



VACC Submission

ACC Market Study into New Car Retailing

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About VACC

The Victorian Automobile Chamber of Commerce (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 specialist, 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), and automotive dismantlers and recyclers.

In addition to VACC, its sister organisations – the Motor Trade Associations, represent the automotive industry for their respective states.

Background of the automotive industry

The automotive industry contains approximately 65,000 businesses nationally, the vast majority of which (95%) are small and family owned and operated businesses.

For the year ended June 2016, aggregate employment for the industry was recorded at 360,000 persons. In gross domestic product (GDP), the automotive industry as a whole accounted for approximately \$38.3 billion or 2.5% of Australia's annual GDP in current prices in 2014-15.

The industry is very competitive with small profit margins, consumer behaviour limits capacity of industry to raise prices, and large multi-nationals (insurance companies, the oil industry, supermarkets, and vehicle manufacturers) heavily influence consumer behaviour and/or price. The cost of doing business is high due to rapid vehicle technology advances requiring high-level skills and expensive technology in the repair service process.

VACC responses to Questions – Appendix D of Issues Paper

The structure and operations of the new car retailing industry

- 1. 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?**

VACC believes the illustration and information concerning the supply chain for new car retailing as presented by the ACCC in Section 1 of the Issues Paper, is basically a sound description of the structure and operations of the physical new car retailing industry supply chain. The information however does not represent the entire value chain, as it excludes finance and insurance operations, which are considered as an intrinsic part of the new car supply chain.

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

VACC argue that both the search and information costs incurred by consumers when buying a new car are very low. Both vehicle manufacturers and new car dealers engage in extensive media advertising, marketing and promotion of new vehicles and consumers are typically aware of the best timing for purchasing a new vehicle, such as during end of financial year runout sales and new year sales promotions.

Consumers also have free access to manufacturer/dealer websites where they can visualise and customise vehicles digitally and obtain relevant pricing information. Furthermore, on-line sales and vehicle comparator websites such as carsales.com.au, enable nationwide vehicle sourcing and price comparisons to be made by consumers. Most dealers can also freely deliver vehicles to consumers to test drive.

This access to information demonstrates a positive environment for low cost information and choice for consumers when purchasing new vehicles.

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

Dealership operations are highly structured through their franchise agreements with manufacturers. These franchise agreements often contain highly restrictive terms and provisions as set by the manufacturer, for which an authorised dealer must inevitably comply. These provisions can relate to vehicle pricing, dealer margins, location, floor design, sales performance, product re-stocking, marketing budgets, sales catchment areas, market concentration of dealerships and other factors. These contractual agreements are often deemed unbalanced, with manufacturers able to cancel any agreements at short notice often without warning. VACC has witnessed examples of such

termination of dealer contracts without warning against some of its members by manufacturers. This has led to considerable loss and financial distress for the business operators concerned.

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?

VACC argues that new car dealers operate within an extremely competitive and saturated business environment, and this has impacted adversely on the profitability and viability of many dealerships over recent years.

Broadly, car dealerships can be split into three market categories – the volume market, the prestige market and the luxury market. Whilst performance does vary within each segment, according to recent analysis conducted by Deloitte Australia¹ on average almost one in five car dealerships or 20% failed to make a profit over the course of 2015. This effectively dispels the notion that that all car dealers are making large profits.

Typically, dealers in the volume market have higher sales throughput and lower margins (gross per new vehicle retailed), whilst dealers in the prestige market have a mid-range sales throughput and higher average margins. Dealers operating within the luxury segment tend to have a lower sales throughput and higher margins (gross per vehicle sold). In practically all three dealer segments, sales of new and used vehicles represent over 50 per cent of gross profits generated within the business².

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

- (a) authorised and independent dealers**
- (b) authorised and independent service and repairer operators**
- (c) authorised and independent parts distributors.**

Market conditions between authorised and independent dealers, service and repair operators and parts distributors can be described as being highly competitive. Competition between dealerships is largely based on a dealer's product range, with consumers, businesses and government each typically seeking out a particular vehicle in a specific segment. In this respect, the branding and size of the dealership often plays a key role, where affiliation with popular brands such as Mazda and Toyota can provide an advantage to some dealerships.

In terms of vehicle service and repairs, vehicle manufacturers typically instigate fixed price service regimes on their affiliated dealers and this is a key source of competition between authorised and independent repairers. Many independent repairers mimic these practices, however many struggle to deliver the same level of service at the same price.

Independent operators tend to be small, family run businesses often unable to take advantage of economies of scale, and thus unable to compete effectively within a market where new vehicle dealerships are investing heavily to increase their market share.

¹ Deloitte Australia, 2016 Dealership Benchmarks <https://www.eprofitfocus.com/performance-monitoring/benchmarks/car-benchmarks-australia>.

² Ibid.

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 Australian new car market is the most saturated and competitive business environment for new vehicle sales in the world. In a market that generates 1.2 million new vehicle sales annually, there are 67 vehicle brands competing for business in Australia with around 360 individual model variants offered for sale to consumers. This concentration of brands and models has accelerated, particularly since 2011. By comparison, in significantly larger markets such as the USA (17.5 million new vehicle sales in 2015) there are only 51 vehicle brands in operation and far fewer models³.

There are a number of factors that have contributed to this increased level of market competition in Australia. These are primarily related to continued economic growth over time, making it both safe and attractive for companies to invest and compete for a share of the Australian market. Key influences include:

- Strong population growth over the decade
- Rising levels of household wealth
- Low interest rates, and
- Favourable exchange rates

The consequences of this heightened level of market competition have been on-going price reductions for new vehicles and lower per unit sales revenues and profit margins for dealers. Consumers have been the beneficiaries of this trading environment, with ABS data clearly showing a markedly decreasing trend over time in the new motor vehicle price sub-component of the Consumer Price Index.

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?

ABS Business Counts data⁴ shows a steady decrease in the number of small car dealerships over the past four years. The fact that ABS employment figures within motor vehicle retailing have not decreased by a similar proportion suggests that business consolidation within car retailing is on the rise. This is evidenced through on-going mergers, takeover and business acquisitions within the sector.

³ Department of Innovation Industry, Science, Research and Tertiary Education, Automotive Industry Data Card 2012

⁴ Australian Bureau of Statistics, Counts of Australian Businesses, Including Entries and Exits, June 2011 to 2015 (Cat.no. 8615.0).

Table1: Counts of Car Retailing Businesses, Australia

Year	Non Employing	1-19 Employees	20-199 Employees	200+ Employees	Total
2011	2008	1922	800	60	4790
2012	1980	1912	796	57	4745
2013	1963	1904	737	27	4631
2014	1996	1820	733	23	4572
2015	1987	1811	670	26	4494
Change over the last 5 years	-21	-111	-130	-34	-296
Change over the last 2 years	-9	-9	-63	3	-78

Source: ABS, Counts of Australian Businesses, including Entries and Exits, cat.no 8165.0

It is possible that if the rate of business consolidation increases significantly over time, this may reduce the overall level of competition between new vehicle dealerships. Potentially this could raise new vehicle prices and reduce the quantity of new vehicles sold, but contribute to higher per-unit sales revenues for dealerships.

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

There is anecdotal evidence that the level of intra-brand competition between retailers can be significant in many cases. VACC has received reports of preferential treatment by manufacturers towards certain dealer groups or dealerships and this can be a source of angst for some dealers. This preferential treatment can be related to the critical mass or presence of a dealer as well as the type of business model that is employed, with more aggressive dealerships receiving more favourable rewards.

There is also the possibility that the distribution of retailers of the same brand by locality/region may affect the level of intra-brand competition. For example, in localities that contain a higher concentration of Ford dealerships, there may be greater levels of competition between these respective dealerships. Therefore, when one dealership is offering certain discounts or deals, there may be intense pressure from consumers on other intra-brand retailers to match these offers.

Consumer guarantees, warranties and new cars

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.

VACC is not aware of any instances or occurrences within its membership base, whereby a major failure was present in a new vehicle and a consumer was not able to gain redress.

VACC is also not aware of any proven cases where the Victorian Civil and Administrative Tribunal (VCAT) or any court needed to make orders for refund, repair or replacement because these had been denied to the consumer by the dealer or manufacturer.

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?

VACC suggest that remedies including a free service and/or free loan car are considered as staple industry offerings that are made to support consumers, whether or not consumers are correct in their approach in the first instance.

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?

Access to information concerning manufacturer warranty/and or dealer's extended warranties is generally provided during the sales process by the dealership. This is communicated both verbally to consumers by a salesperson as well as through the provision of specific written documentation and information.

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?

VACC assert that there is little evidence that consumers are advised that they will lose their warranty if they service their new vehicle at an independent or non-manufacturer aligned workshop. There is a strong and growing community understanding of consumers rights under the Australian Consumer Law and given this sentiment, it is unlikely that consumers would accept incorrect or bad advice on this matter from any parties and consequently would be more likely to challenge it.

Fuel consumption, CO2 emissions and noxious emissions

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)?

The information displayed on vehicles through the mandatory labelling of vehicle fuel consumption and vehicle emissions is used by dealership salespersons as a point of reference both in selling a vehicle to a potential customer, as well as providing information to customers to help substantiate their choice of vehicle. It is also explained by dealership staff, that the figures published by manufacturers are nominal figures to be used as a guide only, and that actual fuel consumption and emissions can vary depending on individual driving style, vehicle load, traffic conditions and environmental conditions.

In addition to this labelling and advice, consumers have access to a wide range of published and freely available on-line information from motoring organisations, motoring clubs and vehicle comparator websites concerning car reviews and vehicle tests of specific makes and models that help inform consumers on the fuel consumption and performance of selected vehicles. Today's consumer is more informed than ever in regards to these matters and there is a plethora of resources available to help substantiate a consumer's choice of vehicle.

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?

Please see to response to previous question, Q24.

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?

VACC advises that that the majority of vehicle technicians and salespeople employed within dealerships are qualified ex-vehicle technicians, and as such they command a thorough understanding and knowledge of vehicle technologies including emission standards and fuel consumption. This knowledge and expertise is utilised to advise consumers appropriately in regards to such matters.

Additionally, vehicle manufacturers provide information to technicians and salespeople as part of a dealerships standard product training processes.

Car performance

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

Car performance is one of a multitude of factors that consumers take into consideration when deciding on any specific vehicle purchase, albeit an important one. To this extent, there is a plethora of information available to consumers including recalls and press/media articles on the varying performance levels of different vehicles. The key issue is that consumers need to be able to make informed choices and there is a host of resources and information available that can be drawn on by consumers to assist with their purchasing intentions.

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?

VACC is aware of a review into Volkswagen and its related subsidiaries in respect to claims made concerning the emissions and performance of some of its products.

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

VACC believes that it is fundamentally important that consumers undertake greater responsibility in their research and testing of vehicles prior to purchasing. Consumers have numerous reference tools at their disposal to validate and substantiate any facts concerning a particular vehicle e.g. carsguide.com.au, themotorreport.com, technical advice from motoring associations, clubs and other sources.

VACC believes that it is neither realistic nor fair, that all information, responsibility and risk should be incumbent on the dealer.

Access to parts and tools

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?

See Section 4.2 of Issues Paper.

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

VACC believes that in order to facilitate better decision making amongst consumers, there needs to be greater clarity and transparency of information regarding the definitions for new Original Equipment Manufacturer (OEM) and aftermarket vehicle parts. Better clarity could involve labelling of aftermarket parts as either '*designed to or exceeding OEM specifications*' or '*not meeting OEM specifications*'. This would help facilitate a clear and more informed choice on behalf of the consumer. VACC further argues that an improved taxonomy for the description of vehicle parts would also assist vehicle repairers and consumers which require a vehicle to be repaired.

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

See question Q33.

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

Both consumers and independent repairers can experience difficulties in gaining access to and repairing security related vehicle components. Such components can typically include electronic vehicle keys, electronic steering lock, transmission control unit, power electronics, direct shift modules, body sections and other parts. Some manufacturers will deny access to these vehicle parts or the tools required to reinitialise these parts, in order to protect against vehicle theft and the rebirthing of stolen vehicles.

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 types of parts and tools sold to consumers and independent repairers can vary depending on the dealer and manufacturer, and also by what is available within the aftermarket environment.

Logbooks, dealer stamps and online logbooks

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

VACC believes that log books are an important part of a vehicles life-history and will be required in vehicles for the foreseeable future. Log books not only provide detailed information on the service background of a vehicle they also provide an important point of historic data when a vehicle is being traded. Given the periodic nature of servicing, and the recording of a vehicles kilometres travelled at each service point, log books serve an important function in establishing the authenticity of a vehicle, including where kilometre tampering may be suspected.

It is the case now that some manufacturers do not include itemised service schedules in the service logbook, but rather specify a *Service A* or *Service B* option, where a *Service A* may be a minor service and a *Service B* may represent a major service, with no supporting information as to what works are carried out within each. This can present difficulties for both consumers and independent repairers in knowing exactly what work has been undertaken previously or what is required during any particular service.

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?

Some vehicle brands have moved exclusively towards on-line logbooks and this is leading towards an inability for independent repairers to be able to update the logbook following the servicing of these particular brands. Other vehicle manufacturers store vehicle service and logbook information electronically on the vehicle keys, where access is required to a specific manufacturer's tool in order to be able to read or access the service information relating to the vehicle. Similarly, this also limits a non-authorised repairer's ability to view a vehicle's service history.

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?

Please see response to previous question Q40.

Access to repair and service information and data

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

VACC believes that the summary information provided in the ACCC's Issues Paper in Section 5 and 5.1 presents a reasonably accurate portrayal of the general availability of repair and service information within the market, along with the constraints experienced in accessing such information.

The Federal Chamber of Automotive Industries (FCAI) hosts a website with links to car manufacturer's websites and email addresses, where supply chain participants can gain access to repair and service information via subscriptions to the relevant car manufacturer's service portal. Currently, 17 vehicle manufacturers have made repair information available on this website, however only one manufacturer provides access to re-initialisation/re-programming codes when replacing components or updating software.

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

Independent repairers often resort to using the internet to search for free or paid sites containing specific vehicle service and repair information, as they are locked out from many manufacturer portals. This information is often unverified, unreliable and may be incomplete as restrictions exist on software codes that are necessary to initiate vehicle systems. VACC therefore does not encourage the use of these sources.

Current Australian and international regulations

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 *Agreement on Access to Service and Repair Information for Motor Vehicles*, is a voluntary agreement or code that commenced in December 2014, with the intention of safeguarding consumers and ensuring effective competition in the vehicle repair market, through the collaborative provision of vehicle service and repair information by vehicle manufacturers in Australia.

Whilst this Agreement has been in operation for less than two years, 17 of the 67 vehicle brands operating in Australia are currently participating in the Agreement, through the provision of OEM repair and service information and data via the FCAI website.

VACC considers these early trends as a positive development, with the expectation that more vehicle brands will participate in the Agreement over time.

Whilst this early success is encouraging, it must be emphasized that there are varying levels of support offered by the OEM's participating in the Agreement. Generally, most participants provide only vehicle repair information and exclude technical service bulletins and software updates as part

of their information offerings. Whilst this is within the principles of the Agreement, it can also be considered as a 'grey' area within the Agreement.

An example of this 'grey' area is Principle 4 of the Agreement which states that:

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

The reference made to 're-initialisation of the vehicle' in Principle 4 infers that software updates are covered within the Agreement. However, Principles 5, 9, and 12 in the Agreement refer to the fact that that OEMs have a right to 'protect intellectual property and are not required to provide trade secrets or information that could affect the integrity of a vehicle's security, design standards, legislative, regulatory or privacy considerations'....

Therefore, the right to access vehicle software updates that is inferred under Principle 4, is negated if it is deemed to compromise a manufacturer's vehicle security under Principles 5, 9 and 12 of the Agreement. This is a matter where perhaps further clarification may be required.

The effect of these opposing principles means that participating vehicle manufacturers essentially have a choice within the Agreement, as to the level of support they are willing to offer in terms of the provision of service and repair information. Currently, only one of the 17 participating OEM's to the Agreement provides access to repair information that includes software updates, via a paid information subscription service.

VACC believes that the Agreement, whilst still in its relative infancy, has marginally improved the level of access to service and repair information for independent and general repairers and thus strengthened the level of competition within the vehicle service and repair market. There is also the potential that over time more manufactures will participate in the Agreement. VACC would also advocate that manufacturer specific repair information should not be provided without cost, but should be made affordable via paid subscriptions.

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?

In addition to the information supplied in Q51 above, VACC would add that compared to the situation existing prior to the voluntary Agreement, independent repairers now have easier access to a growing share of OEM vehicle repair information, which enhances the knowledge, capability and efficiency of these businesses, which in turn strengthens the level of competition in the vehicle repair market.

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?

VACC believes that the overall evidence concerning the US and Canadian systems suggests that their systems are working well and thus appear to be an improvement on Australia's voluntary code of practice.

In particular, the US National Automotive Service Task Force (NASTF) and the NASTF Secure Data Release Model (SDRM) work in conjunction to establish data exchange systems and protocols with the cooperation of OEMs, independent repairers, insurance companies and law enforcement agencies. The system is designed to allow aftermarket access to security sensitive information such as vehicle key codes, PIN numbers, immobiliser reset information and other information required to conduct repairs on passenger motor vehicles and light trucks. Access to security information is further regulated through a Vehicle Security Program Registry (VSP) where only licensed locksmiths and appropriately qualified service technicians are eligible to apply for VSP approval. All transactions relating to vehicle security information are then logged and monitored by crime authorities.

The adoption of a mandatory system as such would provide additional benefits in terms of further strengthening competition in the vehicle repair market in Australia, however the costs associated with regulation and administration of such a model need to be investigated as part of any assessment its overall effectiveness.

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

VACC would support the notion that the Australian vehicle repair market could benefit from the development of a nationally agreed vehicle service and data access accreditation program. Such a program would enable independent repairers to access vehicle information and data, based on agreed protocols and manufacturer benchmarks for security clearance. It is envisaged that such a program would need to be industry led and specifically tailored for the Australian market, incorporating best practice from overseas along with appropriate safeguards as endorsed by industry.

New car dates

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?

VACC advises that this information is recorded on the vehicle compliance plate and consumers are informed through VicRoads and other agencies.