. 46.

The FCAI's submission stated that no independent repairers have reported any issues with accessing appropriate parts. Car parts are available from dealers or, in some cases, authorised parts distributors. It noted that access to security-related parts 'may be subject to tighter controls.'³⁷⁵

The ACCC understands that these security-related parts are generally only OE-branded parts, and as such, are sold through authorised dealers or distributors only. Some manufacturers submitted that denying access to security-related parts to anyone outside the authorised network was necessary to safeguard cars from criminal attack and to reduce incidence of car thefts.³⁷⁶

The AAAA noted that some parts deemed by manufacturers to be 'security-related' in Australia (e.g. engine control units) that are denied to independent repairers are 'routinely bought, fitted and initialised' by independent repairers in North America and Europe.³⁷⁷

Toyota and Holden indicated they were unaware of problems with access to parts, but the FCAI, Mazda and Toyota indicated there are issues related to counterfeit parts.³⁷⁸

Broader concerns about access to parts not related to car security were also raised:

- The AAAA submitted it had received complaints from independent repairers who were unable to access certain types of parts from dealers. It also provided a number of case studies reported by independent repairers where parts were available from dealers but the part would not work without corollary repair and service information, meaning that the part itself was useless.³⁷⁹
- Claims were made that non-price barriers were used to make it more difficult for independent repairers. This included imposing time barriers, such as failing to respond within a reasonable period of time to requests for parts, and selling oil blends and air conditioning refrigerants in sizes that are uneconomical for small and medium sized independent repairers.³⁸⁰

Some of these concerns are also linked to limits on access to technical information needed for repair and service, as discussed in chapter 4.

5.2.2. Reasons for limiting access to certain parts

The ACCC understands that OE manufacturer-branded parts are usually only made available through authorised sources (including dealers). From the manufacturers' and dealers' perspectives, the denial of access can be motivated by concerns relating to car theft or protection of intellectual property. This may be in consumers' interests.

On the other hand, supply of spare parts is generally highly profitable and this creates incentives to deny access to independent repairers for certain parts in order to increase consumers' reliance on dealers for servicing and repair (including the supply of labour as well as parts). As discussed in chapter 4, this is not likely to be in consumers' interests, because it can reduce competition and raise prices for servicing and repair services.

The ACCC recognises the legitimate concerns of manufacturers and dealers relating to supply of certain parts. However, it does not appear necessary to limit access to certain

³⁷⁵ FCAI submission, November 2016, p. 22.

³⁷⁶ AAAA submission, November 2016, p. 40.

³⁷⁷ AAAA submission, November 2016, p. 40.

³⁷⁸ FCAI submission, November 2016; Mazda submission, November 2016, p. 5.

³⁷⁹ AAAA submission, November 2016, pp. 38-39. VACC also stated its members had difficulty in accessing and repairing security-related car components. VACC supplementary submission, February 2017, p. 5.

³⁸⁰ Bapcor submission, November 2016, p. 13.

parts to independent repairers to address security or intellectual property concerns. The AAAA has noted that some security-related parts are supplied to independent repairers in other jurisdictions, and that it appears relatively easy in Australia to claim that access is being denied due to security concerns.³⁸¹ In some instances, repairers are not adequately informed that when purchasing parts for repair from an authorised source, complementary information is required (such as a reinitialisation codes) for the part to work correctly. Provision of such information would reduce uncertainty and reduce instances of independent repairers investing time on attempting repairs that must require dealer involvement.

Reasonable access to parts required to repair and service cars is necessary for the efficient operation of independent repairers. A policy of restricting access to parts without consideration of whether security or intellectual property issues could be addressed in less restrictive ways is not desirable, and raises potential issues of compliance with the CCA. Further, reforms to facilitate access to technical information (discussed in chapter 4) may be made less effective if the parts required to complete repairs or servicing are not made available.

Submissions to this study did not provide any agreed industry wide definition of which car parts are generally agreed to be 'security-related' (or requiring intellectual property protection) as distinct from other parts. Car manufacturers should ensure there is transparency of the circumstances in which access may be restricted. The ACCC considers that the FCAI, as the peak body representing the majority of Australian manufacturers, is well-placed provide support for this process through assisting the creation of a standard definition and detailed classification system for 'security-related' parts.

The ACCC also notes that issues have arisen in other jurisdictions regarding access to parts. Codes of conduct including provision of access are being developed or have been developed in South Africa and Russia³⁸², while the Competition Commission of India has taken enforcement action regarding the denial of access of parts to independent repairers.³⁸³ The European Commission has also noted that while unilateral decisions by authorised resellers not to supply parts are unlikely to breach their competition rules, agreements between car manufacturers and authorised suppliers to not sell 'captive' parts to independent repairers, would likely be anticompetitive.³⁸⁴

Draft findings on access to parts

- Car manufacturers and dealers sometimes restrict access to certain parts for legitimate reasons that may benefit consumers. This includes parts which can compromise vehicle security and encourage theft. However, a further motive for restricting access may be to steer more repair and service work back to authorised dealers and preferred repairer networks. This can reduce competition for repair or servicing work and raise prices.
- The lack of transparency and consistency across manufacturers about what are security-related parts means that access restrictions can be arbitrary, increasing uncertainty and cost for independent repairers. It could also undermine the intent of reforms to promote access to the technical information needed to repair and service cars discussed in chapter 4.

³⁸¹ AAAA submission, November 2016, p. 40.

³⁸² OECD, [Competition issues in aftermarkets – Summaries of contributions](#), DAF/COMP/WD (2017) 1, pp. 17-19. Further, Chinese Taipei requires automobile manufacturers to disclose lists of parts with sales restrictions, methods by which the parts may be acquired, and the reasons for the restriction. See p. 22.

³⁸³ OECD, [Competition issues in aftermarkets – Summaries of contributions](#), DAF/COMP/WD (2017) 1, p. 9.

³⁸⁴ Question 10 in the "Frequently asked questions on the application of EU antitrust rules in the motor vehicle sector" published by the European Commission on 27 August 2012. 'Captive' parts as defined would include security-related parts as well as other parts that can only be obtained through the authorised distribution system.

Draft recommendations and actions on parts

Draft recommendation 5.1

OE manufacturer-branded parts and accessories should be generally available to independent repairers on commercially fair and reasonable terms.

Car manufacturers should develop policies which clearly outline any parts subject to restricted access on security-related grounds. These policies should be publicly available.

The FCAI is well-placed to work with manufacturers to examine whether there is benefit in agreeing a standard definition and detailed classification system for 'security-related' parts to provide certainty to parts customers.

ACCC action 5.1

Refusals by car manufacturers to supply security-related parts for repair and service will be monitored and addressed through action by the ACCC, including enforcement action where appropriate.

5.3. The pricing of parts

The prices for spare parts set by manufacturers and/or dealers were raised as a particular issue by insurers, including Suncorp. Suncorp is a major buyer of replacement parts that are used in repairing cars subject to collisions.

Suncorp suggested that its research had found significant imbalances and a lack of transparency in the parts supply chain in Australia, leading to low non-original equipment usage, supply chain inefficiencies and higher prices, which are ultimately borne by consumers. Suncorp argued that (as an example) the total cost of replacement parts in Australia for a \$21 000 medium-sized hatch may be \$114 081 – more than five times the car's purchase price. This cost is said to be ultimately reflected in repair costs, and therefore consumers' premiums.³⁸⁵

In response to the ACCC's Issues Paper³⁸⁶, which noted that (in contrast to new car prices) repair and parts costs have been increasing in recent years, Mazda noted that it was necessary to take into account the relative contribution made by labour costs. Mazda suggested that increases in labour costs contribute around 53 per cent to the cost of repairs and maintenance (equivalent to 6.4 per cent of the 11 per cent increase in repair and maintenance costs referred to in the Issues Paper).³⁸⁷ The ACCC notes, however, that this is less applicable to prices for parts as these do not have a labour component.³⁸⁸

The AADA's submission suggested that there was 'significant competition' between dealers and independent parts distributors, particularly in the trade component of a dealership's parts business. The main drivers of this competition are said to be the availability of 'non-genuine' parts either produced in Australia or imported, and large insurers instigating arrangements with organisations who stock recycled parts which they make available to the insurers at low cost.³⁸⁹

³⁸⁵ Suncorp submission, November 2016, p. 1. See also AAAA submission, November 2016, p. 10.

³⁸⁶ New car retailing industry market study [Issues Paper](#), p. 6.

³⁸⁷ Mazda submission, November 2016, p. 4.

³⁸⁸ ABS data on the Consumer Price Index separates 'Spare parts and accessories for motor vehicles' (series A2328726R) from 'Motor vehicles' and 'Maintenance and repair of motor vehicles.' See series 6401.0, Table 7.

³⁸⁹ AADA submission, November 2016, p. 14.

5.3.1. Are parts prices excessive?

Submissions to the ACCC presented starkly differing views on the competitiveness of spare parts supply. On the one hand, manufacturers and dealers claimed strong competition from independent suppliers, including importers. On the other, independent repairers and car insurers claimed that prices are excessive and this harms consumers either directly, or through higher insurance premiums.

To determine the extent and magnitude of these issues, the ACCC analysed some of the market features which influence competition in the supply and pricing of spare parts. This is outlined below.

Links between competition in markets for new cars and in parts aftermarkets

As discussed in chapter 2, the demand for goods and services in aftermarkets, including the market for spare parts, depends on demand for new cars in the primary retail market. Manufacturers and authorised dealers earn significant profits from the sale of spare parts and related services. Car manufacturers recognise that increased new car sales will increase spare parts sales, meaning that manufacturers will set lower prices for new cars than if only new cars were sold.

Dealers face similar incentives to manufacturers in their pricing of new cars and parts, because manufacturers sell both new cars and parts through dealers. Dealers also sell a range of further complementary services, including servicing, finance and insurance.

A second pertinent feature of the new car and parts sales relationship is that consumers tend to be more responsive to the price of a new car than to the price of parts.³⁹⁰ Consumer lack of responsiveness to parts pricing is primarily caused by a 'lock in' effect caused by high switching costs once a car has been purchased. Once consumers have purchased a car, they are then 'locked in' to purchasing parts that are designed for that car (or similar cars), and cannot readily substitute parts from other manufacturers or dealers.

The ability of consumers to exercise choice over parts supply is further complicated by:

- Perceptions of quality advantages with OE-branded parts and warranty considerations (as discussed in chapter 3).
- A lack of transparency in, or inability to comprehend, parts pricing compared to new car pricing. Consumers can readily compare the prices of new cars prior to purchase,³⁹¹ but not the price of parts and servicing due to a combination of unavailability,³⁹² complexity and uncertainty about which parts will be required when. The ACCC Consumer Survey indicated that fewer than 1 in 5 consumers consider the cost of parts when buying a new car compared with 3 in 4 that consider the price of the new car.³⁹³
- In cases of car repair, spare parts are purchased by insurers on behalf of consumers, and consumers only indirectly pay for higher prices through higher insurance premiums. This means that to the extent consumers exercise choice of over the use of parts, they have little incentive to choose cheaper parts of equivalent quality.³⁹⁴

³⁹⁰ The purchase price of a vehicle (new and used) was the most considered factor in the purchase of a motor vehicle in a 2012 Australian Bureau of Statistics survey. See Figure 1 in the ACCC's *Issues Paper*, October 2016, p. 16.

³⁹¹ The ACCC Consumer Survey found that 91 per cent of respondents found acquiring price information to be 'very easy' or 'easy' (ACCC Consumer Survey, p. 12).

³⁹² The ACCC Consumer Survey found that spare parts costs were reported as the most difficult type of information to acquire (ACCC Consumer Survey, p. 12).

³⁹³ ACCC Consumer Survey, p. 6.

³⁹⁴ Suncorp submission, November 2016, p. 1. Suncorp's submission states that it commissions: 'the repair of hundreds of thousands of cars each year and spent approximately \$500 million on replacement automotive parts.'

Implications for pricing strategies of manufacturers and new car dealers

The combination of the relationship between new cars and parts, together with differences in consumer responsiveness to prices means that:

- manufacturers will be willing to sell new cars with relatively low mark-ups on the manufacturing cost,³⁹⁵ if this means they are likely to sell more parts with a higher mark-up
- dealers will be willing to sell some goods and services with a lower mark-up (including new cars) if this means they can sell more high mark-up services (such as parts, insurance and finance).

As discussed in chapter 2, these relationships are borne out in data on the sources of profits for manufacturers and their authorised dealers.

There is, however, some competition for the supply of parts. As widely noted in submissions, there is some evidence of competition relating to the supply of spare parts which limits the ability of manufacturers and dealers to sell parts at higher mark-ups. This can occur through supply of automotive component supplier branded parts, parallel imports of OE branded parts, aftermarket or recycled parts. Exemptions in the *Designs Act 2003* (Cth) provide some protection for aftermarket suppliers of parts that replicate OE designs.³⁹⁶ Furthermore, competition for spare parts tends to increase as cars age and decline in value, as consumers are more willing to substitute to other kinds of parts.

To maximise their profits, manufacturers and dealers of new cars will use contractual and other means to encourage consumers to purchase OE parts from the dealer. This makes the pricing strategy profitable overall; selling the new car at a heavy discount while not selling any complementary services will ultimately reduce incentives to discount the new car. The strength of the link or complementary relationship between different goods and services therefore relies on manufacturers and dealers being able to require or otherwise entice consumers to purchase genuine parts supplied by the dealer. This can be pursued in a number of ways, including:

- by recommending the use of 'genuine' parts and advising consumers of the purported safety or quality advantages of using 'genuine' parts supplied by the dealer, including that it provides further assurances that manufacturer warranties will not be voided through use of inappropriate parts
- through offering longer or extended car warranties and capped-priced servicing, which encourage consumers to maintain dealer relationships for longer.

Evidence of consumer detriment

There seems to be broad agreement that the manufacturer and dealer margins associated with parts are much higher than for sales of new cars. For certain kinds of parts, there is limited or no competition as aftermarket parts will not be effective substitutes – for example, parts deemed 'security-related'. Anecdotal evidence supports that where there is minimal possibility of aftermarket substitution, parts prices can appear unreasonable.³⁹⁷

³⁹⁵ Mark-up means the ratio of price to the (marginal) cost of the good sold.

³⁹⁶ Section 72 of the *Designs Act 2003* (Cth) provides that certain repairs do not infringe registered designs, and means that the Act cannot be used to prevent manufacture of spare parts or undertaking repairs with such parts.

³⁹⁷ See for example the evidence cited in David McCowen, 'The real cost of repairing your car', available at: <http://www.drive.com.au/motor-news/the-real-cost-of-repairing-your-car-20140414-36gk6>, accessed April 2017.

The ACCC notes that evidence from the Australian Bureau of Statistics indicates that, over time, parts prices are rising faster than prices of new car prices (which are falling)³⁹⁸ and comparisons were presented to the ACCC indicating that:

- the contribution of aftermarket parts to manufacturer's revenues and profits is highly disproportionate, with parts contributing 5 per cent to revenues but 50 per cent to manufacturers' profits³⁹⁹
- list prices for certain parts in Australia are sometimes considerably higher than (exchange-rate adjusted) prices for equivalent parts in the United States⁴⁰⁰
- repairers paying retail prices for parts pay much higher prices for parts than do car assemblers, with a car built from retail parts in Australia costing between 2.4 and 5.4 times as much as the new car price.⁴⁰¹

Academic work on harm from high aftermarket prices suggests that harm to consumers is more likely where: there is weak competition in the primary market (in this case, for new cars); switching in the primary market is costly; there are large numbers of consumers uninformed about aftermarket prices; or where the aftermarket is large relative to the primary market.⁴⁰²

On the issue of competition in the primary market, if prices for parts are found to be high or excessive, a further consideration is whether these high prices are offset by lower prices elsewhere. This is because competition between manufacturers may reduce detriment for consumers because they will pay less for new cars (upfront) despite paying more for the parts used to repair and service them. This model results in manufacturers and dealers making more profit in supplying parts, and less in supplying new cars.⁴⁰³

Other evidence suggested that harm to consumers is plausible. This is for the following reasons:

- Consumers generally do not appear well informed about prices for parts, prices are not transparent,⁴⁰⁴ and it is difficult for consumers to contractually avoid paying inflated prices for parts prior to purchase of a car. It may therefore lead to poor decisions about the purchase of new cars.
- New cars are expensive and switching costs for consumers to change vehicles are high, meaning that it is very costly to avoid high prices in aftermarkets.

³⁹⁸ 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 3 August 2017. Note that this CPI data refers to all motor vehicles, not specifically new cars.

³⁹⁹ Suncorp submission, attachment, citing IBM Global Business Services (2008), *Performance in reserve*, available at https://www-935.ibm.com/services/us/gbs/bus/pdf/gbe03042-usen_autospareparts.pdf, accessed June 2017.

⁴⁰⁰ Suncorp supplementary submission, Appendixes 1 and 2:

- Appendix 1 provides a comparative price analysis by CCC information systems (for US prices) and Australian list prices. A basket of common crash repair parts is compared. Prices in Australia are said to be as much as 3.5 times higher than the equivalent basket if purchased in the US.
- Appendix 2 provides a selection of 24 parts which shows systemic markups in Australia across a wide range of parts types, including bumpers, panels, light bulbs and nameplates. These comparisons indicate differences of up to 10 times even after adjusting for exchange rates.

⁴⁰¹ Suncorp submission, confidential attachment citing data from Delta-V experts. See also London Economics, *Developments in car retailing and after-sales markets under Regulation No. 1400/2002*, June 2006, p. 200.

⁴⁰² See, for example, Lorenzo Coppi, 'Aftermarket monopolisation: the emerging consensus in economics', *The Antitrust Bulletin*, Vol 52., No. 1, Spring 2007.

⁴⁰³ This kind of pricing structure is not uncommon in real-world markets. For example, consumers pay relatively low prices for razors but higher prices for razorblades, and the same holds for printers and printer toner.

⁴⁰⁴ For example, price lists for parts are not widely available on manufacturer or dealer websites.

- Excessive prices for parts reduce incentives to repair cars, and can induce sales of new cars earlier than would occur if parts were sold at lower prices (parts are around 45–50 per cent of the costs of repairing cars).⁴⁰⁵

Given these submissions, the ACCC accepts that there is anecdotal evidence of consumer detriment as a result of high part prices. The margin comparisons between new car sales and parts sales are also indicative of a pricing model that favours lower new car prices and higher prices for parts. Consumers may obtain some indirect benefit from this pricing model, in that some of the benefit for manufacturers of higher parts prices may be competed away in lower prices for new car sales.⁴⁰⁶ However, the ACCC has no evidence that competition in the primary market eliminates the potential detriment to consumers from higher parts prices.

5.3.2. Pricing transparency

Although not raised in the ACCC's Issues Paper, the ACCC received submissions on the issue of price transparency in relation to automotive parts. The Insurance Council of Australia (the representative body for the general insurance industry in Australia) noted that as the cost of replacement parts on average comprises 45–55 per cent of the total cost of repairing a vehicle, the level of competition in this sector has a significant impact on the cost of repairs for consumers. It stated that to ensure competition in the parts market there must be a high level of price transparency whereby repairers and consumers are able to easily assess what is a fair and reasonable price to pay for particular parts.⁴⁰⁷

Further information was provided by the ICA as a supplementary submission on the withdrawal of a recommended parts price list by Holden.⁴⁰⁸ This included a letter from Holden explaining that the withdrawal was limited to parts used in collision repair, which are not retailed directly to end users but sold to repairers. Holden further explained that the withdrawal was designed to remove distortions in the process of quoting collision repairs, and would provide repairers with the best conditions to quote for genuine Holden parts.⁴⁰⁹

The ICA noted that parts price lists are used extensively by insurers and repairers to quote on repairs and determine whether cars should be repaired or written off (as the value of repairs would exceed the market value of the vehicle). The ICA suggested that in the absence of a retail price list, the automotive industry no longer has a transparent reference point for what is a fair and reasonable price for Holden replacement parts.⁴¹⁰

Price transparency can benefit consumers

In light of the concerns raised about high parts prices, it is particularly important that competition between aftermarket parts suppliers is not unduly restricted. Reduced pricing transparency was raised as an example of an issue that could be restricting competition.

Pricing transparency (for example, through the publication of price lists) can sometimes increase competition by increasing consumer knowledge of prices and making it easier to compare offers.

In the instance raised by insurers, the primary concern seems to be that it makes it more difficult for repairers to compare the price of manufacturer OE branded parts with prices of potential substitutes, including parallel imports or recycled parts. It is claimed that this may ultimately lead to higher repair costs and upward pressure on insurance premiums. The

⁴⁰⁵ ICA submission, November 2016, p. 3.

⁴⁰⁶ That is, car manufacturers and dealers are unlikely to make sustained excess profits.

⁴⁰⁷ ICA, supplementary submission, February 2017, p. 2.

⁴⁰⁸ ICA letter to the ACCC, May 2017.

⁴⁰⁹ ICA, Attachment B to letter to the ACCC (GM Holden's letter to ICA), March 2017.

⁴¹⁰ ICA, Attachment A to letter to the ACCC (ICA's letter to GM Holden), February 2017.

response of Holden indicates that its motivation is to ensure 'genuine' parts are used in repairs; however, it is unclear whether this will be through providing more flexibility for authorised part sellers to lower prices, or by reducing repairers' and insurers' ability to compare prices of substitutes. Given that this issue was not raised with the ACCC until after initial submission rounds, the ACCC seeks further information on the impacts of reduced pricing transparency.

Draft findings on the pricing of parts

- Anecdotal evidence and submissions to this study suggest that parts prices in Australia are rising relative to the cost of new cars, and that Australia has high parts prices relative to some overseas jurisdictions.
- Detriments from high parts prices could include distortions in decisions about repairing cars; for example, high parts prices might cause cars to be 'written off' when it may be more efficient to repair them.
- There is limited competition to supply certain spare parts for repair and service. In addition, consumers have a limited ability to switch to alternative suppliers of parts in many instances and these factors may lead to high prices.
- However, parts prices should be considered within a broader context of supply of new cars and other aftermarket services. Manufacturers and dealers discount prices of new cars to capture a greater share of parts sales, which attract much higher margins.

Request for further information

The ACCC seeks further information on the issue of transparency in parts prices, and whether the withdrawal of retail price lists by some or all manufacturers would harm competition or increase costs in parts markets.

6. Fuel consumption and emissions

Key points

- Fuel consumption is a significant factor for consumers when buying a car, second only to price and model. The environmental impact of new cars is also important to one in five consumers. For this reason, new car buyers need to be able to rely on the accuracy of claims made by manufacturers and dealers about the fuel consumption and emissions of particular car models.
- Current fuel consumption and emissions testing procedures rely on laboratory testing rather than testing in real-world driving conditions. Manufacturers may therefore claim results for fuel consumption and emissions based on laboratory tests that are significantly better than can be achieved in real-world driving conditions. This is unlikely to meet consumer expectations and has the potential to be misleading.
- Research from the Australian Automobile Association and consulting engineers, ABMARC, indicates that real-world fuel consumption is on average 25 per cent higher than official laboratory test results. The size of the gap between laboratory and real-world fuel consumption is not consistent across car types or brands, and has been increasing in recent years. This casts significant doubt on the comparative value of absolute fuel consumption figures currently displayed in fuel consumption labelling.
- Representations to consumers about fuel consumption and emissions are made by manufacturers in a variety of ways, including on mandatory labels and in promotional and advertising materials. ACCC research for this study indicates that manufacturers are not always appropriately qualifying these claims, and many consumers believe that advertised fuel consumption and emissions figures are likely to be attained in real-world driving conditions, when this is not the case.
- The Ministerial Forum into Vehicle Emissions is considering a number of measures to improve the integrity of vehicle emissions testing, including the introduction of a more realistic laboratory test for fuel consumption and emissions, and on road testing for vehicle emissions. The ACCC supports moves to enhance the quality of information supplied to consumers.

The ACCC and other ACL regulators have received a number of complaints from consumers in relation to fuel consumption.⁴¹¹ The ACCC is also aware that fuel prices continue to be a critical concern for consumers.⁴¹² In addition, recent Australian and international media coverage has highlighted consumer experiences of higher than expected fuel consumption, and concerns about manufacturer compliance with emissions standards.⁴¹³

⁴¹¹ The majority of these complaints largely related to consumers not achieving the level of fuel consumption indicated.

⁴¹² The ACCC has conducted a number of [Petrol market studies](#). The aim of these studies generally includes explaining why petrol prices are higher in certain regional locations and where the profits are being made along the petrol supply chain.

⁴¹³ For example: B. Leach, 'Lobbyists Claim Fuel Consumption Stickers Are Lying And Regular Unleaded May Be Axed,' *The Motor Report*, 30 March 2017, viewed 8 May 2017, <http://www.themotorreport.com.au/64929/lobbyists-claim-fuel-consumption-stickers-are-lying-and-regular-unleaded-may-be-axed>; D. McCowan, 'ACCC takes Audi to court over diesel emissions,' *Drive*, 8 March 2017, viewed 8 May 2017, <http://www.drive.com.au/motor-news/accc-takes-audi-to-court-over-diesel-emissions-20170308-gut8oc.html>; N. Tajitsu, 'Can Mitsubishi survive fuel economy scandal?' *Drive*, 2 May 2016, viewed 8 May 2017.

Box 6.1: Fuel consumption, CO₂ emissions and noxious emissions

What is fuel consumption?

Nearly all new cars in Australia use petroleum or diesel fuel to generate power. For the purpose of this study, fuel consumption refers to litres of fuel consumed per 100km (L/100km).⁴¹⁴

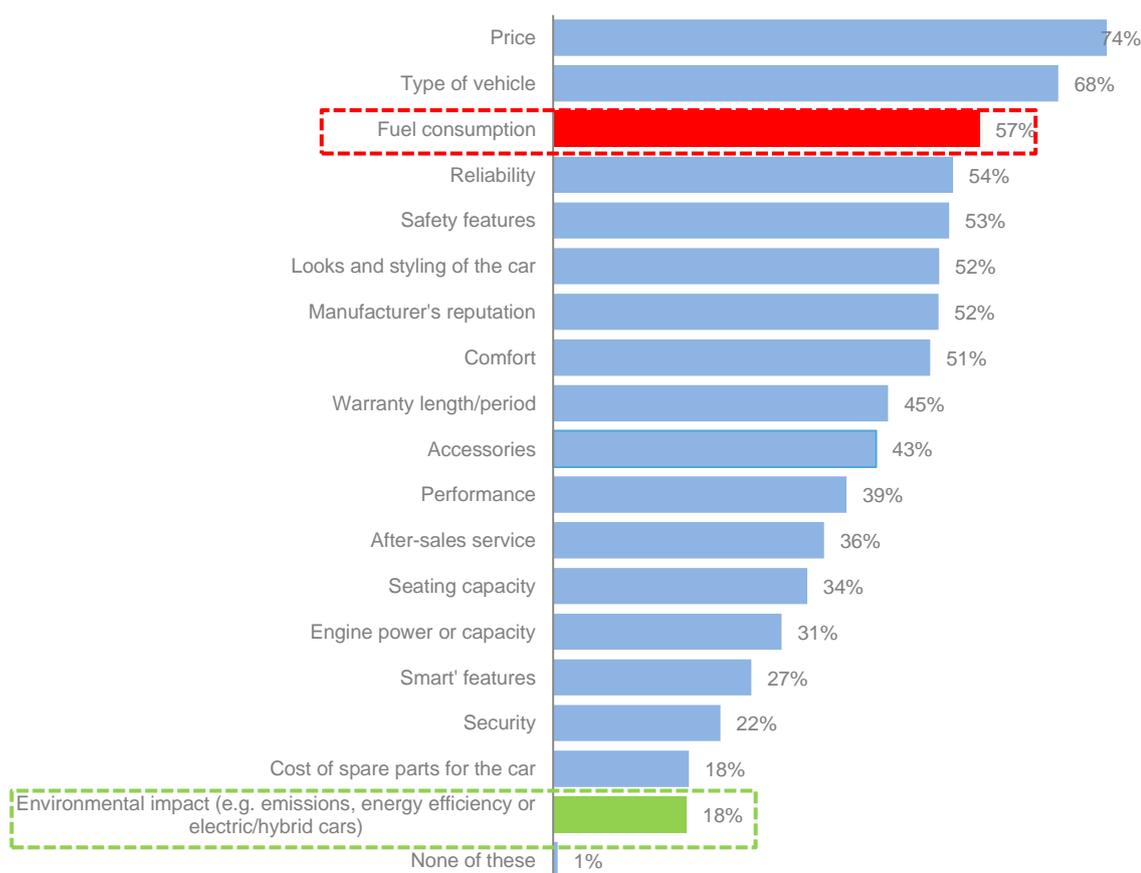
What are CO₂ emissions and noxious emissions?

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 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.⁴¹⁵

After the cost of a new car, the cost of fuel is likely to be the second most important cost faced by new car buyers. This is borne out by the ACCC Consumer Survey, which found that fuel consumption was ranked as the third most important factor when purchasing a new car after the price and type of vehicle, with almost 60 per cent of consumers surveyed factoring it into their purchasing decisions (see figure 6.1 below).

Figure 6.1: Factors considered when buying a new car



Source: ACCC Consumer Survey, Table 2, p.10

⁴¹⁴ This is the same terminology used by DIRD. See DIRD, [Fuel Consumption Label](#), accessed on 23 March 2017.

⁴¹⁵ DIRD, [Vehicle Emissions Discussion Paper](#), February 2016, p. 3, accessed on 6 June 2017.

Figure 6.1 also shows that nearly one in five new car buyers factored environmental impact into their purchasing decisions. While it is relative easy for consumers to measure or observe their car's fuel consumption, the same is not true for emissions – CO₂ and more than 99 per cent of other (noxious) emissions are invisible.⁴¹⁶ This means that consumers who place value on the low emissions of their new car must be able to rely on representations made by manufacturers or dealers as they may have no other direct source for this information.

More broadly, well-informed consumers can play a role in promoting efficient and competitive markets by seeking out the goods and services that offer the best value, leading to lower prices or improved product quality overall. It is therefore important that consumers receive accurate information, including information about fuel consumption and emissions, when buying a new car.

This chapter, in relation to fuel consumption and emissions, will:

- outline the relevant regulatory framework
- identify the cause(s) of issues faced by consumers and discuss any impact these issues may have on competition, consumers and the market
- discuss potential outcomes of government reviews which address the issues identified, and options for regulatory reform.

6.1. Fuel consumption and emissions regulations

As noted in chapter 1, the ACL includes provisions prohibiting misleading or deceptive conduct which apply to the sale of new cars. In addition, the sale of new cars is regulated by the ADRs, which are administered by the Australian Government under the *Motor Vehicle Standards Act 1989* (Cth) (MVSA).

The ADRs set national standards for vehicle safety, anti-theft and emissions which apply to new cars manufactured in Australia or imported, and supplied to the Australian market.⁴¹⁷ The Department of Infrastructure and Regional Development (DIRD) is responsible for the development and review of the ADRs.

The following ADRs set standards relating to fuel consumption and emissions for new cars:

- ADR 81/02 – Fuel Consumption Labelling for Light Vehicles.
- ADR 79/04 – Emission Control for Light Vehicles

These standards are discussed further below.

ADR certification process

Before a car can be registered for the first time in Australia it must meet the requirements of the MVSA, which requires cars to meet the standards in the ADRs. The certification system for new cars is a type approval system. This means that a car representing the design of that make-model (the 'type' of vehicle) is tested to demonstrate compliance with the safety and emissions standard. If the car that was tested is compliant, then all others of the same design (or 'type') are also deemed to comply.⁴¹⁸

DIRD does not test cars to ensure compliance with the ADRs. Rather, the certification process allows manufacturers to conduct tests, provided mandated test procedures are

⁴¹⁶ Department of Transport and Main Roads (QLD), [Motor Vehicle Pollution](#), accessed 10 May 2017.

⁴¹⁷ DIRD, [Australian Design Rules](#), accessed on 23 March 2017.

⁴¹⁸ DIRD, [Vehicle Certification in Australia](#), accessed on 9 June 2017.

followed. Manufacturers must then provide test evidence of compliance. In this case, the evidence provided is subject to scrutiny by DIRD, including review of test results and quality assurance audits of the test and design facilities that are used in the ADR tests. Alternatively, they can provide confirmation that the test evidence and process has been undertaken by a recognised test service and approved by a Contracting Party to the United Nations 1958 Agreement on vehicle standards development and testing.⁴¹⁹

6.1.1. The fuel consumption label

Since 1 January 2001, new cars sold in Australia are required to display a fuel consumption label on the front windscreen.⁴²⁰ ADR 81/02 prescribes the requirements for the design and application of fuel consumption labels and for the measurement of fuel consumption, CO₂ emissions, energy consumption and range (for electric cars).⁴²¹

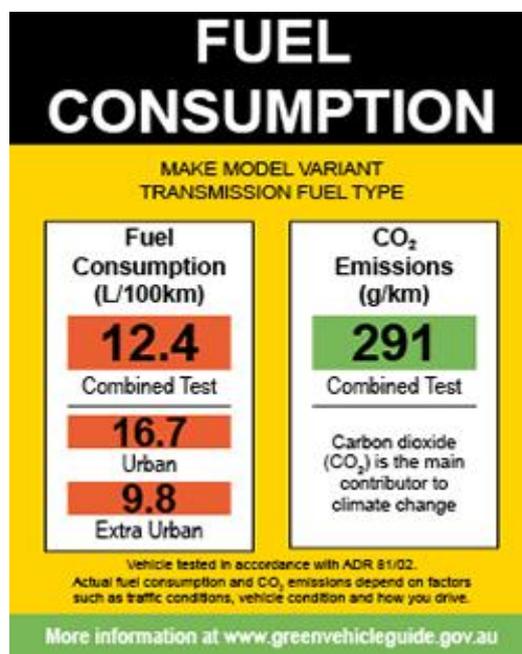
The fuel consumption label was a key element of the *Environmental Strategy for the Motor Vehicle Industry*, which aimed to limit greenhouse emissions from transport.⁴²² It was introduced to address a lack of easily accessible, model-specific information about fuel consumption and CO₂ emissions for new car buyers.⁴²³ The label is designed to help consumers make informed choices about the running costs and environmental impact of their new car.⁴²⁴

The fuel consumption label indicates a car's fuel consumption (L/100km) and CO₂ emissions (g/km). Electric cars are also required to display an energy consumption label, which shows the energy consumption in Watt hours/km and expected range when fully charged, in addition to fuel consumption and CO₂ emissions. The label includes measures for urban (city) and extra-urban (highway) driving conditions, as well as a combined figure.

The figures appearing on the label are based on a standard laboratory test procedure, with the aim of allowing consumers to compare the performance of different models under the same test conditions. This test is described further below.

6.1.2. Noxious emissions standards

Australia has had noxious emissions standards for new cars since the early 1970s.⁴²⁵ These standards have been progressively strengthened over the past 40 years, with the overall objective being to improve urban air quality and reduce the adverse impacts of air pollution



Source: Green Vehicle Guide, [Fuel consumption label](#), accessed 27 June 2017

⁴¹⁹ DIRD, Circular 0–1–2, [A guide to the Certification of New Vehicles—Type Approval](#), p. 3, accessed on 7 June 2017.

⁴²⁰ Australian Design Rule (ADR) 81/00 *Fuel Consumption Labelling for Light Vehicles* required that all new vehicles up to 2.7 tonnes gross vehicle mass (GVM) must carry a fuel consumption label on the windscreen at the point of sale.

⁴²¹ Vehicle Standard (Australian Design Rule 81/02 – Fuel Consumption Labelling for Light Vehicles) 2008.

⁴²² Australian Greenhouse Office, 1998, [The National Greenhouse Strategy: Strategic Framework for Advancing Australia's Greenhouse Response](#), p. 62.

⁴²³ Explanatory statement, [Vehicle Standard \(Australian Design Rule 81/10—Fuel Consumption Labelling for Light Vehicles\) 2005](#), para. 6.

⁴²⁴ Green Vehicle Guide, [Fuel consumption label](#), accessed on 27 June 2017.

⁴²⁵ DIRD, [Summary of Emission Standards for Light Petrol Vehicles in Australia \(1972–Present\)](#), accessed on 27 June 2017.

on human health.⁴²⁶ ADR 79/04 prescribes the current noxious emissions limits for light vehicles,⁴²⁷ as well as the test standards for measuring those emissions.

Noxious emissions standards in Australia reflect Australia's commitment as a signatory to the United Nations (UN) 1958 Agreement on vehicle standards development and testing, which provides for mutual recognition where UN Regulations are applied or accepted.⁴²⁸ The Australian Government's policy is to harmonise national vehicle safety standards (the ADRs) with the international regulations of the UN Economic Commission for Europe.⁴²⁹

The current UN regulations for noxious emissions for light and heavy vehicles are based on the 'Euro' standards adopted in the European Union (EU). For light vehicles, Australia has mandated Euro 5 noxious emissions standards (through ADR 79/04) for newly approved models first manufactured from 1 November 2013, and for all light vehicles manufactured from 1 November 2016.⁴³⁰

6.1.3. Fuel consumption labelling and emissions testing

ADR 79/04 outlines the single testing procedure for noxious emissions, as well as CO₂ emissions and fuel consumption. The current testing procedure is called the New European Driving Cycle (NEDC).

Under the NEDC, fuel consumption and emissions testing is conducted in an environmentally-controlled room or laboratory, where the car is driven through a specified 'drive cycle', which is a sequence of defined acceleration and braking processes designed to simulate typical driving conditions on the road.⁴³¹ The test is designed to be standardised and repeatable, such that the emissions and fuel consumption of different car models can be compared.⁴³²

However, no laboratory test can simulate all possible combinations of conditions experienced on the road: a number of variables can affect fuel consumption and emissions including traffic conditions, driver behaviour (e.g. harsh acceleration or braking) or car usage (e.g. loading, entertainment systems and air conditioner use).⁴³³

Fuel consumption testing is discussed further in section 6.3.1.

6.2. Claims about fuel consumption and emissions

As previously mentioned, official fuel consumption and emissions figures reported for new cars are often not reflective of what a motorist is able to achieve. As a result, the fuel consumption and emissions in real-world driving conditions will likely differ from those advertised. In the absence of appropriate qualification, consumers are likely to expect that they will achieve the fuel consumption and emissions figures represented by the manufacturer or dealer in normal driving conditions.

⁴²⁶ DIRD, [Vehicle Emissions Discussion Paper](#), February 2016, p. 6, accessed on 6 June 2017; Department of Infrastructure and Transport (now DIRD), [Final Regulation Impact Statement for Review of Euro 5/6 Light Vehicle Emissions Standards](#), p. 6, accessed on 7 June 2017.

⁴²⁷ Light vehicles include cars, sports utility vehicles, people movers, small buses, and light commercial vehicles such as vans and utes/light trucks, but do not include motorcycles.

⁴²⁸ DIRD, [Vehicle Emissions Discussion Paper](#), February 2016, p. 7, accessed on 6 June 2017.

⁴²⁹ DIRD, ADRs, <https://infrastructure.gov.au/roads/motor/design/>, accessed on 27 June 2017.

⁴³⁰ DIRD, [Vehicle Emissions Discussion Paper](#), February 2016, p. 7, accessed on 6 June 2017.

⁴³¹ Clean Fleets (EU), [Vehicle Test Cycles](#), July 2014, p. 1, accessed on 9 June 2017. The drive cycle is a simulated flat road, conducted in a laboratory, on a chassis dynamometer or 'rolling road', with the car on rollers so that the wheels rotate during the test, but the car itself remains stationary.

⁴³² MTASA submission, November 2016, p. 18.

⁴³³ Green Vehicle Guide, [Fuel consumption label](#), accessed on 8 June 2017.

The ACCC has identified the following issues in relation to fuel consumption and emissions in new cars: potentially false and misleading fuel consumption and emissions claims by dealers or manufacturers, insufficiently qualified claims about fuel consumption and emissions, and a lack of consumer understanding that fuel consumption and emissions values based on laboratory tests are intended for comparative purposes only.

6.2.1. False or misleading claims about fuel consumption and emissions

Fuel consumption and CO₂ emissions values for new cars are communicated to consumers in a number of ways, including through the mandatory label, by car dealers at the point of sale, on manufacturers' websites and in other general promotional material or documentation provided to consumers.⁴³⁴

Manufacturers and dealers do not generally promote a new car's low noxious emissions to the same degree as fuel consumption or CO₂ emissions.⁴³⁵ However, manufacturers may make claims about the 'environmentally friendly' nature of their cars (see the Volkswagen and Audi case study in box 6.2 below, for example). To avoid misleading consumers, businesses making these claims must be able to substantiate them.

Box 6.2: Case study – Claims against Audi and Volkswagen

On 1 September 2016, the ACCC instituted proceedings against German company Volkswagen Aktiengesellschaft (VWAG) and its Australian subsidiary, Volkswagen Group Australia Pty Ltd (VGA). Following this, on 8 March 2017, the ACCC instituted proceedings against Audi Aktiengesellschaft (Audi AG), its Australian subsidiary Audi Australia Pty Ltd (Audi Australia), and VWAG as knowingly concerned in the conduct of Audi AG and Audi Australia. These cases are being heard together in the Federal Court of Australia.

The ACCC alleges that VWAG, VGA, Audi AG and Audi Australia engaged in misleading or deceptive conduct, made false or misleading representations and engaged in conduct liable to mislead the public in relation to certain diesel vehicle emission claims.

The ACCC alleges that between 2011 and 2015:

- VWAG and Audi AG engaged in misleading conduct by not disclosing the existence and operation of 'defeat' software in certain Volkswagen- and Audi- branded vehicles. The software caused the vehicles to produce lower nitrogen oxide (NO_x) 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 NO_x emissions.
- VWAG and VGA engaged in misleading conduct by representing that the vehicles complied with all applicable regulatory requirements for road vehicles in Australia when, because of the defeat software, that was not the case. Similar allegations were made against Audi AG and Audi Australia.
- Using information provided by VWAG, VGA marketed the vehicles in Australia as being environmentally friendly, clean burning, low emission and complying with stringent European standards when this was not the case under normal driving conditions. Similar allegations were made with respect to Audi AG and Audi Australia.
- VWAG designed and supplied the engines and defeat software to Audi AG for installation in the affected vehicles.

The ACCC is seeking declarations, pecuniary penalties, corrective advertising, orders relating to the future use of findings of fact and costs.

Skoda-branded cars are also affected by the Volkswagen diesel emissions issue. The ACCC

⁴³⁴ FCAI submission, November 2016, p. 17, Mazda submission, November 2016, p. 4; VACC submission, November 2016, p. 9.

⁴³⁵ There is also no regulatory requirement to include noxious emissions on the fuel consumption label.

has decided not to pursue further action against Volkswagen (which owns the Skoda brand in Australia) at this time in relation to these Skoda vehicles, given the lower volume of sales in Australia.

In addition to the ACCC's action, private litigants have commenced class actions against Volkswagen in Australia. Five proceedings were initiated in late 2015, under the direction of two law firms and including claims against the Australian and overseas parent companies related to Volkswagen, Audi and Skoda.

Volkswagen's alleged conduct is also the subject of legal action around the world. In the United States, Volkswagen has already paid over USD\$20 billion as part of a settlement reached with regulators and consumers.⁴³⁶ Australian laws and emissions standards are different from those in the United States.

Volkswagen and Audi reject the ACCC's claims and are defending these proceedings in court.

Both manufacturers and dealers need to appropriately qualify claims

The ACCC is concerned that manufacturers and dealers are not always appropriately qualifying fuel consumption and emissions claims made to consumers.

As discussed in section 6.1, manufacturers are generally responsible for conducting fuel consumption and emissions testing to certify vehicle compliance with the relevant ADRs. Manufacturers may then provide this information to their dealers, for use in general promotional material and marketing or at the point of sale.⁴³⁷ The ACCC Consumer Survey indicates that 65 per cent of new car buyers used manufacturer's websites to inform their purchase, while 54 per cent of new car buyers spoke to a car dealer prior to their purchase.⁴³⁸ It is therefore important that both manufacturers and dealers ensure that the information they provide to consumers on these issues is accurate.

In submissions to this study, stakeholders have stated that manufacturers have processes in place to train or educate dealership staff about fuel consumption and emissions.⁴³⁹ The FCAI and individual manufacturers also submitted that references to fuel consumption and emissions are commonly qualified by a statement explaining that the values quoted are comparative and may vary depending on a number of factors, including those described above.⁴⁴⁰ However, ACCC research suggests that representations made by manufacturers on their websites are not always sufficiently or consistently qualified (see box 6.3 below).

If manufacturers or dealers use the NEDC figures for purposes other than the mandatory label under ADR81/02, they should qualify the figures by explaining to consumers:

- how the displayed figures are calculated
- that they will not necessarily achieve those figures in real-world driving
- that the figures should only be used for comparison.

⁴³⁶ This includes USD\$4.3 billion in civil and criminal fines, nearly USD\$15 billion as part of a civil settlement with US environmental authorities and VW car owners, and USD\$1.2 billion in a settlement with VW authorised dealers. See: D. Shepardson, 'EPA official says Volkswagen diesel scandal deterrent to auto industry,' *Reuters*, 25 January 2017, viewed 10 May 2017; N.E. Boudette, 'VW to Pay \$1.2 billion to U.S. Dealers Hurt by Diesel Scandal', *The New York Times*, 25 August 2016, viewed 10 May 2017.

⁴³⁷ AADA submission, November 2016, p. 29; VACC submission, November 2016, p. 9.

⁴³⁸ ACCC Consumer Survey, Figure 5: Sources used to research car purchase, p. 14.

⁴³⁹ AADA submission, November 2016, p. 28; FCAI submission, November 2016, p. 18; Toyota submission, November 2016, p. 3; VACC submission, November 2016, p. 9.

⁴⁴⁰ FCAI submission, November 2016, p.17; Mazda submission, November 2016, p. 4; Toyota submission, November 2016, p. 3.

Box 6.3: Case study – Second ACCC review of manufacturer and importer fuel consumption communications

In March 2016, following a number of complaints received from consumers about cars failing to achieve advertised fuel consumption levels, the ACCC reviewed communications relating to fuel consumption by manufacturers, importers and dealers.

This was because the ACCC was concerned that if manufacturers or dealers used unqualified NEDC figures more broadly in advertising and marketing, they may mislead consumers into believing that the car would achieve fuel consumption levels that it would not.

The ACCC wrote to a range of car manufacturers and importers explaining its concerns and informing them 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.

In February 2017, the ACCC completed a second review of communications relating to fuel consumption by manufacturers, importers and dealers. The ACCC found an improvement in a number of fuel consumption representations being adequately qualified, with references to real-world driving conditions and their comparative purpose. However, a number of manufacturers continued to represent fuel consumption figures with inconsistent or insufficient qualification (see examples below).

Efficiency, Economy, Enjoyment

The new [redacted] Euro 6 diesel engine is equipped with the latest generation 6-speed fully automatic gearbox and an [redacted] Treatment System, which sharply reduces fuel consumption, CO2 emissions, while increasing engine performance – reaching a remarkable 4.5L/100Km.

▼ Fuel (as per ADR 81/02)

Fuel Type	Diesel
Consumption (l/100km Extra Urban)	6.8
Consumption (l/100km Combined)	7.8
Consumption (l/100km Urban)	9.9
CO2 Emissions (l/100km Combined)	205

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

Many consumers do not understand existing qualifications

Submissions and complaints to the ACCC suggest that consumers are not sufficiently made aware that fuel consumption and emissions values are not intended to represent what consumers will actually attain in real-world driving.

Box 6.4 below presents a sample of responses to an online ACCC questionnaire from consumers and small businesses.⁴⁴¹ These examples indicate that some consumers and small businesses are unaware that the advertised fuel consumption values are intended for comparative purposes only. As some of these consumers and small businesses also indicated that they received information from the fuel consumption label,⁴⁴² it appears that even where fuel consumption and emissions values are accompanied by a qualification, the use of any absolute fuel consumption figure may lead some consumers to believe that they will achieve similar results when driving.

The ACCC accepts that no laboratory test is likely to perfectly predict a consumer's actual fuel consumption or emissions. However, unless the level of discrepancy between laboratory and real-world results is low (see section 6.3), absolute fuel consumption representations may mislead consumers, even when qualified.

Box 6.4: Sample of responses to ACCC Consumer and Small Business Online questionnaire

Question 5: Were there differences between what you were told about your new car's fuel consumption...and its actual fuel consumption?⁴⁴³

Consumer 19 – Yes, not getting the fuel consumption they say can be achieved

Consumer 34 – Claimed 7.7 Urban, 5.2 Extra Urban, 6.1 Combined. We don't do much urban driving but Extra Urban is over 7.2.

Consumer 44 – Fuel consumption tends to always be more that [sic] stated on new cars. I feel that this is deceptive

Consumer 54 – Yes. The published figures are consistently below real word fuel consumption. I understand this is pretty standard across all makes and models.

Consumer 64 – Fuel economy is not even close to the documented figures despite best efforts. Our actual numbers are approaching 50 per cent or more.

Consumer 80 – Yes, I received better fuel consumption figures than what I was told to expect

Small Business 150 – Yes a big difference have never been able to match it

Small Business 190 – Yes, the [fuel consumption] stickers are incorrect.

Small Business 199 – yes it uses more fuel than I was told

⁴⁴¹ As part of its consultation process for this study, the ACCC conducted an [online questionnaire](#). The online questionnaire was a streamlined process designed for consumers and small businesses to make a submission.

⁴⁴² ACCC [Consumer questionnaire responses](#), Consumers 19 and 54, Small Businesses 150, 190 and 199.

⁴⁴³ Question 5 asked 'Were there differences between what you were told about your new car's fuel consumption, emissions and performance and its actual fuel consumption, emissions and performance?' However, most responses to this question related to fuel consumption.

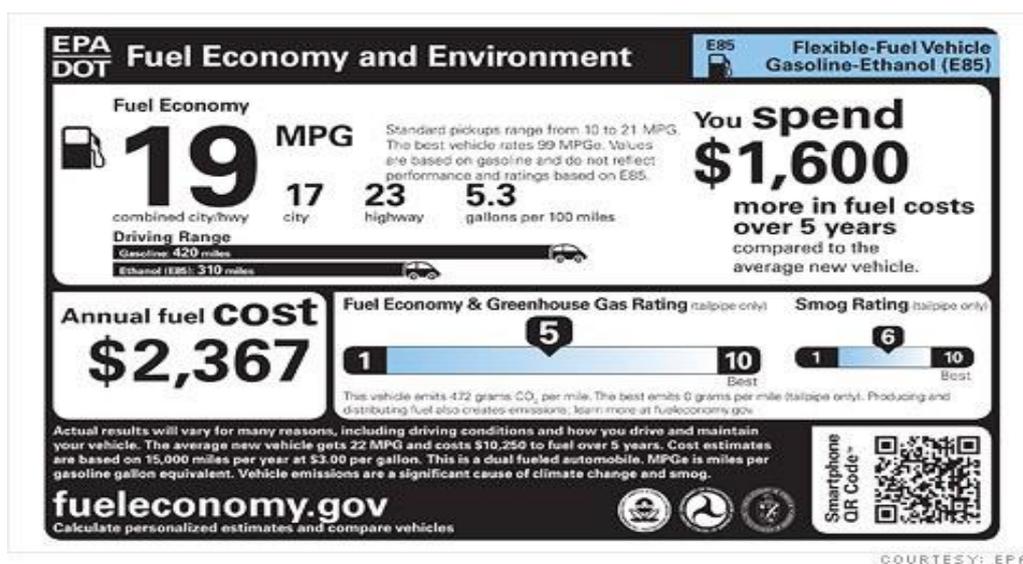
6.2.2. Options for regulatory reform

As discussed, fuel consumption and emissions figures are intended for comparative purposes. However, this information is based on standard laboratory tests and does not necessarily reflect real-world driving conditions. As noted in stakeholder submissions to the market study, fuel consumption and emissions values may even be of little *comparative* use to consumers when they differ significantly from consumers' driving experience.⁴⁴⁴

The ACCC notes the AAA's recommendation to present information on the fuel consumption label in a way that is more readily digestible for consumers, for example by including a star rating system or annual operating costs.⁴⁴⁵ This has been implemented in some overseas jurisdictions (see figures 6.2 and 6.3 for example). Introducing a star rating or similar system, and/or annual operating costs, may minimise the extent to which consumers interpret an 'absolute' fuel consumption/emissions value as equivalent to what they would achieve in real-world driving conditions, as well as more readily allowing them to compare fuel consumption and emissions across models.

The ACCC also notes that the Australian Government has established a Ministerial Forum to coordinate a whole-of-government approach to addressing vehicle emissions, and is considering measures to encourage the uptake of low emissions vehicles (see section 6.3.2).

Figure 6.2: US Fuel consumption label

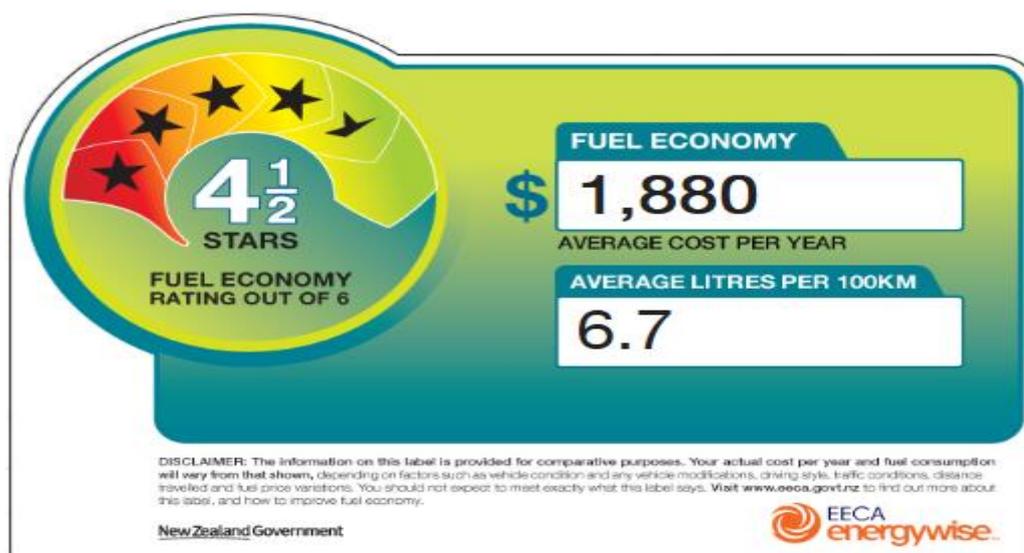


Source: AAA submission, November 2016, p. 24

⁴⁴⁴ ABMARC submission, November 2016, p. 10; CHOICE submission, November 2016, p. 7.

⁴⁴⁵ AAA submission, November 2016, p. 24.

Figure 6.3: New Zealand fuel consumption label



Source: Energy Efficiency and Conservation Authority (New Zealand), [Vehicle fuel economy labels](http://www.eeca.govt.nz), accessed 27 June 2017.

Draft findings on fuel consumption and emissions claims

- Fuel consumption is a significant factor for consumers when buying a car, second only to price and model. The environmental impact of new cars is also important to one in five consumers. For this reason, new car buyers need to be able to rely on the accuracy of claims made by manufacturers and dealers about the fuel consumption and emissions of particular car models.
- Representations to consumers about fuel consumption and emissions are made by manufacturers and dealers in a variety of ways. While they have no discretion about displaying mandatory labels, they do control claims made in promotional and advertising materials or at the point of sale. ACCC research for this study indicates that manufacturers are not always appropriately qualifying these claims, and that many consumers believe that advertised fuel consumption and emissions figures are likely to be attained in real-world driving conditions, when this is not the case.
- In addition, some consumers may not understand that fuel consumption and emissions values are intended for comparative purposes only. Even when representations are qualified, these consumers may still believe that the advertised figures will be attained.

Request for further information

The ACCC welcomes views on whether general consumer education or awareness initiatives about how fuel consumption and CO₂ emissions are measured (and what factors influence them) should be considered.

Draft recommendations on fuel consumption and CO₂ emissions claims

Draft recommendation 6.1

Changes to the fuel consumption label affixed to new cars should be considered to improve the comparative use of the information supplied. Introducing a star-rating system or annual operating costs may minimise the extent to which consumers interpret an 'absolute' fuel consumption/emissions value as equivalent to what they would achieve in real-world driving conditions.

6.3. Addressing the gap between test and real-world outcomes

Submissions to this study raised concerns about the gap between officially-reported (NEDC) and real-world fuel consumption, CO₂ emissions and noxious emissions, with the latter significantly exceeding legislated limits in some cases.⁴⁴⁶ This issue has also received significant media interest, particularly following the revelations in relation to Volkswagen.⁴⁴⁷

As already noted, official fuel consumption and emissions figures reported for new cars are often not reflective of what an individual motorist is able to achieve, as these measures depend on the specific conditions under which the car is driven. However, stakeholder submissions point to evidence of a systemic fuel consumption and emissions discrepancy.⁴⁴⁸ This discrepancy is said to be inconsistent across car models, and be increasing in recent years.⁴⁴⁹

Box 6.5: Case study – AAA real-world driving research shows significant fuel consumption gap

The AAA and ABMARC are currently running an Australian pilot of real driving emissions testing.⁴⁵⁰ The program is measuring the fuel consumption and emissions produced by 30 vehicles when driven on Australian roads, and comparing these results with those produced under laboratory conditions.

The program's interim report, based on 17 vehicles tested so far,⁴⁵¹ found that:

- CO exceeded statutory limits in 20 per cent of petrol vehicles tested (two out of ten vehicles). These cars emitted more than three times the laboratory limit for CO
- NO_x exceeded statutory limits in 83 per cent of diesel vehicles tested (five out of six vehicles). The highest of these emitted almost nine times the limit for NO_x
- particulate matter exceeded statutory limits in one out of six vehicles. This car emitted 40 per cent more CO than the laboratory limit.

In addition, the AAA and ABMARC found that 16 out of 17 cars tested had fuel consumption levels that exceeded official laboratory results. Fuel consumption was on average 25 per cent higher than the NEDC results. However, there was significant variation among the cars tested, with the discrepancy ranging from 1 per cent to 60 per cent, across a range of fuel types, technology levels, and vehicle emissions standards.

The AAA expects final results from the test program to be available in mid-2017.

This section considers the causes of the fuel consumption and emissions gap and options for regulatory reform.

⁴⁴⁶ ABMARC submission, November 2016, p. 8; CHOICE submission, November 2016, p. 7.

⁴⁴⁷ See: R. Blackburn, '[We need to change fuel consumption testing](#),' *CarsGuide*, 26 December 2015, viewed 10 May 2017; E. Han, '[Volkswagen scandal: Choice car test points to other fuel guzzlers](#),' *Sydney Morning Herald*, 1 October 2015, viewed 8 May 2017.

⁴⁴⁸ For example, CHOICE's submission, November 2016, p. 5 notes data published by UK consumer group Which? in April 2015 showed that 98 per cent of 200 vehicles tested over the preceding two years could not match or exceed their advertised fuel consumption.

⁴⁴⁹ ABMARC submission, November 2016, p.8; CHOICE submission, November 2016, p. 7; International Council on Clean Transport (ICCT), '[From laboratory to road: A 2015 update of official and "real-world" fuel consumption and CO₂ values for passenger cars in Europe](#)', pp. 8-17, 25 September 2014, viewed 10 May 2017.

⁴⁵⁰ AAA submission, November 2016, p. 25; CHOICE submission, November 2016, pp. 8-9.

⁴⁵¹ AAA supplementary submission, March 2017.

6.3.1. Limitations of the NEDC drive-cycle test

The NEDC was developed in the 1970s as a tool to measure nitrogen dioxide emissions from cars: it was not originally designed to measure fuel consumption or CO₂ emissions. Although the NEDC has since been amended to measure fuel consumption and CO₂ emissions, it has not been modified to reflect changes in modern driving behaviour and the technological advances made in the automobile sector.⁴⁵² Stakeholder submissions to this study identified the NEDC laboratory test as the cause of the fuel consumption and emissions discrepancy.⁴⁵³

Critics of the NEDC argue that its results are often not reflective of what the motorist is able to achieve, due in part to the drive cycle not being reflective of driving conditions today.⁴⁵⁴ For example, the test is conducted with the air conditioning, lighting, and electrical accessories all switched off, and with a specified 'reference fuel' (rather than the most common fuel type).⁴⁵⁵

Driving and driving styles have also changed in the years since the NEDC was developed, particularly in cities where increased traffic congestion results in more inefficient driving. The NEDC is criticised for having accelerations that are very soft, a lot of constant speed cruises and a lot of idle events, as these do not correspond to modern driving conditions.⁴⁵⁶

The discrepancy is not uniform across car brands or types, and has been increasing over time

In submissions to this study, stakeholders also noted that the magnitude of the fuel consumption and emissions discrepancy has been gradually increasing in recent years and is not uniform across brands or car types.⁴⁵⁷ ABMARC submitted that in Europe, the discrepancy has grown from an estimated 10 per cent in 2010 to 35 per cent in 2014 and that 'it is not possible to provide a generalisation, at the individual vehicle level, of a difference between real-world and official fuel consumption or CO₂ results'.⁴⁵⁸ A number of studies into the fuel consumption gap have found similar results.⁴⁵⁹

These factors do not entirely explain increases and variation in the fuel consumption discrepancy. Other contributing factors may include:

- Manufacturers exploiting 'flexibilities'⁴⁶⁰ in the NEDC procedure, resulting in better fuel consumption and CO₂ emissions test results than drivers can typically achieve. These flexibilities occur when procedural steps are not defined precisely and allow for some freedom of interpretation. For example:
 - the specifications of tyres used in the test could be different from tyres typically available to consumers, or the tyre pressure applied during the test could be

⁴⁵² ABMARC submission, November 2016, p. 5; ABMARC, [Analysis of the Australian 2015 New Light Vehicle Fleet and Review of Technology to Improve Light Vehicle Efficiency: Study for Department of Infrastructure and Regional Development](#), December 2016, p. 50.

⁴⁵³ AAA submission, November 2016, p. 25; ABMARC submission, November 2016, p. 5.

⁴⁵⁴ ABMARC submission, November 2016, p. 5.

⁴⁵⁵ AAA submission, November 2016, p.23; GreenCarGuide.co.uk, [How does the new European driving cycle \(NEDC\) fuel economy test work?](#), 29 April 2014.

⁴⁵⁶ ABMARC submission, November 2016, p. 5; Car Engineer, [European driving cycles](#), 1 May 2015, accessed 8 June 2017.

⁴⁵⁷ ABMARC submission, November 2016, p. 8; CHOICE submission, November 2016, p. 7.

⁴⁵⁸ ABMARC submission, November 2016, pp. 8, 10.

⁴⁵⁹ G. Fontaras, N.-G. Zacharof, B. Ciuffo, [Fuel consumption and CO₂ emissions from passenger cars in Europe – laboratory versus real-world emissions](#), Progress in Energy and Combustion Science, 60 (2017), p. 102.

⁴⁶⁰ The term flexibility refers to a specific provision or interpretation of the certification procedure or an absence of such a provision or clear interpretation that, if applied, results in the measurement of lower FC or emissions. See G. Fontaras, N.-G. Zacharof, B. Ciuffo, [Fuel consumption and CO₂ emissions from passenger cars in Europe – laboratory versus real-world emissions](#), Progress in Energy and Combustion Science, 60 (2017), p. 120.

- higher than typically observed for vehicles at the point of sale.⁴⁶¹
- engine parts may be lubricated using ‘super-lubricants’ that are not supplied at the point of sale or are prohibitively expensive for most consumers.⁴⁶²
 - Manufacturers using specific fuel-saving technologies that improve fuel consumption and CO₂ emissions performance during the NEDC. These technologies include start/stop, hybrid drive and downsized engines.⁴⁶³

Given the wide range of conditions under which cars are driven, it is unlikely that any single test could accurately predict fuel consumption and emissions for individual motorists. However, for consumers to reliably use fuel consumption and emissions results to inform their purchasing decisions, testing procedures must meet consumer expectations and reflect real-world driving conditions. Further, for test results to be reliable and consistent, flexibilities and tolerances in the test procedure should be limited.

6.3.2. Options for regulatory reform

The ADR 81/02 fuel consumption label was introduced to allow consumers to make more informed decisions about the running costs and environmental impact of new cars. However, the label may be of limited use where the values represented are not reflective of real-world driving conditions. The fuel consumption and emissions discrepancy diminishes the effectiveness of the fuel consumption label in assisting car buyers to make informed purchasing decisions, particularly where the discrepancy is inconsistent across car models.⁴⁶⁴ In particular, the presence of a non-uniform discrepancy means that consumers cannot rely on NEDC figures to compare fuel consumption or emissions between one model and another.

Similar concerns apply to the discrepancy for noxious emissions. ADR 79/04 was introduced in recognition of the fact that noxious emissions are an externality which can lead to significant health impacts, particularly in urban areas, and which is not effectively addressed by the operation of market forces.⁴⁶⁵ Where the testing discrepancy results in real-world noxious emissions exceeding legislated limits, this will undermine the broader policy objectives sought to be achieved by introducing noxious emissions standards, resulting in lower than expected improvements in measures such as air quality and health outcomes.

Stakeholder submissions have recommended that an independent testing process be introduced to ensure that cars meet relevant standards, and that fuel consumption and emissions are measured in real-world driving conditions.⁴⁶⁶ Further, the Australian Government’s Ministerial Forum on Vehicle Emissions is exploring a range of possible measures to address vehicle emissions.⁴⁶⁷ These options are discussed further below.

⁴⁶¹ ICCT, [From laboratory to road: A comparison of official and real-world fuel consumption and CO₂ values for cars in Europe and the United States](#), May 2013, accessed 8 June 2017, p. 60.

⁴⁶² ICCT, [From laboratory to road: A comparison of official and real-world fuel consumption and CO₂ values for cars in Europe and the United States](#), May 2013, accessed 8 June 2017, p. 60; G. Fontaras, N.-G. Zacharof, B. Ciuffo, [Fuel consumption and CO₂ emissions from passenger cars in Europe – laboratory versus real-world emissions](#), *Progress in Energy and Combustion Science*, 60 (2017), p. 120.

⁴⁶³ ABMARC submission, November 2016, p. 8; ICCT, [From laboratory to road: A comparison of official and real-world fuel consumption and CO₂ values for cars in Europe and the United States](#), May 2013, accessed 8 June 2017, p. 59.

⁴⁶⁴ Worse, the discrepancy may be causing consumers to lose faith in the value of the label as a source of information. See for example, ACCC [Consumer questionnaire responses](#), Consumer 12.

⁴⁶⁵ DIRD (then the Department of Infrastructure and Transport), [Final Regulation Impact Statement for Review of Euro 5/6 Light Vehicle Emissions Standard](#), p. 21, November 2010, accessed on 6 June 2017.

⁴⁶⁶ AAA submission, November 2016, p. 23; CHOICE submission, November 2016, p.9; ABMARC submission, November 2016, p. 7.

⁴⁶⁷ DIRD, [Ministerial Forum on Vehicle Emissions](#), accessed on 6 June 2017.

Real driving emissions testing and independent testing

In submissions to this study, some stakeholders have recommended that fuel consumption and emissions be measured in real-world driving conditions, as opposed to the current regulations which rely solely on a laboratory test.⁴⁶⁸

Real-world measurement of fuel consumption and emissions is likely to produce more accurate test results. Real-world testing may also limit the ability of manufacturers to implement defeat devices, or other emissions reduction technologies that are more effective on the test drive cycle than in real-world use.⁴⁶⁹

In their submission, the FCAI states that without a standardised test for fuel consumption and emissions, the variation between test results would be significant.⁴⁷⁰ Unlike real driving emissions testing, the NEDC is able to control for a number of factors that may affect test results, such as individual driving styles, road and traffic conditions or weather/temperature. As submitted by the MTA SA, it is therefore important that consistency of testing be ensured and that the parameters of real-world conditions be defined.⁴⁷¹

In submissions to this study, CHOICE and the AAA recommend that an independent testing process be introduced to ensure that cars on Australian roads meet relevant standards, rather than rely on manufacturers' own testing.⁴⁷² However, as DIRD has the ability to conduct audits and inspections on a manufacturer's testing facilities, the ACCC considers that current regulations should be sufficient to ensure compliance if effectively enforced.

Ministerial Forum on Vehicle Emissions

In October 2015, a Ministerial Forum was established to coordinate a whole-of-government approach to addressing motor vehicles emissions. The terms of reference for the Ministerial Forum cover a number of options to reduce fuel consumption and greenhouse gas emissions and pollution from cars, including:

- introducing fuel efficiency (CO₂) measures for new light vehicles as well as tighter noxious emissions standards under Euro 6
- new emissions testing arrangements for vehicles in conjunction with international regulatory agencies to ensure robust testing.⁴⁷³

The Ministerial Forum is also considering measures to encourage the uptake of low emissions vehicles.

Euro 6

The current emissions standards for new light vehicles in Australia are based on the Euro 5 standards. The more stringent Euro 6 standards commenced in the EU from September 2014, with the next phase of these standards ('Euro 6d'), due to commence in the EU in September 2017.⁴⁷⁴

Euro 6d will introduce changes to improve the integrity of the testing regime, with the key change being the replacement of the current drive cycle testing regime (the NEDC) with the new Worldwide Harmonised Light Vehicles Test Procedure (WLTP). The WLTP defines test

⁴⁶⁸ AAA submission, November 2016, p. 23; CHOICE submission, November 2016, p.9; ABMARC submission, November 2016, p. 7.

⁴⁶⁹ AAA supplementary submission, March 2017, p. 4.

⁴⁷⁰ FCAI submission, November 2016, p. 17.

⁴⁷¹ MTASA submission, November 2016, p. 18.

⁴⁷² AAA submission, November 2016, p. 23; CHOICE submission, November 2016, p. 9.

⁴⁷³ DIRD, [Ministerial Forum on Vehicle Emissions](#).

⁴⁷⁴ DIRD, [Vehicle emissions standards for cleaner air –Draft Regulation Impact Statement](#), December 2016, p. 3.

procedures for fuel consumption and emissions which are more representative of real-world driving conditions, for example, it includes more robust testing parameters, such as a longer drive cycle, and higher maximum and average speeds than the current NEDC test.⁴⁷⁵

The Euro 6d standard introduces an on-road real driving emissions test to complement the WLTP laboratory test.⁴⁷⁶ These measures are expected to improve the correlation between laboratory tested and on-road emission levels.⁴⁷⁷

Draft findings on the fuel consumption and emissions discrepancy

- Current fuel consumption and emissions testing procedures rely on laboratory testing rather than testing in real-world driving conditions. Manufacturers may therefore claim results for fuel consumption and emissions based on laboratory tests that are significantly better than can be achieved in real-world driving conditions. This is unlikely to meet consumer expectations and has the potential to be misleading.
- Research from the AAA and ABMARC indicates that real-world fuel consumption is on average 25 per cent higher than official laboratory test results. The gap between laboratory and real-world fuel consumption tests is not consistent across car types or brands, and has been increasing in recent years. This casts significant doubt on the comparative value of absolute fuel consumption figures currently displayed in fuel consumption labeling.
- The Australian Government is currently reviewing possible new measures to address vehicle emissions under the Ministerial Forum on Vehicle Emissions. The Forum is considering a number of measures to improve the integrity of vehicle emissions testing, including the introduction of a more realistic laboratory test for fuel consumption and emissions, and for vehicle emissions, on road testing.

Draft recommendations on the fuel consumption and emissions discrepancy

Draft recommendation 6.2

The ACCC supports measures to enhance the quality of information supplied to consumers currently being considered by the Ministerial Forum into Vehicle Emissions, including the replacement of the current fuel consumption and emissions testing regime with the new Worldwide Harmonised Light Vehicles Test Procedure, a more realistic laboratory test, and the introduction of an on-road 'real driving emissions' test.

⁴⁷⁵ ICCT, [The WLTP: How a new test procedure for cars will affect fuel consumption values in the EU, Working Paper 2014-9, October 2014](#), p. 7.

⁴⁷⁶ ICCT, [Real-Driving Emissions test procedure for exhaust gas pollutant emissions of cars and light commercial vehicles in Europe](#), January 2017, p. 1.

⁴⁷⁷ DIRD, [Vehicle emissions standards for cleaner air –Draft Regulation Impact Statement](#), December 2016, p. 4.

7. Other issues

Key points

- This study considered a number of additional issues, including telematics in cars, car performance and the advertised year of a new car.
- The impact of access to telematics may become more acute as the technology to gather data becomes more prevalent in new cars. The ACCC supports moves for a comprehensive right for consumers to access digitally held data about themselves, including to direct data custodians (such as car manufacturers) to copy that data to a nominated third party.
- In relation to misleading claims about car performance, submissions to this study have not provided evidence that this issue is systemic. The ACCC's initial view is that current laws prohibiting false, misleading and deceptive conduct provide adequate consumer protection in relation to this issue.
- The issue of how the advertised year of a new car is communicated to consumers is within the scope of this study, and the ACCC has considered whether misrepresentations are causing detriment to consumers. The ACCC's initial view is that detriment is not widespread and that instances of misleading or deceptive conduct can be addressed through action by the ACCC and fair trading agencies.
- The ACCC has also received submissions on a number of issues outside the scope of this study. These issues are noted in this chapter. In addition, other issues that are subject to enforcement action are referred to in this chapter.

This chapter looks at other issues that stakeholders have raised as part of submissions to this study.

As outlined in chapter 1, the market study has not considered direct or parallel imports of new cars by individuals, car financing and insurance products, product safety, demonstrator cars and capped price servicing.

This chapter outlines and addresses:

- emerging issues associated with telematics in new cars
- issues faced by consumers in relation to new car performance representations
- issues faced by consumers in relation to the advertised year of a new car
- stakeholders' submissions on issues additional to those outlined in the Issues Paper.

7.1. Telematics – an emerging issue

Telematics is an emerging technology in passenger cars, which can record data, both within the car and remotely, including data related to location, acceleration, deceleration and travel speed.⁴⁷⁸ Telematics technology will likely allow the car to interpret data and indicate whether the driver needs to take action;⁴⁷⁹ for example, the car's on-board diagnostics may identify a fault, combine this with information about the car's location, and suggest through the infotainment unit that the driver should take the car to the nearest dealer for repairs.⁴⁸⁰ The ACCC understands that at present telematics is not widely used in passenger cars.⁴⁸¹ However, this technology is becoming more prevalent in heavy vehicles and road freight, to the extent the National Transport Commission (NTC) has developed a framework for the use of telematics in these types of vehicles.⁴⁸²

The ACCC received a small number of submissions about telematics:

- The AAA submitted that telematics allow the manufacturer to communicate directly with the car owner, perhaps scheduling a service or repair for the car at a dealer, bypassing the independent sector, which may raise competition concerns.⁴⁸³ The AAA submitted that consumers should be able to access and control the data generated by their use of the car.⁴⁸⁴
- The AAAA submitted that data generated by the use of a car should also belong to the car owner.⁴⁸⁵
- Bapcor submitted that telematics is a method for manufacturers to restrict customer service options.⁴⁸⁶
- CHOICE submitted that data collected by a car should only be exported with the car owner's consent.⁴⁸⁷
- Holden submitted that in relation to new features, such as telematics, the industry must ensure the sharing of information and data does not compromise the security and safety of the car.⁴⁸⁸

The AAA, AAAA and MTAA all submitted that the Heads of Agreement (discussed in chapter 4) contemplated the implications of telematics, and indicated that the signatories may develop protocols relating to consumer access and ownership of car generated data; however, this has not yet occurred.⁴⁸⁹

The PC's Data Availability and Use Inquiry Report considered issues around consumer access to digitally held data about themselves, which includes data collected by telematics devices.⁴⁹⁰ The PC has proposed a comprehensive consumer right to share and receive a

⁴⁷⁸ NTC, Compliance and enforcement framework for heavy vehicle telematics, November 2014; PC, Data Availability and Use: Inquiry Report, March 2017.

⁴⁷⁹ For a further explanation about telematics and the nature of 'connected cars', see AAA, *My Car My Data*, viewed on 29 June 2017, <https://mycarmydata.com.au/>.

⁴⁸⁰ Adapted from: AAA submission, November 2016, p. 28; AAAA submission, November 2016, p. 73; Anonymous business 1, November 2016, p. 2.

⁴⁸¹ AAA, *My Car My Data*, viewed on 30 June 2017, <https://mycarmydata.com.au/>.

⁴⁸² NTC, Compliance and enforcement framework for heavy vehicle telematics, November 2014.

⁴⁸³ AAA submission, November 2016, p. 28.

⁴⁸⁴ AAA submission, November 2016, p. 28.

⁴⁸⁵ AAAA submission, November 2016, pp. 44, 73.

⁴⁸⁶ Bapcor submission, November 2016, p. 4.

⁴⁸⁷ CHOICE submission, November 2016, p. 10.

⁴⁸⁸ GM Holden submission, November 2016, p. 15.

⁴⁸⁹ AAA submission, November 2016, p. 32; AAAA submission, November 2016, p. 74; MTAA supplementary submission, November 2016, p. 7.

⁴⁹⁰ PC, Data Availability and Use: Inquiry Report, March 2017.

machine readable form of data held about them, including data created from consumers' use of internet-connected digital devices,⁴⁹¹ such as telematics.

The impact of access to technical information and personal data related to telematics is likely to become more acute as the technology to gather data becomes more prevalent in new cars. The ACCC therefore supports the PC's recommendations in its final report on Data Availability and Use for a comprehensive consumer right to access digitally held data about themselves, including to direct data custodians (such as car manufacturers) to copy that data to a nominated third party. The ACCC considers the PC's recommendations would help ameliorate the potentially detrimental impact of telematics technology on both consumers' access to data about their cars and competition more generally.⁴⁹²

Draft findings on telematics

- The impact of telematics on competition and consumers is likely to become more acute as telematics technology becomes more prevalent. The ACCC will continue to monitor emerging issues in this area.
- The voluntary Heads of Agreement and codes of practice governing information-sharing in relation to technical information provides a process, as yet unused, for the signatories to discuss issues associated with access and ownership of data generated by telematics technology.

Draft recommendation on telematics

Draft recommendation 7.1

The ACCC supports the PC's recommendations in its final report on Data Availability and Use for a comprehensive right for consumers to access digitally held data about themselves, including to direct data custodians to copy that data to a nominated third party, which may address some of the concerns that were raised about the impacts of telematics technology on new car purchasers.

7.2. Car performance

The ACCC has considered the issue of false or misleading claims relating to car performance.

Box 7.1: Definition of car performance

There is no standard definition for **car performance**.

Car performance refers broadly to a range of objective operational performance measures, such as engine capacity or power, or towing and carrying capacity. However, car performance may also refer to more subjective measures, such as the way a car drives, in terms of its handling and precision, or a car's reliability and quality.⁴⁹³

⁴⁹¹ PC, Data Availability and Use: Inquiry Report, March 2017, pp. 35–36.

⁴⁹² ACCC, Submission to the PC's Data Availability and Use Inquiry, 11 January 2017.

⁴⁹³ FCAI submission, November 2016, p. 18.

The ACCC received a small number of submissions to the Issues Paper in relation to car performance. These submissions raised concerns about potentially misleading claims, at the point of sale or in advertising, in relation to the performance of new cars.⁴⁹⁴ The following were given as examples:

- A dealer or manufacturer refers to the towing capacity of a car which may not correspond correctly to all models in that particular range of cars, with the highest or ‘top of the line’ towing capacity generally quoted.⁴⁹⁵
- Advertising depicts a car being driven off-road or through water while the car itself is designated a passenger vehicle, such that any off-road use could void certain warranty cover.⁴⁹⁶

As previously discussed, the ACL prohibits businesses from engaging in conduct that is false, misleading or deceptive. Businesses must not make statements or representations that are incorrect or likely to create a false impression.⁴⁹⁷

As new cars are a significant medium to long-term investment for many consumers, any false or misleading claims which influence consumer purchasing decisions are likely to cause consumer detriment. Research indicates that 39 per cent of consumers considered car performance when buying their new car; as compared with the car’s reliability and safety features, which were considered by 54 per cent and 53 per cent of new car buyers respectively.⁴⁹⁸

Submissions to this study did not suggest that misleading claims about car performance are widespread or systemic. Notwithstanding this, as consumer purchasing decisions may be influenced by representations relating to a car’s performance, the ACCC will continue to monitor complaints about these issues.

Draft findings on car performance

- Submissions to this study have pointed to a few examples of misleading claims in relation to car performance. However, submissions have not provided evidence that this issue is systemic.
- The current laws prohibiting false, misleading and deceptive conduct under the ACL provide adequate consumer protection in relation to this issue.

7.3. Representations about the advertised year of a new car

The ACCC and some state and territory consumer agencies have received complaints regarding manufacturers and dealers using different reference dates to describe the advertised year of a new car for sale. When a new car is advertised, the seller may reference the car’s build date or compliance date. Manufacturers and dealers may also refer to the new car’s model year. These terms are defined in box 7.2 below.

⁴⁹⁴ Carsales submission, November 2016, p.8; Destroy My Jeep submission, November 2016, p.5; AAAA submission, November 2016, p.28; SBDC submission, November 2016, p. 4.

⁴⁹⁵ AAAA submission, November 2016, p. 28; SBDC submission, November 2016, p. 4.

⁴⁹⁶ Destroy My Jeep submission, November 2016, p. 5.

⁴⁹⁷ CCA, Part 2-1, s.18 and 29.

⁴⁹⁸ ACCC Consumer Survey, Appendix 1, Table 1, p. 5.

Box 7.2: New car year

The **build date** or year refers to when the car was manufactured. The build date contains the VIN and the year of manufacture by months and year. This date is typically used to determine the age of a car (including second hand cars).

The **compliance date** is the date the car is fitted with a compliance plate. The compliance plate shows the date when the car was deemed to comply with the ADRs and was approved for sale in Australia.

The **model year** is a marketing term, indicating the model cycle or edition of the car. Model years are not aligned with calendar years, so that (for example) 2018 model vehicles will be released for sale in 2017. Further, a car model manufactured at the start of 2017 and mid 2017 may have different specifications, thus different model years.

A pictorial example of a 'build plate' and 'compliance plate' is provided below for reference (these images have been created by the ACCC for illustrative purposes):

Figure 7.1: Pictorial examples of a 'build plate' and 'compliance plate'

Example build plate



Example compliance plate



ACCC created images

The build date and compliance plate date can be significantly different as cars take time to travel from the point of manufacture to the point of sale. The date of compliance plates and build plates typically vary by three to six months, as compliance plates are fitted in Australia rather than at the earlier point of manufacture.⁴⁹⁹ For example, a car advertised as a 2016 model may have been deemed compliant in Australia in 2016 but may actually have been manufactured in 2015.

Consumers who are unaware of differences in marketing terms used by dealers or manufacturers may be misled or misunderstand the build date of the new car. This may result in consumers paying more for a new car than they otherwise would have, or experience an unexpected financial loss later if they resell the car.

⁴⁹⁹ Carsales submission, November 2016, p. 9, AAA submission, November 2016, p. 37.

7.3.1. Submissions received on the advertised year of new cars

A small number of submissions were received on the advertised year of new cars.

Carsales⁵⁰⁰ and the AAA⁵⁰¹ submitted that consumers do not have a strong understanding of the difference between model year, build date and compliance plate dates for new cars. However, the FCAI, AADA and VACC all submitted that consumers are aware of the meanings of the different new car dates.⁵⁰²

Carsales and the AAA submitted that as there is no requirement or regulation that car sellers must refer to a specific reference date, different dates are used by different sellers.⁵⁰³ Carsales submitted that it has attempted to address the inconsistency of information on its website by making it mandatory to state the build date for all dealer cars and also include the ability for dealers to show other dates relevant to the car.⁵⁰⁴

The AAA submitted that the practice of advertising using a car's compliance date is an attempt to divert attention away from when the car was built. The AAA further submitted that the compliance date represents only an administrative function that a car importer is obliged by law to fulfil.⁵⁰⁵

The AAA submitted that one of its members, Royal Automobile Club of Queensland, has received a number of complaints on this issue.⁵⁰⁶ A stakeholder submitted that consumers are regularly misled about the build date, compliance plate date and registration dates of cars.⁵⁰⁷

Carsales, which uses the vehicle build date in its advertising, advocated for the adoption of a single, consistent designation for the advertised year of a vehicle being adopted.⁵⁰⁸ The AAA advocated that it should be mandatory for sellers to use the build date in advertising new cars,⁵⁰⁹ and that build dates should be used in all transactions and promotions of new car sales and disclosed to potential buyers.⁵¹⁰ Further, the AAA submitted that using anything other than the build date has the potential to benefit the new car seller and disadvantage the consumers at resale time.⁵¹¹

Carsales also advocated for the use of VIN numbers as an identifier and for there to be a database of cars in Australia searchable by VIN, which would provide consumers with all relevant dates and car specifications.⁵¹² Carsales submitted that consumers can obtain the VIN from the car itself as the VIN remains the same for the life of the car.

⁵⁰⁰ Carsales submission, November 2016, pp. 9-10.

⁵⁰¹ AAA submission, November 2016, pp. 37-38.

⁵⁰² FCAI submission, November 2016, p. 31, VACC submission, November 2016, p. 15.

⁵⁰³ Carsales submission, November 2016, pp. 9-10, AAA submission, November 2016, pp. 37-38.

⁵⁰⁴ Carsales submission, November 2016, p. 10.

⁵⁰⁵ AAA submission, November 2016, p. 37.

⁵⁰⁶ AAA submission, November 2016, p. 38.

⁵⁰⁷ Destroy My Jeep, November 2016, p. 7.

⁵⁰⁸ Carsales submission, November 2016, pp. 9-10.

⁵⁰⁹ AAA submission, November 2016, pp. 37-38.

⁵¹⁰ AAA submission, November 2016, p. 37.

⁵¹¹ AAA submission, November 2016, p. 38.

⁵¹² Carsales submission, November 2016, p. 10.

7.3.2. Consumer impact

The ACCC accepts that, in principle, using dates other than the build date to describe the age of a new car could mislead consumers. The advertising of compliance dates has the potential to mislead consumers, because few consumers would consider this date to be reflective of the age of the vehicle. However, advertising a model year may be a legitimate marketing practice to differentiate between different models produced in the same calendar year – as long as it does not mislead consumers.

Consumers potentially may face two types of financial losses as a result of these practices if they are misled about or unaware of a significant difference between the build, compliance date and model year for a car.

- At the point of sale: they may pay more for the new car than they would otherwise have paid had they known the car had an earlier build date.
- At the point of resale: they may receive a lower than expected resale price as the car will be one year older than they had understood at purchase.

These issues reflect the kinds of complaints that the ACCC and state and territory regulators have received in the past, although these have been relatively few in number.

Submissions to this study have not provided any further evidence on the frequency and magnitude of the problems experienced by consumers in relation to this issue. The ACCC notes, however, that the potential loss to individual consumers is potentially significant.

Draft findings on the advertised year of new cars

- Submissions to this study have provided limited evidence of systemic misleading behaviour by manufacturers or dealers in relation to the advertised year of new cars.
- The current laws prohibiting false, misleading and deceptive conduct under the ACL provide adequate consumer protection in relation to this issue.

7.4. Other issues identified by stakeholders

This section outlines issues identified by stakeholders that are outside the scope of this study.

7.4.1. Insurance and financial products

Insurance and financial products typically fall under ASIC's jurisdiction. Pursuant to s.131A, the ACL does not apply to financial services or products.⁵¹³

CHOICE, Bapcor and the MTASA submitted that the provision of insurance products and cars should be included in this study.⁵¹⁴ CHOICE noted that access to car data, including data collected via telematics (discussed about at 7.1), could be used to calculate the level of risk associated with insuring the driver of the car, while Bapcor submitted that dealer sold insurance products are linked to the issue of service bundling that occurs at the point of sale – to maximise the use of 'genuine' parts in repair works.

⁵¹³ Section 131A of the CCA, '...this Division does not apply...to the supply, or possible supply, of services that are financial services, or financial products.'

⁵¹⁴ CHOICE submission, November 2016, p.10, Bapcor submission, November 2016, p.18, MTASA submission, November 2016, p.4; OSBC submission, November 2016, p. 3.

The ACCC notes ASIC's ongoing work and regulatory role in this area. ASIC's submission to this study detailed that it has been conducting a review of the sale of add-on insurance products by car dealers, with its key findings set out in three recent reports.⁵¹⁵

ASIC's review of these products is ongoing. ASIC will be undertaking further work into this issue, including potential enforcement action, to ensure that this market delivers acceptable outcomes for consumers.⁵¹⁶ ASIC has also notified insurers that they need to improve consumer outcomes by making substantial changes to the pricing, design and sale of add-on insurance products or face additional ASIC regulatory action.

7.4.2. Capped price servicing

Capped price servicing offers can be attractive to consumers because they are a means for consumers to lock in the price of servicing their cars for a set period. However, concerns have been expressed by a number of small businesses in response to the ACCC's online questionnaire that capped price servicing is not necessarily 'capped' or 'free' and may not cover critical service items specified in manufacturers' recommended service schedules.

Bapcor, Ultratune and a number of small business online questionnaire responses submitted that capped price servicing should be included as part of this study.⁵¹⁷ Bapcor submitted that capped price servicing is linked to the issue of service bundling that occurs at point of sale for manufacturers in order to maintain control over the servicing of cars.

The ACCC looked at issues associated with capped price servicing in 2014.⁵¹⁸ The ACCC reviewed representations made by some manufacturers, including in brochures and advertisements, that scheduled service prices were capped at a maximum price, whereas their terms and conditions allowed for these prices to be changed at any time. Following the ACCC's engagement with the industry, a number of manufacturers amended their terms and conditions for capped price service offers and their advertising.

7.4.3. Parallel importation

Toyota and the MTASA submitted that parallel importation, which would allow vehicles to be imported into Australia outside formal or authorised channels, should be included as part of this study.⁵¹⁹ Both Toyota and the MTASA submitted that they oppose the parallel importation of cars.

Parallel importation has however not been included as part of this study given that the relevant proposed laws are yet to be enacted by Parliament.⁵²⁰

7.4.4. Car safety ratings

The Australasian New Car Assessment Program (ANCAP) and the AAA both submitted that product safety and car safety ratings should be included as part of this study.⁵²¹ ANCAP

⁵¹⁵ ASIC submission, November 2016, p. 1. The three reports are: (1) [Report 470](#) Buying add-on insurance in car yards: Why it can be hard to say no; (2) [Report 471](#) The sale of life insurance through car dealers: Taking consumers for a ride; and (3) [Report 492](#) A market that is failing consumers: The sale of add-on insurance through car dealers.

⁵¹⁶ ASIC, 'ASIC puts insurers on notice to address serious failures in the sale of add-on insurance through car dealers', 12 September 2016, available at: <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-301mr-asic-puts-insurers-on-notice-to-address-serious-failures-in-the-sale-of-add-on-insurance-through-car-dealers/>.

⁵¹⁷ Bapcor submission, November 2016, p.18; Ultratune submission, November 2016, p. 2.

⁵¹⁸ ACCC media release, '[ACCC takes action on Kia capped price servicing](#)', 23 February 2015.

⁵¹⁹ MTASA submission, November 2016, pp. 4, 11-12; Toyota submission, November 2016, p. 8.

⁵²⁰ In 2016, the Government announced it would introduce legislation easing restrictions on consumers importing new cars from 2018. The reforms to the MVSA are limited. They permit a consumer to import a car from the UK or Japan. The car must have less than 500km on its odometer, and the consumer may not import more than one vehicle every 2 years.

⁵²¹ ANCAP submission, November 2016; AAA submission, November 2016, p. 40.

submitted that car safety rating information is a key element in the new car buying process. ANCAP submitted that there is misinformation about car safety ratings provided to consumers at point of sale. The AAA submitted that the provision of ANCAP safety information should be increased and improved at the point of sale.⁵²²

Product safety in cars is regulated under the MVSA, the *Motor Vehicle Standards Regulations 1989* and the CCA. DIRD and the ACCC jointly 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. The ACCC largely relies on DIRD for information to assist recalls. The ACCC has also developed a formal Memorandum of Understanding (MoU) with DIRD. The MoU, among other things, provides clarity for third parties about the respective regulatory responsibilities where joint action on product safety issues is warranted.

Reforms to the MVSA will expand DIRD's role in car safety and transfer the recall powers for road transport vehicles from the consumer portfolio to the Minister with administrative responsibility for the MVSA, which means they will apply to all vehicles regardless of whether they are 'consumer' or commercial vehicles.⁵²³

Given these administrative arrangements, and because the ACCC has not received a significant number of complaints in relation to car safety ratings, these issues have not been examined in this study.

7.4.5. Online reviews

The MTAA and Toyota both submitted that due to the growth of the internet as a source of information and increasing consumer reliance on online reviews when making purchasing decisions, the role of third party websites is important.⁵²⁴ The MTAA further submitted that businesses should be protected from misleading consumer reviews that negatively impact them by amending the ACL to include protections for businesses that are similar to the existing protections for consumers.

The ACCC has issued a number of guidance documents for online reviews, testimonials and comparator websites for both businesses and consumers on their rights and obligations under the ACL,⁵²⁵ and has not included these issues in this study.

⁵²² AAA submission, November 2016, p. 40.

⁵²³ Productivity Commission Research Report, [Consumer Law Enforcement and Administration](#), March 2017, pp. 181-182.

⁵²⁴ MTAA submission, November 2016, pp.50-52; Toyota submission, November 2016, p. 8.

⁵²⁵ Outlined below are the resources the ACCC has developed:

- ACCC publication: [What you need to know about: Online reviews – a guide for business and review platforms](#), 3 December 2013. Guidance for businesses and review platforms, including 'guiding principles' to follow in order to prevent consumers from being misled.
- ACCC publication: [Comparator websites: A guide for comparator website operators and suppliers](#), August 2015. The ACCC has released consumer and industry guidance on the operation and use of comparator websites. The industry guidance is targeted at the operators of comparator websites and businesses whose products are listed on them. The guidance sets out how industry can comply with competition and consumer protection laws when operating/utilising comparator websites.
- ACCC publication: [The comparator website industry in Australia](#), November 2014. This report provides industry, consumer groups and regulators with a better understanding of the comparator website industry in Australia and its potential impact on competition and consumer welfare.
- ACCC publication: [Advertising and selling guide](#), 17 April 2014. This guide contains a section on testimonials and review platforms (page 12 and 13). Consumers expect reviews to be independent and genuine to help them make more informed purchasing decisions and any testimonial should reflect the genuine views and opinions of the person that is represented to have made it.

Appendix A – Consultation

The ACCC has consulted with a wide range of stakeholders and commissioned research as discussed below.

We would like to thank stakeholders, consumers, and small businesses, for their time in providing submissions and responses to the ACCC's consultation and research.

Submissions process and stakeholder consultation

On 17 October 2016, the ACCC published the new car retailing industry market study issues paper which provided detailed information on the scope of the study and sought stakeholder submissions on a number of key topics. As part of the issues paper consultation process the ACCC also conducted an online questionnaire. The online questionnaire was a streamlined process designed for consumers and small businesses to make a submission on particular areas of interest. In response to the issues paper, the ACCC received:

- 49 public initial submissions from stakeholders to the issues paper
- 85 responses from consumers and a total of 229 responses from small businesses to the online questionnaire
- 29 public supplementary submissions to the issues paper.

The ACCC also attended workshop site visits and had a range of stakeholder meetings throughout the process.

A list of public submissions is provided below and links to each submission are available on our website at www.accc.gov.au/newcars.

ACCC stakeholder forum

The ACCC also conducted a stakeholder forum in December 2016 which provided key stakeholders with an opportunity to communicate with the ACCC's Commissioners about their key issues of interest in relation to the new car retailing market study. Key issues discussed included consumer guarantees and warranties, access repair and service information and fuel consumption and emissions. The forum was attended by 55 stakeholders from 35 organisations, including representatives from industry associations, consumer groups, government agencies, automotive brands, repairers, dealerships, sales websites and industry experts. A summary of the stakeholder forum is available on our website at www.accc.gov.au/newcars.

ACCC commissioned research

The report uses data and information from commissioned research including consumer research commissioned by the ACCC and undertaken by Colmar Brunton (ACCC Consumer Survey) as well as technical advice on new car repair by Cartech Pty Ltd.

The ACCC Consumer Survey contains findings from an online stratified consumer survey of 1500 new car buyers across Australia. The research explored consumer preferences, experiences and behaviours related to the purchase, repair and service of their new cars.

Two reports by Cartech Pty Ltd contain the findings of analysis undertaken by Cartech Pty Ltd into stakeholder given examples of access to repair and service data and information restrictions related to new cars.

The Colmar Brunton report of survey findings and reports by Cartech Pty Ltd are published on the ACCC website at www.accc.gov.au/newcars.

List of publicly available submissions*

ABMARC	Motor Trade Association of South Australia
Andrew Forsyth (Dymocks)	Motor Trade Association Queensland
Australasian New Car Assessment Program	Motor Traders' Association of NSW
Australian Automobile Association	Motor Trades Association of Australia
Australian Automotive Aftermarket Association	National Motor Vehicle Theft Reduction Council
Australian Automotive Dealer Association	NSW Small Business Commissioner
Australian Securities and Investments Commission	Repco (Auto Care Ocean Grove – Emma Harper)
Australian Small Business and Family Enterprise Ombudsman	Repco (Drysdale Motors – Noel Harper)
Auto Care Association	Repco (Gejay Automotive – Gary Pinner)
Automotive Dealer Services	Repco (Highton Automotive Services – Mark Awramenko)
Autopolis	Repco (J&F Motors Pty Ltd – Steven Grocl)
Bapcor Limited	Repco (Woodward's Auto Repairs – Alan Woodward)
carsales	Steve Sorensen Mechanical
Car Solutions Motor Vehicle Consultants	Small Business Development Corporation
CHOICE	Subaru Australia Pty Limited
Consumer Action Law Centre	Suncorp Group
Consumer questionnaire responses	Swedish Car Company (Kott Gunning Lawyers)
Destroy My Jeep	Think Software Consulting
Federal Chamber of Automotive Industries	TJM PRODUCTS PTY LTD
Global Auto Parts	Tony Carter (Brokerage WA)
GM Holden Australia	Toyota Motor Corporation Australia
GPC Asia Pacific	T R Flanagan Smash Repairs
Insurance Australia Group Limited	UltraTune
Insurance Council of Australia	Victorian Automobile Chamber of Commerce
Kmart Tyre and Auto Service	Wayne Horton (Euroworld)
Lemon Laws 4 Aus	
Lemon vehicles In Aus	
Mazda Australia Pty Ltd	

Appendix B – 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.

B.1 Australian Consumer Law: Warranties and Servicing

- Consumer Affairs Australia and New Zealand (CAANZ) recently undertook a review of the ACL. The review assessed 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. A final report was released in March 2017, containing 19 legislative proposals, four non-legislative actions and seven priority areas. The report recommends a number of changes to the operation of consumer guarantees, manufacturer's warranties and extended warranties. The [final report](#) also considers industry-specific regulation for motor vehicles, recommending a 'generic and flexible approach' to consumer guarantees in preference of an 'industry-specific approach'. An opt-in approach to extended warranties, consumer guarantee exemptions for second-hand vehicles and a generic statement for warranties against defects is also considered but not recommended by CAANZ.

B.2 Legislation reviews

- DIRD recently reviewed the *Motor Vehicle Standards Act 1989* (Cth), 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. In December 2016, the Ministerial Forum released [draft regulation impact statements](#) on improving noxious emissions standards and introducing fuel efficiency standards for light vehicles, which sought views on design elements and timing for their adoption.' A fuel quality [discussion paper](#) was also released in December 2016. The Ministerial Forum is expected to report to Government later in 2017 on a draft implementation plan for these new measures.
- The WA Department of Commerce's Consumer Protection Division undertook a review of the *Motor Vehicle Dealers Act 1973* and *Motor Vehicle Repairers Act 2003* and released a consultation [Discussion Paper](#) in August 2013. The second stage of the review resulted in the release of a subsequent [Consultation Paper](#) in November 2015, which discussed the earlier paper and sought feedback from stakeholders on options for reform. A Decision Regulatory Impact Statement will be prepared in the third stage of the review addressing the outcome of consultation and making recommendations for reform.
- In 2014–15, the Australian Government undertook a comprehensive review of Australia's competition policy (the 'Harper Review'). The Harper Review's Terms of Reference required an assessment of Australia's competition policies, laws and institutions to determine whether they remain fit for purpose, especially in light of the opportunities and challenges facing Australia into the foreseeable future. The Harper Review's [Final Report](#) was released on 31 March 2015 and contained 56 recommendations for reform, including specific recommendations in relation to restrictive trade practices such as third-line forcing.⁵²⁶

⁵²⁶ Competition Policy Review, [Final Report](#), 31 March 2015.

B.3 Future of the Automotive Industry: Automated Vehicles and Data Availability

- On 22 September 2016, the Parliament of New South Wales Joint Standing Committee on Road Safety (Staysafe) released a [final report](#) into *Driverless Vehicles and Road Safety in NSW*. The report contained nine findings and three recommendations including the development and implementation of an automated vehicle regulatory framework by the National Transport Commission (NTC), the development of guidelines or a code of practice regulating the trials and introduction of automated vehicles in NSW and the identification of potential social and economic impacts. On 22 September 2016, the NSW Government tabled a [response](#) to the report supporting the Staysafe recommendations.
- On 30 November 2016, the Standing Committee on Industry, Innovation, Science and Resources commenced an [inquiry](#) into ‘the social issues relating to land-based driverless vehicles in Australia.’ Following the consultation process, the Committee is expected to report to Government by September 2017.
- In 2016–17, the Productivity Commission (PC) conducted a broad ranging investigation into the benefits and costs of options for improving availability and use of private and public sector data. On 31 March 2017 the PC sent its [final report to the Australian Government](#), recommending a legislated comprehensive right for consumers to direct how data about them or generated by their internet-connected activity is handled by data holders. In March 2014 the PC also released a [report](#) on public support for Australia’s automotive manufacturing industry.
- In November 2015 the COAG Transport and Infrastructure Council tasked the National Transport Commission with investigating regulatory barriers to automated vehicles. The NTC undertook 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. In November 2016 the Transport and Infrastructure Council approved the NTC’s policy findings and recommendations, which are outlined in a policy paper titled [Regulatory reforms for automated road vehicles](#).
- 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.

B.4 Other reviews

- In February 2016, 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 21 February 2017, ASIC accepted an [Enforceable Undertaking](#) by Inhouse Finance Group (Sydney) Pty Ltd (**Inhouse Finance Group**). Inhouse Finance Group provides loans for cars purchased from Best Buy Autos in Sydney. The undertaking required Inhouse Finance Group to refund more than \$400 000 to consumers who had been charged a higher interest rate on car loans than the maximum rate permissible under s. 322(1) of the *National Consumer Credit Protection Act 2009* (Cth).
- 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.
- On 19 November 2013 the NSW Legislative Assembly voted to establish a Select Committee on the Motor Vehicle Repair Industry. The terms of reference for this committee was 'to inquire into and report on the contractual relationships between insurers and motor vehicle repairers, the quality of smash repair work in NSW, consumer choice in the marketplace, and whether the industry works competitively.' The Committee published a [report](#) in July 2014, containing 21 recommendations. The NSW Government published a [Response to the report of the Select Committee on the Motor Vehicle Repair Industry](#) in December 2014. The response supported a number of recommendations including compelling manufacturers to make repair specifications readily available to repairers and assessors in addition to a mandatory code of conduct for the repair and insurance industry. As a result of the recommendations made by the Committee on 31 March 2017 the NSW Government announced the implementation of a mandatory code of conduct between the motor vehicle insurance and repair industries. The code came into effect on 1 May 2017.

Appendix C – Motor vehicle regulations and codes

There are a number of Commonwealth and state and territory regulations affecting the sale of new cars in Australia. There are also a number of applicable industry codes and agreements.

Table C1 lists the specialised legislation that may be relevant to the sale of new cars in certain Australian jurisdictions.

Table C1 – Relevant motor vehicle regulation

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
Competition and Consumer (Industry Codes – Franchising) Regulation 2014 (Franchising Code of Conduct).	ACCC	Mandatory industry code
Motor Vehicle Standards Act 1989 Australian Design Rules	DIRD	Commonwealth
Fuel Quality Standards Act 2000	Department of the Environment and Energy	Commonwealth
Sale of Motor Vehicles Act 1977* Fair Trading (Motor Vehicle Repair Industry) Act 2010	ACT Government	State and territory – car dealers and repairers
Motor car trader obligations (Motor Car Traders Act 1986*; Motor Car Traders Regulations 2008)	Consumer Affairs Victoria	State and territory – car dealers
Motor Dealers and Repairers Act 2013*	NSW Fair Trading	State and territory – car dealers and repairers
Consumer Affairs and Fair Trading Act* (Consumer Affairs and Fair Trading (Motor Vehicle Dealers) Regulations)	NT Government	State and territory – consumer law
Motor Vehicle Dealers and Chattel Auctioneers Act 2014 (Motor Dealers and Chattel Auctioneers Regulation 2014)	Queensland Government	State and territory – car dealers
Motor Vehicle Traders Act 2011*	Tasmanian Government	State and territory – car dealers
Motor Vehicle Dealers Act 1973 (Motor Vehicle Dealers (Prescribed Vehicles) Regulations 1974; Motor Vehicle Dealers (Licensing)	WA Department of Commerce	State and territory – car dealers and repairers

Regulations 1974; Motor Vehicle Dealers (Sales) Regulations 1974; Motor Vehicle Dealers (Infringements) Regulations 2002)

[Motor Vehicle Repairers Act 2003](#)
(Motor Vehicle Repairers Regulations 2007)

* This refers to specialised legislation that may be relevant to the sale of new vehicles in addition to the Australian Consumer Law. Note that Queensland, South Australia and Western Australia do not have laws for the sale of new vehicles that extend beyond the Australian Consumer Law as applied in each jurisdiction.

Table C2 lists a number of industry codes and agreements relevant to new cars sold in Australia.

Table C2 – Industry codes and agreements applying to motor vehicles

Industry 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)	Mandatory Industry code for NSW from May 1 2017, Voluntary Industry Code elsewhere – repair and insurance dispute resolution

Appendix D – Claim limits in tribunals and small claims courts

Table D1 lists the jurisdictional limits for motor vehicle consumer guarantee disputes for tribunals and small claims courts in each jurisdiction.

Table D1: Jurisdictional limits for motor vehicle claims – 2017

Tribunal or court	Maximum amount consumers can claim
ACT Civil and Administrative Tribunal ⁵²⁷	\$25 000 (increased from \$10 000 in 2016)
Northern Territory Civil and Administrative Tribunal ⁵²⁸	\$25 000
NSW Civil and Administrative Tribunal ⁵²⁹	Where the vehicle is new and is substantially for private use: unlimited For other motor vehicle consumer claims: \$40 000
Queensland Civil and Administrative Tribunal ⁵³⁰	\$25 000
South Australian Magistrates Court: minor claim ⁵³¹	\$12 000
Tasmanian Magistrates Court: minor civil claim ⁵³²	\$5000
Victorian Civil and Administrative Tribunal ⁵³³	Unlimited
Western Australian Magistrates Court: minor case claim ⁵³⁴	\$10 000

Consumers whose claims are greater than the jurisdictional limit of the relevant tribunal or small claims court can choose to file a general court application. The appropriate court is usually the Magistrates Court or equivalent. However, for some claims it could be the Supreme Court.

⁵²⁷ ACAT, Civil Dispute Applications - Guide to Applicants, http://www.acat.act.gov.au/application-type/civil_disputes_and_common_boundaries/civil_dispute_applications_-_guide_to_applicants#Jurisdiction, accessed 17 July 2017.

⁵²⁸ NTCAT, Matter types/Jurisdiction, <http://www.ntcat.nt.gov.au/jurisdiction.shtml>, accessed 17 July 2017.

⁵²⁹ NCAT, Motor vehicle consumer claims, http://www.ncat.nsw.gov.au/Pages/cc/Divisions/Motor_vehicles/Motor_vehicles.page.aspx, accessed 17 July 2017.

⁵³⁰ QCAT, Consumer and trader disputes, <http://www.qcat.qld.gov.au/matter-types/consumer-and-trader-disputes>, accessed 17 July 2017.

⁵³¹ Courts Administration Authority of South Australia, Civil Claims, <http://www.courts.sa.gov.au/RepresentYourself/CivilClaims/Pages/default.aspx>, accessed 17 July 2017.

⁵³² Magistrates Court of Tasmania, Minor civil claims (\$5000 or less), http://www.magistratescourt.tas.gov.au/about_us/civil/minor_civil_claims, accessed 17 July 2017.

⁵³³ VCAT, Goods and Services – Cases VCAT can hear, <https://www.vcat.vic.gov.au/case-types/goods-and-services>, accessed 17 July 2017.

⁵³⁴ Magistrates Court of Western Australia, Civil Matters, http://www.magistratescourt.wa.gov.au/C/civil_matters.aspx, accessed 17 July 2017.

Appendix E – Types of technical information to repair and service new cars

Table E1 provides a non-exhaustive list of the types of technical information that may be needed to repair or service a new car, of which the ACCC is currently aware.

Table E1: Types of information and data to repair to repair and service new cars

Information or data	Description
Body/collision repair methods and dimensions	The manufacturer's recommended methods for welding and completing structural and non-structural repairs to a car ⁵³⁵
Component overhaul procedures	Instructions for completing a refurbishment of car components, for example, instructions for tuning-up car engines to the manufacturer's specifications, including for in-chassis and major overhauls of the car's engine and its components ⁵³⁶
Component specifications	The design requirements of car parts made by component level suppliers, which may include specifications such as suspension roll gradients to determine front and rear roll stiffness ⁵³⁷
Diagnostic and testing procedures	The practices for accessing the on-board diagnostic system of a car to identify the problems a car may have ⁵³⁸
Diagnostic, testing and scanning tools	Tools that are connected to a car to download and display fault codes, generally can also be used to upload software updates and reinitialisation codes
Electrical circuit and wiring diagrams and voltages for electronic components	Schematic layout of a car's wiring and components and specifications ⁵³⁹
Electronic logbooks	An electronic logbook includes information about the car, such as manufacturer specifications regarding servicing, and provides a record of the service history of the car. It may be stored in the car's on-board diagnostic system, in the cloud, in the car's keys or in another electronic medium
Lubricant specifications	Description of the type (synthetic, part synthetic or mineral) and viscosity of oil recommended by a manufacturer for use in lubricating different car components e.g. crankcase, automatic transmission, differential, 4WD transfer, 4WD differential or power steering, may be contained in repair and service manuals or logbooks ⁵⁴⁰
Maintenance and service schedules	Instructions issued by manufacturers on how often a car should be serviced and what components should be replaced or inspected at each service. May be contained in repair and service manuals ⁵⁴¹
Maintenance specifications and	Car servicing and maintenance requirements as specified by the

⁵³⁵ Toyota (US), [Collision Repair Information](#), December 2013, accessed 17 July 2017.

⁵³⁶ Supertune.com.au, [What is a car engine overhaul?](#), 2016, accessed 17 July 2017.

⁵³⁷ Cai Z., Chan S., Tang X., Xin J. (2013) The Process of Vehicle Dynamics Development. In: SAE-China, FISITA (eds) Proceedings of the FISITA 2012 World Automotive Congress. Lecture Notes in Electrical Engineering, vol 195. Springer, Berlin, Heidelberg.

⁵³⁸ AAA (US), [Automobile Computer Diagnosis – AAA Experts Explain How Repair Shops Find Problems](#), 17 September 2012, accessed 17 July 2017.

⁵³⁹ AAA submission, November 2016, p. 29; AAA submission, November 2016.

⁵⁴⁰ Castrol (AU), [Engine oil](#), 2017, accessed 17 July 2017; Caltex (AU), [Oil & Product Finder](#), 2017, accessed 17 July 2017.

⁵⁴¹ VACC supplementary submission, February 2017, p. 4.

adjustment procedures	manufacturer to be conducted on a periodic basis, may be contained in repair and service manuals ⁵⁴²
Meanings of fault codes	Many diagnostic trouble codes reported by a car's on-board diagnostic systems are standardised, ⁵⁴³ however, some manufacturers may use non-standard codes
Pass-through information	Pass-through allows the reprogramming of ECUs (e.g. using software updates) to be carried out using a pass-through-enabled tool via a car's on-board diagnostic port in conjunction with a computer ⁵⁴⁴
Recommended manufacturer repair times	A guide issued by the manufacturer as to how long a service or repair should take to complete by a qualified technician ⁵⁴⁵
Reinitialisation codes	Where an ECU is disconnected/loses power and is reconnected to a car, systems may need to be reset with the use of a PIN ⁵⁴⁶
Safety and emergency services instructions	Detailed procedures outlining precautions for handling a car during repairs/servicing or an incident ⁵⁴⁷
Service campaigns	Notifications to customers to address issues with a product not related to safety or compliance. ⁵⁴⁸ Toyota (US) defines two types of service campaigns: Special Service Campaigns where customers are notified about specific product or technical issues for which a remedy is being offered without an expiration date for free; and Limited Service Campaigns, which are similar to above but only offered for a specified period of time ⁵⁴⁹
Software update (car)	New instructions for various car systems to improve their operation, for instance, a manufacturer may release a software update for a car's automatic transmission to improve its shifting performance. These may be in the form of codes, procedures and files required to recalibrate ECUs in cars (e.g. powertrain, engine, emissions, transmission, and advanced driver assistance systems) ⁵⁵⁰
Software update (diagnostic tool)	New instructions for a manufacturer branded or aftermarket diagnostic tool to communicate with new car models and to improve their operation, for instance, where a new car model is released a diagnostic tool will need to be updated to understand fault codes occurring from new car systems
Technical service bulletins	Instructions issued by manufacturers to dealers on procedures to service/repair cars where unanticipated problems have regularly arisen on a particular make and model of car in order to avoid future problems ⁵⁵¹

⁵⁴² Toyota (US), [Basic Car Maintenance Tips & Services Checklist](#), 2017, accessed 17 July 2017.

⁵⁴³ SAE International, [Diagnostic Trouble Code Definitions](#), SAE J2012 DEC2016, December 2016, accessed 17 July 2017.

⁵⁴⁴ 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, accessed 17 July 2017.

⁵⁴⁵ VACC supplementary submission, February 2017, p. 4.

⁵⁴⁶ AAAA submission, November 2016, p. 57.

⁵⁴⁷ Toyota (EU), [Euro 5—Emergency Responders Guides](#), 2017, accessed 17 July 2017; Australasian Road Rescue Organisation, [Rescuers Technical Library](#), 2017, accessed 17 July 2017.

⁵⁴⁸ Volkswagen (US), [Recall/Service Campaign lookup](#), accessed 21 March 2017; VACC, Supplementary submission to the market study, February 2017, p. 4.

⁵⁴⁹ Toyota (US), [Lookup Safety Recalls & Service Campaigns by VIN](#), 2017, accessed 17 July 2017.

⁵⁵⁰ AAAA supplementary submission 1, February 2017, Appendix 8, p. 9; Bosch Diagnostics, [J2534 FAQ](#), 2017, accessed 17 July 2017; AAAA submission, November 2016, p. 57.

⁵⁵¹ AAAA submission, November 2016; VACC supplementary submission, February 2017, p. 4.

Appendix F – Supporting information on access to technical information

Table F1 collates reports from the MTAA and KTAS about the availability of access to Australian model information and pass-through access⁵⁵² for independent repairers for the top ten makes in Australia in 2016.

Table F1: MTAA and KTAS reported differences in the online provision to independent repairers of technical information, by top ten makes in Australia (2016)

Make	Technical information web address	Origin	Website accessible in Australia	Pass Through	Country model information available
Toyota	www.toyotamanuals.com.au	AU	Yes	No	AU models
Mazda	www.mazdamanuals.com.au	AU	Yes	No	AU models
	www.mazdaserviceinfo.com	US	Blocked	Yes	
	mapps.mazdaeur.com/cas/login	EU	Blocked	Yes	
Holden	www.acedelcodts.com	AU	Yes	Yes	AU models
Hyundai	technical@hyundai.com.au	AU	—	No	Email service
	www.hyundaitechnicalinfo.com	US	Yes (OS)	No	OS models only
	service.hyundai-motor.com:444/euro5/login.tiles	EU	Accessible since October 2016 ⁵⁵³	Yes ⁵⁵⁴	Unknown if AU specific models or OS only
Mitsubishi	No Australian email or web site	—	—	No	—
	www.mitsubishitechinfo.eu	EU	Yes (OS)	Yes	OS models only
	mitsubishitechinfo.com/epacarb/	US	Blocked	Yes	
Ford	www.motorcraftservice.com (AU option)	AU	Yes	No	AU models
	www.motorcraftservice.com (US option)	US	Blocked	Yes	
	etis.ford.com	EU	Blocked	Yes	
Nissan	techdata@nissan.com.au	AU	—	No	Email service
	www.nissan-techinfo.com	US	Blocked	Yes	AU Nissan dealers only
	eu.nissan.biz	EU	Blocked	Yes	
Volkswagen	erwin.volkswagen.de	AU/US /EU	Yes	Yes (US/EU)	AU has less information ⁵⁵⁵
Honda	No Australian email or website	AU	—	No	—
	techinfo.honda.com	US	Blocked	Yes	

⁵⁵² See Box 4.2 or Appendix E for further information.

⁵⁵³ FCAI supplementary submission, May 2017, Attachment 4, states that access is available to Australian independent repairers. Hyundai confirmed to the ACCC that this information became available to Australian independent repairers in October 2016.

⁵⁵⁴ Further review of the website indicates pass-through access is available to Australian independent repairers for a subscription fee, however, it is unclear whether this is fully applicable to all Australian model cars.

⁵⁵⁵ AAAA supplementary submission 1, February 2017, p. 8.

Subaru	techinfo.honda-eu.com	EU	Blocked	Yes	
	www.subaru.com.au/service/service-and-repair-manuals	AU	—	No	Order form for repair and service manuals on DVD
	VACC call centre ⁵⁵⁶	AU	Yes	No	Body repair methods for smash repairers
	techinfo.subaru.com	US	Yes (OS)	Yes	OS model only
	www.subaru-repairinfo.com	EU	Yes (OS)	Yes	OS model only

Source: MTAA supplementary submission (April 2017), pp. 5–6; KTAS, supplementary submission (April 2017).

Note: Top ten based on VFACTs data for the year ending 2016.

Table F2 shows the number of FCAI members producing passenger cars who currently have a link to a technical website on FCAI's portal to facilitate independent repairers' access to technical information from manufacturers.⁵⁵⁷ Table F2 also displays the market share of each manufacturer listed.

Table F2: FCAI members (passenger cars) with and without links to their technical websites on FCAI's website (and market shares in the Australian market, 2016)

With	% market share	Without (*or email/order form only)	% market share
1. Audi	2.90	1. Alfa Romeo	0.15
2. BMW	2.80	2. Aston Martin	0.02
3. Citroen	0.10	3. Bentley	0.03
4. Ford	4.80	4. Caterham	0.00
5. GM Holden	10.00	5. Chery	0.00
6. Hyundai	14.00 ⁵⁵⁸	6. Chrysler	0.10
7. Jaguar	0.45	7. Ferrari	0.04
8. Lexus	0.72	8. Fiat	0.28
9. Mazda	11.50	9. Honda*	4.21
10. MINI (via BMW)	0.67	10. Infiniti	0.10
11. Peugeot	0.42	11. Kia	5.67
12. Renault	0.70	12. Lamborghini	0.03
13. Skoda	0.81	13. LDV	0.12
14. Toyota	18.01	14. Lotus	0.01
15. Volkswagen	7.09	15. Maserati	0.10
		16. McLaren	0.02
		17. Mercedes-Benz	4.78
		18. Mitsubishi	2.16
		19. Morgan	0.00
		20. Nissan*	1.79
		21. Porsche	0.19
		22. Proton	0.04
		23. Rolls-Royce	0.01
		24. Smart	0.00

⁵⁵⁶ Subaru submission, p. 6.

⁵⁵⁷ For the purpose of these tables, the ACCC considered that links to email addresses are not links to technical websites.

⁵⁵⁸ Hyundai has a technical portal accessible to Australian independent repairers via Hyundai Motors Europe since October 2016.

		25. Ssangyong	0.03
		26. Subaru*	2.70
		27. Suzuki*	2.16
		28. Volvo Car	0.44
Total % market share	74.97%	Total % market share	25.18%

Source: VFACTs data for 2016 calendar year; MTAA submission, p. 34–38. As at 1 April 2017.

Note: Percentages may not add up to 100 due to rounding.

Table F3 provides the same information as reported in table F2, but for Sports Utility Vehicles (SUVs), which are included in this study, but reported differently in the VFACTS statistical dataset.

Table F3: FCAI members (SUVs) with and without links to their technical websites on FCAI's website (and market shares in the Australian market, 2016)

With	% market share	Without (*or email/order form only)	% market share
1. Audi	2.30	1. Bentley	0.01
2. BMW	3.27	2. Chery	0.00
3. Citroen	0.05	3. Dodge	0.08
4. Ford	3.81	4. Fiat	0.24
5. GM Holden	5.11	5. Great Wall	0.00
6. Hyundai ⁵⁵⁹	6.36	6. Haval	0.07
7. Jaguar	0.19	7. Honda*	4.62
8. Land Rover	3.08	8. Infiniti	0.08
9. Lexus	1.25	9. Isuzu Ute	1.59
10. Mazda	10.90	10. Jeep	2.86
11. MINI (via BMW)	0.12	11. Kia	3.43
12. Peugeot	0.24	12. Maserati	0.00
13. Renault	0.70	13. Mercedes-Benz	3.03
14. Skoda	0.19	14. Mitsubishi	9.29
15. Toyota	14.31	15. Nissan*	9.32
16. Volkswagen	2.19	16. Porsche	0.80
		17. Ssangyong	0.05
		18. Subaru*	7.69
		19. Suzuki*	1.94
		20. Volvo Car	0.85
Total (%)	54.07%	Total (%)	45.95%

Source: VFACTs data for 2016 calendar year; MTAA submission, p. 34–38. As at 1 April 2017.

Note: Percentages may not add up to 100 due to rounding.

⁵⁵⁹ Has a technical portal accessible to Australian independent repairers via Hyundai Motors Europe available since October 2016, however, it is not listed on the FCAI website.

Appendix G – EU and US models of technical information sharing

European Union

The primary legislation regulating the sharing of information and data to repair and service cars in the EU is Regulation (EC) No. 715/2007 (Euro 5 Regulation). A number of associated regulations implement aspects of the Euro 5 Regulation. The Euro 5 Regulation, which has been in effect in the EU since March 2010, goes beyond requiring access to repair and service manuals and include diagnostic protocols, security-related repair and service information and enable diagnostic tool manufacturers to create non-proprietary tools.⁵⁶⁰

Background to Euro 5 Regulation

The predecessor legislation to the Euro 5 Regulation was directed at dealing with emissions, however, expanded to require manufacturers to provide all operators—both independent and those within the manufacturer’s distribution and dealer networks—access to the technical information necessary to repair and service their cars.⁵⁶¹

The current tranche of legislation also includes provision for a Security-related Repair and Maintenance (SERMI) scheme allowing independent repairers to be vetted and gain access to security and safety related repair and maintenance information.⁵⁶²

Operation of the Euro 5 Regulation

The Euro 5 Regulation works on the principle that manufacturers must provide independent repairers exactly the same repair and maintenance information to the same level and content as they provide to dealers or authorised repairers. As part of the Euro 5 Regulations, the requirement to give access to repair and maintenance information is an obligation on manufacturers in order to meet the criteria for vehicle type approval.⁵⁶³ This means that manufacturers must only provide access for those cars subject to the Euro 5 Regulation, and not older cars (in practice there is no benefit in restricting access to older cars). However, non-compliance with the obligations may render a vehicle type non-compliant—meaning the car cannot be sold in the EU.⁵⁶⁴

‘Secure Repair and Maintenance Information’ (SERMI)

To enable independent repairers to access security-related repair and maintenance information in the EU, an organisation called SERMI was established in 2009 to operate a scheme and a process to approve, authorise and accredit independent repairers to access this information and data.⁵⁶⁵ The process involves vetting independent repairers and the use of hardware-based security keys and a PIN to access a manufacturer’s security-related portion of their technical website.⁵⁶⁶

⁵⁶⁰ Mavis Cournane, ‘Repair and Maintenance Information (RMI) legislation in Europe’, Cognitran, 2016.

⁵⁶¹ Mavis Cournane, ‘Background to Repair and Maintenance (RMI) for Cars’, Cognitran, 2016; European Commission, ‘Mandate to the European Standardisation Organisations for Standardisation in the Field of Vehicle OBD, Repair and Maintenance Information’, M/421 EN, 21 January 2008.

⁵⁶² Mavis Cournane, ‘Background to Repair and Maintenance (RMI) for Cars’, Cognitran, 2016.

⁵⁶³ Mavis Cournane, ‘Background to Repair and Maintenance (RMI) for Cars’, Cognitran, 2016.

⁵⁶⁴ Mavis Cournane, ‘Background to Repair and Maintenance (RMI) for Cars’, Cognitran, 2016.

⁵⁶⁵ SERMI, About SERMI, Retrieved from: <http://www.vehiclesermi.eu>,

⁵⁶⁶ SERMI, Background, Retrieved from: <http://www.vehiclesermi.eu/about-sermi/background/>.

Submissions and further evidence on the EU model

AAAA submitted that the EU model recognises that access to information, data, training and tools is a prerequisite for effective competition in the automotive aftermarket.⁵⁶⁷ MTAA submitted a secure release mechanism, like SERMI, could be adopted in Australia.⁵⁶⁸ In 2014 the European Commission released a report it commissioned on the effectiveness of the EU laws on sharing repair and maintenance information. The report concluded that:

*In general, it appears that levels of compliance are high, and it is important to recognise that the situation has improved over the past few years. OEMs have invested significant effort into their systems to ensure that the required information is provided in compliance with the Regulations.*⁵⁶⁹

Further key findings on the operation of the market from the report found that⁵⁷⁰:

- Better vehicle build quality and parts durability have led to longer service intervals, but technological advancements and an ageing vehicle fleet have contributed to higher costs per visit.
- Repairers (both authorised and independent) are reliant on the functioning of information flows between OE manufacturers to other intermediate actors in the aftermarket.
- However, the report noted that the longer-term implications on competition and consumers for the Euro 5 Regulation were not clear, as most cars affected by Euro 5 at the time of the report were still within their warranty periods, and therefore serviced mostly by dealers.

United States

There are two key elements that operate in the US system to facilitate the sharing of technical information:

- A law that operates in the US State of Massachusetts (since 2012 and updated in 2013) that regulates the sharing of technical information.⁵⁷¹ Following the passing of this Massachusetts law, in 2014 a voluntary (MoU) was agreed between the Automotive Aftermarket Industry Association (AAIA), Coalition for Auto Repair Equality (CARE), Alliance of Automobile Manufacturers (Alliance) and Association of Global Automakers (Global Automakers) to extend the substantive provisions of the law to all 50 states across the US and to the District of Columbia.
- The National Automotive Service Task Force (NASTF), a not-for-profit organisation representing major stakeholder groups in the motor vehicle industry, was established to facilitate the technical aspects of sharing of repair and service information in the US. NASTF also administers a secure-data release model (SDRM) and an associated 'Vehicle Security Professional Registry' (VSP Registry), which is a secure internet-based system that vetted mechanics and locksmiths in the US can use to access security-related repair and service information and files directly from manufacturers of motor vehicles. NASTF has described that the SDRM responds to concerns about 'protecting the integrity of vehicle security systems, the intellectual property of auto manufacturers,

⁵⁶⁷ AAAA submission, November 2016, p. 70.

⁵⁶⁸ MTAA submission, November 2016, p. 49.

⁵⁶⁹ 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, p. 5.

⁵⁷⁰ 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, pp. 73, 117, 123.

⁵⁷¹ *An Act Relative to Automotive Repair*, Mass Gen Laws, ch 93K (2013). (Mass Gen Laws, ch 93K).

the privacy and property of consumers and the insurability of vehicles at affordable rates.⁵⁷² Access to the SDRM is referenced in the Massachusetts law and MoU.

Background to establishment of Massachusetts Law and the MoU

In 2012 the Massachusetts legislature passed a 'right to repair' bill and voters in Massachusetts approved a right to repair law in a state referendum. In 2013 the Massachusetts legislature passed a bill reconciling the earlier legislation and the law approved in the state referendum as they differed slightly.⁵⁷³ In 2014 various national motor vehicle industry stakeholders responded to the Massachusetts law by signing an industry MoU voluntarily extending the substantive provisions of the state law nationwide.⁵⁷⁴

Operation of the Massachusetts law and the MoU

The substantive provisions of the Massachusetts law and the voluntary MoU provide:

- For model year 2002 motor vehicles⁵⁷⁵ and later, manufacturers of motor vehicles⁵⁷⁶ in the US must, on fair and reasonable terms:
 - make available for purchase by owners and independent repair facilities the same diagnostic and repair information, including software updates, in the same form and manner as it makes it available to dealers⁵⁷⁷
 - make available for purchase by owners and independent repair facilities the same diagnostic repair tools, incorporating the same diagnostic, repair and wireless capabilities, as it makes available to dealers⁵⁷⁸
 - provide diagnostic repair information to each aftermarket diagnostic tool company for the purpose of building aftermarket diagnostic tools and their service information publications and systems.⁵⁷⁹
- Manufacturers may exclude diagnostic and repair information necessary to reset an immobiliser system or security-related electronic modules, but must provide the information to owners and independent repair facilities through the SDRM administered by NASTF (or other known, reliable and accepted systems).⁵⁸⁰

⁵⁷² Mary Hutchinson, [NASTF Releases Secure Data Release Model \(SDRM\)](#), NASTF, 7 February 2008.

⁵⁷³ *An Act Relative to Automotive Repair*, H.3757 [House Bill], 188th General Court of the Commonwealth of Massachusetts (2013).

⁵⁷⁴ Including AAIA, CARE, Alliance and Global Automakers. See [Memorandum of Understanding](#), 15 January 2014.

⁵⁷⁵ [Memorandum of Understanding](#), 15 January 2014, s. 1, 'motor vehicle' is defined as: *any vehicle that is designed for transporting persons or property on a street or highway and that is certified by the manufacturer under all applicable federal safety and emissions standards and requirements for distribution and sale in the United States, but excluding (i) a motorcycle; (ii) a vehicle with a gross vehicle weight over 14,000 pounds; or (iii) a recreational vehicle or an auto home equipped for habitation.*

⁵⁷⁶ [Memorandum of Understanding](#), 15 January 2014, s. 1, 'manufacturer' is defined as: *any person or business engaged in the business of manufacturing or assembling new motor vehicles.*

⁵⁷⁷ Mass Gen Laws, ch 93K, s. 2(a) and [Memorandum of Understanding](#), 15 January 2014, s. 2(a).

⁵⁷⁸ Mass Gen laws, ch 93K, s. 2(b) and [Memorandum of Understanding](#), 15 January 2014, s. 2(b)(i).

⁵⁷⁹ Mass Gen Laws, ch 93K, s.2(c)(3) and [Memorandum of Understanding](#), 15 January 2014, s. 2(b)(ii).

⁵⁸⁰ Mass Gen Laws, ch 93K, s. 2(e) and [Memorandum of Understanding](#), 15 January 2014, s. 2(d).

Obligations on manufacturers under the Massachusetts law and MoU from model year 2018

From model year 2018, manufacturers must, in general, make on-board diagnostic data and repair information accessible using an off-the-shelf personal computer and a standardised non-proprietary vehicle interface.⁵⁸¹ This requires the establishment of websites or 'clouds' by manufacturers that contain the same information and software dealers have access to as part of their proprietary tools to be, in general, accessible by the independent repair and service sector using an off-the-shelf personal computer and a standardised vehicle interface.⁵⁸²

Owners and independent repair facilities will still need to subscribe to different manufacturers' websites to obtain repair and service information for different brands of motor vehicles, however, they will be able to connect to the motor vehicle's on-board diagnostics and the manufacturer's internet server using one off-the-shelf personal computer and one standardised device.

Submissions and further evidence on the US model

VACC stated in its research that the EU and US models are working well and appear to be an improvement on the Australian system.⁵⁸³ Auto Care Association submitted that as a result of the Massachusetts law and the MoU, manufacturers are now 'maintaining websites that contain all of their repair information affordably available to independent shops.'⁵⁸⁴ Auto Care Association submitted that in the US, 'repairs in the new car dealer network cost about 42 per cent more than repairs performed at independent shops' and that the result of the right to repair changes is a \$USD26 billion saving per year to consumers.⁵⁸⁵

GPC Asia Pacific stated that in its experience the EU and US models had been effective and it had used the regulatory framework in those jurisdictions to obtain repair and service information for its own Repco Autopedia product in Australia.⁵⁸⁶ GPC Asia Pacific noted, however, that in many instances licencing arrangements in those jurisdictions prohibited the dissemination of that repair and service information elsewhere.⁵⁸⁷

⁵⁸¹ Mass Gen Laws, ch 93K, s. 2(d) and [Memorandum of Understanding](#), 15 January 2014, s. 2(c).

⁵⁸² Frequently Asked Questions about the Right to Repair National Memorandum of Understanding, provided in a [submission by GPC to the ACCC](#), 16 March 2017.

⁵⁸³ VACC submission, November 2016, p. 14.

⁵⁸⁴ Auto Care Association submission, November 2016, p. 1.

⁵⁸⁵ Auto Care Association submission, November 2016, p. 2.

⁵⁸⁶ GPC Asia Pacific submission, November 2016, p. 8.

⁵⁸⁷ GPC Asia Pacific submission, November 2016, p. 8.