MTAA SUBMISSION TO THE
AUSTRALIAN AUTOMOTIVE DEALER ASSOCIATION

Consultation on Australian Consumer Law Reforms affecting Motor Vehicle Dealers, Manufacturers and Consumers

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MOTOR TRADES ASSOCIATION OF AUSTRALIA

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1. Introduction

The Motor Trades Association of Australia (MTAA) is the peak Australian retail automotive association. MTAA represents the automotive retail sector through its state and territory associations, whose members include automotive dealers, repair and service businesses, recyclers and dismantlers, towing operators, service stations, and the broader automotive supply chain.

Collectively, these members comprise tens of thousands of predominantly family-owned small and medium businesses and employ more than 320,000 Australians nationwide. They deliver the essential mechanical, repair, collision, tyre, servicing, recycling and specialist services that underpin a safe, reliable and economically productive transport system.

MTAA and its members support sensible, evidence-based reform of the Australian Consumer Law (ACL) that delivers clarity, certainty and balanced outcomes for both consumers and businesses. In this context, MTAA highly commends the Australian Automotive Dealer Association (AADA) for its initiative to undertake a root-and-branch review of the ACL and expresses its full support for this work.

2. Context, definitions and scope used in this submission

For the purpose of this response, the term "supplier" is substituted with "dealer" or "franchisee" or "independent" unless otherwise stipulated. In addition, "manufacturer" refers to the franchisor, Original Equipment Manufacturer (OEM), importer, or distributor unless otherwise specified.

MTAA supports the central policy intent of strengthening compliance with the ACL where manufacturers deny indemnity and reimbursement to dealers for rectification and remedial work completed on goods subject to consumer guarantee claims. MTAA members advise that dealers in this sector are at times coerced or encouraged to not pursue their rights under the indemnity provisions in Division 2 and Division 3 of the ACL. MTAA therefore supports civil prohibitions and penalties where it is established that a manufacturer has contravened legislated obligations by not dealing fairly with a dealer as mandated by those Divisions.

At the same time, MTAA notes that significant numbers of automotive businesses have informed MTAA they feel unfairly disadvantaged by the ACL, with the stated view that the system is biased towards protecting consumers, encourages consumers to seek windfall gains, and provides inadequate protection for businesses of all sizes. MTAA also remains concerned at the lack of resolve by state and federal government regulators to intervene in the private selling of motor vehicles and address the impact those private-to-private sales have upon the most vulnerable community members.

This submission addresses the AADA Terms of Reference by focusing on:

- practical operation of consumer guarantees in the dealer/manufacturer/consumer ecosystem

- clarity of "acceptable quality", "fitness for purpose", "major failure", rejection obligations and remedies
- used vehicles and demonstrators and how the ACL applies in practice
- indemnification, reimbursement, warranty underpayment and retaliation practices
- enforcement options (including ACCC infringement notices), penalty design and proportionality
- specific reform recommendations to improve outcomes for consumers and reduce unnecessary conflict and cost.

3. The complexity of motor vehicles and the future of trading in used vehicles

Used vehicles are not new vehicles – this must be explicitly recognised in the ACL

MTAA recommends that government carefully considers how it defines a used or second-hand motor vehicle, why a used vehicle must always be treated separately from a new motor vehicle or other consumer products, and the complexities involved with used vehicles, particularly how unclear prior use and maintenance affect condition.

The ACL guarantee of acceptable quality (section 54) applies to second-hand goods sold in trade or commerce, but requires age, price and condition to be considered in decisions about claims. This is an aspect of used car retailing that consumers and consumer groups do not always understand. The conjecture surrounding how a used motor vehicle should be assessed under a quality perspective, and how both consumers and traders can know what level of quality and performance is guaranteed, remains challenging and often cost prohibitive.

For example, a complete forensic analysis on a used motor is an impossible task to complete in real-world retailing and repair environments. It would require time-intensive dismantling of every component and accessory. The complexity and cost make this unfeasible.

Calls for dealers or repairers to conduct comprehensive (forensic) mechanical inspections or overhauls before selling or repairing vehicles would add thousands of dollars to each vehicle sale and repair bill, which is neither reasonable nor practical.

Roadworthy certificates are widely misunderstood and misrepresented

Another claim widely misunderstood by consumers and consumer lobby groups is that a vehicle having undergone a roadworthy check (for example, Victoria's VSI 26 or VSI 4 for motorcycles) guarantees the vehicle's mechanical performance. It does not.

A roadworthy inspection and certificate is not an inspection of mechanical quality, reliability, or cosmetic condition. It certifies that, at the time of inspection, the vehicle meets prescribed safety requirements for use on public roads.

Demonstrators are not always "new" in consumer expectation

MTAA cannot overstate the importance of recognising that a used vehicle is not a new vehicle. A dealer demonstrator vehicle is not necessarily treated as a new vehicle in consumer perception and dispute settings, and the law should provide clearer categorisation and guidance, noting variation in usage and prior driving patterns.

Used vehicles vary significantly in condition and performance based on factors including age, kilometres, and how the vehicle has been driven, maintained, repaired or stored. In many cases, used cars have had multiple owners and varied driving conditions, including weather events and different driving techniques.

Applying ACL provisions to used vehicles of varying conditions in the pursuit of remedies requiring "new-like" repairs places a burden on industry and creates consumer expectations that are unlikely to be met. These matters must be explicitly recognised as "relevant matters" for section 54(3).

When a vehicle is driven to destruction by a consumer, resulting in melted engines, buckled components, missed service schedules, or river crossings, MTAA submits it is not unreasonable to suggest this is not liability for the dealer or warranty provider. Yet these are precisely the types of claims frequently made to dealers.[1]

Most used vehicles sold by dealers have a published owner's manual (or online access) that provides guidance on maintenance and service intervals.

Unintended market consequence: vulnerable consumers pushed into the private market

An unintended by-product when the law is misapplied is that vulnerable consumers may have no option but to trade in the private market, leaving them with more limited consumer protections. MTAA submits this outcome cannot be what the ACL intended.

4. Automotive retailing, repairs and the ACL

Dealers and vehicle repairers responding to consumer guarantee claims are in a difficult position: they must respond to claims while having no certainty they will be compensated for time and materials, despite manufacturer indemnities in section 274 of the ACL.

Even where indemnity is provided, it is usually paid at labour rates or time dictated by the manufacturer notwithstanding section 274. Dealer agreements often stipulate that all customer complaints be reported to the manufacturer, who may intervene and instruct the dealer on how to respond.

In an ideal world, the retail automotive industry seeks collaborative resolution with consumers. However, the sector is frequently confronted with baseless accusations and reports. MTAA notes it is of concern that some reports cited as reference points in consultation processes, such as in the Treasury's 'Consumer Guarantees and Supplier Indemnification under Consumer Law' paper issued in 2024, which have not been publicly scrutinised to any meaningful degree yet are treated as factual.

[1] Actual ACL claim received by VACC member LMCT in 2023.

5. Independent mechanical repair perspectives and ACL repair obligations

Independent mechanical repairers often find themselves caught in the middle of consumer guarantee claims where a defective replacement part is alleged to be the cause of the fault.

It may transpire after tense negotiation that a manufacturer compensates the repairer with another replacement part or credit note. However, despite section 274(2), compensation for consequential loss, such as labour involved in replacing the part or other remedy costs, is commonly not considered. Labour costs are often never to the favour of the supplier, and time allocations in repair methodologies frequently understate real workshop requirements.

Labour costs can quickly escalate into the thousands of dollars, particularly with modern vehicles where recalibration is required. In many cases, recalibration and diagnostic time costs more than the component itself.

Where consumer behaviour or misuse contributes to extensive damage caused by a defective part, repairers can find it challenging to obtain remedy from suppliers/manufacturers. Most replacement parts are imported, and delays in remedy are common, especially where defective parts are sent back to manufacturers for assessment. Warranty claims are sometimes rejected on grounds of alleged workmanship issues or inappropriate use.

MTAA submits that these realities must be better reflected in how indemnification and consequential loss operate in practice for the repair sector, especially as vehicle technology increases complexity and labour intensity.

6. Supplier indemnification under the ACL: ambiguity and under-compliance

Section 274 provides dealers a right of indemnity against manufacturers to recover losses where the dealer is liable to a consumer for breach of certain consumer guarantees, including:

- section 54 acceptable quality
- section 55 fitness for any disclosed purpose (more limited application)
- section 56 supply of goods by description

While these protections offer relief in principle, the cost and time of seeking adequate remedy through courts can be prohibitive, particularly for small businesses.

MTAA submits that ambiguity in section 274 undermines the effectiveness of the regime.

Unclear meaning of “liable” in practice

Section 274(1) requires the manufacturer to indemnify where the dealer is “liable” to pay damages to a consumer under section 259(4), but only where the manufacturer would also be liable for the same damages

under its consumer guarantees. Section 271(2) requires manufacturer indemnification for costs where the dealer is liable for breaches relating to acceptable quality, fitness for purpose (where made known to the manufacturer), or goods not matching description.

It is unclear what "liable" means in these clauses. Does it require a court or tribunal order? Or does it arise when a dealer honours a consumer guarantee claim and pays damages voluntarily? This should be clarified so dealers and repairers know when they are entitled to indemnity and how costs are assessed.

Inconsistency regarding section 55 indemnity

The manufacturer's obligation to indemnify the dealer for a "fitness for purpose" consumer guarantee breach is uncertain. Under section 271(1), if the dealer pays damages for breach of section 55, the manufacturer is not required to indemnify the dealer for those damages because the manufacturer is not liable to pay damages for that particular guarantee (as drafted). However, section 271(2) states "without limiting subsection (1)" and appears to require indemnification for failure to comply with section 55 where the purpose was made known to the manufacturer suggesting an inconsistency that should be resolved.

Ultimately, the lack of clarity and lack of fulsome adherence by some manufacturers may lead to businesses accepting liability and paying consumer claims for no fault of their own. This is not viable for small businesses without a clear pathway for adequate redress.

7. State and federal inconsistency: need for alignment before penalties

MTAA is mindful that there is inconsistency between consumer law regimes imposed at state and federal level. There is inconsistency between consumer guarantees across new and used vehicles at a state level under various legislation and section 54 of the ACL.

By way of example, in New South Wales there are consumer guarantees by motor dealers under Part 4 Division 4 of the Motor Dealers and Repairers Act that impose requirements inconsistent with the ACL.

MTAA considers that prior to civil penalty regimes being applied, Treasury should align consumer law regimes to avoid constitutional and compliance complexity, including potential arguments under section 109 of the Constitution.

In this context, MTAA submits that aspects of the New South Wales dealer protection framework, particularly in relation to unfair contracts and unjust conduct (Part 6), provide a model for addressing power imbalances between manufacturers and dealers. Treasury should examine these provisions as a potential best-practice reference point in developing nationally consistent protections.

RECOMMENDATION 1
MTAA recommends a review of consumer law regimes across state and federal frameworks, including consideration of the New South Wales unfair contracts and unjust conduct provisions as a potential best-practice model.

8. Consumer guarantees needing clarification (Sections 54 and 55)

9.1 Section 54 (acceptable quality): practical ambiguity in automotive context

MTAA members advise section 54 is commonly relied upon and difficult for consumers and industry to interpret.

Confusion arises particularly with s 54(2)(a) regarding goods being fit for all purposes for which goods of that kind are commonly supplied, especially when applied to used vehicles.

While s 54(3) requires consideration of the nature and price of the goods and "all other relevant circumstances" (including age for second-hand goods), and s 54(6) addresses abnormal consumer use, experience is that depreciation and use are rarely taken into account and this can lead to windfall gains.

MTAA members seek greater clarity on how used motor vehicles meet section 54 criteria. For instance, s 54(2)(c) refers to goods being "free from defects." When comparing a brand-new vehicle to one five years old, it is impossible for the older vehicle to meet an implied standard of being blemish or defect-free. Similarly, the use of recycled or used parts in repairs cannot meet the same standard as brand-new parts.

While s 54(3) lists considerations, MTAA submits the current drafting still enables misinformation and false expectations in used vehicle disputes, resulting in distress for consumers and industry.

RECOMMENDATION 2
MTAA recommends that specific criteria be inserted into section 54 stating that used motor vehicles are not a new product and therefore cannot be considered blemish or defect-free.

(MTAA notes the average age of passenger vehicles in Australia is 11 years, and issues in vehicles of that age may reasonably be present.)

Section 55 (fitness for any disclosed purpose): frequent misinterpretation and misuse

Section 55 deals with suitability for a disclosed purpose made known to the dealer (or party conducting negotiations) or manufacturer. However, no liability is imposed where the consumer did not rely, or it was unreasonable to rely, on the dealer's skill or judgment.[2]

[2] Jeanie Paterson, Corone's Australian Consumer Law (Thomson Reuters Australia, 4th ed, 2019),262,.[2]-[3].

This provision is widely misinterpreted, and dealers can be held liable for misinterpreting or not understanding a purpose described by the consumer. MTAA members also report this guarantee is often included spuriously to reinforce claims that relate solely to section 54.

9. Major failure: need for clearer thresholds and responsibilities

Greater clarity is essential

MTAA submits that greater clarity is required as to whether a "major failure" has occurred. This clarity must follow correct diagnostic processes, ensure the failure is not beyond what a reasonable person would regard as outside a rejection period, and reflect how the failure transpired.

The language in section 260, such as "substantially unfit" and "reasonable consumer", creates uncertainty. Where a civil penalty regime is contemplated, the legal tests for major failure must be clearer to avoid inappropriate escalation and coercion.

Major failure should not be determined by unverified claims

MTAA considers it unfair for the retail automotive industry to face repeated spurious claims where "major failure" is asserted without evidence. Diagnosis of major failure should not be left to the sole discretion of consumer agencies or lobby groups.

Where a dealer or repairer diagnoses a major failure, consumers' rights to choice of remedy (repair, replacement or refund) are generally met. However, where consumers assert rejection and refuse to return the vehicle, they may be acting contrary to section 263. Consumers and representatives must be responsible for inaction. Continued driving can turn a minor fault into a major fault.

RECOMMENDATION 3
It should be clearly stated in section 263 that if a consumer rejects a vehicle based on a major failure, the vehicle must be returned to the retail dealer promptly.

Section 260(1)(a) is drafted too broadly for used vehicles

The statement that "a reasonable consumer fully acquainted with the nature and extent of the failure would not have bought the good" is capable of subsuming most other major failure scenarios and has led to minor faults being treated as major failures, irrespective of whether they can be remedied within a reasonable time.

In used vehicle sales, major fault diagnoses are often related to latent manufacturing defects that are almost impossible for a dealer to identify or rectify before sale. MTAA submits s 260(1)(a) should not operate the same way for second-hand vehicles or parts.

RECOMMENDATION 4
Amend section 260(1)(a) to specify it does not apply to consumers purchasing second-hand or used motor vehicles, or parts.

10. Should failures to provide a consumer guarantee remedy be a contravention?

MTAA submits not all failures to provide a remedy should be classified as a contravention.

A consumer making a claim does not require a dealer or manufacturer to acquiesce immediately. Dealers and manufacturers must have the opportunity to investigate how a fault arose. They may disagree and defend their position in a tribunal or court. Treating a consumer's claim of major fault as unchallengeable denies access to justice and has caused distress for consumers and industry, as consumers demand instant remedies without inspection.

MTAA further submits that dealers should not be held accountable for major failures where they did not manufacture the vehicle and cannot reasonably be expected to know all latent faults prior to sale.

11. Scope of penalties: economy-wide vs motor vehicles only

MTAA has serious concerns with proposals to target motor vehicles for punitive measures.

MTAA notes significant industry concern about research methodologies and sources relied upon in framing automotive issues as uniquely problematic. Consumers have multiple tribunal and dispute pathways available, yet in practice do not appear in large numbers, and fast-track mechanisms are underutilised. This suggests many disputes are resolved without litigation.

MTAA also notes evidence from the Victorian Automotive Chamber of Commerce (VACC) research in 2023 and 2024 indicating that Licensed Motor Car Traders (LMCTs) comprise less than 1% of VCAT hearings as respondent and are not a top five ranked industry respondent category under Goods and Services. VACC findings also note an insignificant LMCT respondent listing rate (0.4%), behind building / property / maintenance suppliers, IT providers and repairers, retail consumer sector and real estate agents.

MTAA submits that if there are delays in hearing listings at tribunals such as VCAT, this is an administrative justice problem for tribunals, not justification for punitive federal reforms targeting one industry.

MTAA also notes ACCC consumer survey findings indicating motor vehicle sectors are not among the highest ranked for problems and that much of the negative data relates to poor customer service rather than vehicle quality.

MTAA submits that, on this footing, punitive measures specifically targeting motor vehicles risk unfairly singling out the sector.

12. Definition issues: what is “new”, what is a “motor vehicle”, and coverage scope

How long should a vehicle be classed as “new”?

MTAA submits that “new” for ACL claim purposes should reflect ownership, use and condition factors, not solely dates. MTAA proposes that a “new” vehicle for claim classification should be:

- within the ownership of the first registered owner
- not modified outside OEM specifications
- maintained according to manufacturer service schedule
- not sustained panel or undercarriage damage
- not written off under state legislation
- and within a specified period from build date

A dealer demonstrator or factory-driven vehicle with less than 5,000 kilometres should be considered a new vehicle.

MTAA submits build date or compliance date alone should not determine “new” status, particularly as NVES may increase the likelihood of older stock being retailed much later.

What vehicles should be captured in “motor vehicle”?

MTAA submits all nominated vehicle types should be included. Caravans are unique and should have their own definition. MTAA also submits that e-bikes and e-scooters should be included in the definition.

13. Value thresholds and used vehicles: targeted reform proposal

MTAA sees merit in introducing a value limit for used motor vehicles to provide greater clarity to consumers and industry about rights and expectations.

MTAA recommends that used vehicles priced between $1 and $14,999 be exempt from the consumer guarantees owed by dealers under section 54 (acceptable quality), but not from clear title and encumbrance-free guarantees. If implemented, dealers must provide consumers an opportunity to access an external warranty and comply with state-based Motor Vehicle Traders Acts (including statutory warranties where applicable).

MTAA reiterates the reality that dealers cannot sustainably absorb costs of “new-like” remedies for low-value used vehicles, especially where consumer misuse or destructive driving is involved.

MTAA also notes that in some jurisdictions consumers have access to fast-track mediation for disputes under certain thresholds (e.g., under $10,000 in Victoria, with proposals to increase), but such avenues are chronically underutilised.

MTAA again warns that misapplied law can push vulnerable consumers into private markets with less protection.

RECOMMENDATION 5
Provide an option for a licensed motor vehicle dealer to be exempt from providing remedies under ACL section 54 for vehicles priced between $1 and $14,999.

RECOMMENDATION 6
Require that dealers retailing vehicles priced between $1 and $14,999 provide the consumer with an opportunity to acquire an external extended warranty product.

14. Depreciation and refunds: reform needed to prevent windfall gains

MTAA submits it is entirely appropriate to factor depreciation when determining an appropriate refund amount in most claims, noting that refund outcomes should range from full refund to no refund depending on circumstances.

The overriding principle should be that consumers are returned to the position they would have been in had the vehicle not failed to meet expected or advertised quality standards.

MTAA submits section 263(4) should be amended to explicitly include depreciation and third-party costs.

A depreciation methodology should account for:

- consumer's uninterrupted use over time/distance
- independent panel and mechanical assessment to mitigate losses where abuse is present
- modifications outside manufacturer specifications
- tax depreciation already claimed (e.g., ATO diminishing value method) and related taxation and duty claims (instant asset write-off, logbook method implications)
- that dealers remit government charges and do not retain them (registration, stamp duty, GST, LCT, other fees) and those amounts should be deducted from any baseline refund
- where refunds of government fees are sought, consumers are often the only party statutory bodies deal with; consumers should claim those outside the dealer under contract rescission principles

RECOMMENDATION 7
Amend section 263(4) to include depreciation and other third-party costs.

15. Risk of unmeritorious claims and coercion if penalties are introduced

MTAA notes reports indicating car loan delinquencies and repossessions have increased in recent periods and submits it can be inferred that cost-of-living pressures may be driving buyer's remorse or attempts by consumers to exit vehicles purchased at inflated prices.[3]

MTAA members report increasing unmeritorious ACL claims driven by buyer's remorse or desperation to separate from an overpaid product as market values decline.

If prohibitions and penalties are introduced, MTAA submits consumers may attempt to use prohibitions to coerce dealers into full refunds for any issue, and that misleading expectations of full refunds or "new-like" performance will fuel conflict and complaints.

MTAA submits that if penalties are introduced, there must be balance, including mechanisms addressing vexatious or coercive conduct by consumers and advisors.

RECOMMENDATION 8
Conduct a national survey to investigate whether there is a direct link between consumer ACL claims and major defaults/vehicle repossessions.

RECOMMENDATION 9
If a penalty regime is introduced, it should apply equally to businesses and consumers, including to consumers and advisors who use the regime to coerce a supplier or manufacturer in a vexatious, belligerent or unlawful manner.

16. ACCC enforcement tools: infringement notices and safeguards

MTAA believes the ACCC should be given authority to issue infringement notices for alleged failures to provide consumer guarantee remedies. However, penalties should only occur after the dealer/manufacturer has been given a genuine opportunity to investigate and remedy.

[3] "Rising car delinquencies & repossessions in Australia," InfoChoice, 23 August 2024, https://www.infochoice.com.au/news/rising-car-delinquencies-repossessions-australia (accessed 24 January 2026).

MTAA notes the current penalty unit under the Crimes Act 1914 (Cth) is $330 per unit and submits that any infringement notice regime must differentiate between corporate and individual contraventions.[4]

MTAA also submits that penalties should prioritise correcting conduct and achieving remedies rather than defaulting to financial sanctions that risk crippling small businesses or causing job losses.

In automotive retail, many entities are small family businesses. The reputational impact of non-compliance is already significant. MTAA suggests that, for dealers, an enforceable undertaking and probationary model (with escalation if conduct continues) may be more effective than immediate financial sanction. MTAA notes that robust penalty and enforcement models exist in other sectors (e.g., telecommunications).

17. Manufacturer indemnification failures: contraventions should apply to minor and major failures

MTAA submits a manufacturer's failure to provide supplier indemnification should be a contravention in all instances, not only major failures.

Franchise dealer technicians are subject matter experts trained by manufacturers to assess whether issues reflect normal wear and tear or manufacturing defects. They have access to service campaigns and vehicle characteristics that may contribute to faults.

Where a major failure is determined, MTAA submits the remedy and process should be managed by the manufacturer in all instances, saving time for consumers and dealers. This is particularly relevant for independent used car traders who struggle to invoke rights under section 274 and often have communications ignored by manufacturers.

RECOMMENDATION 10
Any claim for a major failure should be managed in the first instance by the manufacturer, and in litigation the dealer should be the second applicant.

18. Warranty underpayment and time allocation disputes: real-world impacts

Dealers report persistent issues with diagnostic systems, prescribed repair times and warranty underpayment. Manufacturers often pay predetermined time allocations that do not reflect actual workshop realities.

A dealer provided this example:

> "They (dealers) will get in some cases in a dispute because the manufacturer doesn't believe it takes four and a half hours to change a gearbox over in a factory environment (dealership workshop), (…) so they (car manufacturer) will only pay for two and a half hours to replace a gearbox. The

[4] Australian Competition and Consumer Commission (ACCC), "Fines and penalties," ACCC, https://www.accc.gov.au/business/compliance-and-enforcement/fines-and-penalties (accessed 24 January 2026).

> technicians have been trained in accordance with what the manufacturer prescribes. They can't do it any faster than that. They've done all the training; so, if you added up four or five of those cases over a 12-month period there's two hours on each job that's been lost and not compensated for."

Another example:

> "It seems I have been told to claim 0.3hrs when we clocked 1.59hrs completing this work. We have followed the (brand deleted) diagnosis as attached, checking voltages, Ohms & DTC codes. This does not come close to the time we spent on this car, we had to book the car in, check it in when it arrived, order the part which arrived via courier at our expense and complete the work."[5]

MTAA submits that civil prohibitions and penalties aimed at manufacturer indemnification should directly address systemic underpayment and refusal to reimburse reasonable labour and administrative time genuinely incurred by dealers.

19. Incentives and impact of penalties: franchise dealers vs independent traders

MTAA submits two distinct incentive environments exist:

Franchise new vehicle dealers

MTAA does not believe penalties will materially change a franchise dealer's willingness to seek indemnification, because franchise agreements remain heavily weighted toward the franchisor and dealers may avoid aggravating strained relationships.

Independent used car traders (non-franchise)

MTAA believes penalties will change incentives and manufacturer responsiveness for independent traders, who often have no relationship with manufacturers and have communications ignored. Co-joining manufacturers in litigation is often the only effective way to engage them. Many MTAA members advise car trader members to co-join manufacturers when manufacturing defects manifest and litigation is threatened or commenced.

20. Commercial arrangements that would be impacted by a contravention

The most obvious commercial arrangements impacted are dealer/franchise agreements and operations manuals. MTAA has reviewed agreements that attempt to limit manufacturer liability and restrict reimbursement to "reasonable labour costs" as set out in manufacturer standards, rather than actual out-of-pocket costs.

[5] Actual dealer email to MTAA member VACC rework done for manufacturing defect on year old vehicle.

Such provisions, in practice, can place dealers in an invidious position where they cannot break even on warranty work. The imbalance is real, and dealers often agree under sufferance.

MTAA submits that reforms must ensure contractual warranty standards and "process" rules are not used to undermine statutory indemnity rights that cannot be excluded.

21. Manufacturer retaliation: practices that must be captured and presumptions applied

MTAA notes not all manufacturers behave negatively and both manufacturers and dealers have a right to investigate claims. However, MTAA members report retaliatory practices including:

- prohibiting dealers from making admissions of liability without manufacturer approval
- long-winded claim submission processes and reimbursement deferrals on administrative grounds
- compelling dealers to follow manufacturer instructions in responding to consumer claims or legal proceedings
- threatening loss of indemnity rights if dealers do not adhere to manufacturer directions
- random audits and "clawbacks" based on administrative oversights, including "warranty extrapolation"

Warranty extrapolation

Warranty extrapolation describes withdrawal or refusal to reimburse dealers for warranty repairs based on alleged administrative non-compliance. Some reported practices involve extrapolating a small number of audited files into large clawbacks across years of claims.

MTAA submits that presumptive tests should apply to retaliation provisions, including:

- nature of retaliation
- impact on the dealer
- willingness of dealer to assist investigations
- number of prior transgressions by that manufacturer

MTAA supports ACCC authority to issue infringement notices for indemnification contraventions and retaliatory practices, for both minor and major failures, particularly to protect independent traders and aftermarket repairers who lack leverage.

MTAA also submits that dispute windows should not leave dealers carrying debts for extended periods due to manufacturer resourcing advantages.

MTAA proposes:

- 28 days for disputes following an infringement notice

- monitoring and reporting of dispute volume and timeframes
- referral to regulator if disputes exceed 60 days
- a publicly accessible online register of claims older than 28 days

For penalty design on retaliatory practices, MTAA submits the penalty methodology should be informed by principles similar to unconscionable conduct factors, including bargaining power, undue pressure, consistency of conduct across like transactions and financial harm.

For maximum penalties, MTAA submits regulators should be guided by the ACCC's 'Guidelines on ACCC approach to penalties in competition and consumer law matters, September 2023', including proportionality and deterrence.

22. Consolidated recommendations

1. Review and align consumer law regimes across state and federal legislative frameworks.
2. Insert specific criteria into section 54 stating used motor vehicles are not new products and cannot be considered blemish or defect-free.
3. Clarify section 263 so that if a consumer rejects a vehicle based on major failure, the vehicle must be returned promptly.
4. Amend section 260(1)(a) to specify it does not apply to second-hand/used motor vehicles or parts.
5. Provide an option for dealers to be exempt from ACL s 54 remedies for vehicles priced between $1 and $14,999.
6. Require dealers selling vehicles $1–$14,999 to provide consumers the opportunity to acquire an external extended warranty product.
7. Amend section 263(4) to include depreciation and third-party costs.
8. Conduct a national survey investigating links between ACL claims and defaults/repossessions.
9. If a penalty regime introduced, apply it equally to businesses and consumers, including penalties for vexatious/coercive consumer conduct.
10. Require manufacturers to manage major failure claims in the first instance, with dealers as a second applicant in litigation.

23. Conclusion

MTAA supports strengthening compliance with manufacturer indemnification obligations and supports penalties where manufacturers contravene statutory obligations or retaliate against dealers seeking to enforce rights.

However, MTAA submits that reform must be accompanied by clarity, particularly in sections 54, 55, 260 and 263, and must reflect the practical realities of used vehicle trading, mechanical repairs, modern diagnostic complexity and workshop labour costs.

Without targeted clarification and balanced enforcement, reforms risk incentivising unmeritorious claims, increasing coercive conduct and pushing vulnerable consumers toward the private market where protections are weaker.

MTAA welcomes ongoing engagement to ensure reforms improve consumer outcomes while sustaining a viable, fair and properly allocated risk framework for dealers, repairers and manufacturers. Should you wish to discuss this submission further, please contact MTAA's Interim Executive Director, Peter Jones on info@mtaa.com.au.

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