



Summary of stakeholder round table – 25 September 2017

On 25 September 2017 the ACCC held a round table with invited stakeholders at the ACCC offices in Melbourne. The purpose of the round table was to provide stakeholders with the opportunity to discuss the key findings and recommendations of the ACCC's [draft report](#) for the new car retailing industry market study.

The round table was chaired by ACCC Commissioner Sarah Court, with ACCC Deputy Chair Delia Rickard also in attendance. The round table agenda is at **attachment A** and a list of invited stakeholders is at **attachment B**.

The following is a summary of the key issues discussed at the stakeholder round table.

Session 1

Access to technical information to repair and service new cars

The ACCC's draft report stated that:

'The ACCC considers that consumers benefit from competitive aftermarkets. As voluntary commitments to share technical information have not been successful in meeting their aims and there has been only a limited improvement in access, the ACCC recommends regulatory intervention to mandate the sharing of technical information with independent repairers on 'commercially fair and reasonable terms'.¹

Stakeholders had mixed views regarding this recommendation; with some arguing that there were existing processes to improve the voluntary industry agreement and that it should be given a chance to work. However, other stakeholders considered that it was unlikely the industry could resolve the issues relating to access to technical information on its own and independent mandatory oversight was needed.

Stakeholders also addressed the need for independent repairers to invest in training and equipment, and concerns relating to independent repairers not being appropriately qualified or trained to service all makes and models of new cars in Australia. There was discussion about the introduction of a licensing system to screen mechanics (e.g. through police checks) to provide security related information.

Level of access to technical information

Stakeholders had divergent views regarding the level of access to technical information to repair and service new cars available to independent repairers.

Some stakeholders suggested that access to technical information is available for a fee or when requested, and that information is generally only restricted by manufacturers when it related to environmental, security or safety systems (ESS). Other stakeholders noted that some manufacturers provide access to the same information available as their authorised dealers at reasonable commercial terms (except for certain information such as immobilisers and door-locks). Some stakeholders put that the level of access varied between brands or manufacturers.

¹ ACCC New car retailing industry market study draft report, 10 August 2017, p. v.

Other stakeholders suggested that there were significant issues in accessing technical information by independent repairers and other industry participants, particularly related to reprogramming and reinitialising vehicle information required to complete a repair. It was put that this information can be restricted by manufacturers on ESS grounds and that increasingly this was used as a reason for restriction due to the connectivity of ESS to other systems. Some stakeholders also noted that access to technical information could be incomplete and costly for independent repairers to access, with some repairers needing to spend extended time diagnosing issues, while unable to pass these costs onto the consumer.

Some stakeholders also considered that there was diminishing utility in debating whether information was available or not. These stakeholders considered that, as new cars become increasingly complex, systems will need to be put in place to ensure that all repairers will be able to access sufficient information and systems to repair cars in the future.

A mandatory scheme to share technical information

Stakeholders had divergent views regarding the need for a mandatory scheme to share technical information, with concerns generally related to protecting ESS information and protecting consumers by ensuring repairers are qualified. Concerns were raised by some stakeholders that releasing vehicle safety information could lead to greater car theft, with consumers potentially facing higher insurance premiums. Some stakeholders also suggested that ESS information needed to be clearly defined in any scheme.

There were also varied views among stakeholders regarding what form a mandatory scheme should take (for example, an industry code under the *Competition and Consumer Act 2010*). Most stakeholders agreed that industry would need to be involved in designing such a scheme, a number of stakeholders suggested that no existing industry group should be solely in charge of administering it.

Repairer licencing and accreditation

There was discussion about the introduction of licensing or accreditation schemes to certify the technical qualifications of repairers and to screen mechanics in order to provide security related information. A number of stakeholders generally supported a system to provide checks and balances on who could access information, particularly in relation to security related information. It was noted that the US system for sharing technical information includes police checks, and that the US has since experienced a decline in car thefts.

Some stakeholders suggested that a system to accredit the technical qualifications of repairers would provide a level playing field for dealers and independent repairs, as dealers are currently required to comply with a significant amount of regulation, while independent repairers are not. However, other stakeholders did not consider an accreditation system to be necessary, arguing that it would be impractical for repairers to attend training for over 60 car brands. Concerns were also raised about which body would be responsible for accreditation. Some stakeholders suggested that accreditation would be particularly difficult on a national scale, and proposed allowing state-based consumer organisations to accredit repairers instead, noting the current licensing regimes in NSW and WA.

Training and investment

Some stakeholders submitted that repairers needed to have appropriate qualifications and training as cars become more technologically complex. Specific concerns were raised by some stakeholders relating to the safety issues that could arise when repairing hybrid and electric cars if a repairer is not appropriately trained.

Some stakeholders noted the significant cost of training repair technicians, and questioned

the ability of independent repairers to invest in the training, information and equipment required to service over 60 car brands. Some stakeholders noted that training would be particularly costly for rural repairers, who generally have to travel to capital cities for training.

However, some stakeholders submitted that some independent repairers invest significantly in training and equipment, and that equipment could also be acquired on loan in certain circumstances. Some stakeholders noted that third-party data aggregators can reduce the cost of accessing information from multiple manufacturers for independent repairers.

Parts needed to repair and service new cars

The ACCC's draft report recommended that original equipment manufacturer-branded parts and accessories should be generally available to independent repairers on commercially fair and reasonable terms, and that car manufacturers develop policies (made publicly available) which clearly outline any parts subject to restricted access on security-related grounds.²

Stakeholders had mixed views in relation to this issue, with a number of stakeholders suggesting that restricted parts access was generally concentrated amongst particular European brand types. Some stakeholders noted that, as with technical information, access to parts was often restricted on security-related grounds. Stakeholders also referenced instances of repairers being sold parts without the necessary information.

There were also some divergent views regarding the draft report's recommendation. Concerns were raised by some stakeholders that if manufacturers were allowed to determine the definitions, the definitions would be too broad. Some stakeholders recommended industry input into the definition process, but added that a pathway to accessing such parts would still be necessary.

Session 2

Consumer guarantees and warranties

The ACCC's draft report supported the amendments proposed by CAANZ in the recent ACL Review to enhance the ACL and address any uncertainties about the application of consumer guarantees.³ Proposals 1 and 2 were discussed at the round table:

- Proposal 1 would create a time-limited right for a consumer to choose a refund or replacement or opt for a repair without the need to demonstrate a major failure.
- Proposal 2 would clarify that multiple non-major failures can amount to a major failure.

The ACCC explained to round table attendees that the proposed amendments to the ACL were still subject to a RIS and further consultation processes.

Some stakeholders indicated support for the proposed amendments to the ACL. However, other stakeholders considered there to be insufficient evidence to conclude that there is a systemic issue in the industry concerning compliance with consumer guarantees.

Some stakeholders pointed to complexities in defining key ACL terms, such as clarifying what is a major or minor failure, and raised the need for refunds of cars to take account of the depreciated value of the car. Some stakeholders also discussed the complex nature of new cars, and the issues this raised then providing remedies to consumers.

Some stakeholders requested the ACCC look more closely at dealership agreements and the one-sided nature of agreements in favour of manufacturers. The ACCC confirmed that it

² ACCC New car retailing industry market study draft report, 10 August 2017, p. 98.

³ ACCC New car retailing industry market study draft report, 10 August 2017, p. 33.

was further looking into this issue.

Defining major failure

Some stakeholders raised concerns regarding the definition of what constitutes a major failure under the ACL, and what would be a reasonable time (post-sale or post-service) for a consumer to be entitled to refund or replacement without having to prove major failure.

Some stakeholders considered that defining a major failure could be difficult as car defects could fall into many different categories, such as safety, cosmetics or performance. Some stakeholders pointed to the issue of minor failures requiring a major fix, whereby a minor part which is a component of a more important part (such as the transmission or engine) might fail. It was suggested by certain stakeholders that in some cases, the more efficient or practical solution might be to replace the entire major part. However, some stakeholders noted that some consumers (or a tribunal) may view this as a major fault.

In relation to Proposal 1, some stakeholders raised that the need for refunds of cars to take account of the depreciated value of the car, particularly where a consumer may have had uninterrupted use of a car for a significant period of time. Some stakeholders argued that if depreciation could be factored in, there may not be a significant difference/issue in defining a major and minor failure. Some stakeholders also considered that any prescribed time period under Proposal 1 would be needed to include protections against cases of buyer's remorse.

Issues with dealership agreements and manufacturer's policies

Some stakeholders raised concerns that the ACCC's draft report placed too much responsibility for consumer guarantee and warranty issues with dealers, when manufacturers' procedures and dealership agreements had a role to play. It was argued by some stakeholders that the nature of dealership agreements created an imbalance of bargaining power in favour of manufacturers which it was argued was evidenced by the ability of some manufacturers to unilaterally change policies and procedures.

Some stakeholders raised concerns about the amount of time that manufacturers allocate to dealers to complete repairs, arguing that the 'standard timing' used by manufacturers to reimburse dealers for warranty work did not accurately reflect the time needed to diagnose and complete a repair. One stakeholder stated they were aware of a manufacturer who had a 32-step process for dealers to make reimbursement claims for warranty work, with one of the steps being to ensure that the claim is processed in a timely manner.

Some stakeholders also raised concerns that dealers face uncertainty about whether warranty claims will be reimbursed. In particular, concerns were raised by some stakeholders in relation to certain manufacturer's auditing of warranty claims made by dealers, which may result in manufacturers claiming back money paid for warranty work due to an administrative error. Concerns were also raised by some stakeholders about extrapolation processes used by certain manufacturers.

However some stakeholders noted that dealers meeting a statutory warranty claim have a right of indemnity against manufacturers under the ACL. Some stakeholders also argued that it was not in the interest of manufacturers to drive dealers out of business, while adding that manufacturers nonetheless needed mechanisms to encourage correct behaviour at all levels.

Providing a remedy

Some stakeholders noted that cars are complex products and unlike other everyday goods, which may contribute to issues in providing a remedy. In particular, some stakeholders noted that it may be hard to diagnose a problem in a new car: in some circumstances it may be

difficult to know if there is simply no issue, or if the issue is just difficult to identify.

Some stakeholders, although acknowledging the complexity of cars, considered that consumers are entitled to have issues resolved quickly, noting examples of consumers with straightforward issues that nonetheless had difficulty obtaining a remedy.

Some stakeholders raised concerns about the costs of providing a refund or replacement (in cases of a major failure), which could be quite significant depending on local tax conditions (i.e. GST, stamp duty). It was noted that, in some states or territories, dealers may be required to pay stamp duty on both the original sale and on a replacement car. Some stakeholders considered that the proposed amendments to the ACL may result in unintended consequences with significant economic impact on dealerships, particularly if thousands of cars could be returned to dealerships for refunds and the resale value of the returned cars was depleted.

Some stakeholders also suggested that there were a number of barriers to consumers obtaining a remedy such as: the cost of obtaining independent advice, the time and cost associated with accessing courts and tribunals, the limited technical expertise of tribunal members, and consumer understanding and awareness of their ACL rights.

Session 3

Fuel consumption and emissions

The ACCC's draft report recommended that changes to the fuel consumption label affixed to new cars should be considered to improve the comparative use of the information supplied. The draft report stated that introducing a star-rating system or annual operating costs may minimise the extent to which consumers interpret an 'absolute' fuel consumption/emissions value as equivalent to what they would achieve in real-world driving conditions.⁴

The ACCC's draft report also recommended measures to enhance the quality of information supplied to consumers currently being considered by the Ministerial Forum into Vehicle Emissions, including the replacement of the current fuel consumption and emissions tests with the new Worldwide Harmonised Light Vehicles Test Procedure, a more realistic laboratory test, and the introduction of an on-road 'real driving emissions' (RDE) test.⁵

There was support from a number of stakeholders for the draft report's recommendations relating to fuel consumption and emissions. Some stakeholders noted that any additional clarity in the information given to consumers was important however noted that a multiplicity of fuel consumption and emissions tests and results may lead to consumer confusion.

In support of RDE testing, some stakeholders pointed to recent AAA research which indicates that the discrepancy between official and real world fuel consumption/emissions is inconsistent across vehicles, with some cars meeting official values while others exhibit discrepancies of up to 60 per cent. Some stakeholders also noted that although the EU was moving to a more realistic laboratory test, this discrepancy would still be around 30 per cent in 2025.

It was also noted by some stakeholders that Australia has a policy of harmonizing emissions standards for new cars with the EU, and that the EU is introducing an RDE test. There were divergent views expressed regarding the need for an Australia-specific RDE test, with concerns raised about such a test duplicating the potential new EU regulation. However, other stakeholders considered that certain environmental conditions unique to Australia may

⁴ ACCC New car retailing industry market study draft report, 10 August 2017, p. 114.

⁵ ACCC New car retailing industry market study draft report, 10 August 2017, p. 119.

mean that results from the European RDE test may not be reliable for assessing performance in Australia.

Telematics

The ACCC's draft report found that "the impact of telematics on competition and consumers is likely to become more acute as telematics technology becomes more prevalent" and that it would "continue to monitor emerging issues in this area".⁶ The draft report also indicated further support for the Productivity Commission's (PC) recommendations in its final report on Data Availability and Use for a comprehensive right for consumers to access digitally held data about themselves.⁷

Some stakeholders expressed concerns PC's recommendations were considered to be quite broad. There were also concerns that telematics data could be used to foreclose competition, such as by allowing manufacturers to monitor in-service vehicles and remotely undertake all interactions with the vehicle or consumer, thereby completely bypassing dealers or repairers. However, it was also argued that manufacturers needed to make significant investments to meet consumer demand for telematics technology, and could not subsequently be expected to provide 'carte-blanche' access to this technology.

Stakeholders also noted the potential privacy issues raised by telematics technology and the need to ensure that information is protected. Stakeholders noted that manufacturer offerings in relation to telematics are significant, currently covering not only in-car services, but also services such as mobile apps and cashless payments. It was argued that consumers should have the right to know what data is collected, to know who is using the data, and to direct dealers/manufacturers to provide their preferred repairer with access to their data.

⁶ ACCC New car retailing industry market study draft report, 10 August 2017, p. 122.

⁷ ACCC New car retailing industry market study draft report, 10 August 2017, p. 122.

ACCC New Car Retailing Industry Market Study Round Table Agenda

10.00am – 5.30pm | Monday, 25 September 2017 | Melbourne

Agenda

Time	Agenda item
10:00am – 10:10am	Welcome and introductory comments <ul style="list-style-type: none"> Purpose of the round table
Session 1 10:10am – 1:00pm	Access to technical information to repair and service new cars <ul style="list-style-type: none"> Recommendation of a mandatory scheme to share technical information Recommended features of a mandatory scheme to share technical information Overseas experiences and outcomes with mandatory schemes to share technical information Parts needed to repair and service new cars <ul style="list-style-type: none"> Defining security-related parts Dealing with access to security related parts Pricing transparency Questions and next steps <ul style="list-style-type: none"> Meetings with staff on request and final report to be published in late 2017
1:00pm – 2:00pm	Break
Session 2 2:00pm – 3:30pm	Consumer guarantees and warranties <ul style="list-style-type: none"> Australian Consumer Law Review proposals and new cars Assisting consumers understand their consumer guarantee rights Features of the commercial arrangements between dealers and manufacturers which impact on consumer guarantee compliance Improving industry compliance with the consumer guarantee requirements Questions and next steps <ul style="list-style-type: none"> Meetings with staff on request and final report to be published in late 2017
3:30pm – 4:00pm	Break
Session 3 4:00pm – 5:30pm	Fuel consumption and emissions <ul style="list-style-type: none"> Informing consumers about fuel consumption and emissions Fuel consumption, emissions and dealers' and manufacturers' ACL obligations Fuel consumption and emissions discrepancy Other business/issues <ul style="list-style-type: none"> Telematics Questions Questions and next steps <ul style="list-style-type: none"> Meetings with staff on request and final report to be published in late 2017

ACCC New Car Retailing Industry Market Study Round Table

10.00am – 5.30pm | Monday, 25 September 2017 | Melbourne

Attendees**ACCC Commissioners**

Commissioner Sarah Court (Chair), Deputy Chair Delia Rickard

ACCC senior staff

Tim Grimwade, Executive General Manager, Consumer, Small Business & Product Safety Division

Richard Fleming, General Manager, Enforcement ACT

Joelle Leggett, A/g General Manager, Consumer & Small Business Strategies

Stakeholders invited to participate in the round table

Organisation	Participant(s)
ABMARC	Natalie Roberts (Managing Director)
AP Eagers Limited	Keith Thornton (Chief Operating Officer- Cars)
Australian Automobile Association	David Colmer (Senior Advisor – National Policy)
Australian Automotive Aftermarket Association	Stuart Charity (Executive Director)
Australian Automotive Dealers Association	David Blackhall (Chief Executive Officer)
Australian Small Business and Family Enterprise Ombudsman	James Strachan (Director of Advocacy)
Autodata Australia	Wayne Mander (Technical Liaison & Content Manager)
Bapcor	Mathew Cooper (Executive General Manager - Development)
CHOICE	Sarah Agar (A/g Head of Campaigns and Policy)
Consumer Action Law Centre	Session 2: Katherine Temple (Senior Policy Advisor)
Department of Infrastructure and Regional Development (Commonwealth)	Session 3: Donna Wieland (General Manager – Transport Technology Futures)
Federal Chamber of Automotive Industries	Session 1: Tony Weber (Chief Executive) Session 2: Peter George (Advisor) Session 3: James Hurnall (Technical Director)
Fennessy's	Ray Mountney (Dealer Principal & Managing Director)
Fiat Chrysler Jeep	Victor Li (General Counsel)
Ford	Sessions 1 and 3: Ian Mearns (Government Affairs Director) Session 2: Michael Sullivan (Senior Legal Counsel)

Organisation	Participant(s)
GM Holden	Session 1: Brett Page (Manager - Aftersales Engineering) Session 2: Kristen Hooke (Senior Manager & Counsel) Session 3: David Magill (Director – Government Relations and Public Policy)
GPC Asia Pacific Group	Nick Costa (National Manager - Repco)
Hyundai	Scott Grant (Chief Operating Officer)
Insurance Council of Australia	Session 1: Steven Palmer (Deputy Chair, ICA National Motor Insurance Committee) Sessions 2 and 3: Tom Lunn (Senior Policy Advisor)
Kmart Tyre & Auto	Adam Pay (Managing Director)
Mazda Australia	Shane Bradford (Senior Manager - Warranty & Technical)
Motor Trade Association Queensland	Dr Brett Dale (Chief Executive Officer)
Motor Trade Association of South Australia	Paul Unerkov (Chief Executive Officer)
Motor Trade Association of Western Australia	Stephen Moir (Chief Executive Officer)
Motor Trades Association of Australia	Richard Dudley (Chief Executive Officer)
Motor Traders' Association of New South Wales	Sessions 1 and 2: Stavros Yallouridis (Chief Executive Officer)
Nissan Motor Co. Australia	Session 1: Peter Gilliam (General Manager – Parts Sales & Marketing) Session 2: Michael Carydias (General Manager – Customer Experience) Session 3: Claude Harran (General Manager – Legal)
Toyota Motor Corporation Australia	Session 1: Rob Langridge (Divisional Manager, National Service Division) Session 2: Simone Zerial (Senior Solicitor) Session 3: Mark Dobson (Senior Divisional Manager, Product Planning & Product Development)
Ultra Tune Australia Pty Ltd	Sean Buckley (Executive Chairman)
Victorian Automobile Chamber of Commerce	Leyla Yilmaz (Deputy Executive Director, Industrial Relations, Policy and Engagement)

Observers

In addition to the above participants some organisations had observers attend sessions. Observers from the Australian Securities and Investments Commission and Treasury (Commonwealth) also attended.