

### Choice of repairer, new car servicing

Dear member

The Australian Competition and Consumer Commission (ACCC) recently reiterated that consumers can choose to have their vehicle serviced by the repairer of their choice without voiding a new car warranty, provided the service is completed in accordance with the manufacturer service schedule and specifications, and is performed with due care and skill and genuine or appropriate quality parts are used.

The ACCC in their 2017 New Car Retailing Industry market study, found that the “majority of consumers take their new cars to manufacturer authorised dealers for repairs and service. This appears to be, in part, the result of a mistaken belief that the manufacturer’s warranty requires them to only use an authorised dealer”. [\[1\]](#)

#### What’s happened?

The ACCC has instituted Federal Court proceedings against Honda Australia Pty Ltd for making false or misleading representations to consumers about two former authorised Honda dealerships, Brighton Automotive Holdings Pty Ltd (Astoria) in Victoria and Tynan Motors Pty Ltd (Tynan) in NSW. [\[2\]](#)

The ACCC alleges that between January 2021 and June 2021, Honda Australia represented to customers of Astoria and Tynan that the dealerships would close or had closed and would no longer service Honda vehicles.

The ‘Closure’ Representation and the ‘No Dealer Servicing’ Representation were false, misleading or deceptive because Astoria and Tynan were not closing and did not close, and at all material times including during the Relevant Period, Astoria and Tynan continued to operate a vehicle servicing department and were able to service, repair and provide spare parts for vehicles, including Honda vehicles.

“While Astoria and Tynan were no longer a Honda franchisee, they remained open as independent dealerships and were able to service Honda vehicles,” ACCC Commissioner Liza Carver said.

“We also allege Honda caused harm to the Astoria and Tynan businesses, by falsely claiming they had closed or would close, which may have led customers to have their Honda vehicles serviced elsewhere.”

“It is important that independent dealerships can service vehicles of all brands, and from 1 July 2022 dealerships will have fair access to the necessary technical information from all manufacturers to service and repair all makes of cars,” Ms Carver said. It’s important to note that this applies to all repairers regardless of whether they are a dealer or not if they are operating a business of diagnosing faults, servicing, repairing, or modifying a vehicle.

By making the Closure Representation and the No Dealer Servicing Representation in the circumstances set out above, Honda, in trade or commerce: (a) in connection with the promotion and supply of automotive servicing and repair services to Australian consumers, made false or misleading representations concerning the availability of facilities for the repair of vehicles, in contravention of s 29(1)(j) of the Australian Consumer Law (ACL); and (b) engaged in conduct that was misleading or deceptive or likely to mislead or deceive, in contravention of s 18(1) of the ACL.

The ACCC allege that the conduct by Honda, deprived customers of Astoria and Tynan the opportunity to make an informed choice about their options for servicing their vehicle and may have led to them to have their Honda vehicle serviced elsewhere to the detriment of Astoria and Tynan who had not closed their service centres.

The ACCC is seeking declarations, pecuniary penalties, and costs.

Please see the link [here](#) to the ACCC website.

### **Misleading or deceptive conduct**

Businesses are prohibited from engaging in conduct that misleads or deceives or is likely to mislead or deceive consumers or other businesses.<sup>[3]</sup> There are also specific prohibitions against businesses making false or misleading representations, <sup>[4]</sup> and against businesses engaging in conduct that may mislead the public as to the specific nature, characteristics, or suitability for purpose of a good.<sup>[5]</sup>

Members are reminded not to engage in Misleading or Deceptive conduct in contravention of the ACL. With this in mind, consumers have the right and freedom to select the tradesperson and workshop of their choice to service their vehicle.

### **Industry Guidelines**

The following industry guidelines provides information relating to your obligations under the ACL for motor vehicle sales, and repair industries including motorcycles.

Click [here](#) to access the document.

**John Khoury**  
Industry Policy Advisor

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<sup>[1]</sup> New Car Retailing Industry, a market study by the ACCC (2017) pp 57.

<sup>[2]</sup> ACCC, Honda in court for allegedly misleading consumers about dealership closures < <https://www.accc.gov.au/media-release/honda-in-court-for-allegedly-misleading-consumers-about-dealership-closures>>.

<sup>[3]</sup> s18 of the ACL.

<sup>[4]</sup> s29 of the ACL.

<sup>[5]</sup> s33 of the ACL.