

# *VACC Submission*

## **Response to ACCC 2024 Strategic Review – Stakeholder Survey**



**VACC**  
You're in good hands

## Contact



**Dr Adiba Fattah**  
Policy and Research Analyst  
VACC  
[afattah@vacc.com.au](mailto:afattah@vacc.com.au)



**Michael McKenna MBAMBLaw**  
Industry Policy Advisor  
VACC  
[mmckenna@vacc.com.au](mailto:mmckenna@vacc.com.au)

*For matters regarding  
franchise dealers.*

## About VACC

VACC is Victoria's peak automotive industry association, representing the interests of more than 5,000 members in over 20 retail automotive sectors that employ over 50,000 Victorians. VACC members range from new and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery), repairers (mechanical, electrical, body and repair specialists, i.e. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture), tyre dealers and automotive dismantlers and recyclers.

VACC is also an active member of the Motor Trades Association of Australia (MTAA) and contributes significantly to the national policy debate through Australia's peak national automotive association.



## 1. Which of the following best describes you or your organisation?

- Consumer
- Consumer advocacy or representative group
- Small or medium sized business
- Large business
- Industry organisation
- Government department/agency
- Other

## 2. What do you think are the top issues currently facing consumers and/or small businesses?

- Cost of goods and services
- Customer support and service
- Competition in markets
- Dispute resolution
- Delivery and supply chain issues
- Misleading claims and advertising
- Quality of goods and services.
- Unsafe consumer goods
- Unfair contract terms
- Other: Collective bargaining, Warranty (Australian Consumer Law), The Motor Vehicle Service and Repair Information Scheme.

### VACC written response

#### Quality of goods and services:

The Victorian Automotive Chamber of Commerce (VACC) expresses significant concerns regarding the limited understanding among consumers about the quality of electric vehicles (EVs) and their rights under the Australian Consumer Law (ACL). VACC has engaged with the Australian Competition and Consumer Commission (ACCC) to facilitate dealership visits aimed at enhancing understanding of the requirements for servicing and repairing electric vehicles. We believe that the ACCC can play a crucial role in managing consumer expectations around the quality of EVs, particularly in countering misinformation suggesting that these vehicles require less servicing and repair, as well as addressing the associated technological challenges of EVs.

#### Collective bargaining:

VACC urges the ACCC to advocate for safe access to collective bargaining among retailers. Since its inception, VACC has participated in several collective bargaining initiatives, yet many dealers/industry participants are hesitant to join due to fears of retaliation from their franchisors, suppliers or insurer. This situation often mirrors the challenges faced in class actions. We recommend that the ACCC invest in educating businesses about the benefits of collective bargaining as a means to foster a fair and safe negotiation process.

#### Warranty issues:

Car manufacturers continue to reject or significantly delay warranty reimbursements that dealers are entitled to under ACL manufacturer indemnity provisions (s 274) obligations. This persistent non-compliance with warranty provisions remains a critical issue within the automotive franchise retail sector.

Following the comprehensive review of the Franchising Code of Conduct in 2021, a discussion paper was launched to examine warranty and recall processes, as well as subsequent reimbursement in the Australian automotive industry when rectifying an issue with regards to an ACL claim or manufacturing defect. Unfortunately, no meaningful progress has been made on this front. Given the ongoing disruptions in distribution channels and upcoming changes to service arrangements, it is essential for regulators to focus more closely on warranty repairs, product defects, recalls, and service-related issues within the broader automotive sector.

Despite suppliers (i.e. dealers) having the statutory right to seek reimbursement from manufacturers for repairs related to consumer guarantees—including warranty repairs and recalls—significant challenges remain. Research indicates prevalent problematic practices, such as warranty extrapolation, substantial delays in sourcing parts, and underpayment or delay in payment for warranty repairs.

Warranty extrapolation involves withholding or denying reimbursement for warranty-related repairs when dealers do not meet stringent process requirements. Some franchisors have gained a reputation for creating obstacles that prevent dealers from securing rightful compensation for warranty work, resulting in a climate of apprehension regarding reimbursement pursuits due to fears of potential retaliation. The ACCC should oversee the enforcement of fair compensation for warranty, product defect, and recall reimbursements, which is not only vital for consumer protection but also crucial for the financial sustainability of franchisees. VACC has provided evidence to the ACCC of this type of manufacturer behaviour.

#### **The Motor Vehicle Service and Repair Information Scheme:**

The Motor Vehicle Service and Repair Information Scheme (MVIS) has been recognised as a world-leading legislative framework that enables Australian automotive repairers to access the same repair, maintenance, and diagnostic information provided by OEMs to their franchised and authorised networks. This access is essential to maintaining Australia's aging vehicle fleet and ensuring the safety of motorists and the broader community.

Since its implementation in July 2022, the MVIS has made substantial progress toward meeting its objectives. However, there are several key issues that the VACC believes require immediate attention from the ACCC:

- 1. Enforcement of the Fair and Reasonable Test:** It is crucial that the “fair and reasonable” standard, which underpins the MVIS, is strictly enforced to ensure equitable access to essential data for independent automotive businesses.
- 2. Protection of privacy data:** VACC is concerned that OEMs are collecting and storing the private details of Australian businesses on centralised databases located outside of Australia. This may be inconsistent with legal provisions outlined in the MVIS, particularly as mentioned in the Explanatory Memorandum (1.159). Immediate action is required to ensure the protection of privacy data, and compliance with the MVIS's requirements.
- 3. Compliance of third-party data aggregators:** In the collision industry, third-party data aggregators must be held to the same safety standards as outlined in Section 7 of the MVIS Rules. VACC urges the ACCC to take steps to ensure all third-party providers strictly follow these safety requirements.
- 4. Access to diagnostic, software, and programming data:** It is vital that all data providers, including OEMs and third-party entities, make diagnostic, software, and programming data and files fully accessible to independent automotive businesses. This will ensure a level playing field and allow for the continued safe and effective repair of vehicles across Australia.

The VACC appreciates the significant efforts of the ACCC to date and believes that addressing these urgent issues will ensure the long-term success and fairness of the MVIS.

### 3. Which areas are the MOST important for the ACCC to focus on in 2025–26? (Please select up to 3 options)

- Environmental claims and sustainability
- The supermarket sector
- Competition in essential services
- Misleading pricing in essential services, including telecommunications and energy
- The aviation sector
- Issues in the digital economy
- Ensuring NDIS providers comply with consumer law
- Unfair contract terms
- Product safety issues for young children

#### VACC written response

##### **Environmental claims and sustainability:**

The automotive industry is crucial in the transition to a net-zero future and supports sensible policy reform to achieve this target. However, recent years have seen a significant amount of misinformation about EVs in mainstream media, particularly regarding vehicle range, consumer expectations regarding service cost of EVs, fire risks, and battery and charging specifics. We believe that the lack of oversight and lack of automotive retail industry consultation from the ACCC and state-based offices of Fair Trading and Small Business offices regarding this misinformation could adversely affect consumer expectations when considering EV purchases, potentially hindering their adoption.

Earlier this year, the VACC initiated a visit by a team from the ACCC to Melbourne-based dealerships and observe the service requirements for EVs and view associated infrastructure requirements at franchise dealer locations. During this visit, VACC engaged in discussions about the ongoing financial and contractual commitments faced by dealers concerning the infrastructure needed for charging, storing, selling, servicing, and repairing EVs.

An alarming comment from an ACCC representative suggested that servicing an EV would be less expensive than servicing a traditional internal combustion engine (ICE) vehicle. This assertion has raised concerns within the industry, as it does not fully represent the complexities involved. It is essential to recognise that dealerships and workshops primarily sell time, and the setup required for servicing and storage of EVs is often more intricate and time-consuming than the straightforward process typically associated with ICE vehicles, which generally involves simply opening the bonnet.

To ensure that the narrative surrounding the service and repair of EVs accurately reflects the perspectives of the franchised dealer and repair sector—rather than those of energy providers or community panels—the VACC has initiated a follow-up meeting. In this session, VACC engaged a national automotive industry aftersales consultancy to provide the ACCC with a comprehensive understanding and comparative analysis of EV servicing, including a benchmark of procedures from manufacturers such as Hyundai, KIA, MG, and BYD.

The VACC appreciates that the ACCC engage with industry. However, it is also important that the ACCC adopts a proactive approach and takes action in mitigating the consumer expectation on EVs and the risk vexatious claims can have on automotive businesses.

##### **Unfair contract terms:**

While the Franchising Code of Conduct has introduced improved regulations to address concerns regarding unilateral, retrospective modifications of franchise agreements,

it unfortunately fails to tackle the issue of unilateral changes to operations manuals. Operations manuals serve a vital role in transferring knowledge and expertise from franchisors to franchisees. They establish control mechanisms to ensure consistent practices and compliance within the franchise system. These manuals include critical information on product and service offerings, sales and servicing procedures, advertising requirements, employee standards, showroom identity, and other essential operational details. Their primary goal is to maintain uniform quality and value delivery to customers across all franchise units.

Given their dynamic nature, operations manuals are regularly updated and revised within any franchise system. Franchise agreements often require franchisees to adhere to the guidelines outlined in these manuals. However, this dynamic aspect can create significant uncertainty for franchisees as operations manuals can be viewed as powerful tools that grant franchisors considerable authority to control their franchisees with limited constraints. Research shows that automotive franchisors frequently amend operations manuals unilaterally through bulletins and online communications during the term of the dealer agreement.

Given the critical nature of operations manuals, amendments can significantly impact dealership profitability. For instance, car manufacturers may alter warranty obligations, audit processes, profit margins, Key Performance Indicators, payment systems, procedures for unloading inventory, or recruitment quotas. These changes can lead to unforeseen increases in operational and overhead costs for dealerships over the course of a contract term.

The content of the operations manual is integral to the profitability of a franchise business. However, the current legal framework does not adequately recognise the importance of these documents within a franchise system. VACC propose that the ACCC should oversee provisions to prevent essential requirements impacting dealers' commercial livelihoods from being shifted from the contract to the operations manual. Instead, these requirements should be subject to majority consent provisions, allowing dealers a chance for meaningful negotiation with the franchisor.

#### 4. What new or emerging concerns should the ACCC consider in 2025–26?

##### VACC written response

###### **Strengthening ACCC governance in the automotive industry:**

It is crucial for the ACCC to improve its governance of the ACL within the retail automotive sector. When the New Vehicle Emissions Standards (NVES) takes effect in 2025, the anticipated influx of EVs will likely bring new foreign original equipment manufacturers (OEMs) to the Australian market, including at least ten Chinese car manufacturers planning to enter, or already launching in Australia. Therefore, it is essential for the ACCC to proactively address the ongoing lack of accountability among car manufacturers regarding their ACL obligations.

Furthermore, the ACCC should closely oversee consumer warranty claims that affect small businesses. The impact of COVID-19 on the automotive supply chain significantly reduced vehicle stock, leading to increased prices for both new and used cars. As supply chains normalise and high inflation pressures the cost of living, vehicle prices have begun to decline. This shift has resulted in buyer remorse among consumers, leading to cancelled orders or returns that adversely impact dealership operations.

Additionally, consumer lobby groups often contribute to these challenges by lacking a nuanced understanding of the automotive industry's economic dynamics. The VACC believes that ineffective and misinformed consumer advocacy does not serve the best

interests of consumers. The VACC has long engaged with the ACCC and Consumer Affairs Victoria to highlight industry challenges and mitigate unrealistic consumer expectations.

As the transition to EVs accelerates, the ACCC must focus on ensuring that consumers are well-informed about the inherent limitations of EVs, such as range constraints, faster tire degradation, and technological complexities. These factors are critical for consumers to understand when purchasing an EV.

Moreover, the VACC is concerned that some consumer lobby groups promote the notion that consumers are entitled to refunds as a predetermined outcome. This is not necessarily the case and the notion of an automatic cash settlement for all issues is not realistic. The level of fraudulent, opportunistic or misinformed claims seen by this sector is equal to the amount of legitimate claims we see. The ACCC has an obligation to protect automotive businesses from vexatious claims and ensure that there is a balanced framework delineating the respective rights and responsibilities of dealers, manufacturers, and consumers. Consumers have a right to have genuine claims settled fairly. Industry has a right to be treated fairly and not have resources drained or pay out claims because 'it's just too hard to argue' with consumers who have been provided bad advice.

**5. The ACCC works to promote competition and fair trading in markets to benefit consumers, businesses and the community. Which of the following are the most effective tools to achieve this?**

- Enforcement action by the ACCC with a focus on penalties
- Refunds or compensation for consumers,
- Direct engagement with businesses
- Industry guidelines
- Research reports
- Consumer education via the ACCC website and other channels
- Market studies
- Other

**6. When you contact the ACCC, what outcome are you hoping for?**

- For the ACCC to provide general information relating to your issue
- For the ACCC to provide specific assistance to help resolve your issue
- For the ACCC to investigate and take appropriate action against the trader
- Other

**VACC written response**

The ACCC's role extends beyond consumer representation; it also has a duty to advocate for businesses under competition law and ensure that business also has access to justice. It is essential for the ACCC to address systemic issues within the industry effectively.

**7. Are there specific industries or issues you believe the ACCC should focus on in 2025–26?**

**VACC written response**

**Victorian Licensed Motor Car Traders in the Victorian Civil and Administrative Tribunal:**

Victorian Licensed Motor Car Traders (LMCTs) have frequently been at the centre of discussions initiated by consumer lobby groups advocating for the establishment of



an automotive industry-based, and funded, lemon law ombudsman model. However, we at VACC question the validity of this proposition. Over the past two years, VACC has conducted a weekly review and comparative analysis of LMCTs that have been respondents in the Victorian Civil and Administrative Tribunal (VCAT) hearings. This analysis, which spanned 10 weeks in 2023, is currently being extended to cover a 17-week period this year.

Our findings indicate that LMCTs account for a negligible portion (less than 1 per cent) of VCAT hearings. VACC is available to discuss the insights from our VCAT analysis with the ACCC.

## 8. Please provide any additional comments or suggestions that you would like to share with the ACCC.

### VACC written response

#### **The ACCC's protection of small business:**

The ACCC's charter is centred on promoting fair competition, ensuring that businesses have a fair opportunity to thrive. It is essential for the ACCC to address fraudulent consumer claims, as these can lead to significant financial losses for industries each year. This included businesses also having access to justice and not being forced to defend an action because the law is unsuitable.

#### **Fuel discounting:**

The ACCC should monitor not only fuel prices but also the discounts offered by various retailers. Significant discounts can distort competition, especially if larger retailers use them to drive smaller competitors out of the market. This could lead to a less competitive landscape, harming consumers in the long run. Additionally, discounts might mislead consumers about overall market fairness. VACC requests excessive fuel discounting be monitored by the ACCC can help ensure a stable and competitive fuel retail industry.

