



*Motor Trade Association
of South Australia*

ACCC Market Study into New Car Retailing

8 November 2016



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Background

The following comments are provided on behalf of Motor Trade Association of South Australia (the MTA), an employer organisation representing the interests of 1,100 members and approximately 15,000 employees in the retail automotive sales, repair and service sector by our Members.

Eighty per cent of these businesses employ less than 20 employees in South Australia and ninety three per cent nationally. The automotive retail, service and repair sector adds more than \$2.85 billion to the State economy annually and employs almost 27,000 people in South Australia – more than the ten largest South Australian companies combined.

The MTA GTS is a Registered Training Organisation and Group Training Organisation, which delivers post trade and apprentice training to automotive tradespeople, placing some 500 apprentices in over 250 host businesses.

As a representative state body, the MTA has 13 divisions representing the full range of businesses within the motor industry, excepting mass vehicle manufacturing. These divisions represent businesses in the following sectors:

- Towing
- Vehicle Repair
- Motorcycle
- Bus and Coach
- New Car Dealerships
- Used Car Dealerships
- Farm Machinery
- Retail Tyre
- Service Station
- Auto Recyclers
- Heavy Vehicle
- Vehicle Servicing
- Vehicle Rental



Executive Summary

New car retailers provide over 68,850 jobs in Australia and over \$7.4 billion in economic activity. It is the lynchpin for the entire automotive retail, service and repair sector which employs over 383,806 and contributes more than \$38 billion annually to the economy.¹

In South Australia, over 518 new car retail businesses employ 3,675 people.²

As a major driver of prosperity and employment in the State and National economy this market study into new car retailing should be utilised as an opportunity to set legislative and regulatory structures that enhance and maximise economic outcomes for consumers and businesses, now that vehicle manufacturing is scheduled for closure next year. This does appear to be the intent of this study.

The MTA is concerned that the ACCC's narrow focus approach to new car retailing chooses to ignore or undervalue key components of the new car market value chain.

The underlying assumption made by the ACCC appears to be that there is a fundamental misalignment between business interests and consumer interests. The MTA argues this is incorrect and proposed actions arising from this market study will be logical conclusions drawn from flawed base assumptions.

By not including substantial discussion on finance, insurance and parallel imports, the ACCC has ignored the pre-eminent issues facing this market.

For the record, the MTA again states its total opposition to parallel vehicle imports, noting the consumer detriment that is likely to arise in terms of safety and cost.

The MTA makes the following key points on the headline topics raised by the ACCC in its issues paper:

1. There is a high level of vertical integration in the new car retail market, with strict franchising structures governing almost all aspects of operations.
2. Vehicles sales are loss making exercises that are supplemented through paid access to sales channels for insurance and finance products, which add to the consumer experience, lower search costs, and provide greater access to market for consumers compared to other options.
3. There is a high level of competition in the market for consumers, who are exhibiting lower levels of brand loyalty, the greatest level of choice in the world, and access to new and emerging sales devices, even before the introduction of parallel vehicle imports.
4. ACL is already sufficient to protect consumers, but does not do enough to protect dealerships from issues originating higher up the supply chain, nor does it protect dealerships from vexatious and malicious online reviewers who often hide in anonymity.
5. There is no evidence base to suggest a need for so called 'lemon laws', nor has a viable model that would mitigate frivolous disputation while delivering better outcomes been suggested.
6. The MTA does not necessarily oppose the introduction of new testing methodologies for emissions, provided that replicable, consistent results can be achieved and that current

¹ Automotive Environmental Scan, Auto Skills Australia, 2015

² *Ibid*



- standards are revised to reflect the new baselines generated by altered testing methods. The current test is described on page 16 of this submission.
7. The intent of testing originally was to provide marketing comparisons with consistent data. It was not originally intended to replicate real world conditions nor to be used as an indicator for compliance testing.
 8. The use of these measurements has evolved over time to provide data for purposes for which they were not designed.
 9. A solution to this would be to allow for a level of variance between laboratory testing and real world results that accommodate climatic,
 10. Any solution to accessing repair information must balance the needs of manufacturers and dealerships to protect their brand and intellectual property with the rights of repairers to provide accurate and safe repairs to their customers.
 11. The MTA considers that market forces are finding equilibrium in the market for repair information and that it is too early to consider regulatory or legislative solutions imposed by government at this time.
 12. 17 manufacturers already provided a fee for service portal for independent repairers to access and there is a complaint resolution process that accommodates disputes between these parties. To date, there has been no evidence of a need for further action beyond the Heads of Agreement signed in 2014.

The MTA's submission should be read in conjunction with and in addition to those of the MTAA and our sister bodies around Australia.

The ACCC should consider whether Federal Government's Luxury Car Tax revenue, which has grown by 61.07% between 2004\5 and 2014\15, totalling \$480 million annually, is affecting the price elasticity of demand for vehicles and whether ever increasing revenues from this source provide a consumer benefit or detriment.

The ACCC must consider that an ultra-competitive market already exists in new car retailing, as it does across the retail, service and repair sector, and any moves to further slice margins will affect employment and business viability in the sector, undermining the competition remit afforded to the ACCC and lead to greater consumer detriment overall.



Structure and Operations of the New Car Retailing Industry

- **ACCC has not accurately captured the value chain and profit centres of the new car retailing market.**
- **ACCC has contradicted itself by stating it will not consider submissions on insurance and finance products while then asking for submission responses on these very subjects.**
- **Car sales in and of themselves are not profit centres.**
- **Dealership operations are highly structured through their franchise agreements with manufacturers, which often contain take it or leave it provisions.**
- **Other consumer offerings, such as finance and insurance products, are sold through the new car sales channel on behalf of insurers and financiers, but are not developed by dealerships.**
- **Payment for access to these channels is a major profit centre for dealerships and add to the consumer value proposition by providing convenient and affordable services.**

The MTA considers that while the ACCC has accurately described the physical supply chain of new cars in the retail market, it has not accurately captured the value chain and profit centres of that market.

It also considers that the ACCC has contradicted itself by stating it will not consider submissions on insurance and finance products while then asking for submission responses on these very subjects.

This betrays a fundamental misunderstanding by regulatory agencies about the operation of the new car retailing market, which adversely affects their policy prescriptions for efficient, competitive and financially well-regulated markets.

Vertical relationships, business models, and decision drivers

There are several key factors the ACCC and other regulators must consider when looking at the new car retail market:

- Car sales in and of themselves are not profit centres
- Dealership operations are highly structured through their franchise agreements with manufacturers, which often contain take it or leave it provisions over elements such as retail pricing, dealer margins, location, floor design, sales performance, restocking, marketing budgets, sales catchment areas and market concentration (known as Prime Marketing Areas or PMAs).



- Usually the only variable dealerships are able to administer to some extent are staffing levels and ease of purchase considerations.
- Other consumer offerings, such as finance and insurance products, are sold through the new car sales channel on behalf of insurers and financiers, but are not developed by dealerships.
- Payment for access to these channels is a major profit centre for dealerships and adds to the consumer value proposition by providing convenient and affordable services that consumers would otherwise have to expend additional time and money sourcing, or not having access to at all.

Nielson Market Research identified in 2013 that face to face interactions are the primary source of information that drive consumer preferences for new cars for 76 per cent of consumers, followed by online resources for 73 per cent and print publications for 61 per cent of consumers.³

In practice, these are not mutually exclusive devices. There is often a high degree of crossover between these decision making devices but it is fair to say that face to face interactions represent the last link in that process, and the one where consumers are most ready to commit to a purchase.

The JD Power and Associates Initial Quality Study⁴ and University of Leeds Institute of Transport survey into influences on new car purchasing found similar results when considering what drives consumers to purchase a new vehicle.

Style and characteristic considerations (size, design, reliability, comfort, utility) rank prominently in both, followed by initial purchase price and on road costs and ease of purchase and consumer experience at point of sale.

In practice, consumers will look for given needs based factors within a given cost parameter, both upfront and ongoing.

Given that dealers are constrained by their franchise agreements as to the vehicle models and sales volumes they must achieve, their next available variable for them to operate a viable are ease of purchase considerations and to an extent volume.

In short, they can only sell what they are supplied and must fight for every customer. This is true of all the products offering in a dealership from the vehicles through to finance, insurance, servicing and repairs.

This underpins the need to ensure that consumers have as complete a sales experience for all the costs that are associated with owning and operating a vehicle, such as financing and insurances, servicing and repair, to enhance customer satisfaction.

³ <http://www.nielsen.com/content/dam/corporate/au/en/reports/2013/nielsen-au-australian-automotive-report-flyer-march-2013.pdf>

⁴ <http://www.jdpower.com/cars/articles/car-news/top-10-reasons-why-car-buyers-choose-specific-vehicle-model>

⁵ *Modelling the Factors which influence new car purchasing*, Matthew Page, Gerard Whelan, Andrew Daly, Institute for Transport Studies, University of Leeds



Brand loyalty and competition

There are relatively high levels of brand loyalty based on consumers experience with the above factors, but these levels are declining and depend on the age cohorts surveyed.

According to 360 Finance⁶, younger consumers are more likely to have lower levels of brand loyalty and use a greater number of channels to identify vehicles which are fit for purpose and meet their financial constraints.

Equally, the improvement in vehicle durability and increases in warranty and servicing options has increased the time between purchases, from roughly every 4 years to 10 years for private purchases.⁷

Both of these factors diminish the impact of consumer experience in purchasing decisions and make providing exceptional customer value a key factor in the dealer sales model.

The Australian Prudential Regulation Authority⁸ has confirmed that there is diminished brand loyalty and a focus on utilising online sales and research at least as a starting point for the purchasing decision process.

New car dealers also face high levels of competition from used car sales, online sales, the threat of parallel imports, as well as the largest range of makes and models in the world.

Given that approximately 60% of all vehicle sales are private to private, there is also substantial competition from the secondary sales market.

Australia already has the most competitive retail vehicle market in the world with over 64 brands available for 1.1 million sales each year, compared to the United States which has only 50 brands on sale for over 15.6 million purchases annually.⁹

It is not possible for any credible observer to state that Australian consumers experience a lack of choice, price competition, or opportunities for product substitution in the new car retail market.

⁶ <https://www.360finance.com.au/is-car-brand-loyalty-dead/>

⁷ *Ibid*

⁸ *Loss of brand loyalty the real disrupter, says APRA chief*, Sydney Morning Herald, James Eyre, July 30 2015.

⁹ *The Future of the Australian Car Industry*, Carsguide, Joshua Dowling, <http://www.carsguide.com.au/car-news/the-future-of-the-australian-car-industry-once-the-factories-close-29726>, 2014.



Consumer Guarantees, Warranties and New Cars

- **The language of ACL is complex and subjective, leading to unnecessary confusion and litigation.**
- **The obligations and responsibilities and roles of various actors within ACL are not readily understood and in many cases there is insufficient definition of key terms.**
- **Empirical evidence does not support the conclusion that there is a need for a 'lemon' laws. Evidence from Victoria, which already has state based 'lemon' laws, shows that the number of complaints, prior to the introduction of those laws, totalled less than two dozen annually.**
- **'Lemon' laws will create an unrealistic expectations of the types of claims that can be redressed and add to the level of grievance and agitation being experienced by those few consumers who are having difficulties.**
- **ACL already provides sufficient remedy in these matters. An increase in the compliance burden will not improve the fault rate experienced by purchasers, as the more defined the legislation is the greater the exclusion of specific faults.**

The MTA considers that the language of ACL is complex and subjective, leading to unnecessary confusion and litigation.

The obligations and responsibilities and roles of various actors within ACL are not readily understood and in many cases there is insufficient definition of key terms and thresholds.

Specifically, the *Australian Competition and Consumer Act 2010* should:

- define a major fault;
- define a minor fault;
- define what constitutes reasonable time;
- include businesses that purchase goods and services in the course of trading, including where they are held liable for the fault of a product supplied by a manufacturer, in the definition of consumers;
- define the terms 'unconscionable conduct' and 'misleading' and 'deceptive' conduct, and 'reasonable person' better, without adding to the overall administrative burden. These are currently highly subjective terms that lack clarity in ACL. In particular, deceptive conduct can currently include omissions or silences that a reasonable person would find relevant. This is too subjective when dealing with products such as second hand vehicles where the faults may not even be evident to the sellers or the dealers if the vehicle is purchased through a trade in and the fault is not declared by the private seller;
- require plain English guidance for consumers, businesses, regulators and courts of arbitration that are a common point of reference for all parties.



'Lemon laws'

The MTA strongly opposes further penalties and sanctions under ACL for motor vehicles experiencing repeated faults.

The evidence base demonstrating a need for 'lemon' laws is very weak. There is very little data that accurately quantifies the need for 'lemon' laws, partly because there is a lack of definition around what constitutes a 'lemon'.

The United States introduced 'lemon' laws in the 1960s at a time when few other consumer protections existed. It has one of the most mature legislative regimes globally and even there the definition of what constitutes a 'lemon' varies widely between States.

Does a vehicle that has multiple, separate faults constitute a 'lemon' or does the vehicle that has the same fault fail repeatedly constitute a 'lemon'? It is be entirely unreasonable to legislate against the former, and there are already existing protections in statutory warranties that address the latter.

Additionally, the issue of whether a fault occurs because of product failure or because of poor use; unreasonable expectation; natural wear and tear or inappropriate vehicle selection for a given task is highly subjective and has a material impact on the performance of a vehicle and on the efficacy of any repairs.

The empirical evidence that does exist does not support the conclusion that there is a need for a 'lemon' laws. Evidence from Victoria, which introduced state based 'lemon' laws, shows that the number of complaints, prior to the introduction of those laws, totalled less than two dozen annually.

The Federal Chamber of Automotive Industries undertook a survey to determine the size and extent of vehicle complaints in Australia.

That survey found that 55% of cases are settled prior to determination by a tribunal, 40% are resolved in favour of a manufacturer and only 5% are resolved in favour of the complainant. This suggests that vehicle dealers are acting responsibly and providing appropriate levels of consumer support for their products.

The risk of introducing broad, ill defined, 'lemon' laws is that they will actually increase litigation costs for both dealers and consumers, who receive minimal benefit given that 95% of complaints are either resolved amicably or against the consumer.

'Lemon' laws will create unrealistic expectations of the types of claims that can be redressed and add to the level of grievance and agitation being experienced by those few consumers who are having difficulties.

ACL already provides sufficient remedy in these matters. An increase in the compliance burden will not improve the fault rate experienced by purchasers, as the more defined the legislation is the greater the exclusion of specific faults.



The modernisation of the vehicle fleet and the high level of technological integration have made diagnosis of vehicle faults increasingly complex.

Repair or replacement of a fault can be relatively straight forward once the component at issue is identified. However, it is diagnosis that poses the biggest obstacle to addressing faults. As an example, identifying where an electrical system is malfunctioning and diagnosing the specific component that has failed is multifaceted and often involves multiple components.

The success or otherwise of the attempted repair cannot always be immediately determined given the highly integrated nature of modern electrical components and software. This typical diagnostic process should not form the basis for 'lemon' laws in Australia.

The MTA considers a more effective mechanism to resolving these issues is the introduction of consumer redress programs by dealerships that emphasize complaint resolution and mediation as part of their aftersales service.

The MTA also wishes to highlight two structural contradictions evident in the proposed move to 'lemon laws.'

First, ACL is described as a broad framework rather than a prescription solution to consumer protections. Even though it may be argued that 'lemon' laws could be more broadly applied, depending on the definition, there is no doubt that 'lemon' laws are intended to single out the retail vehicle sector as a bad actor in the economy, a claim which is just not true. This would undermine confidence in an industry that already has very robust consumer protections and very low levels of disputation.

It would be unconscionable that government would seek to place additional barriers in the way of growth of this already heavily regulated and highly competitive sector without conclusive proof that a need existed.

Second, government's decision to allow for the personal importation of motor vehicles thoroughly undermines the purpose of ACL. The basis of the personal imports decision towards consumer protection is 'buyer beware'. This is wholly inadequate to protect consumers and it is staggering that the ACCC supports such a laissez faire attitude to consumer protection.

Even with some level of theoretical legislated protection, in practice consumers will not be able to access ACL to pursue claims against overseas sellers, who are beyond the jurisdiction of ACL. This policy decision seems to be completely out of step with the intent of other competition and consumer protection settings initiated by government and supported by the ACCC, such as 'lemon' laws, ANCAP ratings, the PPSR, and state based consumer protection agencies.

Even under existing legislation, the ACCC and its state body, CBS, have significant difficulty in securing prosecutions and stemming the insidious spread of unlicensed and unaccredited backyard car dealers domestically – i.e. in places where they can actually access physically and have jurisdiction to prosecute. This is not a criticism of either of those agencies; it is an observation of the inherent difficulty of their task.



It is important for government and regulators to understand that licensed and accredited businesses, which the MTA represents, are as frustrated by the backyard operators and unlicensed operators as consumers are.

This personal imports decision will now effectively open the door for an influx of overseas backyard sellers on a global scale and the ACCC and CBS will have no ability or jurisdiction to pursue these claims nor to safely administer vehicle recalls that are required for unsupported models.

The burden of undertaking repairs to these vehicles will fall on domestic repairers and dealerships that, incorrectly, will be expected to be able to provide service, repairs, parts and advice on vehicles carrying manufacturers branding even though they do not provide aftersales support those models in Australia.

The likely consequence of this decision will be refusal to work on or provide advice on these personally imported vehicles to consumer for fear of ACL claims, or if cars do not pass inspection they will be left on the docks unclaimed.

Equally, Australia already has the most competitive retail vehicle markets in the world with over 64 brands available for 1.1 million sales each year, compared to the United States which has only 50 brands on sale for over 15.6 million purchases annually. The ACCC's argument of a consumer detriment because of a lack of competition is not sustainable.

Personal imports will severely harm the viability of dealerships and increase the reliance upon foreign private sales to Australian consumers. This will create chaos for consumer protection and leave consumers with practically no recourse from unconscionable conduct and deception or even simply from faulty products. The MTA opposes personal import measures in the strongest terms.

Product safety standards

Australian Standards should not allow for the importation of products that are unsafe into the Australian market. Currently, safety standards are voluntary unless expressly made mandatory by Ministerial intervention. This is a cumbersome and slow process which is not working as effectively as it could.

The MTA is aware of several situations where current ACL protections are not adequate. Personal imports of vehicles, as stated above, pose a serious threat to consumer protection and these inconsistencies have not been reconciled by the flagged framework put forward by the government which the MTA considers to be naïve and inefficacious.

Further, various vehicle components available online are supplied absent essential features and require alteration or modification for fitment. This can be done through qualified businesses and tradespeople, but there are a great many that attempt to undertake these safety critical modifications at home or through backyard operators. This poses a serious safety risk and such products should not be available in Australia.



Figure 1



This figure shows rims that have not had the stud holes drilled to enable fitment to a vehicle. Currently, this work can be done by anybody and is unregulated, when in reality, this work should be undertaken in consultation with a qualified engineer or metallurgist to ensure there is rim is not weakened by the alteration through cracking, bending or distortion.

Figures 2 & 3



This figure shows stud holes that have been elongated to enable fitment to multiple stud patterns on a vehicle rather than being fit for purpose. This is evident through the partial eclipse like drill pattern on the rim. A vehicle travelling at speed would be at risk when moving over undulating surfaces, causing slippage, and would cause impact damage on the stud hole perimeter, and potentially, damage the studs themselves, making the vehicle unstable.

These products figured above self-evidently pose safety risk for consumers. Rim and tyres not made to Australian Standards that are imported from overseas and deteriorate faster and at lower impact speeds while travelling than the certified Australian equivalent.



The justification for this from regulators is typically there is a cost difference between the items that places the consumer at some level of financial disadvantage.

Such cost savings are a pyrrhic victory for consumers. The initial cost differential in these circumstances is more than offset by the cost of replacement of affected parts, repair costs to damaged vehicles and the potential for physical harm in the event of product failure.

Additionally, the theoretical cost saving realised by the consumer during the initial purchase is brought about precisely because those products and practices which do not go through regulated and accredited imports channels are not subject to the same vigorous standards and are generally of poorer quality.

ACL should be amended to ensure Australian levels of quality and safety are reflected in international standards in line with our international trading partners and source markets.

Balance in ACL decisions

The prevailing view within industry is that ACL is interpreted to penalise businesses from the outset and that consumers are given the benefit of any doubt.

Even though ACL claims must be established on the balance of probability, the fact a product does not function as the consumer wishes is often considered *res ipsa loquitur* evidence that there is a fault with the product and the retailer or wholesalers bears a level of liability.

This is not so.

There are several reasons why a product does not meet consumer expectations, and these do not necessarily involve a failing by the retailer or wholesalers.

In many cases a product can be subject to ACL due to poor use, unreasonable expectation, natural wear and tear or inappropriate selection for a given task and buyer remorse. Additionally, the product may have been supplied to the retailer or wholesalers from the manufacturer in an unfit state that is unable to be detected in the normal course of trading until the product is used.

The MTA considers that an ACL claim needs to be interpreted to establish that there is in fact a fault that has occurred, as opposed to a misunderstanding or buyer's remorse, and that the retailer or wholesalers could have reasonably been aware of this at the time of purchase but did not disclose it.

ACL should also make provision for retailers and wholesalers to be able to more easily reclaim their costs from manufacturers where it is established that the product was supplied in an inadequate form or to make manufacturers party to an ACL claim if they feel it appropriate.

ACL should consider the provision of a manufacturer's warranty that protects third party installers from faulty or substandard supplied parts. Currently, these parts become the responsibility of the installer when a fault occurs for ACL purposes.



Fuel Consumption, Emissions and Car Performance

- **MTA does not propose to provide a running commentary about recent public examples, but rather make several general points relevant to the questions posed by the ACCC, despite the fact the ACCC has specifically used the Volkswagen example as a case study.**
- **The Australian vehicle emissions regime is governed through Australian Design Rules, flowing from Australia's participation in the standard set by the United Nations Economic Commission for Europe standard, utilising the New European Driving Cycle test.**
- **The MTA would not necessarily oppose changing the test, the ACCC must answer how it would ensure consistency of testing and define the parameters of real world conditions, and whether current emissions and performance standards would be altered in light of a changed testing methodology.**

The MTA notes that the ACCC is currently investigating the role of emissions testing and so called 'defeat devices', and there are also a number of class actions before the Courts.

Given this, the MTA does not propose to provide a running commentary about these actions, but rather make several general points relevant to the questions posed by the ACCC; despite the fact the ACCC has specifically used the Volkswagen example as a case study.

As the ACCC itself notes, the Australian vehicle emissions regime is governed through Australian Design Rules, flowing from Australia's participation in the standard set by the United Nations Economic Commission for Europe standard, utilising the New European Driving Cycle test.

This standard and test are different from those governing vehicle emissions in North America.

As noted by Resources for the Future:

Thus far, the US and EU regulators have responded quite differently to the Volkswagen case, partly because of the EU's greater reliance on diesel technology. In the United States, the EPA has changed its emissions certification procedure, adding several tests and additional time to the process (Beene 2016). In contrast, EU officials weakened the testing framework in response to widespread noncompliance with emissions standards in order to provide more time for the auto industry to adjust before the Euro 6 standards are fully applied. Manufacturers will be allowed to exceed the nitrogen oxides emissions standard under real-world driving conditions by 110 percent between September 2017 and the start of 2020, and by 50 percent afterwards.¹⁰

The MTA notes that the use of so called 'defeat devices', can also legitimately be characterised as exhaust gas recirculation and catalytic converter technology. The presence of these devices in vehicles does not itself determine whether there has been a violation of standards.

¹⁰ *Comparing US and EU approaches to Regulating Automotive Emissions and Fuel Economy*, Resource for the Future, Thomas Klier & Joshua Linn, 2016.



We also note that while Australia does operate a National Clean Air Agreement, it is not as rigid as the US *Clean Air Act 1990*, which is the enabling legislation that has given rise to recent controversy in that jurisdiction.

Testing

The current test under Australian design rules is as follows:

Comparison of Euro 4, 5 and 6 re: HC, NOx and PM Emission Limits under the Type I Test for Passenger Cars¹¹

Standard	Limits on Emissions (Type I Test)					
	Petrol, LPG & NG Vehicles		Diesel Vehicles			
	HC (g/km)	NOx (g/km)	HC (g/km)	NOx (g/km)	PM (g/km)	Particles (no.)
Euro 4	0.1	0.08	0.045	0.25	0.25	NA
Euro 5	0.1	0.06	0.035	0.18	0.005	6x10 ¹¹
Euro 6	0.1	0.06	0.026	0.08	0.005	6x10 ¹¹

In addition to lowering the HC, NOx and PM emissions limits under the Type I test, the Euro 5/6 standards:

- Apply longer durability requirements for emissions control systems (increased to 160,000km from 100,000km in Euro 4) which are designed to more closely align with the expected life of vehicles and ensure that these systems continue to function throughout the life of the vehicle;
- Enhance the on-board diagnostics (OBD) requirements to provide greater assurance of in-service compliance;
- Extend the low temperature emissions (Type VI) test (albeit with less stringent emissions limits) to all light vehicle categories - Euro 4 only applies this test to passenger vehicles and the lighter categories of goods vehicles. This test ensures quicker catalyst operation on vehicles which are started from a cold condition (not just at the -7°C test condition);
- Require all passenger vehicles, regardless of mass, to meet the same emissions limits under the Type I test (Euro 4 allowed vehicles over 2,500 kg to meet the more lenient standards applicable to the heaviest category of light goods vehicles);
- Introduce a particle number standard (on a delayed timeframe), which is designed to reduce the emissions of ultrafine particles which are of greatest health concern. The introduction of this new requirement is expected to ensure that manufacturers fit high efficiency particulate traps to diesel vehicles; and
- Extend the PM mass limit to direct injection petrol engines (previously only applied to diesel vehicles).

¹¹ https://www.legislation.gov.au/Details/F2011L02016/Supporting%20Material/Text#_Toc276984460



The ACCC has specifically asked for comment on the testing regime in Australia and whether 'real world' testing would be more appropriate than current laboratory testing.

Laboratory testing provides a standardised, comparable data set for consumers wishing to make an informed choice between different options.

It is also provided as a baseline figure for compliance testing.

Real world testing poses a number of challenges; principally how to reliably replicate results for the numerous 'real world' driving conditions and styles that could conceivably be measured.

While the MTA would not necessarily oppose changing the test, the ACCC must answer how it would ensure consistency of testing and define the parameters of real world conditions, and whether current emissions and performance standards would be altered in light of a changed testing methodology.

Post Sale Service Arrangements

- **The MTA consider that there must be a balanced solution to this vexed issue.**
- **Manufacturers and dealers do have a right to protect their proprietary information as to vehicle design and brand integrity through ensuring servicing and repairs are undertaken in accordance with OEM specifications, particularly through the warranty period where they are expected to bear any liability for faults and failure of service. This quality assurance is also integral to providing customer value.**
- **Equally, independent repairers should not be penalised for seeking to provide equally high quality service and parts to their customers.**
- **The MTA does not agree with the ACCC that this issue restricts or influences purchasing decisions in the new car retail market.**
- **The MTA considers that market forces are at work to address any shortfall in the provision of these services through paid subscription services for independent repairers.**
- **It is too early for any legislative prescription to resolve this issue, as the market is finding equilibrium to these contrasting positions.**

The principle issue being considered by the ACCC in this space is the right to access repair information by independent repairers.

The MTA considers that there must be a balanced solution to this vexed issue.



Manufacturers and dealers do have a right to protect their proprietary information as to vehicle design and brand integrity through ensuring servicing and repairs are undertaken in accordance with OEM specifications, particularly through the warranty period where they are expected to bear any liability for faults and failure of service. This quality assurance is also integral to providing customer value.

Equally, independent repairers should not be penalised for seeking to provide equally high quality service and parts to their customers.

The MTA does not agree with the ACCC that this issue restricts or influences purchasing decisions in the new car retail market. If and when consumers face any difficulty, it is during the repair period, particularly post warranty, rather than in the purchasing phase of a vehicle. The MTA agrees that regional consumer may face additional difficulties in accessing servicing and warranty services.

It is important to note that increased technological capability and complexity in diagnostics and repairs, with greater specialised equipment, both increases the risk to OEMs that mistakes will be made by undertrained technicians, and increases anxiety suffered by repairers due to higher levels of training, skills and equipment.

However, the MTA considers that market forces are at work to address any shortfall in the provision of these services through paid subscription services for independent repairers.

These arrangements protect the brand, intellectual property and legal liabilities of manufacturers and dealerships, while given independent repairers access to information.

The Commonwealth Consumer Affairs Advisory Council (CCAAC) Inquiry into sharing of repair information during 2011 and 2012, insufficient evidence could be produced to illustrate the significance or size of the access to repair information problem or any consumer detriment that was resulting from reported difficulties that repairers were experiencing.

The CCAAC could not find sufficient cause to recommend any change stating '*There does not appear to be any evidence of systemic consumer detriment at present. However, the accessibility of repair information has the potential to become a barrier to entry in this market going forward.*' and urged the industry to develop processes to ensure access to repair information.

Negotiations between peak representative organisations throughout 2013 failed to secure a sector wide Voluntary Code of Conduct. Government intervened and a Heads of Agreement was negotiated and signed by all relevant parties at the end of 2014.

The MTA suggests that it is too early for any legislative prescription to resolve this issue, as the market is finding equilibrium to these contrasting positions.