

**MOTOR TRADES
ASSOCIATION
OF AUSTRALIA**

MTAA Limited response to the
Australian Consumer Law Review
Interim Report
December 2016

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ACL Review Secretariat
The Treasury
Langton Crescent
Parkes ACT 2600

Via Email: ACLReview@TREASURY.GOV.AU
c.c: Julia.Muse@treasury.gov.au

**Motor Trades Association of Australia Limited (MTAA) response to the
Australian Consumer Law Review Interim Report December 2016**

Dear ACL Review Secretariat,

The following is a response to the Interim Report of the Review of the Australian Consumer Law and in particular reference to the retail, service, repair, recycling and associated industries of the Australian automotive sector.

The Motor Trades Association of Australia Limited (MTAA) on behalf of its State and Territory Association Members thanks the Review Team for the opportunity to make this response and remains available to assist the Secretariat with any additional assistance.

Please do not hesitate to contact the undersigned should you require any additional clarity or further information.

Yours Sincerely,

Richard Dudley
Chief Executive Officer
Motor Trades Association of Australia Limited
On behalf of the MTAA Limited Board of Directors and Members

Automotive Industry in context

- The Australian Automotive Sector consists of more than 65,000 businesses nationally. This figure is derived purely from ABS data. The vast majority of which are small and family owned and operated businesses. *Australian Bureau of Statistics figures, but not all automotive sector related businesses are necessarily included*). For the year ended June 2015, aggregate employment for the industry was recorded at 362,000 Australians.
- The sector is undergoing significant structural adjustment resulting from:
 - Globalisation
 - Impacts of the world's most competitive and volatile right hand drive market.
 - Rapidly changing and application of new and emerging technologies.
 - Changing consumer behaviours and requirements.
 - Emergence of ride sharing and levels of automation.
 - Consolidation of many automotive industries.
- Modern motor vehicles are highly complex products – integrated and connected. Increased safety, efficiency, environmental, mobility and connectivity outcomes are being achieved with increasing reliance on computerisation and usually with multiple third party involvement particularly in advanced systems and sub-system integration. Today and tomorrow's motor vehicles can have multiple computer systems, radars, hundred of sensors and systems which will become increasingly updateable online.
- This in turn is increasing the complexity of supply chains and relationships and interdependencies between consumers, supply chain participants, and regulatory and legislative instruments.
- Highly complex products are also creating sometimes highly complex diagnostic, service and repair requirements particularly with systems integration.
- Also influencing a highly fragmented and relationship dependent sector are influences including: the relative power of market participants, a lack of consistent and coordinated policy or understanding of policy implications on the sector, all of which are causing significant structural adjustment and industry change and consolidation.
- The provision (and in some cases the type) of services, the skills and qualifications required, and traditional business models are resulting in structural adjustment to industries within the sector.
- The closure of the final two domestic vehicle manufacturers in 2017 will see approximately 18% of the total automotive sector disappear with thousands of jobs lost. The nation will for the first time since the late 1940's be solely reliant on imported motor vehicle products.
- These closures will also potentially add further dynamics to relationships and interfaces with consumers, as the sector, and industries within it, adjust to this new environment.

Motor Trades Association and Member Associations in context

- MTAA Limited is the national association of participating State and Territory Motor Trades Associations and Automobile Chambers of Commerce Members and is the voice of what will be more 95% of the automotive sector, when car manufacturing ceases, with largely key Commonwealth Government stakeholders and the community.
- MTAA Limited Members have all industries of the automotive sector represented as business member constituents. This allows MTAA Limited Members the unparalleled ability to understand the operations, issues, concerns and risks of new car franchised motor dealers and other automotive participants.
- Some MTAA Members may have provided independent submissions reflecting specific views of their retailing business members. This submission supports any member representations that may have been made.
- On behalf of its State and Territory Association Members, the MTAA has been heavily involved in matters connected to and at the forefront of national policy development in regard to the automotive sector for more than 25 years.

Scope and coverage of the ACL

Consumer Threshold

- MTAA and Members previously advised the reviews into Australian Consumer Law and the Competition and Consumer Act that the current consumer guarantee threshold (\$40,000) needs to be indexed to 2016 prices with annual indexation thereafter tied to movements in the Consumer Price Index (CPI).
- MTAA Members do not support the notion that the threshold should be adjusted retrospectively by the CPI back to 1986, which would determine its value at over \$100,000 in today's prices.

- MTAA Member VACC, has provided arguments for this position in their independent response to the Interim Report including:
 - Such action may contravene an important legal concept - the *Principle of Legal Certainty*, which states that the retroactivity of laws and decisions must be limited and that there should maximum predictability of official's behaviours within the law.
 - A change in threshold value from \$40,000 to \$100,000 would constitute an extreme change and disruption towards business activity, particularly that of small business
 - Many consumers could see this introduction as an opportunity to 'cash in' when experiencing minor or trivial issues.

- It was also suggested a model / formula based on existing models found in State and Commonwealth jurisdictions that cover the automatic indexing of fines and penalties so that the value of those penalties can be maintained.

Consumer Guarantees, Acceptable Quality, Clarity

MTAA Observations and Recommendations

- There is no change to the ACL in terms of broad consumer protections and guarantees.
- Action is taken to address the language of ACL in regard to complex products of motor vehicles.
- Improved consistency between ACL and related legislation / regulation in other jurisdictions.
- Action is taken to provide definitions in the ACL in relation to complex products such as motor vehicles. 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'; and
 - require plain English guidance for consumers, businesses, regulators and mediation and arbitration providers that are consistent and a common point of reference for all parties.
- The obligations and responsibilities and roles of various actors within ACL are also defined and an awareness and education program be developed and implemented nationwide to enhance the understanding and application of the ACL in relation to complex products such as new motor vehicles.
- Lemon Laws are not pursued as a national policy, regulation, position, or solution to potential problems with an extremely small component of a market of over 1 million sales per annum or in addition to protections and guarantees already available in the ACL.
- The introduction of '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, when compared to the overall market.
- Further consideration is given to the potential for enhanced awareness and education of the provisions of the ACL including requested clarity and definition and their application from a consumer perspective.
- The proper role and accountability of manufacturers and distributors in the delivery of effective warranty provisions and service work associated with warranties be investigated and better defined and included in any changes to the ACL and / or Franchising Code.
- The role and accountabilities of Dealers in undertaking warranty work for a manufacturer / distributor be better defined and included in any changes to the ACL and / or Franchising Code.
- The role and accountabilities of any other service provider in undertaking warranty work for a manufacturer / distributor be better defined and included in any changes to the ACL and / or Franchising Code.

Overview

Consumer Guarantees

- The definition of ‘consumer’ in Schedule 2, Chapter 1, Section 3 of the ACL MTAA suggests still requires amendment to include traders who have ‘purchased Goods and/or Services for resale’ as the present definition prevents such traders from taking appropriate action against a supplier through the consumer protection agencies such as Fair Trading or the Civil and Administrative Tribunals in their respective jurisdictions.
- It is crucial the consumer guarantee be extended to businesses that are consumers as well. One of the major concerns of MTAA Members and their business constituents, as previously expressed in submissions to the ACL and CCA reviews, is that retailers are often liable for consumer guarantees where they were supplied that product from manufacturers and where the fault occurred during manufacture. There should be greater protections for retailers and wholesalers from this type of claim; and manufacturers should be able to be made a party to a claim where appropriate.
- This is becoming more pronounced as even warranty provision and coverage has come under the microscope for efficiencies and savings placing even greater pressure on retailing to address matters that are of manufacturer origin.
- For example: Schedule 2, Chapter 3, Part 3-2, Section 54 of the ACL refers to Guarantees as to acceptable quality and notes at sub-sections 4, 5 and 7 that goods that are not of acceptable quality are taken to be of acceptable quality if it is ‘*specifically drawn to the consumer’s attention before the consumer agreed to the supply*’.
- The terminology used creates opportunity for differing interpretation. For example it could be inferred from the terminology that goods are that are ‘not of acceptable quality’ may be ignorant that the fact that the good/s may be nearing the ‘end of life’ cycle, but are still quite serviceable providing they are treated by the consumer appropriately.
- The number of consumer contacts relating to consumer guarantees and motor vehicles warranty concerns received by the ACCC during 2014/15 and 2015/16, in a market of over 1.1million sales per annum, represents a level of complaint at 0.16%. Any potential changes to the ACL should be mindful of the size of the market and the relative size of the concern, before potential disproportionate levels of change are introduced.

- MTAA and Members maintain that automotive industry participants are often disadvantaged and endure detriment as a result:
 - Inadequate provisions and definitions in the ACL.
 - Inappropriate reliance on case law and associated costs to all parties to determine definitions and application.
 - Lack of consistent interpretation and sometimes contradictory behaviours by and between Federal and State / Territory jurisdictions.
 - Excessive bias to consumer rights particularly in cases where vexatious or frivolous claims are made against small and medium sized automotive businesses, which have limited capacity and financial resource to defend litigation.
 - Greater specificity and delineation is required with a suggestion that matters specific to the automotive sector be contained in enhanced guidance material, a schedule or similar.

- MTAA and Members are of the view interpretation of the ACL by regulatory bodies such as the ACCC and State based agencies such as the Victorian Civil and Administrative Tribunal (VCAT) and Consumer Affairs Victoria (CAV), and similar agencies and departments in each jurisdiction are inconsistent and often contradictory in delivery of national policy objectives.

- There is a belief by MTAA and Members and their business constituents these regulatory bodies are excessively biased towards the rights of consumers and that the objectives of the ACL are not being appropriately dealt with.

- The objectives of the ACL do not assign specific weighting to as to which elements are more important than any other. Consumer protection, effective competition and fair trading have all equal value and importance under the law and MTAA and Members believe that this balance should be effectively and consistently observed and reinforced by regulatory authorities. Consumers and businesses both need the confidence and belief that the ACL's objectives are fair and impartial, providing protection where necessary, along with promoting effective competition and fair trading in a manner that sees neither party being disadvantaged. This is an area it is respectfully suggested still requires further work in the final recommended changes.

- MTAA and Members also believe that whilst there are advantages and support having a one generic Australian Consumer Law that is applicable across all goods and services in the economy, in the case of motor vehicles, repairs and parts, there are issues concerning product liability that warrant greater specificity and delineation within the legal framework of the ACL.

- In particular, automotive retail businesses that are at or near the end of the supply chain receive an unfair burden under the ACL through having to shoulder the liabilities and responsibilities for consumer guarantees on products originally supplied from vehicle manufacturers and where the faults occurred are manufacturing faults.

- This is both unfair and a source of detriment and financial hardship for the members of MTAA's Members, particularly small and independently-owned vehicle retailers and service and repair businesses.
- Reports received by MTAA from its Members who all conducted surveys with their membership as part of fact finding for original submissions to the ACL Review indicated that there is a considerable level of misunderstanding among both consumers and motor car traders with respect to the provisions contained in the ACL regarding motor vehicle sales and repairs. Specifically, a lack of clarity within the law has contributed towards grievances amongst consumers and traders leading to unnecessary litigation in many cases.
- Some of this lack of clarity includes:
 - What constitutes a 'minor failure' and a 'major failure' under section 259 of the ACL?
 - What constitutes 'reasonable time' for conducting vehicle repairs?
 - Expectations relating to 'fit for purpose', 'acceptable quality' and expected product life span.
 - Misunderstandings concerning the time length of consumer guarantees for particularly types of vehicles.
 - Consumers concerning the statutory warranties as applicable under the Motor Car Traders Act and their rights under the ACL.
 - Disputes surrounding the liability and responsibilities associated with product failures between vehicle manufacturers and the application of the ACL.
- MTAA has previously and again provide some case studies of how this lack of clarity and inconsistent interpretation and consumer bias has translated into cases, which are arguably not the fault of automotive sector businesses.

Inconsistent interpretation of Consumer Guarantees

Case Study 1:

- A [REDACTED] had experienced balance shaft failures within the engine. The car would not run. It was taken to a workshop where the failure was confirmed and work undertaken to rectify the fault.
- A short time later the engine warning light displayed indicating the presence of fault codes. These turned out to relate to worn cam phasers. This had no relevance with the original work carried out.
- An ACL claim was made and the Victorian Civil and Administrative Tribunal (VCAT) awarded full compensation to the car's owner because the workshop 'should have known' that these components were going to be faulty in the future.

Case Study 2:

- A 2004 [REDACTED] with 324,000 kilometres on the odometer developed a coolant leak four months after purchase whilst towing a heavy trailer on the highway.
- The temperature gauge was functional however the driver failed to stop and the result was that the engine was destroyed. The coolant leak was a minor defect, however the trader refused to repair the consequential damage.
- The VCAT proceedings were initiated and the Tribunal ruled that the vehicle was not 'fit for purpose' and the consumer was awarded a full refund along with associated costs for damages, despite the consumer having contributed to the damage through failure in their duty to stop and minimise loss.

Case Study 3:

- A 2004 [REDACTED] aged more than 10 years and with 163,040 kilometres on the clock was purchased for \$13,875.00.
- 4 months and approximately 7,000 km after purchase, the vehicle failed. The applicant was awarded \$4,000.00 at VCAT for the cost of a new transmission along with \$8,200.00 for additional costs claimed to have been incurred.
- VCAT did not provide reasons for its decision.
- The car was sold with a roadworthy certificate. It was examined by mechanics and considered to be in good condition for its age and level of use.

Case Study 4:

- A southern regional New South Wales consumer buys two new identical model vehicles (brand and model available on request) from a dealership in neighbouring Australian Capital Territory.
- Vehicles arrive, are 'pre-delivered' and collected by purchaser, who then drives vehicles home to a country location about 1.5 hours' drive from the dealership.
- Days pass . . . purchaser inspects under bonnet of vehicles. Notices white, crystalline 'precipitant' visible on alloy components.
- Purchaser takes vehicles to local mechanic.
- Local mechanic (not a brand dealer / agent) writes a report to the effect that precipitant is evidence of excess salt water exposure and corrosive. Writes of concerns with respect to electronic components. Furnishes report to purchaser.
- Purchaser presents at dealership with report, demands refund.
- Dealer assures customer of real explanation of residue cause and informs, "No" . . . we don't give refunds for 'change of mind'.
- Two weeks pass.
- The dealer receives a visit from two officers from the accountable ACT Government Department administering ACL / consumer affairs matters.
- Dealer subsequently receives letter of demand from purchaser's legal representation.
- Dealer – feeling intimidated and bullied by Departmental Officers and threat of legal action – issues refund cheques for vehicles.

Issues

- First and foremost this example is not a 'major failure'.
 - Vehicle would have been delivered to dealer with protective (often naphthenic-base) protective coating sprayed in engine bay / undersides.
 - Removal of coating is required before long-term operation of vehicle.
 - Difficulty in using petroleum based 'degreasers' for coating removal due to environmental considerations/ requirements, so water-based, alkaline solutions preferred.
 - Alkaline solutions based on alkaline salts and causation of residue.
 - Use of alkaline-based degreasers commonly attended to by alkaline salt residue, which is largely inert.
 - Failure of independent repairer to seek information and inform consumer.
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- These examples illustrate the unfair and highly subjective application of the ACL by regulatory authorities. It is clear in all cases that the objectives of the ACL were not served.
 - In all likelihood, the litigation and financial losses suffered by the businesses in these examples could have been ameliorated or even possibly avoided had there been more explicit information and better clarity surrounding the particular provisions and guarantees contained in the ACL in regard to motor vehicle sales and repairs.

- A significant contributing factor in this regard is the blurring of the rights of businesses and consumers through the existence of both the Motor Car Traders Act and similar jurisdictional legislation in the States and Territories as well as the ACL. This has also been reported as a cause of major confusion and disputes.
- Statutory warranties provide clear benchmarks for vehicle age and kilometres driven. By contrast, the ACL makes only the following vague statement: 'as a reasonable consumer fully acquainted with the state and condition of the goods would regard as acceptable having regard to the nature of the goods, price, any statement made about the goods and any other relevant circumstances.'
- MTAA and Members raised these concerns from the outset of consultation on the creation of the ACL and since, including the current review. It has never been acceptable that case law is the provider of clarity regarding major versus minor faults and other provisions and MTAA suggests one of the outcomes of the ACCC market study is rectifying these genuine concerns.

Product Durability

- MTAA and Members believe that while the ACL and provisions can cater generally for new products including high complex motor vehicles, as the vehicles age, their ownership increases, their use potentially varies and the nature of repairs and history of those repairs can become less clear – so too does the ability of the ACL to appropriately cater for such matters.
- There is no amount of definitions, guidelines or advisory material that could be written to cover off every potential matter that may arise as a motor vehicle ages. As today's motor vehicles age the failure of parts from natural wear and tear and end of life and the capacity for these failures to disrupt or disable other integrated systems will likely increase. For example, the drive train of a vehicle will contain specific systems including the actual transmission, electronic control units; individual computer systems linked to other vehicles systems such as braking and steering. Hundreds if not thousands of individual components are involved, how the vehicle is driven, many other factors will influence the durability of these parts. MTAA members believe the very complex nature of these products makes the guarantee of durability an unreasonable impost on traders and increases unrealistic expectations amongst consumers.

- As MTAA Member, VACC, points out the durability of second hand motor vehicles is closely related to their prior history of use, which is often unknown, particularly for vehicles that have been traded more than once. Prior abuse of such vehicles can seriously distort perceptions of durability and this can negatively affect both licensed motor vehicle dealers and consumers. Using the same criteria towards a second hand car, driven in many different ways and conditions and maintained by many different types of mechanics (some qualified, some not) as opposed to a television that is passive in its application and usually never serviced or taken out of the same environment, is both illogical and unfair.
- More often than not, inaccurate perceptions concerning second hand vehicle durability are manifested through an inconsistency of decision-making by courts, tribunals and regulators and can be a source of angst and financial distress for parties involved such disputes. The issue of durability and expectation has been permitted to be exaggerated by consumer groups with little industry or product knowledge. This warrants an improved understanding of the durability of second hand motor vehicles by decision makers and participants.
- MTAA and Members have previously provided examples on where the ACL in our opinion has failed small businesses and indeed have forced some to close because poor or biased interpretation of the ACL, which led to inappropriate burden and payment of costs.
- MTAA Members remain of the opinion that unless some form of acceptable guidelines or definitions (even though MTAA does not believe this to be possible because of the variables) the Used motor vehicles should be exempt.

Lemon Laws

- MTAA reminds the Review Team that there is no evidence of sufficient magnitude or compelling reason for the introduction of lemon laws in addition to ACL current provisions.
- The majority of MTAA Members do not support the introduction of lemon laws or cooling off periods. If Cooling Off periods are to remain (as in some jurisdictions) then efforts should be directed to uniformity of these requirements and take into account other considerations as outlined.

- Existing provisions within the ACL relating to motor vehicle sales and repairs more than adequately meet consumer expectations for redress without the need for 'lemon' laws.
- There is no common or agreeable definition as to what constitutes a 'lemon'. Even in countries that have had 'lemon' laws over a considerable period of time such as the United States, there are widespread discrepancies between States in the U.S both in the definition of a 'lemon' and the application of respective laws. It also needs to be recognised that such laws in international jurisdictions predated comprehensive generic consumer laws such as those that exist in Australia. The need for both is not justified.
- In Australia, there is little empirical evidence in existence that supports the conclusion that there is a need for a legislative response.
- The recent 2016 'Turning Lemons into Lemonade' survey from consumer advocate Choice, and Treasury's 2016 Australian Consumer Survey are both unable to offer valid substantiation of reported motor vehicle faults as being a major consumer problem warranting 'lemon' laws or substantial legislative response, particularly given the proximity and provisions of the ACL and the incidence of concern against the total market.
- Similarly, the 2015 Queensland Government 'Lemon' laws inquiry found complaints to the Office of Fair Trading over the previous four years about 'lemons' represented less than 1% of complaints regarding motor vehicles.
- In Western Australia that Motor Trades Association of WA noted that of total 33 formal complaints received by the WA Department of Commerce in relation to change of mind or cooling off periods. When one considers that over the 43 months that these complaints were received, the industry sold approximately 350,000 new cars alone. A complaint rate of 0.009% does not demonstrate a significant failure in the market. It also must be remembered that this figure refers to new car sales alone and does not include the several hundred thousand used vehicles traded in the same period.
- The ACL is a broad regulatory framework and is not designed to apply industry specific interventions. If Lemon Laws were to be introduced it would effectively single out the retail automotive sector undermining both small business confidence and growth within the sector. This it is argued would establish an unnecessary precedent and potentially expose the ACL and its application to dilution by exception.
- Additionally, there is a risk with 'lemon laws' that unscrupulous consumers could tamper or sabotage a vehicle in an attempt to obtain a refund or exchange for personal reasons or to gain a financial advantage at the expense of legitimate business operators.

- Nor is the issue of a cooling off period as simple as the consumer changing their mind and the contract being torn up. Vehicle transactions can be complex and most commonly involve a vehicle trade-in and financing. All factors of the transaction must be considered when looking at the potential introduction of a cooling off period. There are also the additional costs incurred by the dealer such as marketing costs, fees to web based sales sites, costs associated with holding stock, and a myriad of other requirements usually specified by manufacturers / distributors in the Dealer Agreement or in meeting regulatory and other obligations under different jurisdiction requirements.

Business Refunds

- An important component in the application of the ACL in the automotive sector is the relationship and obligations of new car retailers and manufacturers and distributors and of all dealers with obligations to jurisdictional laws and regulations such as the Motor Traders Acts, Motor Vehicle Dealers Acts or similar.
- All dealers understand their obligations to manufacturers / distributors to comply with dealership agreements and provisions within or supplementary to those agreements relating to warranty provision requirements. This includes providing reasonable levels of detail for warranty work and reimbursement.
- To often however the car retailers, new and or used, are left to confront the consumer over matters which are not the dealers fault or issue, even when taking into account the relationship with the manufacturer or distributor and dealer obligations to them or to relevant laws or regulations. To often delays is parts supply, lack of information, lack of support, unrealistic processes and procedures in undertaking warranty work, disputes over whether the required repair is a warranty problem or not, clear faults with the product (already demonstrated, but not sufficient for a full recall; are outside the control of dealers and not their accountability, but are nonetheless forced to be the intermediary with the consumer.
- A constant complaint to MTAA Members is that many new car dealers do not receive adequate or any compensation for some elements of an approved warranty repair. Matters often not included in the cost of warranty repairs can include:
 - Initial and potential ongoing diagnostic work (particularly when often a problem is presented which is previously unknown)
 - Unrealistic times for carrying out the repair
 - Administration including reimbursement of time taken to assist customers
 - Freight costs
 - Reimbursement of loan vehicles supplied to customers whilst warranty is being performed

Example of the influence of manufacturer requirements on dealers in relation to warranty work

- In April 2016 Dealerships of a prominent brand received advice regarding changes to 'a warranty audit process'.
- The internal correspondence to Dealers outlined revised requirements of the manufacturer / distributor to substantiate a dealer claim for warranty work performed, and future 'audit' processes outlining levels of charge back and rights of appeal.
- Of critical concern was the inclusion of changed policy indicating that any warranty claim would be rejected if it failed to meet '12 mandatory steps' outlined in the correspondence and required by the manufacturer /distributor.
- It is understood that failure to meet one of the '12 mandatory steps' would trigger rejection of the claim with no right of appeal.
- The '12 mandatory steps' along with other requirements it is understood would require a total of 31 different processes to support one (1) warranty claim.

Product Safety

MTAA and Members continue to have concerns about the nature of product safety standards in Australia. As highlighted in previous submissions in regard to the case of personal importation of new or near new motor vehicles, standards should not allow for the importation of products that are unsafe into the Australian market.

The MTAA and Members are aware of several situations where current ACL protections are not adequate.

MTAA draws attention to examples provided in previous submissions that illustrated the proliferation of various vehicle components available online, supplied absent essential features, sometimes of dubious standards and requiring alteration or modification for fitment, posing serious consumer safety risks.

The 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.

Safety Recalls

The review team are reminded that safety recalls for motor vehicles are almost invariably the product of, and response to, demonstrated faults arising as a result of on-going product testing and development conducted by a manufacturer, or from a pattern of (potential) faults emerging or being discovered in the course of normal vehicle servicing.

Those recalls are also almost invariably safety related and, thus, could potentially be construed as evidencing a major vehicle fault. In practice, however, recall campaigns, in the main, result in the prevention of a given fault / failure occurring in a vehicle. In that respect those campaigns represent effect being given to fault prevention measures.

A safety-related vehicle recall – by virtue of the fact that it provides both an opportunity for a vehicle to be either prevented from evidencing a fault, or to have any fault rectified – cannot be, of itself, evidence of a ‘major’ fault and, hence, a trigger for the relevant proscribed remedy. That, however, is not entirely clear and explicit within the ACL.

Parts and after Sale Service Arrangements

- Original Equipment Manufacturer (OEM) car parts are usually produced by the car manufacturer and are identical in every way to the part included on the vehicle when it rolled off the production line. Some OEM parts are also manufactured and provided by contracted companies to the car manufacturer. The parts are usually branded with the car manufacturers brand even to the point where it is ‘stamped’ into the part for easier recognition as a genuine part by the dealer, smash repairer, insurers and independent mechanics where appropriate. Manufacturers provide parts to dealer networks and in most circumstances this is the primary pathway to access them. However OEM parts are also available through other channels including third party parts suppliers and on-line. OEM parts usually include a warranty, are generally of high quality and usually more expensive than parallel or aftermarket parts.
- Parallel parts are usually manufactured by the same contracted companies supplying the car manufacturers with their genuine parts. Car manufacturers can ‘permit’ the manufacture of ‘extra’ parts without the car manufacturers branding or packaging. They are branded differently and sold through other supply chains and online. Generally cheaper than the OEM part, they provide competition to the OEM part. Parallel parts are usually of the same quality. MTAA and members do not have sufficient information or details on these relationships.
- Aftermarket parts are any car part that is not sourced from the car manufacturer. There are hundreds of companies worldwide producing aftermarket parts and in many cases the parts are ‘reverse engineered’ or in other words an OEM part is taken apart, analysed, and depending on the part new moulds, etc. are produced to deliver a fit for purpose part. One of the arguments of aftermarket industry is that reverse engineering allows for any identified weaknesses to be

rectified making the part potentially even better than the genuine part. Of course OEMs do not agree and cannot agree because to do so would mean that the original OEM part is not the best it could be. to such propositions produced usually new parts provided as an alternative to genuine parts. Aftermarket parts can also improve performance such as high performance brake components. An analysis of literature suggests that up to 80% of the independent mechanical businesses in the United States use aftermarket parts. Costs are usually the lowest, often greater variety and improved availability.. Negatives can include the lack of a warranty, varying quality (including in some cases better than OEM quality, but equally some dangerous parts).

- There are multiple reasons why these three forms of parts exist and the purpose they serve. They exist at different price points. They can arguably be used at different life stages of a vehicle, they can be used on new or near new vehicles because the service offering is potentially cheaper than a dealer. They contribute to a more competitive landscape and underpin different service offerings.
- There are as many conflicting positions on consumer benefit and / or detriment these forms of parts, and their supply and availability may provide. For every argument about their benefit – and these can be absolutely correct – there will be equally compelling arguments regarding detriment and even death, if the part is of such poor quality that it contributes to an accident or causes one. Clearly the ACCC will receive submissions advocating each.
- MTAA and Members believe there is room for all, but believes real questions remain regarding quality assurance frameworks to ensure consumer protection – a fundamental requirement of the ACL. There are also significant questions regarding whether the ACL adequately identifies these supply chain participants and their important role regulations for their use and Imagine a motor body repairer fitting a front quarter panel to a damaged late model vehicle, but not the panel specified for Australian delivered vehicles of the same make and model. Not the genuine panel but one that looks the same, feels the same and is bonded to the car sub-frame exactly the same way. It may even meet certain international standards. But it is one of at least 5 quarter panels produced for the same make and model and available in different markets.
- What happens when the same vehicle is involved in another accident and the part does not perform to manufacturers original specifications or standards, and damage is far more excessive than had the right part been used?
- Imagine the fitment of a new front bonnet to a popular European sedan – just not the manufacturers recommended genuine bonnet? Who does the consumer seek recourse from when the car is involved in another accident and the in-built safety features of the recommended bonnet are absent. The crumple zones are absent, the pedestrian protections are absent and because the fitted bonnet was not made of the same alloy, it actually created further danger to the occupants of the car and anyone else because it performed differently in an accident than the product was originally designed to.
- Such products pose safety risk for consumers.
- The justification for this from regulators is improving consumer choice and competitive pricing. 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.
- The 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.

Administration and Enforcement

Option 1 – improve the accessibility of the ACL and related Guidance Material

- MTAA and Members support Option 1 which centres on enhancing communications, awareness and explanatory materials to supplement ACL changes and to address identified matters in this and previous submissions.
- MTAA and Members would be pleased to work with appropriate Government agencies and the Review team to further explore these opportunities and his option and to partner in the development, design and delivery of such programs with Government.
- MTAA and Members remain available for any additional information or further clarity or addition exploration of the issues.

Ends