



17 November 2016

**FEDERAL CHAMBER
OF AUTOMOTIVE
INDUSTRIES**

ABN 53 008 550 347

ACCC
New Car Retailing Market Study
GPO Box 520
Melbourne VIC 3001

LEVEL 1
59 WENTWORTH AVENUE
KINGSTON ACT 2604
AUSTRALIA
PHONE: 02 6247 3811
FAX: 02 6248 7673

Dear Sir

NEW CAR RETAILING INDUSTRY – a market study by the ACCC

The Federal Chamber of Automotive Industries is the peak industry body representing the interests of Australia's manufacturers and importers of passenger motor vehicles, light commercials and motor cycles. FCAI's membership can be seen on our website at www.fcai.com.au.

The Australian market for new motor vehicle sales, service and parts and accessories is highly competitive. The brands operating in Australia compete by providing not only high quality vehicles at competitive prices but also by delivering customer satisfaction and ownership experience in a way which not just meets mandatory standards but far exceeds them in all aspects of the ownership experience.

The industry is regulated by the terms and conditions of the Franchising Code of Conduct, which has been amended a number of times to take into account the changing circumstances of industry more broadly not just in terms of motor vehicles. Coupled with the broader provisions of the Competition and Consumer Act there is significant regulation and guidance available relating to the conduct of business in the new motor vehicle industry.

FCAI welcomes your consideration of the attached and looks forward to discussions over the next twelve months to ensure that the ACCC has a practical and balanced understanding of the industry.

Please call me on 02 6247 3811 if you would like to discuss any of the attached.

Yours faithfully,

Tony Weber
Chief Executive.

**Submission to the
Australian Competition &
Consumer Commission
“New car retailing
industry – a market
study”**



**Federal Chamber of Automotive Industries
Level 1, 59 Wentworth Avenue
Canberra ACT 2604
Phone: +61 2 6247 3811
Facsimile: +61 2 6248 7673
Contact: Mr Anthony McDonald,
Director Industry Operations**

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New Car Retailing Industry – a market study by the ACCC

Issues Paper

Response by Federal Chamber of Automotive Industries

Chapter 1- Structure and Operations of the New Car Retailing Industry

Q1. How well does the ACCC's understanding of the new car retailing industry supply chain reflect market participants' understanding of the supply chain? Which key market participants does it not capture? How could the ACCC's definitions be improved?

- FCAI notes the ACCC's understanding of the new car industry supply chain and agrees that the flow as indicated in Diagram 1 of the ACCC Issues Paper (the Paper) is a reasonably accurate depiction of the industry. It may be relevant to note that Equipment and Parts suppliers should be split between genuine OE parts and accessories and aftermarket.
- In terms of the definitions the ACCC has applied to the various stages in the supply chain, the distributors are generally represented by Australian subsidiaries of the overseas brand and in some instances by independent companies representing and distributing the particular brand/s in Australia.
- It remains unclear to the FCAI how the term "independent dealers" fits into the Australian market for new motor cars, and what the ACCC means by this reference.
- In terms of independent repairers, it is important to note that a range of FCAI members do have recommended or authorised repairers outside the authorised dealership space, particularly in body repairs.
- The definition of cars (page 4) that are covered by the inquiry should in our view refer to passenger motor vehicles, SUVs and light commercials. FCAI notes the exclusions in footnote 6 to the Paper.
- The FCAI would also like to understand the analysis behind the statement that the cost of increasingly sophisticated equipment is leading to lower profit margins for independent repairers in particular (page 6). This is a very broad statement that needs testing. In the FCAI's view the new equipment available in the market will often reduce diagnosis and repair times and costs for consumers. Regular use of the equipment would amortise the cost across many service and repair activities such that any increased cost component would be quite minimal and ultimately benefit consumers in relation to costs and higher quality repairs. The ACCC search for information as to the degree of impact on competition (see page 6 of the Market Study Issues Paper) needs to carefully consider a wise investment in modern tools and equipment (as well as training) by an independent repairer specialising in certain makes/models compared to a decision to attempt to service a large number of makes and models that may be un-economic.

2. What search costs do consumers typically incur when buying a new car? Have online sales decreased these costs?

FCAI members are not aware of any specific search costs that consumers would typically incur when buying a new car, other than costs that might be associated with conducting research, whether online, in magazines/publications or an automotive dealerships. While online advertising is normal, "online sales" per se are rare and there is no data available to assist in understanding whether the few on-line sales that have been conducted have decreased consumer's costs.

On a more general level one benefit that the automotive industry delivers to consumers is a reduction in search costs due to trade marks. Trade marks are used on goods or in connection with the marketing of goods (World Intellectual Property Organization, 2012, p. 12).

The protection of trade marks ensures that the owners of marks have the exclusive right to use them to identify goods or services, or to authorise others to use them in return for payment (World Intellectual Property Organization, 2012a, p. 9).

Trade marks lower consumer search costs by providing consumers with a means for distinguishing between products that differ in quality but that, absent a brand name, would be difficult to distinguish at the point of purchase (Blair & Cotter, 1999, p.13).

The benefits of trade marks in reducing consumer search costs require that the supplier of a trade marked good in a particular market maintain a consistent quality over time and across consumers (Landes & Posner, 1988, p. 271). In this way, trade mark protection encourages expenditures on quality. Rather than investigating the attributes of all goods, the consumer may find it less costly to search by identifying the relevant trade mark and purchasing the corresponding brand. For this strategy to be efficient, however, not only must it be cheaper for the consumer to search for the right trade mark than for the desired attributes of the good, but past experience must be a good predictor of the likely outcome of current consumption choices. Thus, the brand must exhibit consistent quality through time.

More generally and in terms of the current market the significant amount of information, intuitive, comparative and factual, available on all aspects of new motor cars enables a consumer to be very well informed prior to any visit to a dealership. Much of this information is available electronically to consumers at no cost. Many media articles on motor vehicle performance and attributes are subjective by nature, particularly when comparing vehicles with others in their competitive group. However, they do form a further source of information for consumers.

To the FCAI's knowledge on-line sales of new motor cars has little, if any, impact on purchasers. As previously mentioned to date limited on-line sales have occurred and when they have, the vehicle is still delivered through the customer's chosen dealership. This process involves the rolling out of the pre-delivery processes and preparation work including the provision of ACL related information to the consumer.

It is interesting to note that the average physical visits to a dealer prior to purchasing a vehicle have significantly reduced in recent years. Purchasers often now only make one physical visit, having informed their purchase decision from on-line or other information sources. In the past the average visits have been up to five before buying a new car.

It is also worth noting that the new motor vehicle industry is one of the most significant users of advertising to reach consumers, across all media types and make a substantial investment in publicly marketing vehicles. As would be expected there has been a significant growth in investment in on-line advertising compared to more traditional forms of media.

3. What are the key factors determining vertical relationships and contractual arrangements in the car industry? In particular:

(a) what is the contractual relationship between manufacturers, and authorised dealers and authorised repairers?

These arrangements are covered by the Dealership Agreements and are governed by the requirements of the Franchise Code of Conduct and other legislation such as the Competition and Consumer Act.

Further to this, there are often procedures in place to ensure that dealers develop a consistent behavioural standard in their dealings with customers. It is a focus of the brands and the dealerships that the customer experience is a positive one, and these procedures are an aid to a consistent approach to the full raft of customer interactions from sales through to service and parts supply.

(b) what are the common features of these contracts?

Features of these contracts are common to most franchise agreements, which include clauses covering topics such as:

- IP use and licensing
- Requirement to follow certain policies and procedures
- Training
- Facility requirements
- Compliance with laws
- Right to operate a franchised business from a specific address for a specific term
- Renewal rights
- Default and termination.

(c) to what extent do contractual relationships raise barriers to entry and exit and/or reduce the degree of competition in the car market (or specific submarkets)?

FCAI is not aware of any contractual relationships that reduce the competition in the market for sales of new motor vehicles.

4. What is the nature of the business model applying to new car dealers? To what extent does the sale of new cars, service and repairs, finance and insurance and used car (purchases) and sales each underpin gross profit margin of dealers? Is there variability between dealers in the market?

FCAI refers the ACCC to the submission from the Australian Automotive Dealer Association (AADA) for the answer to this question.

5. To what extent do consumers substitute between brands and models, particularly responding to price differences? Do consumers show loyalty to particular brands of cars and dealerships, particularly for the aftercare of their new cars and for future car purchases?

The Australian new motor vehicle market is extremely competitive (by other advanced economy standards) with over 67 brands competing for sales across more than 400 models in a small market of just over 1.1 million new vehicle sales annually. This competition is delivering greater choice for Australian consumers and delivering world competitive pricing. With a vehicle density of 685 vehicles per 1,000 people, the Australian car parc is effectively at saturation, meaning that any additional sale to a new brand is replacing a sale from another sale. Given this, it is in the interests of the distributors to ensure that the consumer purchase and motoring experience is overall a positive one with respect to their brands.

While brand loyalty has been apparent in the past, with the level of competition in the market coupled with the growth and evolution of technology in vehicles, it has meant that retaining consumer loyalty to brands becomes more challenging. A good example is the market share a new brand to the market seeks to carve out through price, technology and features provided to the consumer in order to establish themselves. Aside from this, the aftersales treatment of customers is vitally important to a brands capacity to retain customers.

6. What is the level of competition between participants in each sector of the market? For example between:

(a) authorised and independent dealers

There is unlikely to be competition between authorised and independent dealers in sale of new motor vehicles. Authorised dealers are the only dealerships authorised to sell new motor vehicles. Independent dealers typically do not have access to new cars to sell, and therefore operate in the used car market. To the extent that used cars serve as an imperfect substitute for new cars, then there is competition between authorised and independent dealers.

In relation to the sale of new cars, authorised dealers compete against other dealers both within and outside their particular brand. Specifically in relation to Australia, the Productivity Commission (2014, pp. 63-64) concluded:

The Australian market for new motor vehicles is small in global terms. At the same time, due to a high level of import penetration (with few barriers to those imports), the Australian automotive market is highly fragmented, and appears to have become more so over the past decade...

Australian consumers benefit from this highly competitive new vehicle market. They have greater choice, and competition encourages lower prices, improved vehicle quality and more extras for a new vehicle in a particular market segment.

According to the Productivity Commission (2014, p. 67):

The highly competitive Australian automotive market limits the scope for all sellers of cars in Australia to increase the selling price of their vehicles.

The findings of the Productivity Commission and the Bracks Report are also consistent with previous conclusions made by the ACCC (2007, p. 26) that competition amongst sellers at the retail level is strong.

(b) authorised and independent service and repairer operators

Motor vehicle repairers in Australia can be broadly categorised into two main groups:

- Authorised repairers that are aligned with a motor vehicle manufacturer or importer (Commonwealth Consumer Affairs Advisory Council, 2011, p. vi). Authorised repairers are part of an authorised repairer network.
- Independent repairers that are not aligned with a motor vehicle manufacturer or importer (Commonwealth Consumer Affairs Advisory Council, 2011, p. vi).

The independent repairers can be further broken down between branded repairers consisting of franchised repairers (e.g. Midas, Ultra Tune and Kmart Tyre and Auto), repairers with supported relationships (e.g. Repco Authorised Service and Bosch Authorised Service), and motoring club repairers (e.g. NRMA MotorServe and RAC Auto Services in Western Australia), in addition to the many independent repairers that do not fit into any of the above categories.

The main areas of competition between authorised repairers and independent repairers are in relation to motor vehicle repair and scheduled handbook servicing.¹ Independent repairers and authorised repairers differentiate themselves on the basis of price and quality (Commonwealth Consumer Affairs Advisory Council, 2012, p. 14). While independent repairers generally seek to differentiate themselves on the basis of price, authorised repairers market themselves on the basis of providing a qualitatively superior service through the expertise that they develop through their franchise relationship and on the basis of price.

The Australian car parc is estimated at over 17 million vehicles and with around 3,500 authorised service and repair facilities located in dealerships, there is a clear need for independent repairers to ensure that this fleet can be serviced. In fact, FCAI estimates that well over 60% of the total car parc is currently serviced by independent repairers, a testimony to the health of the independent repair sector.

(c) authorised and independent parts distributors.

Authorised dealers distribute genuine OE parts – the manufacturer's branded parts equivalent to or the same as those originally fitted to a new car or other approved parts. We are not aware of any widespread practice on the part of authorised dealers of withholding parts to parties outside the authorised dealer network which would have a significant impact on competition. In fact, the sale of parts to wholesalers and those involved in the independent motor vehicle service and repair trade (composed of independent parts

¹ Repair occurs when a problem is experienced by a consumer and the motor vehicle is sent to a repairer for diagnosis and repair while scheduled handbook servicing is routine maintenance to a vehicle that is performed on a regular basis as specified by the vehicle manufacturer (Australian Automotive Aftermarket Association, 2011, p. 19).

distributors/independent repairers), make up between 24-27 per cent of the parts sales of the parts departments of the top 30 per cent of authorised dealers (Deloitte, 2016). Independent repairers are important customers for authorised dealers, and these dealers compete vigorously with each other to sell parts to them.

Furthermore, genuine parts enjoy no privileged position due to the so-called repair defence provision contained in section 72 of the *Designs Act 2003* (Cwth). Under section 72, it is not an infringement of a registered design to use, or authorise another person to use, a product which is a component part of a complex product, 'for the purpose of the repair of the complex product so as to restore its overall appearance in whole or part'. 'Repair' is defined to include restoring or replacing decayed or damaged components, as well as carrying out maintenance. The essence of this issue in this respect is that aftermarket organisations will copy some, but not all, of the OE specifications in introducing lower priced and generally lower quality products into the market.

Aside from parts produced utilising the repair defence, genuine parts must also compete against parallel imports and generic parts distributed through independent parts distributors. This is a constant focus of attention for the FCAI members and their authorised dealers as the importation of parallel parts can be a cover for the importation of counterfeit parts. The significant safety issues that can arise with counterfeit parts are well known. Genuine parts incorporate the costs of significant research and development costs and the brand reputation risk attached to the part when fitted to the vehicle. The ability of aftermarket parts suppliers to free ride on this investment yet take none of the risk is a core driver of the price and quality competition in the market.

7. *Has competition increased in the new car industry over time and, if so, what is driving this change and how have dealers/manufacturers responded?*

The FCAI considers that the Australian car market is one of the most competitive in the world. For a relatively small market that comprises only 1.5 percent of global production Australia has around 67 brands and 400 models competing for around 1.1 million sales. This has come about for a number of reasons. Principally, as the tariff barriers on automotive products have reduced from 57.5 per cent in the 1980s to between 3 and 4 per cent² the number of vehicle brands and models in the Australian market has increased.

Competitiveness of Global Markets³

	Australia	Canada	UK	USA
No. brands in market	67	49	53	51
Sales	1,112,032	1,620,221	2,249,483	13,040,632
Market size per brand	16,597	33,066	42,443	255,699

² Derived from a general tariff of 5% for vehicles coming into Australia plus vehicles imported duty free due to compliance with the rules of origin under the various free trade agreements.

³ Australian Government, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, March 2013 Automotive Update.

The above table demonstrates the competitiveness of the Australian market through a comparison with Canada, the UK and the USA. Australia has more brands offered for sale than these other 3 markets, with double the number of vehicles per brand sold in Canada, almost three times as many in the UK and more than 15 times the number of vehicles sold per brand in the USA.

The offerings from distributors and manufacturers have had to increasingly meet rising consumer expectations driven by competitive design and marketing by the various brands. As such, not only are the prices for vehicles competitive, but often the vehicles themselves have an increasing level of specification, from a comfort, performance and safety perspective, that is towards the premium end of the international market. Australian consumers have shown a desire for high specification vehicles as standard and this is what the industry delivers.

Falling prices in real terms reflects the intensity of competition that exists in the Australian new car market.

The CommSec Car Affordability Index measures the affordability of new motor vehicles. It demonstrates that new motor vehicles are at their most affordable levels since records began in the 1970s.⁴

The fact that cars are more affordable is also supported by data presented by Australian Automotive Intelligence (AAI). In their 2014 Yearbook⁵, AAI outlines three key periods when comparing the CPI motor vehicle indexes and average weekly earnings:

- Up to 1988, when car price increases markedly exceeded increases in earnings.
- Then to the mid-1990s when movements in car prices and earnings were roughly equal.
- From the mid-1990s when earnings moved well ahead of falling or stable car prices.

These three phases are shown in the affordability indexes in the chart below.

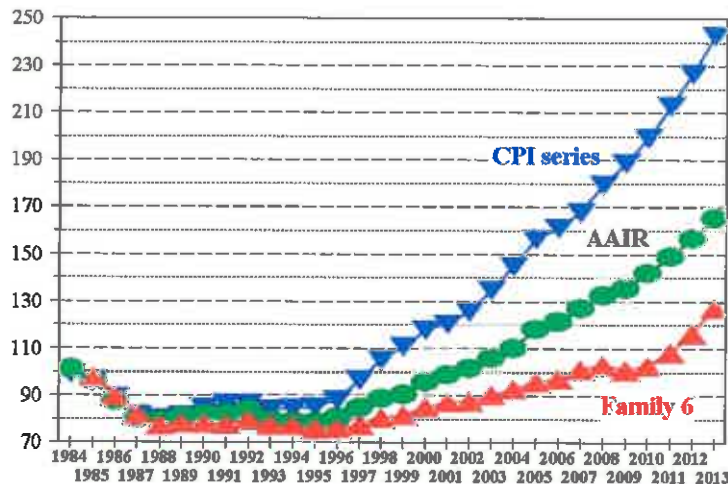
The three phases detailed above are shown clearly in the affordability indexes, and are broadly the same for the 3 measures - the major differences are the degrees of recovery in affordability since the mid-1990s:

- The CPI motor vehicle index shows the most improvement in affordability, but this is mainly because it discounts prices for specification improvements and therefore does not simply reflect the changes in actual car prices.
- The Family 6 series shows the least improvement because the prices of these cars have risen more rapidly than for cars generally, although better specifications offset some of the rise.

⁴ See for example <https://www.whichcar.com.au/car-advice/new-car-affordability-in-australia>

⁵ Australian Automotive Intelligence, Yearbook 2014

Car Affordability Indexes



8. What are the main drivers of the increase in new car sales? E.g. import tariff reductions, competition from used cars, lower prices due to increased competition.

While competition is a key driver, the general economic conditions and availability of affordable credit are also factors.

Free trade agreements where automotive is included are significant drivers of the affordability of vehicles from a distributor perspective and they also provide assistance in the ability to offer higher specification vehicles at lower prices in response to consumer demand. The tariff barriers on automotive products have reduced from 57.5 per cent in the 1980's to between 3 and 4 per cent, at the same time as the number of vehicle brands and models in the Australian market has increased. However, at the middle and higher end of the market, this positive price impact is quickly eroded, through the regressive Luxury Car Tax.

9. Are there other trends developing in the new car retailing industry in Australia? For example, has there been any consolidation in the dealership segment? What impact might these trends and changes have on consumers?

FCAI has no comment on this.

10. What is the level of intra-brand competition (for example competition between retailers of the same branded product)?

Intra-brand competition is just as fierce as inter-brand competition in the new car market, and this extends across the full range of dealer services from sales to parts and service. Dealers will not only look to maximise their sales of new vehicles to private buyers but also vigorously compete against other dealers within the same brand for potential fleet sales.

Chapter 2 - Consumer guarantees, warranties and new cars

General comments

i) The Australian automotive industry is extremely competitive. Motor vehicle manufacturers spend many millions of dollars locally (globally many hundreds of millions of dollars) creating, building and protecting their brand. The manufacturers, distributors and their dealers are acutely aware that their brand can be damaged by defective or unreliable vehicles and by poor, unresponsive after-sales service.

ii) Consequently, manufacturers spend substantial amounts of money ensuring that their new motor vehicles are as reliable as possible. They also spend significant amounts of money on after sales service, warranty and goodwill and on measures to satisfy those few customers who are dissatisfied with their purchase.

iii) In short, it is in the commercial interests of the manufacturers and importers for their customers to be satisfied regardless of any legal obligations.

iv) The paper makes a number of assertions to which the FCAI would like to specifically respond to:

(a) The paper states that in 2014 -15 the ACCC and ACL regulators received around 1,800 consumer complaints about consumer guarantee issues relating to cars. Even assuming that:

- a. all of the complaints were justified;
- b. each of them related to a separate vehicle; and
- c. they only related to new vehicles sold within that year;

the number of complaints represents 0.16% of the number of new vehicles sold in that year.

The FCAI would also welcome the opportunity to review the complaints that have been received (or understand the particular types of issues they raise) so that its members are able to use the knowledge gained to improve their customer handling processes.

(b) The paper also mentions that cars were the most recalled product safety items in 2015 -16 financial year. There seems to be an implication that this is a problem, it is not. Given the number of models and the high complexity of the vehicles sold today, it is understandable that there are recalls. Many brands also conduct recalls as a precautionary measure and will change over a part due to in-service reports that might demonstrate the original part might not perform as intended over the service life of the vehicle. This seems to be accepted and understood by consumers. The safety-related recall processes are extremely robust and the FCAI would challenge any implication that this is in some way amiss.

(c) The three examples on page 10 of the paper are in no way representative of the experience of most consumers. In the examples, the FCAI agrees that, dependent upon the particular circumstances, the consumer guarantee provisions in the ACL could apply. The FCAI members are well aware of the distinction between a manufacturer's warranty and the consumer guarantees under the ACL. FCAI understands that the members provide training to their staff and their dealers' staff to ensure that they are also aware that a consumer may have rights under the ACL which are in addition to those under the manufacturer's warranty.

Where the ACCC receives information that suggests customers receive different information, the FCAI's members would value receiving access to that information so that they can ensure that the source of the incorrect information is remedied.

(d) No manufacturers' warranty states that the car must be serviced by an authorised dealer. Rather, most of them provide that if the vehicle is serviced by a dealer and the repairs or servicing contribute to a defect in the vehicle, the manufacturer's warranty will not be affected.

(e) The FCAI will not make any comments with respect to dealers extended warranties as this is a matter for the dealers to respond to.

Response to specific questions

Question 11- When purchasing a new car, what information is given to consumers about their consumer guarantee rights? What information are consumers given about the terms and conditions of the manufacturers⁶ warranties or the dealers' extended warranties? Who provides this information? How is this communicated?

Dealers, not the manufacturers, interface directly with consumers when a vehicle is purchased. The manufacturer's express warranty is typically contained in the handbook which is provided to the consumer at the time of purchase, often along with the Service Record Book. In accordance with the Competition and Consumer Act, these "warranties against defects" are required to have the mandatory wording (i.e. about consumer guarantees etc.) included within them. Many members have specific processes for dealers (as opposed to general guidance) to follow in new vehicle delivery and clearly explaining the manufacturers' express warranty provisions form part of this. It clearly provides that the rights are in addition to other rights the consumer might have under, for example, the ACL. Manufacturers also generally make their warranty statements available on their websites and these can be viewed before or after sale.

Question 12 - What information is given to consumers about the interaction between their consumer guarantee rights, the manufacturer's warranty and, where relevant, the dealer's extended warranty? Who provides this information? How is this communicated?

Each company will have a specific approach; there is no single response to this question.

⁶ The paper refers to 'manufacturer's warranties'. Strictly speaking, most express warranties are given by the Australian distributor, not the entity which manufactured the vehicle. To avoid any confusion, in this chapter we have also used the term 'manufacturer's warranty'.

Question 13 - What are consumer perceptions of consumer guarantees, manufacturers' warranties and dealers' extended warranties? How do these influence a consumer's decision to buy a new car?

Anecdotally, consumers appear to place a high value on manufacturers' warranties. Manufacturers' warranties provide a degree of certainty to consumers for the length of the warranty which may be as long as seven years. In our members' experience, consumers generally understand that they have rights in addition to those under the manufacturers' warranties.

The FCAI understands that consumers do compare the manufacturer's warranty across brands when considering purchasing a new vehicle.

Additionally, the motoring press, when reviewing a new model, will compare the warranty cover of the brand compared to competitors. This allows the consumer to include warranty along with other attributes of the vehicle in their decision making process.

Question 14 - Have consumers relied on consumer guarantee rights to seek a refund, repair or replacement for a new car that had a major fault and been denied? Please provide examples.

The industry is fully aware of the importance of compliance with the consumer guarantees. The FCAI is not aware of any such instances as those referred to in the question. On the flip side, not all claims made by consumers are justified. Some examples may be claims made when the cause of the problem is the result of the consumer misusing the vehicle, not maintaining it properly (e.g. regular servicing and oil changes) or fitting aftermarket non-genuine accessories, such as 'roobars' or suspension kits. In these instances, the manufacturer is not liable either under its warranty or under the ACL. Consumers may not always accept this outcome given the values at stake.

Consumers may also misunderstand the definition of a major failure, and in particular the correct application of s260(a) of the ACL. New motor vehicles are uniquely complex in respect of the application of consumer rights and the application of these rights is sometimes a grey area when determining the existence of or cause of a particular issue with a vehicle. A range of issues reported by consumers may be difficult to replicate in workshop or road test conditions, which may lead to frustration. However, it will generally not equate to a failure to meet a consumer guarantee. In short the diagnosis of an issue/s with a motor vehicle can be somewhat more difficult than for many other consumer goods. FCAI members will generally try and negotiate an outcome which is acceptable to the customer to ensure as far as possible that they protect their brand.

Some members have noticed that in some instances there is a spike in the number of consumers seeking a refund at the time a car's final finance payment is to be made. This highlights one of the FCAI's major concerns with the current provisions of the ACL – that a refund can be claimed but there is no allowance made for the use a consumer has had of their vehicle up to that point in time. This will be discussed in more detail in the submission made by the FCAI on the review of the ACL currently being undertaken by Consumer Affairs Australia and New Zealand. A copy of the submission can be provided upon request when finalised.

Question 15 - What issues, if any, have consumers experienced in having their manufacturer's warranty or dealer's extended warranty claims accepted? Please provide examples.

The FCAI cannot comment on issues to do with dealers' extended warranty claims. In relation to claims made to a manufacturer, in the vast majority of cases consumers have little or no issues with making valid and justified claims.

Assessing a warranty claim may involve investigating the vehicle's service history where the failure was a component that requires regular service e.g. major internal engine failure / no oil found in engine. If the vehicle is serviced within the authorised franchised network, the service and repair history can be confirmed easily via available repair order data. If the consumer has had some or all services performed either by themselves or an independent repairer, documentation verifying the services performed, oil and parts used would be requested from the customer to assist the manufacturer in assessing the claim.

Question 16 - Are there examples of consumers being advised that rights to a repair, replacement or refund are limited because a vehicle is outside the manufacturer's warranty? If so, does this arise when dealing with a dealer or a manufacturer? Please provide details

In general, if this was to occur, it would be contrary to the instructions of the FCAI members to its staff and dealers.

Question 17- Are there examples of consumers being offered alternative remedies, such as a free service, in response to a request that a new vehicle be repaired, replaced or refunded?

Members would not offer an alternative remedy where any such claim relating to a bona fide major failure of a vehicle to comply with a consumer guarantee exists. Rather, if a manufacturer has a genuine dispute with a customer as to whether a bona fide claim exists, a manufacturer may offer a remedy such as a free service as a way of resolving that dispute and in an attempt to ensure that the customer remains satisfied with that brand. To be clear, members making such offers do not do this as a way of "shirking" their legal obligations under the ACL but rather as a genuine dispute resolution and customer satisfaction tool. Some members report that the opposite has been true on many occasions, i.e. that the manufacturer has not been convinced that the consumer's claim regarding a major failure has been genuine, but has given the customer the benefit of the doubt and agreed to repair, replace or refund, and/or provided other goodwill offers.

Question 18 - Are dealers constrained in their ability to provide remedies to consumers by, for example, contractual clauses requiring prior manufacturer's approval to provide a specific remedy or reliance on manufacturer's expertise in diagnosing issues?

FCAI is not aware of any contractual constraints that would be inconsistent with a consumer's rights under the ACL.

FCAI members and their dealers work together to provide the most rewarding customer experience that they can. While this customer-centric approach is successful in the vast majority of cases, from time to time issues will arise. In these instances if the manufacturer is expected to pay for the consumer's claim then it is only reasonable and appropriate that

the manufacturer be involved in the process of assessing and determining the consumer's complaint and be given the opportunity to assist in the diagnosis or repair of the issue. Manufacturers often do have additional expertise in diagnosing issues and as such their involvement can be useful to all parties.

In instances where approval is required, an authorisation can be provided on the same day when the relevant information permitting the repairs is provided.

Question 19 - What training are dealers given in explaining consumer guarantees, the manufacturer's or dealer's extended warranty? What information is provided at the point of sale and after sales?

We understand that many members have training sessions for their dealers and their staff where they are provided with information on consumer's rights including those under the ACL and the manufacturers' warranties.

In addition, members and their dealers can access training modules on consumers' rights under the ACL, organised through the FCAI and provided by external parties.

Question 20 - What information is given to consumers about when their manufacturer's warranty and/or dealer's extended warranty commences and expires? What information are consumers given about how the manufacturer's warranty and dealer's extended warranty interact? How is this communicated?

In the majority of cases the FCAI understands that the manufacturer's express warranty is clearly spelt out in the owner's handbook which is provided to the consumer by the dealer at the point of delivery. Further the FCAI is also aware that most members require their dealers to explain to consumers their rights. While the customer interface is handled by the dealer, clearly there are responsibilities for both the manufacturer and the dealer.

Question 21 - What information are consumers given about who can service their new car without affecting either the manufacturer's warranty or dealer's extended warranty? Who provides this information? How is this communicated?

See answer to Question 20 above.

Question 22 - What issues have consumers experienced in having a dealer's extended warranty claim accepted where the car has been previously repaired with used parts? How does this interact with the terms and conditions of a consumer's insurance policy?

This is a matter for dealers.

Question 23 - Are there examples of consumers being required to sign a confidentiality agreement in order to resolve a complaint about a new car? If so, does this arise when dealing with a dealer or a manufacturer? Please provide details.

A claim for a refund or replacement vehicle under the ACL will usually be a claim involving a substantial sum of money. Where agreement is reached with the consumer to resolve such claims, it is a usual aspect of the settlement of such claims that the settlement agreements will contain a release and a confidentiality provision restricting disclosure of the terms of the settlement reached. The law encourages the settlement of disputes without recourse to litigation and often, the maintenance of confidentiality of the terms of the settlement will be an important consideration for the parties agreeing to the settlement. For that reason, it is

entirely reasonable and appropriate that settlement agreements resolving claims for refunds and replacement vehicles under the ACL contain confidentiality provisions.

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

General Comments:

- Before a road vehicle can be registered for the first time in Australia it must comply with the Motor Vehicle Standards Act 1989 (Cth)(MVSA). The MVSA applies to new and used imported vehicles and locally manufactured vehicles. The MVSA requires vehicles to meet national standards covering safety and environmental requirements. These national standards are known as the Australian Design Rules (ADRs).
- Under the MVSA, all vehicles must demonstrate compliance with the relevant ADRs and receive a "type approval" prior to being released.
- The MVSA is administered by the Federal Department of Infrastructure and Regional Development (DIRD). DIRD will assess the evidence supplied by vehicle brand that demonstrates how the vehicle meets the relevant ADRs and issue a type approval (called an 'identification plate approval [IPA]).
- The Australian Government has a long term policy commitment to harmonising the ADRs with the international United Nations Regulations (UNECE Regs).
- Australian vehicle emission standards largely reflect international standards developed through the United Nations World Forum for the Harmonisation of Vehicle Regulations. These standards form the basis of vehicle emission standards adopted in Europe and many other countries, and are commonly known as the "Euro" standards.
- The statement on p.16 that "fuel economy was ranked as the second most important factor when purchasing a car" does not accurately reflect the results of the ABS survey. Chart 1 of the Paper demonstrates that fuel economy/running costs were the second highest ranking for the ABS survey and evaluation. Running costs includes servicing, replacement tyres, other maintenance and repair, registration and insurance as well as fuel consumption.
- The ABS survey on factors considered when buying a motor vehicle (Chart 1 on p.16) includes purchasing of both new and used vehicles. As no more than 20% of people purchase a new car (with the average private consumer purchasing a new car every 5 years), it can be assumed that the majority of the respondents to this survey were purchasers of used cars. Therefore, the relevance of this data to new car purchasers needs to be considered in that context.

Question 24 - What information is communicated to consumers about the fuel consumption, CO2 emissions and noxious emissions of cars they purchase (i.e. from manufacturers, dealers, government guides, labels etc.)? How is this information provided to consumers (other than through mandatory labelling)?

FCAI member brands provide information on fuel consumption and noxious emissions to new car consumers via their information brochures, websites and reference to the Australian Government's Green Vehicle Guide website (www.greenvehicleguide.gov.au).

The information provided is the result of the Australian Government's regulated standards. For fuel consumption, brands provide the result of the ADR 81/02 fuel consumption test displaying the result in litres/100 km and usually state the level of test standard, i.e. Euro 5 or Euro 6 (as measured in the ADR 79/04 test standard) for noxious pollutants.

FCAI member brands have noted the ACCC's recent guidance on this issue and the recommendation to include a qualifying statement when ADR fuel consumption figures are represented and some brands have already implemented this recommendation. An example qualifying statement from a member brand is:

The declared fuel consumption figures are determined by testing under standardised laboratory conditions to comply with ADR 81/02. Real world fuel consumption is influenced by many additional factors such as individual driving style, load, traffic and vehicle condition. The declared fuel consumption figure should only be used for the purpose of comparison amongst vehicles.

Question 25 - Are consumers aware that fuel consumption and CO2 emissions values are designed to be comparative? Is this made clear to consumers at the point of sale or elsewhere? Are there any ways in which consumer understanding could be improved?

Many brands provide additional information to consumers to highlight that the fuel consumption value from the ADR 81/02 test may vary from actual on-road use. Words such as "fuel consumption and emissions will vary depending on driving conditions, vehicle conditions, loads and options/accessories" are common. The mandatory label not only requires the general information but also the inclusion of the words "Actual fuel consumption and CO2 emissions depend on factors such as traffic conditions, vehicle condition and how you drive". The Government mandated notice also refers the reader to the Green Vehicle Guide where more information is available

As mentioned above, FCAI member brands have noted the ACCC's recent guidance on this issue and the recommendation to include a qualifying statement when ADR fuel consumption figures are represented and some brands have already implemented this recommendation.

It must be noted that a standardised laboratory test enables new car purchasers to make a like-for-like comparison between various makes/models to assist in their purchasing decision. Without a standardised test, variation between results would be significant and would depend on a range of factors including fuel quality, vehicle load conditions, individual driver styles, traffic conditions, test track or road conditions, environmental and ambient temperature.

Question 26 - What processes (e.g. training or education) are in place to ensure that dealers or sales staff are knowledgeable about, and don't mislead consumers about, the fuel consumption and emissions characteristics of a new car?

There is no standard approach across industry to the knowledge of the FCAI. We are aware that in some cases members have conveyed the earlier message from the ACCC on this matter to the dealers through dealer bulletins. Websites and brochures have also been reviewed.

Question 27 - Other than those described above, are there any additional factors or measures that could be included in the term 'car performance'?

As noted by the ACCC, car performance can cover a range of vehicle operational performance characteristics and also subjective measures such as vehicle handling, quality and reliability.

Objective vehicle performance characteristics often refers to engine performance such as power and torque output. Additional objective performance measures that are often provided by vehicle brands include vehicle towing capacity, luggage space and also cargo load space and carrying capacity.

There are also a range of subjective attributes that are often considered as part of a vehicle's performance including, handling, body roll, ride quality, seat comfort, interior storage space, finish quality and ease of use of vehicle controls, infotainment systems and climate control.

Question 28 - To what extent do manufacturers and dealers seek to differentiate their products and services, and on what basis? To what extent do perceptions of quality and reliability account for price differences?

Manufacturers seek to differentiate their vehicles and models on the basis of many factors. Some of the factors include price/value, reliability, features and performance. Others are more ephemeral such as the overall brand experience and the manufacturer's view of the market and where they choose to position their brand within the market.

Manufacturers do not specify the retail price of their cars – they only specify a manufacturer's maximum recommended drive away price. The maximum recommended drive away price of cars and models is an amalgamation of all of the factors referred to above, as well as, in some instances, the available supply of the car or model.

Our submission has also mentioned the value of trade marks and links to quality to both consumers and the brands in earlier sections.

Question 29 - To what extent do claims relating to car performance affect consumer purchasing decisions? Please provide examples.

Chart 1 (p. 16) that summarises the ABS 2012 survey of factors considered when purchasing either a new or used car shows that many of the "performance" factors are considered either directly (e.g. engine performance) or indirectly. For example;

- Type of vehicle determines towing capacity and load capacity.
- Accessories will include infotainment systems and climate control.

Question 30 - Are you aware of any examples of claims by dealers or manufacturers (through websites, TV, print etc.) that are made to consumers about car performance that are potentially false, misleading or deceptive?

All FCAI members have stringent procedures in place, including legal review, to ensure that all claims made by them in relation to their cars are accurate and are not false, misleading or deceptive and comply with the FCAI's Voluntary Code of Practice for Motor Vehicle Advertising (FCAI Advertising Code).

Question 31 - Do you have suggestions of how claims made to consumers about car performance could be improved?

Before considering any improvements, there needs to be demonstrated evidence of a problem that requires improving. The FCAI would welcome further information from the ACCC which provides an explanation of any particular concerns in this area.

Chapter 4 – Post sale service arrangements

Question 32 - What are the differences between genuine, OEM, parallel import and aftermarket parts? When and why are these parts used? When and why are second-hand parts used in repairing or servicing new cars?

Genuine parts are parts supplied by the OEM manufacturers through their authorised distribution channels.

Genuine parts undergo significant and extensive validation and testing to ensure that they will perform to the standard deemed appropriate by the manufacturer. Parts that are introduced to the market outside this system are questionable or have unknown attributes in terms of their suitability and reliability compared to the genuine parts. FCAI also notes the definition applied by the ACCC to “original equipment manufactured parts”. This definition is incorrect and misleading; the term OE parts is interchangeable with genuine parts that are provided to the market by the brand. It is incorrect to state that OE parts are parts made available for sale under a different brand.

Parallel parts are made by the car or motorcycle manufacturer or with its approval but are not necessarily produced for Australian vehicles, and yet have somehow entered the country. The risk posed by parallel parts is that they have not come through the correct supply chain so they may not fit Australian vehicles correctly or safely and may not function as intended/properly in Australian conditions. The provenance of the parts may be unknown.

Counterfeit parts are illegal imitations represented as genuine parts. They may be stamped with serial numbers and the logo of the car manufacturer in order to deceive consumers into thinking they are genuine parts. They can be an enormous safety risk as the origin of the counterfeit parts cannot be verified nor can it be confirmed if the manufacturing processes and materials used are appropriate for the particular component.

Salvaged parts have been removed from a damaged car and ‘cleaned up’ for use in the repair of other vehicles. The risk with salvaged parts is that they may have been damaged in the accident, sustained wear and tear from previous use or have degraded due to exposure to the elements while sitting outside in the wrecker’s yard. All these factors could stop the part from working properly. There is also no guarantee that the part was originally genuine without knowing the full repair history of the vehicle. Other names for salvaged parts include ‘green’ parts and ‘recycled’ parts. The only situation in which a reused part should be considered is in the case of remanufactured genuine parts in which the car-maker itself or its authorised supplier has reconditioned the part to its strict specifications.

Aftermarket parts are not produced by the car or motorcycle maker and have been produced by another company as an addition to existing equipment or an alternative to a genuine part. Aftermarket parts can pose a significant risk because they are not tested by the vehicle’s manufacturer as an integral component of the vehicle and can’t necessarily offer the quality and safety that comes with a genuine part.

Cars are so ubiquitous and so much a part of our everyday lives that they are taken for granted. They are however, an extremely complex and sophisticated piece of machinery. For a car to be safe and working properly, all of its parts and components need to be properly working in unison. Until the car rolls out the factory gate and is available for sale at the dealer, the manufacturer can ensure that this is the case. Once the car is sold and registered, it is up to the driver to ensure that his/her car remains safe and continues to work properly.

Over time some parts will inevitably be required to be repaired or replaced. To ensure that a car continues to be safe and to operate properly, the replacement parts need to be designed and manufactured to the same standards as the original part as a small discrepancy can have a significant impact. The only way this can be guaranteed is if the parts are 'genuine parts'.

Parallel imported parts might have been designed and manufactured by the original manufacturer, but they are still potentially problematic. Many parts can deteriorate over time, especially if they are not stored properly. There is no guarantee that parallel imported parts have been properly stored. In addition, there are often subtle but important variations between parts made for an overseas models compared to the same model in Australia.

The FCAI is particularly concerned about the apparent increase in the use of refurbished second hand parts outside of the Australian genuine parts supply chain. Not only is there a question over the provenance of the part itself, but there is the issue of the quality of the refurbishment. These concerns are particularly pertinent when considering parts which are important for maintaining the safety of the car's occupants and other road users.

Question 33 - What information is made available about different types of car parts to the market? Who makes this information available and when?

FCAI members distribute their parts through their authorised dealer network. The dealers not only use parts themselves in servicing and repairing of vehicles, they also sell parts at retail and wholesale.

In addition, some members have dedicated parts wholesalers.

FCAI members provide information relating to their parts to their dealer network. Dealers are then able to provide the information to their customers.

In addition, information relating to parts is available on the Internet. Generally, the manufacturer of the part makes the information available although information is also available from other sources.

FCAI also operates a dedicated website www.genuineisbest.com.au to explore issues with the various sources of parts.

Another important consideration in this context is the vertical integration within the insurance and body repair industries. This is leading to practices that, in some cases, are not necessarily in the consumer's best interest. This vertical integration tends to result in a price driven approach with second hand parts sometimes specified by the insurance company to the related body repair shop. There are other issues that the FCAI members have from time to time been made aware of such as use of sub-standard repair practices. The ACCC should consider the vertical integration within the insurance and body repair industry and the impacts this has on consumers and vehicle safety.

Another point to consider is the complexity of the terminology used in the insurance PDS when describing the parts that the insurer will use to repair a vehicle. The FCAI suggests this should be standardised along the lines of the definitions used earlier in this submission to ensure consumers become more aware of their policy entitlements. That is, are they buying a policy which guarantees the use of genuine parts or can the insurer use aftermarket or salvage parts? It is important that this is expressly drawn to the consumer's attention before a consumer buys the insurance product.

Question 34 - What information are consumers given about using different types of car parts and its effect on their manufacturer's or dealer's extended warranties? How is this communicated?

Presumably, this question is addressing the time at which a new vehicle is delivered to a consumer. On this basis, all matters relevant to a manufacturer's warranty statement are clearly set out in the owner's handbook which is provided to the owner when he/she purchases their car or available on the manufacturer's website.

Question 35 - What issues, if any, have consumers and independent repairers had in accessing appropriate parts or tools to repair or service a new car?

As far as the FCAI is aware, no consumers or independent repairers have had any issues with accessing appropriate parts or tools which are required to service a new car. Access to security related parts may be subject to tighter controls, which is in alignment with the Industry Agreement provisions on access to security information and agreed to by the various associations.

Genuine parts are available from dealers or, in some cases, authorised parts distributors. If the dealer does not have the part in stock, it can be readily obtained from the Australian distributor or the manufacturer.

The same is the case for tools. In addition, the FCAI Voluntary Code of Practice – Access to Service and Repair information for Motor Vehicles covers special tools. More is said about the Code of Practice in Chapter 5.

It needs to be borne in mind that vehicles are becoming increasingly complex and require increasingly sophisticated equipment to service and repair them. Through no fault of the manufacturers, this equipment is expensive. If an independent repairer cannot afford, or cannot commercially justify some of this expensive equipment, then this is not a matter which should be addressed by legislation, it is simply a product of the competitive market in which repairers, both authorised and independent, are operating.

As mentioned above, FCAI members are committed to providing consumers and independent repairers with a range of information pertaining to the repair and service of a new vehicle. There are over 17million vehicles in service and 3,500 franchised dealer locations. Clearly, the independent repairers play an important part of the system to service and repair the car parc.

The FCAI's Voluntary Code of Practice for Access to Service and Repair Information for Motor Vehicles was developed to ensure that the pathway to access FCAI participating members' service and repair information is clear. The Voluntary Code has been developed by the FCAI to ensure that the service and repair of motor vehicles is carried out in a manner that best protects the consumer's interest in their vehicle.

To assist in achieving this, the Code, which has been developed following the Commonwealth Consumer Affairs Advisory Council's (CCAAC) report on Sharing of Service and Repair Information in the Automotive Industry, facilitates access for independent repairers to service and repair information and provides a methodology to seek information where it appears unavailable. The Code takes into account the particularities of the Australian market and has considered relevant aspects of other countries' activities in this area.

The objectives of the Code are:

- a) to ensure that vehicle repairs are carried out in a professional manner and to ensure that the safety, structural integrity, regulatory compliance, presentation and utility of the vehicle is restored or maintained;
- b) to provide an information pathway to repair information that may be used by parties outside of the Authorised Dealer network; and
- c) to provide a fair means of access to repair information for parties outside the Authorised Dealer network.

The FCAI supports a responsible approach to ensuring that the public has an opportunity to choose the repair or service facility that best suits their particular needs. While a wide range of information is available from a variety of sources, the Code does not require the provision of certain information including that relating to particular aspects of security, safety and environmental compliance or performance by OEMs. However, each OEM is free to determine whether, and on what terms, to supply information to Independent Repairers in addition to repair information.

Many manufacturer OBD tools are widely available and although brand specific tools can assist in the repair of a particular motor vehicle, independent repairers may be able to use generic tools, rather than brand specific tooling to undertake repairs. Independent repairers are able to purchase generic on-board diagnostic (OBD) tools which are widely available.

Question 36 - What types of parts and tools do manufacturers sell to consumers and independent repairers? Do these differ from what is made available to dealers? What explains the difference?

Manufacturers mostly make the same type of parts and tools available to independent repairers as they make available to the dealers. Manufacturers do not make parts or tools available directly to consumers. Consumers can generally purchase parts and tools from dealers, or from the manufacturer of the tools, if they want.

The FCAI Voluntary Code on access to service and repair information states that each OEM shall:

- make repair information available to independent repairers at commercially reasonable prices;
- upon request advise independent repairers on where they may purchase special tools;
- provide the information to access special tools where those tools are not supplied by the OEM (to the extent that the OEM is in possession of such information and is permitted to provide it), or alternatively make these tools available to independent repairers through authorised dealers.

Question 37 - What types of parts and tools do dealers sell to consumers and independent repairers? How does this differ from what manufacturers sell? Are dealers put at a competitive disadvantage for selling these parts and tools?

The FCAI refers to its response to question 36. In addition, the FCAI notes that it is very difficult to see how dealers could be put at a competitive disadvantage by selling parts and tools. They can choose whether or not to sell the parts and tools to third parties and, if they choose to do so, are free to set their prices.

Question 38 - Where a common platform is used by manufacturers (e.g. Volvo S40, Ford Focus and Mazda 3 are built on a common platform, with different features/trim), does this make it easier to access parts and tools?

Having a common platform does not necessarily mean that all parts are common across the cars sharing the platform. The brands will introduce various features to differentiate their product from the competitors. For example, there may be different engine and transmissions or suspension set-ups, different interiors, different seats, driver controls and also different infotainment systems. However, to the extent that the parts and tools are common, they will be easier to access.

Questions on logbooks, dealer stamps and online logbooks:

Question 39 - What is the purpose of a logbook? How is this communicated to consumers? What other uses are there for a logbook?

A logbook or Service Passport offers the consumer a hard copy record of the service history of the vehicle. Such history is referred to at the time of resale or trade in to value the vehicle. Online logbooks offer the same level of information via a consumer brand portal.

Question 40 - What are the industry trends for providing online logbooks, rather than a paper copy? What other record keeping methods are available? What are the benefits or challenges of using such methods?

Different brands do different things. As vehicles become more sophisticated, some brands have seen merit in introducing digital or online logbooks. Such logbooks provide additional assurances, benefit and convenience to consumers that all services performed by an authorised service centre have been properly recorded. This also allows the whole-of-life service history of the vehicle to be recorded, and provides a more tailored service to meet the customer's needs.

Manual logbooks typically only record very limited details of services. This usually involves a stamp from the service provider certifying that a service had been completed and a record of whether, for example, brake fluid was replaced. Manual logbooks also do not necessarily offer the same quality assurance to prospective purchasers.

Digital logbooks enable authorised service centres to electronically record all services performed on a vehicle by an authorised service centre in a secure database which is readily available to vehicle owners. For many brands, this also provides quality assurance to the customer, ensuring that a comprehensive database of a vehicle's history is stored and easily accessible.

For those owners with a vehicle fitted with an online logbook, it is open to them to choose to record services in their own vehicle logbook and/or retain copies of receipts and invoices as records of those services for prospective purchasers to inspect should they wish to sell their vehicle in the future.

Question 41 - What level of access do consumers or others have to online logbooks? Who can update the online logbook? What barriers, if any, are there to do so?

Generally speaking, customers are able to access their online logbooks. The detail of how this is undertaken may vary by brand [including via personalised online account], and there is nothing preventing a customer from providing a copy of a vehicle's online logbook record to an independent repairer.

When a consumer brings their vehicle into an authorised service provider for servicing, the authorised service provider can log into the database and bring up the vehicle's records contained in the online logbook. This assists in identifying what services are required. Once the authorised service provider has completed the service, they will update the online logbook and provide a printout of the service for the consumer.

Consumers are able to access the information contained in online logbooks either through logging in on a personalised online account, or through requesting a copy of the service information through an authorised dealer.

Accessibility to a proprietary online logbook is not an essential input required by independent repairers that would exclude them from participation in the market for servicing and repair. Indeed, independent repairers are readily able to develop their own alternative electronic recording service or manually equivalent databases in order to service their customers.

The FCAI does not agree with any assertion that the provision of online logbooks result in either anti-competitive or consumer detriment.

Chapter 5 - Access to repair and service information and data for new cars

General Comments

1. Reference is made in the paper to the FCAI website through which supply chain participants – e.g. independent repairers in particular – can gain access to a member's service information and data. This downplays the extensive work that has been done by the FCAI and its members to ensure that independent repairers have access to service and repair information. In particular, in February 2015, the FCAI published a voluntary code of practice entitled: 'Access to Service and Repair information for Motor Vehicles'.

The Code facilitates access for independent repairers to service and repair information and provides a methodology to seek information where it appears to be unavailable.

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.

Notwithstanding that independent repairers can readily get access to this information at reasonable and appropriate prices and the majority (FCAI estimates well over 60%) of the 17 million registered vehicles that are serviced and maintained by independent repairers, the FCAI members have had very few requests from independent repairers. Similarly, the FCAI is aware of only two complaints under the code by independent repairers about not being able to access information they requested. In one case the manufacturer took immediate steps to rectify the situation which was a one-off issue with a particular dealer and in the other it was identified by the body representing the independent repairers that the issue was in fact with the repairer, not the distributor.

2. Providing access to vehicle data is a complex and multifaceted issue. It has serious implications for vehicle safety, the protection of personal information and property and the protection of intellectual property owned by a variety of parties. The FCAI provided a submission to the Productivity Commission's issues paper on Data Availability and Use in April 2016. In this submission, the FCAI explores some of these issues in more detail. A copy of the submission can be provided if required.
3. The complexity of the data and information raises another issue: it requires a relatively high level of expertise and knowledge to be able to be properly utilised. The FCAI cannot comment on the level of expertise that, in general, is available at independent repair shops.

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

In the first instance when a new vehicle or part is released, the relevant repair and service information is largely owned and controlled by the manufacturer of the vehicle/part. Over time, other sources for the information become available such as from independent repairers and even special-interest forums. A lot of this information can be accessed via the web.

Question 43 - What repair and service information and data is shared by manufacturers? How is it shared? With whom is it shared? What conditions are on sharing this information and data?

Manufacturers make service and repair information available to their respective dealer networks and to independent repairers in accordance with the Code of Practice referred to above.

The Agreement on Access to Service and Repair information for Motor Vehicles of 2014 acknowledges that there is some information that may not be able to be shared by manufacturers. This may, for example, result from confidentiality arrangements, security, legislative, regulatory or privacy considerations; the lack of robust monitoring or enforcement mechanisms to ensure the protection of information or the bona fides of those who might access it, or intellectual property or proprietary considerations. Manufacturers may impose conditions on the provision of information to address these issues and to protect consumers. One of the overriding themes of the Agreement is the need to ensure that consumers are the prime consideration in the provision of service and repair information in the marketplace.

Under the FCAI Voluntary Code, FCAI participating members undertake the following:

At a minimum, it is understood and acknowledged that independent repairers will be granted access by OEMs to repair information and special tools under this Code in accordance with the following principles, subject to the terms and conditions determined independently by each OEM. Unless otherwise agreed with the relevant OEM:

- (a) The repair information is applicable only to the use, repair and replacement of new genuine parts and may not be applicable where the independent repairer uses non-genuine parts in the repair or maintenance of a motor vehicle;
- (b) An OEM may provide repair information and/or special tools to an independent repairer on the condition that whenever the independent repairer does not use or will not be using new genuine parts sourced from the OEM or its authorised parts suppliers, the independent repairer must inform its customers of that fact and if relevant, that the performance of the motor vehicle may be affected;
- (c) All repair information and special tools are proprietary to the OEM and are subject to applicable copyright, trade marks and other intellectual property rights of the OEM and/or supplier of the special tools. Their production or disclosure is subject to the copyright, trade marks and other intellectual property rights relating to such repair information and/or special tools and they remain the exclusive property of the OEM and or special tool supplier and all rights remain with the OEM and/or special tool supplier; and
- (d) The fact that an independent repairer has been given access to repair information under the provisions of this Code does not give the independent repairer, or any associated group or organisation, the right to claim or represent themselves as “factory trained”, “authorised dealer”, or make any other representation that would imply the OEM’s approval or authorisation of the independent repairer.

Each OEM will independently determine the terms and conditions of any supply of repair information and special tools to an independent repairer.

Question 44 - What is the effect of not having some level of access to repair and service information and data? On what basis might repair and service information not be shared? Why?

There is already a high level of access to repair and service information by independent repairers and the dealer networks.

Repair and service information might not be shared for a number of reasons including, if it was going to be used:

- in such a way that the vehicle's safety, security or environmental compliance could be compromised;
- to "reverse engineer" some aspects of the vehicle; or
- to gain an inappropriate or extraneous commercial advantage.

The sharing of security, environmental and safety information should be non-negotiable because of the associated consumer and public detriment.

Question 45 - Is repair and service information and data presented in a standardised way across manufacturers? How consistent is repair and service information and data in terms of availability and how it is presented across brands?

All manufacturers' vehicles are different. This is the essence of their marketability - to distinguish their vehicles from other brands and models. Their vehicles are also manufactured in different places using different protocols and processes. Accordingly, it is completely understandable that service information is not standardised across all manufacturers. It is however readily available.

Question 46 - How is repair and service information and data accessed? What controls are there on accessing it?

Generally, manufacturers provide information on service and repair information via direct contact with dealerships, through the brand website or via the FCAI. Any suggestion by any party that the FCAI website links are the primary source of access are not only disingenuous, they are also incorrect. The independent repair sector identified that one of the issues independent repairers faced was knowing where to go to gain access. While it is not the role of the FCAI to provide this pathway, the FCAI has nonetheless assisted by providing a link for those members that wanted to use this additional pathway. Importantly, third party providers also play a role in the provision of service and repair information both in Australia and internationally. The MTA/VACC Tech-on-Line tool is a good example.

Question 47 - What other methods exist for accessing repair and service information and data? What are the benefits or challenges of using such methods?

As mentioned above third party providers play a role in the provision and consolidation of service and repair information. Competition between these independent providers will inevitably mean that the quality of information being provided is of a high standard.

Question 48 - Where a common platform is used by manufacturers (e.g. Volvo S40, Ford Focus and Mazda 3 are built on a common platform, with different features/trim), does this make it easier to access repair and service information and data?

It makes little difference. The information can be readily accessed through available sources mentioned above.

Question 49 - What issues have consumers experienced with accessing repair and service information? How do these issues impact them?

The FCAI is not aware of any issues experienced by consumers in accessing repair and service information.

Question 50 - What impact have the Heads of Agreement and/or voluntary codes of practice had on access to repair and service information and data? Provide examples.

The adoption and implementation of the Industry Agreement and the voluntary code of practice has meant that repair and service information and data continues to be readily accessed under agreed terms and conditions. However, the experience of the FCAI members has been that very few independent repairers have sought to avail themselves of the opportunity to access the information and data. Any suggestion that it is difficult to access the data and information is simply incorrect. We can speculate on the reasons as to why independent repairers have not taken this opportunity the simple fact is that they have not. We understand that this has also been the experience in other parts of the world.

The FCAI and some industry groups have continued to engage constructively through this mechanism. This includes:

- Investigating a complaint from an independent repairer and concluding the complaint did not constitute a systemic and ongoing breach
- Dealing directly with a FCAI member to resolve an area of identified concern.

Question 51 - What effect have the Heads of Agreement and/or voluntary codes of practice had on competition in the repair and service sector? How has this affected consumers?

Service and repair information has always been available, and as such the car parc of 17 million vehicles is being serviced and repaired. The purpose of the Industry Agreement is to ensure that this continues but also acknowledges that to protect consumers there are certain types of information that, all parties agreed, should not be shared. The independent repairers have always serviced the bulk of the vehicles in the market and that remains the case following the signing of the Industry Agreement.

With all independent repairers being able to access the repair and service information, they should be able to compete with authorised dealers. If independent repairers are of the view that they are not able to compete with dealers, the FCAI is of the view that it is for reasons other than access to repair and service information.

The Heads of Agreement has been in operation since May 2015, when the Australian Automobile Association (AAA) released their Code of Practice as required to bring the Agreement into force. In the 18 months since the Agreement came into effect, the steering committee has met once.

The FCAI considers that the Agreement is in its early stages of implementation and that it provides an appropriate framework for consideration of matters concerning access to service and repair information. In the time that the Agreement has been in effect, there has been no substantive allegation made of systemic activity by FCAI members. There have been a number of isolated instances and this has been addressed bilaterally by the FCAI and the other industry associations, or by the member company itself.

FCAI members are committed to providing consumers and independent repairers with a range of information pertaining to the repair and service of a new vehicle. There are more than 17 million vehicles operating today in the Australian national fleet. There are 3,500 franchised dealer locations. The reality is that independent repairers are an important part of the system; the fact is that cars continue to be serviced and that consumers continue to receive effective service and repair of their motor vehicles from both authorised dealerships and independent repairers.

Question 52 - How effective are the Canadian, US and EU approaches? Are there any concerns with a mandatory system, such as in the EU and Massachusetts, being introduced in Australia? What are the risks and benefits of similar regulation (voluntary or mandatory) in the Australian context?

Based on the experience of the FCAI members, there is no need for right to repair legislation to be introduced into Australia. The current voluntary system provides the necessary protection for consumers as well as providing appropriate protection to the owners of the intellectual property. This is demonstrated by the fact that there has been very limited contact with the FCAI to highlight issues with systemic access to service and repair information. The FCAI does not consider there is an identifiable need for a further layer of red-tape and legislation.

It is the FCAI view that this level of information is generally available in the Australian market today through manufacturers themselves or through the FCAI portal, let alone through third party providers.

Question 53 - What other ways could repair and service information and data be shared or provided? Could or should the information and data be standardised?

Attempting to standardise information and data is very problematic. Apart from agreeing on what 'standardisation' means and then agreeing on what the particular 'standard' is, it is highly likely that some of the information will simply not be able to be standardised or that this might impact on the information's veracity.

Then there is the question of who bears the cost. Australia is a small market relative to the rest of the world with annual sales of 1.2 million vehicles in a 90 million unit market and if the manufacturers are expected to pay for the cost of providing data in a different form for Australia, they may be required to do one of two things: pass the cost on or reduce the number of models they sell in Australia.

Chapter 6 – Other Issues

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

'Build date', 'model year' and 'compliance date' have separate and distinct meanings, of which, the FCAI believes, consumers are aware.

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

The FCAI is intending to make a submission to the review on the ACL currently being undertaken by the Consumer Affairs Australia and New Zealand. In that submission it raises a number of issues relevant to the new car retailing industry. A copy of the submission can be provided upon request when completed.

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