MTAA RESPONSE TO:

Unfair trading practices protections for small businesses

July 2026

Contents

1. Executive summary

The Motor Trades Association of Australia (MTAA) welcomes the opportunity to contribute to the Unfair Trading Practices Protections for Small Businesses consultation. The automotive retail, service and repair sector experiences unfair trading practices more frequently than most sectors of the Australian economy, yet current protections fall short.

While MTAA supports extending unfair trading practices protections, it is critical that any reform is clearly targeted, evidence-based, proportionate, and designed to avoid duplication with existing legal frameworks or unintended capture of legitimate commercial conduct.

In complex sectors such as automotive, clarity and practical operability are essential. Reform should address demonstrated harms while ensuring that the framework remains predictable, workable, and aligned with existing regulatory settings.

We therefore strongly support extending unfair trading practices prohibitions to protect small businesses.

The Motor Trades Association of Australia is the peak Australian retail automotive association. It represents the interests of state and territory Motor Trade Associations and Automotive Chambers of Commerce including the Motor Trade Association of South Australia and Northern Territory (MTA SA/NT), the Motor Trade Association of Western Australia (MTA WA), the Motor Trades Association of Queensland (MTAQ), the Tasmanian Automobile Chamber of Commerce (TACC) and the Victorian Automotive Chamber of Commerce (VACC).

Through these organisations, MTAA represents more than 15,000 automotive businesses across Australia, the overwhelming majority of which are small and medium enterprises. These businesses operate in commercial relationships with insurers, vehicle manufacturers, distributors, franchisors, large suppliers and digital platforms, where significant imbalances in bargaining power are an entrenched feature of the market.

MTAA conducted a dedicated industry survey of its members in June 2026 to inform this submission. Respondents represented a cross-section of the industry, including mechanical repairers, collision repairers, new and used car dealers, motorcycle dealers, tyre retailers, auto electricians, parts suppliers and service stations, drawn from across Australian states and territories. The results confirm that unfair trading practices are widespread, harmful and largely unchecked in the automotive sector.

At a high-level, MTAA's position is that:

- The unfair trading practices prohibition should be extended to protect small businesses acquiring goods and services as consumers
- Protections must also apply to business-to-business dealings across the economy, not only to consumer-like transactions
- Franchisees, regardless of size, should be covered given the structural vulnerabilities inherent in franchise arrangements
- The grey list should include conduct commonly experienced in the automotive sector, including manufacturer restrictions on access to parts and repair pathways that lack objective safety justification
- The proposed small business definition is appropriate for the sector
- Enforcement must be accessible and adequately resourced
- Reform should be implemented through a calibrated or staged approach, prioritising clearly identified harmful practices and incorporating appropriate safeguards

The following submission provides the evidence and recommendations necessary to realise these protections.

Regulatory design principles

MTAA considers that effective reform must balance addressing clear evidence of harm with maintaining legal certainty and minimising unintended consequences. Key considerations include:

- Maintaining clarity and certainty in drafting
- Targeting clearly identified harmful practices
- Avoiding duplication with existing ACL provisions and code-based protections
- Ensuring proportionality for small businesses
- Aligning responsibility with control, particularly in platform-mediated environments
- Supporting implementation through guidance and appropriate transition periods
- Ensuring individual harmed businesses have reasonable avenues for redress (beyond regulator activity for harm that is systemic, material to the overall economy and/or of considerable public interest)

2. Protecting small businesses as consumers

> **Question 1: Should the proposed general prohibition (section 28B) be extended to also protect small businesses where they acquire goods or services as a consumer? Please include examples or case studies of conduct that this extension could address including, where possible, evidence of its impact (including financial impact) on small businesses**

MTAA supports extending the proposed general prohibition to protect small businesses acquiring goods or services in a consumer-like way, provided it is clearly defined, targeted to demonstrable harm, and supported by appropriate safeguards.

The MTAA member survey found that 87% of respondents had experienced conduct by another business that they considered unfair, unreasonable or harmful in the past three years. The most common form of unfair conduct was unilateral changes to prices, margins, targets, rebates or trading terms (27%), followed by pressure to accept new terms or sign a new agreement (21%) and unrealistic sales, performance or service targets (21%).

The financial impact is substantial. Over 58% of affected businesses reported direct financial loss. A total of 59% reported reduced margin or profitability. Over 22% estimated losses between $5,000 and $20,000, while over 13% estimated losses exceeding $250,000.

Automotive businesses regularly acquire goods and services that are ordinarily supplied for personal, domestic or household use, including vehicles, software and services subscriptions, telecommunications, insurance products and office supplies. In each of these categories, members report experiencing manipulative or distortive conduct.

Automotive businesses also report unfair or unreasonable conduct when dealing with parts suppliers and warranty processes. Reports shared with MTAA revealed how repairers may be denied a stock of parts unless the repairer agrees to hold numerous items of the supplier's branded products for retail sale.

One repairer described:

> *"Multiple issues when returning parts to suppliers who want a detailed form and explanation. Then they often send the parts to their suppliers and want an assessment conducted which delays the process."*

This illustrates how small automotive businesses can be left carrying delay, administrative burden and customer service risk when supplier warranty processes are opaque or inefficient.

One member described the cumulative effect of warranty underpayment by a manufacturer:

"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 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."

A dealer warranty case study provided to MTAA illustrates how these deductions work in practice:

"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."

MTAA also draws attention to documented cases where vehicle manufacturers have restricted independent repairers from accessing genuine replacement parts. For instance, a collision repairer who sought to obtain a front bumper bar for a Tesla Model S 75D and was advised that body shop parts support, including requests for quotes and orders, was no longer available unless the repairer was part of the Tesla Approved Body Shop Network. The part was a bumper bar cover that did not involve a repair requiring special equipment or approval. The repairer was unable to complete the customer's repair and reported a lost repair value of approximately $3,500.

This type of conduct – where manufacturers restrict access to genuine parts to channel repair work to preferred networks – is a clear example of the harm the proposed prohibition should address.

These impacts directly influence business decisions and sector outcomes. The survey found that 39% of affected businesses reduced their willingness to expand, 30% reduced staffing or hiring, 26% took on additional debt and 20% reduced apprenticeships or training. In a sector facing a workforce shortage exceeding 38,000 positions, these downstream effects are significant.

MTAA recognises that broadly framed or open-textured prohibitions may create uncertainty, particularly for small businesses without access to specialist compliance resources. These risks can be mitigated through:

- Clear legislative drafting (including drawing from insights gained through the application and enforcement of the Unfair Contract Terms prohibition and jurisprudence)
- Targeted provisions, including grey list examples
- Regulator guidance supported by practical, industry-specific examples.

> **Question 2: Should any adjustments be made to the proposed general prohibition when extending it to apply in respect of supply to small businesses? For example, should it:**

- **only apply where there is a bargaining power imbalance between the supplier and the small business?**
- **only capture conduct that causes, or is likely to cause, financial detriment to the small business?**
- **not capture a supplier's conduct if the conduct is reasonably necessary to protect the supplier's legitimate interests?**

MTAA supports extending the general prohibition to small businesses without requiring a separate bargaining power imbalance threshold, noting that such imbalances are overwhelmingly present in the conduct reported by members.

The survey found that 87% of respondents reported a significant imbalance in bargaining power. The factors contributing to that imbalance were:

- The other party was much larger (54%)
- The other party-controlled access to key products, parts, customers or work (31%)
- The business had already made significant investments in the relationship (24%)
- The business feared losing future work, supply or allocation (24%)
- The other party had stronger legal or commercial resources (19%)
- The agreement was standard form and not negotiable (19%)

MTAA considers that the two-limbed test in the proposed prohibition, requiring conduct that manipulates or unreasonably distorts the decision-making environment, provides an appropriate standard. Adding a separate bargaining power threshold would create an additional evidentiary burden that could undermine the accessibility of the prohibition for small businesses.

MTAA supports limiting the prohibition to conduct that causes, or is likely to cause, detriment (whether financial or otherwise). Non-financial detriment, including wasted time, foregone commercial opportunity, diminished choice and stress, is a significant feature of the conduct reported by members, with 44% reporting stress or mental health impacts on owners or staff.

A legitimate interests exception is reasonable, provided it is not drafted so broadly as to allow larger parties to justify exploitative practices by reference to commercial interests. MTAA notes that manufacturers have routinely invoked safety and quality justifications to restrict parts access, but the practical effect has been to exclude competent independent repairers from competing for work. The ACCC acknowledged this concern in its response to a formal complaint regarding Tesla's parts restrictions, noting that manufacturer restrictions can raise competition concerns where the practical effect is to channel repair work into preferred networks, reduce consumer choice, or diminish the ability of independent repairers to compete. Any legitimate interests/business justification exception must be clearly defined and require conduct to be objectively justified, proportionate and transparent.

MTAA notes that Government may consider prioritising targeted measures addressing clearly identified harmful practices, alongside or ahead of a broader general prohibition, to ensure early progress while maintaining certainty.

> **Question 3: Would it be appropriate to use the same small business threshold as is currently used in the unfair contract terms provisions of the ACL (i.e., characterising a small business as one with fewer than 100 employees and/or less than $10 million annual turnover), or is another threshold appropriate?**

Yes. The proposed threshold is appropriate for the automotive sector.

The MTAA survey confirmed that 74% of respondents employ fewer than 20 people and 59% report annual turnover under $5 million. The overwhelming majority would fall within the proposed definition.

MTAA supports the alternative threshold approach, where meeting either limb is sufficient. This ensures that businesses with higher turnover but small workforces, such as new vehicle dealerships, are not inadvertently excluded. A dealership may turn over more than $10 million in vehicle sales while employing fewer than 20 staff and exercising no meaningful bargaining power against its manufacturer.

> **Question 4: Noting that most franchisees in Australia would be captured as small businesses, are there similar issues that impact franchisees that are not small businesses when they acquire goods or services as a consumer? If so, would any such issues be best addressed through reform to the ACL, or through other regulatory frameworks such as the Franchising Code?**

Yes. Franchisees that are not small businesses face similar issues. The power imbalance is a feature of the franchise relationship and model, not the size of the franchisee.

In the automotive sector, the franchise relationship between vehicle manufacturers and their dealer networks is characterised by entrenched structural imbalances. Franchise agreements are typically standard form, non-negotiable and heavily weighted in favour of the franchisor. The franchisor controls allocation, branding, territory, performance targets and operational requirements. The franchisee makes substantial investments in premises, equipment, training and staff, creating dependency that makes exit prohibitively costly.

The MTAA survey confirmed that 39% of respondents operate within a franchise, authorised dealer, authorised repairer, preferred supplier or network arrangement.

MTAA considers these issues, not adequately addressed through the Franchising Code, are best addressed through reform to the ACL. The Franchising Code provides some protections but does not cover the full (and potentially changing) range of unfair practices in manufacturer-dealer relationships, particularly unilateral changes to commercial terms, unrealistic performance targets and warranty reimbursement practices. As one member described:

"If you (dealer) are going to have a minor dispute about whether the manufacturer is paying you (dealer) adequate compensation for legitimate warranty repair, I mean, to go through a mediation and dispute resolution process for that can take months. And at the end of the day, the manufacturer can turn around and say, if you keep agitating like this, then we might have to examine whether you guys (dealer) are still one of our preferred dealers going forward."

> **Question 5: Are there interactions with other regulatory frameworks (including industry codes or other sector-specific laws) that should be considered in relation to this option? If so, how should these be managed?**

Yes. The automotive sector is subject to multiple overlapping regulatory frameworks that interact with the proposed prohibition:

- The Franchising Code of Conduct, which governs some aspects of the manufacturer-dealer relationship but does not address the full range of unfair practices.
- The Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct, a voluntary industry code governing insurer-repairer relationships. The MVIRI Code is currently being updated by the

MTAA and the Insurance Council of Australia (ICA). It is critical that the new Code addresses insurer dominance, the marginalisation of the professional judgement of repairers, and the transparency, enforceability, and governance standards of the co-regulatory framework. If MTAA is unable to achieve these objectives, we will consider alternative mechanisms to address these aspects, including the potential involvement of the ACCC.

- The Motor Vehicle Service and Repair Information Sharing Scheme (MVIS), which regulates access to service and repair information. While the Scheme addresses information access, the same policy logic applies to the supply of physical parts. The Tesla parts restriction example for instance noted that independent repairers cannot compete fairly or deliver consumer choice if they cannot obtain the parts, part numbers, repair methods and associated information necessary to complete repairs.

- The Oil Code of Conduct, which is a mandatory Code, regulates the sale, supply or purchase of declared petroleum products, such as unleaded petrol and diesel, is of particular interest and relevance to MTAA's service station and convenience store association committee members.

- State and territory motor vehicle trader legislation.

The unfair trading practices prohibition should operate as a floor, not a ceiling. Industry codes should continue to apply, with the general prohibition providing a baseline of protection where codes are absent, voluntary or inadequately enforced.

Given the number of industry Codes, provisions that are common across a number and a gradual embrace of 'bets of breed' provisions across them that are incrementally implemented (usually after a scheduled review), it is an option for Treasury to consider whether unfair trading practices prohibition provisions could be a 'nest' of economy-wide provisions. Codes could then be focussed on specific areas of concern of relevance and importance to the regulated/respondent sector. This would enable the broader provisions intended to support fairer and transparent dealings between businesses to be more consistent, predictable and contemporary.

MTAA recommends that the Government consider whether the existence of an unfair trading practices prohibition should be a trigger for reviewing the adequacy of existing industry codes.

The prohibition should operate as a complementary safeguard rather than a duplicative regime, with clear guidance on how overlapping frameworks interact in practice. Opportunities for 'forum shopping' and repeat litigation should be avoided.

> **Question 6: Are there any examples of conduct on the 'grey list' for the proposed general prohibition that are not relevant where the consumer is a small business? Are there any additional examples that should be included where the consumer is a small business? If possible, please include evidence of the conduct's impacts (including prevalence and financial impact) on small businesses.**

MTAA considers that all conduct on the existing grey list is relevant where the consumer is a small business. MTAA recommends the following additional examples, drawn directly from conduct reported in the member survey and MTAA's broader advocacy:

- Unilateral changes to prices, margins, targets, rebates or trading terms during the course of a contract or business relationship (reported by 27% of survey respondents).
- Warranty extrapolation, where a party audits a sample of claims and claws back payments across the full portfolio based on limited findings. One member described this practice:

  "The warranty inspector audits all of the dealers' warranties for the past five years, but they (warranty inspector) will only pick five random case studies. And if in two of the five they found there's something wrong with the paperwork, they'll take back 40 per cent of all of the dealers claims in the past five years. It's called warranty extrapolation. That's another example of behaviour that a lot of dealers don't like."

- Imposing unrealistic performance targets that cannot reasonably be met, where failure to meet targets results in adverse commercial consequences (reported by 21% of survey respondents).
- Requiring a small business to accept liability or warranty obligations for work performed under the direction or instruction of the stronger party.
- Withholding payment for completed work by classifying undisputed amounts as disputed (late payment or withholding payment reported by 20%).
- Threatening loss of allocation, supply, authorisation or network membership in response to a small business exercising legal or contractual rights.
- Requiring a small business to use non-genuine or non-OEM parts or methods against its professional judgement, without indemnifying the small business for resulting warranty or safety liability.
- Altering digital platform terms, fees, algorithms or access conditions without reasonable notice (reported by 13%).
- Restricting access to genuine replacement parts, part numbers, ordering systems or repair pathways in a way that excludes competent independent businesses from undertaking lawful work, where the restriction is not objectively justified by safety, security or structural integrity requirements.
- Requiring other commercial action or dealing as a precondition to access parts that should otherwise be available on reasonable terms.

The priority areas for reform identified by survey respondents were pressure to accept unfavourable terms (46%), unilateral contract or pricing changes (37%), warranty, consumer guarantee and supplier indemnity issues (37%), insurer and repairer relationships (37%), and late payment and withholding payment (30%).

MTAA supports expansion of the grey list, provided provisions are precisely defined and supported by guidance to ensure they do not capture legitimate commercial conduct.

> **Question 7: What would be the likely benefits to small businesses from extending the proposed general prohibition to small businesses? Would there be broader economic impacts from the extension? Where possible, please provide quantitative information or examples.**

The primary benefit is the creation of credible and enforceable deterrent against unfair conduct. Currently, the cost of engaging in unfair practices is negligible for larger parties because existing protections are too narrow and too difficult to enforce.

The MTAA survey provides evidence of the scale of harm that the prohibition would help address. Over 58% of affected businesses reported direct financial loss. A total of 59% reported reduced margin or profitability. Over 51% reported lost revenue. Over 22% estimated financial losses between $5,000 and $20,000, with over 13% exceeding $250,000.

The broader economic impacts include reduced investment, employment and training. The survey found that 39% of affected businesses reduced their willingness to expand, 30% reduced staffing or hiring, 26% took on additional debt, 24% delayed investment and 20% reduced apprenticeships or training.

Beyond the direct impacts on individual businesses, unfair trading practices undermine competition in the repair market. Where manufacturers restrict independent repairers from accessing parts, consumers face reduced choice, longer repair times and potentially higher costs. The VACC position paper noted that restricted networks disproportionately affect regional and outer metropolitan motorists, who may have fewer approved repair options and greater travel burdens.

In a sector facing a workforce shortage of more than 38,000 positions, the downstream effect of unfair trading practices on training investment is a matter of national economic significance. One member captured the broader dynamic:

"As those screws (profit of car sales) are tightened, the relationship comes under pressure because it's more and more and more being asked of the dealer but less and less and less in terms of recognition of the costs involved."

MTAA acknowledges that any reform should demonstrate a clear net benefit. In the automotive sector, existing unfair practices impose significant economic costs that are ultimately borne by small businesses, consumers and the broader economy. Well-designed protections would reduce existing inefficiencies and redistribute costs more fairly, rather than create new regulatory burden.

> **Question 8: Would there be any additional compliance costs for businesses if the proposed general prohibition was extended to protect small businesses, noting the Bill if passed would already require businesses to comply in respect of supply to consumers? Please provide quantitative information or examples where possible.**

MTAA does not consider that extending the prohibition to small businesses would impose unreasonable additional compliance costs. Businesses that already comply with the prohibition in respect of supply to individual consumers would be required to apply the same standards to their dealings with small businesses. The marginal cost of extending existing compliance systems is likely to be modest.

Businesses that deal fairly with their trading partners will not be affected. The prohibition targets conduct that manipulates or unreasonably distorts the commercial environment, not legitimate competitive behaviour or good faith commercial negotiation.

However, uncertainty itself can create compliance burden. This highlights the importance of clear drafting, early regulatory guidance, and appropriate transition periods to minimise unintended impacts.

Consideration should be given to providing the ACCC with additional funding to take early action against suspected breaches of the new provisions. As evident with the unfair contract terms prohibitions, early case law provided interpretation clarity and enable the Commission to provide sure-footed guidance.

3. Unfair trading practices in business-to-business dealings

> **Question 9. What types of unfair trading practices are occurring in business-to-business dealings, and what harm does this cause small businesses?**

MTAA supports extending protections to business-to-business dealings involving small businesses, particularly where there is clear evidence of sustained harm and structural power imbalance, as demonstrated in the automotive sector.

Priority should be given to sectors and relationships where such risks are most pronounced, ensuring reform remains targeted, proportionate, and evidence-based.

(a) Vehicle manufacturers and franchise dealers

The franchise dealer relationship is the most significant source of unfair B2B trading practices reported to MTAA. Franchise agreements are structured heavily in favour of the franchisor, with dealers typically required to commit substantial capital investment, meet stringent facility and tooling standards, and comply with manufacturer-imposed operational requirements. Dealers are predominantly small to medium-sized enterprises, while the franchisors are multinational, publicly listed entities controlled by overseas parent companies.

Unfair practices occur at all stages of the relationship but are most acute during agreement performance and termination. The following categories of conduct are documented:

- Warranty underpayment: Manufacturers routinely pay dealers for warranty repair work at rates and time allocations that do not reflect actual costs. MTAA has reviewed franchise and dealer agreements that contain clauses limiting reimbursement to "reasonable labour costs" as defined by the manufacturer, not the market. In one agreement, the manufacturer would only pay for the hours it considers appropriate, not the actual time taken, resulting in dealers absorbing losses on warranty work they are contractually required to perform. One dealer reported being told to claim 0.3 hours for work that took 1.59 hours to complete. Another dealer described a gearbox replacement where the manufacturer would only pay for two and a half hours when the work took four and a half hours, with multiple such shortfalls accumulating over a year.

- Warranty extrapolation: Manufacturers conduct random audits of warranty work and apply a practice known as warranty extrapolation, where they withdraw or claw back reimbursement for repairs if the dealer has not completed the administrative process according to the manufacturer's guidelines. One dealer described the process: the warranty inspector audits claims for the past five years, picks five random case studies, and if two of the five have paperwork issues, the manufacturer claws back 40 per cent of all claims for the past five years.

- Liability limitation clauses: MTAA has reviewed agreements containing clauses that seek to exclude the manufacturer's liability for any loss or damage, whether indirect or consequential, arising from or in connection with the use, failure of, or fault with manufacturer goods, except as required by law.

- Retaliatory conduct: Dealers have reported fear of retaliation for pursuing reimbursement. Independent academic research published in 2023[1] documented instances where manufacturers threatened to examine whether dealers remained "preferred dealers going forward" if they continued to agitate over compensation for legitimate warranty repairs.

- Termination without adequate protection: Honda Australia's transition to an agency model led to the termination of a large portion of its dealer network midway through their agreements. One dealer who pursued legal action incurred approximately $1.8 million in legal costs and two years of proceedings.

The harm is significant. Dealers are absorbing unrecoverable labour and parts costs on warranty work, facing clawback demands spanning five years, and in some cases losing their franchise entirely. The Franchising Code of Conduct applies to these relationships, but MTAA's position is that it does not adequately address the unique challenges and power imbalances in the automotive sector.

(b) Insurers and automotive body repairers

Approximately 4,500 automotive body repairers operate in Australia, most of whose work is funded in whole or in part by insurance companies. There is a significant structural power imbalance, with three or four major insurer groups controlling the majority of motor vehicle insurance. Research indicates that around two thirds of Australian households renew their car insurance with the same provider each year, and in some state markets, combined insurer market shares approach 35 to 40 per cent.[2]

Documented unfair practices include:

- Steering and restricting consumer choice of repairer: Insurers fast-track assessments for preferred repairers within days but delay assessments for consumers exercising choice of repairer by up to three months.

[1] Fattah, Adiba. (2023). *An Evaluation of the Franchise Model in the Australian Automotive Industry*. Doctoral dissertation, University of the Sunshine Coast, Queensland.

[2] Renewal data cited from Roy Morgan Research, 4 December 2023. Combined market share estimates derived from RAA Group Annual Report 2023-24; RACQ Annual Report 2023-24; ABS Motor Vehicle Census Australia, 30 June 2021; and Economic and Finance Committee of the House of Assembly, *An Inquiry into Motor Vehicle Insurance and Repair Industry in South Australia*, 24 September 2020.

- Substandard repair authorisations: Insurers refuse to authorise OEM-standard repairs, mandating cost-cutting methods. In one case (AFCA Case No. 647152), the vehicle was ultimately deemed a total loss after the insurer-mandated non-OEM repairs failed.
- Unfair supplier terms: Insurers demand free services and refuse to pay full list prices for genuine parts, shifting costs to repairers and consumers. Insurers cap contributions to the cost of repairs at their contracted repairer's lower quote, effectively creating a gap insurance model despite selling comprehensive coverage.
- Non-evidence-based cash settlements: Cash settlement offers are routinely made without supporting evidence or adequate justification, leaving consumers with insufficient funds for proper repairs and depriving repairers of the work.
- The Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct applies, but it remains voluntary in most jurisdictions. The Code lacks adequate enforcement mechanisms and penalties. In South Australia, where the Code is mandatory, the maximum penalty is $50,000 for a company, a figure that is trivial for corporations with global capitalisations exceeding $100 billion.

Survey responses also indicate that insurer assessment and pricing practices can displace repairers' professional judgement and shift cost onto small businesses. One repairer described the issue as "Insurance companies dictating the cost of repairs", and reported that "the quotes we submitted were reduced and the work was still all included." Another respondent described "Insurance assessors changing repairer estimates when the estimates are fair and reasonable", adding that assessors should not do so unless they are changing the repair method. These examples support MTAA's concern that insurer conduct can leave repairers expected to complete the same repair scope for reduced payment, while carrying the commercial, quality and liability risk.

This issue extends well beyond the replacement cost of the defective component itself. When a supplied part fails, repairers are frequently required to absorb the cost of vehicle diagnosis, removal and reinstallation of the failed component, freight, workshop administration, customer liaison, and increasingly the calibration and programming procedures required for modern vehicles. In many cases, suppliers will replace the defective part but decline to compensate the repairer for the labour and consequential costs required to rectify the failure. The practical effect is that warranty risk is transferred from the supplier, manufacturer or importer that supplied the defective product to the small business that installed it.

For independent repairers, these costs can quickly escalate into many hundreds or thousands of dollars per claim, particularly where advanced driver assistance systems (ADAS), electronic control modules, or high-voltage vehicle systems require recalibration or additional diagnostic procedures. This transfer of risk is rarely the subject of genuine negotiation and leaves many small automotive businesses carrying losses arising solely from the failure of another party's product.

(c) Vehicle manufacturers and independent repairers

Vehicle manufacturers restrict access to genuine parts, repair information, ordering systems, and approval networks in ways that exclude competent independent repairers. Tesla, for example, changed its parts supply arrangements to limit access to body repair components only through its Approved Body Shop Network. At the relevant time, there were only 10 Tesla-approved collision repairers in metropolitan Melbourne and only one in regional Victoria. Independent repairers reported lost repair values of approximately $3,500 per job and an inability to compete for repair work.

Parts suppliers also provide limited recourse when parts fail. The ACL is more focused on protecting consumers than businesses from product liability. An automotive business ceases to be a consumer if goods are purchased for resale or transformation, meaning repairers do not have consumer rights when parts they install fail. Labour costs for consequential loss are rarely compensated, and can quickly escalate into thousands of dollars, particularly with modern vehicles requiring recalibration.

Survey responses also show that parts warranty processes often fail to compensate repairers for the real cost of rectifying failed parts. One respondent reported that a water pump failed within nine months and that "the cost to me was $800 and the warranty covered $150, leaving me out of pocket $650 for their part failure." This illustrates the gap between parts warranty coverage and the actual labour, diagnostic and customer-management costs borne by small repair businesses.

Like with motor vehicles, timely access to parts for small engine repairers can be frustrated by delays, preconditions and disproportionate expense that unnecessarily harms competition, value and choice for equipment owners.

Extending the general prohibition proposed in the Bill to B2B dealings would address several of these practices that currently fall between the gaps of unconscionable conduct and unfair contract terms provisions. MTAA supports protections that capture conduct occurring across all stages of the business relationship, including pre-contractual, performance, and termination phases.

- **Question 10. What factors affect whether a small business is likely to be harmed by unfair trading practices in business-to-business dealings (e.g. bargaining power imbalances, whether it is a medium or long-term relationship, whether the small business is a purchaser or supplier, whether an industry code applies)?**

The following factors materially affect the likelihood and severity of harm to small businesses in the automotive sector.

Bargaining power imbalance is the most significant factor. The vast majority of automotive retail businesses are small, family-owned enterprises. Their counterparties are multinational, publicly listed manufacturers, global insurance conglomerates, and large parts importers. A dealer who heads a dealership group for over 30 years has no greater leverage against a manufacturer headquartered overseas than a dealer in their first year of operation.

Duration and lock-in of the relationship intensify the harm. Franchise dealers make capital investments in facilities, tooling, and staff over many years. This sunk investment creates a dependency that manufacturers can exploit. The Honda agency model transition demonstrated that dealers who challenged terminations faced $1.8 million in legal costs, while most other dealers chose not to pursue claims. Body repairers in insurer preferred networks face similar lock-in, as they build their business models around insurer referral volumes.

Whether the small business is a supplier or purchaser matters. In the automotive sector, franchise dealers act as both supplier (selling vehicles to consumers) and purchaser (buying wholesale from the manufacturer). This dual role compounds the imbalance because the manufacturer controls both supply terms and the conditions under which the dealer can seek indemnification.

The presence of an industry code provides some mitigation, but only where enforcement is adequate. The Franchising Code of Conduct applies to automotive dealers but does not adequately address sector-specific issues such as warranty extrapolation, unilateral model changes, and NVES compliance cost allocation. The MVIRI Code of Conduct applies to body repairers but remains largely voluntary with trivial penalties where it is mandatory.

Fear of retaliation is a pervasive factor. Dealers and repairers consistently report reluctance to enforce their rights due to concern that the counterparty will reduce allocations, terminate agreements, or otherwise disadvantage the business. This fear is not speculative; it is supported by documented dealer testimony and academic research.

Regional and remote location amplifies harm. Restricted networks disproportionately affect regional and outer metropolitan businesses, which face fewer alternatives and greater travel burdens if excluded from manufacturer or insurer networks.

> **Question 11. If the Government were to introduce an economy-wide unfair trading practices prohibition that applies to business-to-business conduct:**

What types of conduct should be captured and are there any specific forms of conduct that should be protected against (for example in a 'grey list')? Please provide reasons and evidence.

MTAA supports the introduction of a grey list that identifies specific forms of conduct presumed to satisfy the general prohibition. Based on documented industry experience, the following conduct should be included:

- Warranty underpayment or extrapolation: refusing to reimburse a supplier for repair or warranty work at rates that reflect actual and reasonable costs, or retrospectively clawing back warranty payments based on administrative technicalities rather than the substantive quality of the work performed.
- Unilateral variation of essential terms: changing business models, sales channels, or agreement structures without adequate notice, consultation, or compensation. This captures practices such as the transition from franchise to agency models.
- Restricting access to essential inputs: withholding access to genuine parts, repair information, or ordering systems where the restriction is not objectively justified by safety, security, or competency requirements and has the practical effect of excluding competent businesses from competing.
- Parts warranty practices should also be considered within the scope of the prohibition. MTAA members report that suppliers commonly provide replacement parts when a component fails but refuse to reimburse the full labour and consequential costs associated with diagnosing the fault, removing the failed part, reinstalling the replacement, recalibrating vehicle systems and managing customer remediation. The result is that small businesses bear losses caused by

defects in products over which they had no control. This conduct can distort decision-making by discouraging repairers from pursuing legitimate warranty claims or by encouraging them to absorb losses to preserve commercial relationships.

- Retaliatory conduct: taking adverse action against a small business for exercising a contractual or statutory right, including seeking indemnification, lodging a complaint, or participating in a regulatory process.

- Deliberate delay as a coercive tactic: unreasonably delaying assessments, payments, or approvals to pressure a small business into accepting less favourable terms or to punish the exercise of a right.

Should it apply to all business-to-business dealings involving a small business, or just a subset of these (for example, where there is a significant power imbalance between the parties, where there is a medium or long-term relationship between the parties, and/or where the small business is a supplier or purchaser)? Please provide reasons and evidence.

MTAA supports the prohibition applying to all B2B dealings involving a small business. The automotive sector demonstrates that unfair practices occur across all types of relationships, not only those with a formal long-term contractual basis. Independent repairers who have no franchise relationship with a manufacturer still face unfair practices when seeking indemnification under section 274 of the ACL or attempting to source parts. Limiting the prohibition to a subset of relationships would create gaps that larger counterparties could exploit by restructuring their arrangements.

Should there be an exception for conduct that is reasonably necessary to protect the legitimate business interests of the party engaging in it? Please provide reasons and evidence.

MTAA accepts that a legitimate business interest or justification exception is appropriate, provided it is narrowly defined. Manufacturers may have genuine safety, security, or competency reasons for restricting access to certain parts or systems, particularly for electric vehicles and high-voltage components. However, the exception must not become a blanket justification for anti-competitive conduct. The Tesla example demonstrates that restrictions applied to ordinary replacement parts such as bumper bar covers lacked any credible safety basis. MTAA recommends that any exception require the party to demonstrate that the conduct is objectively justified, proportionate, and transparent.

Should there be a harm element and, if so, should that harm element include financial and non-financial harm? Please provide reasons and evidence.

MTAA supports the inclusion of a harm element, and that element should encompass both financial and non-financial harm. Financial harm in the automotive sector is well documented through warranty underpayment, extrapolation clawbacks, and unrecovered labour costs. Non-financial harm is equally significant and includes the fear of retaliation that prevents dealers from enforcing their rights, reputational damage when repairers are forced to compromise on repair quality, and the stress and disruption caused by threatened or actual termination of franchise agreements.

What would be the potential costs and benefits? Please provide reasons and evidence.

The primary benefit is the creation of a credible deterrent against conduct that currently falls between the gaps of unconscionable conduct and unfair contract terms provisions. For the automotive sector, a functioning prohibition would reduce the incidence of warranty underpayment, discourage retaliatory conduct, and give small businesses greater confidence to enforce existing rights. Compliance costs for larger businesses should be modest if they are already acting consistently with fair dealing standards. Businesses that are not acting fairly should expect to adjust their practices, which is the intended effect of the reform.

As has been the case following the introduction (and extension) of unfair contract terms prohibitions, enforcement action provides a sure-footed evidentiary base for interpretation and clear guidance on what is and is not an acceptable contractual provision. This visibility of reasonable commercial practice helps nurture a fairer business environment, just as unfair trading practices will do for fairer business-to-business commercial conduct

What costs (including time, money, or forgone opportunities) are currently incurred by small businesses in guarding against or attempting to avoid being harmed by unfair trading practices? Please provide examples and evidence.

Current costs are substantial. Honda dealers who challenged the agency model transition spent approximately $1.8 million in legal costs over two years, and the prospect of such costs discouraged other dealers from pursuing their claims. MTAA members regularly advise that the cost and time involved in mediation and dispute resolution for warranty reimbursement disputes can take months, during which the dealer must continue absorbing the unreimbursed costs. Many small businesses simply accept the loss rather than risk the relationship, which represents a significant forgone opportunity cost that is difficult to quantify but real.

This approach ensures that reform captures harm comprehensively while remaining consistent with a targeted and proportionate framework.

> **Question 12. Would a new economy-wide unfair trading practices prohibition that applies to business-to-business conduct interact with other existing laws and regulations (such as industry codes)? How should any overlap or duplication be managed?**

The prohibition will interact with several existing frameworks relevant to the automotive sector:

- The Franchising Code of Conduct, which regulates the franchise relationship between vehicle manufacturers and dealers.
- The MVIRI Code of Conduct, which governs the relationship between insurers and body repairers.
- The Motor Vehicle Service and Repair Information Sharing Scheme, which requires manufacturers to share repair information with independent repairers on fair and reasonable terms.
- The Oil Code of Conduct, which is a mandatory Code, regulates the sale, supply or purchase of declared petroleum products, such as unleaded petrol and diesel, is of particular interest and relevance to MTAA's service station and convenience store association committee members.

- The ACL provisions on unconscionable conduct (sections 21 and 22) and unfair contract terms.

Survey responses reinforce the need for stronger, enforceable protections in insurer-repairer relationships. One Queensland collision repairer stated that there is “no advocate for the repairer” and that insurers expect repairers to “either cut corners or not pay us to do the job correctly.” This reflects MTAA’s concern that voluntary or weakly enforced codes do not provide repairers with an effective remedy where the commercial imbalance is significant.

MTAA supports the prohibition operating as a safety net that complements rather than replaces these frameworks. Industry codes address specific conduct within defined relationships, but they contain gaps and their enforcement mechanisms are often inadequate. The MVIRI Code remains voluntary in most jurisdictions and its penalties are trivial where mandatory. The Franchising Code does not address sector-specific practices such as warranty extrapolation. The unfair trading practices prohibition should fill these gaps without creating a hierarchy where conduct covered by a code is excluded from the general prohibition.

Where a specific industry code already prohibits conduct and provides adequate remedies, the general prohibition would act as a backstop rather than a primary enforcement pathway. MTAA recommends that the ACCC be empowered to issue guidance on the interaction between the prohibition and industry codes, including clarifying that compliance with a code should not automatically preclude a finding that conduct was unfair.

> **Question 13. What costs or impacts would a new economy wide unfair trading practices prohibition that applies to business-to-business conduct have on businesses (e.g. compliance costs, changes to contracting practices or prices) and who would bear these costs? Please provide estimates where possible.**

MTAA expects the compliance costs for businesses acting in accordance with fair dealing standards to be modest. Businesses that already deal fairly with their small business counterparties, honour reimbursement obligations, and do not engage in retaliatory conduct would require minimal adjustment.

The businesses most affected by the prohibition would be those currently engaging in practices that the prohibition is designed to address. Manufacturers that systematically underpay warranty work, retrospectively claw back reimbursements, or threaten franchise termination in response to legitimate claims would need to adjust their practices. Insurers that use deliberate delays, substandard repair authorisations, or restrictive supplier terms would similarly need to bring their conduct in line with fair dealing standards.

These adjustments represent a reallocation of costs currently borne by small businesses. Warranty underpayment, for example, shifts costs from the manufacturer to the dealer. Correcting this does not create new costs; it allocates existing costs to the party that should bear them.

MTAA is not in a position to provide precise cost estimates for economy-wide compliance, but notes that the automotive retail sector comprises over 15,000 businesses contributing approximately $39.35 billion to Australia's GDP annually. The costs to the sector of current unfair practices, while difficult to aggregate, are substantial when warranty underpayments, extrapolation clawbacks, legal fees, and absorbed losses are considered across the industry.

> **Question 14. Previous consultations identified barriers that prevent small businesses from enforcing their rights, including cost of legal action, fear of retaliation, and knowledge of rights. How would such barriers affect the effectiveness of any new protection?**

These barriers are real, documented, and will materially affect the effectiveness of any new protection if they are not addressed.

Cost of legal action: The Honda agency model case demonstrates the scale of the barrier. Legal costs of $1.8 million and two years of proceedings are prohibitive for the vast majority of automotive dealers, who are small to medium-sized enterprises. Even where a dealer received substantial compensation, the high costs discouraged other dealers from pursuing similar claims.

Survey responses also demonstrate that some small businesses perceive enforcement as unrealistic because larger counterparties have greater legal and financial resources. This supports MTAA's recommendation for accessible, low-cost dispute resolution and regulator-led action where systemic conduct affects classes of small businesses.

Fear of retaliation: This is the most significant barrier in the automotive sector. Academic research has documented dealers reporting that manufacturers warned them: "if you keep agitating like this, then we might have to examine whether you guys are still one of our preferred dealers going forward." This fear is rational and based on observable conduct. It means that many instances of unfair trading go unchallenged and therefore unreported.

Knowledge of rights: Independent used car traders and aftermarket repairers often have limited awareness of their indemnification rights under section 274 of the ACL, and even where they are aware, they lack the contractual relationship with the manufacturer that would make enforcement practical.

To address these barriers, MTAA recommends:

- The ACCC be given standing to take representative action on behalf of classes of affected small businesses.
- Presumptive tests apply where retaliatory conduct is alleged, shifting the evidentiary burden to the party with the greater resources and information.
- An accessible, low-cost dispute resolution mechanism be established, administered by a body such as the ASBFEO.
- Protections against retaliation be included as a standalone provision, consistent with the approach taken in the Franchising Code.
- Treasury examine initiatives to improve small and family business access to justice by enabling smaller businesses to pursue their own economic interest through self-initiated affordable action to remedy harm caused by unlawful commercial conduct

> **15. Should unfair trading practice protections apply in respect of franchisees who exceed the proposed small business threshold (i.e. franchisees with 100 or more employees and more than $10 million annual turnover)? Please provide reasons, including addressing the questions above where relevant.**

MTAA strongly supports extending unfair trading practice protections to all franchisees regulated by the Franchising Code of Conduct, regardless of whether they exceed the proposed small business threshold.

The power imbalance in automotive franchise relationships does not diminish when a dealer's business grows beyond 100 employees or $10 million in turnover. The manufacturer retains control over product supply, pricing, warranty processes, brand standards, and the fundamental terms of the franchise agreement. A larger dealer may have more revenue, but the manufacturer controls the allocation of vehicle supply, can threaten non-renewal, and can unilaterally change business models.

The automotive franchise sector includes multi-site dealership groups that exceed the proposed threshold but remain fundamentally dependent on the franchisor for their business model. The warranty underpayment and extrapolation practices documented by MTAA apply regardless of dealer size. A larger dealer processing more warranty claims may in fact face greater cumulative exposure to warranty extrapolation than a smaller operator.

Furthermore, the NVES compliance point at importation rather than at point of sale creates financial risk for dealers of all sizes, as manufacturers can push stock onto dealer networks to meet compliance targets. MTAA has forecast that total NVES penalties could reach $2.7 billion by 2029, with uncertainty about how manufacturers will allocate these costs across their networks. Larger dealers absorb a proportionally larger share of this risk.[3]

MTAA's position is that the franchise relationship is inherently characterised by a structural power imbalance that justifies protection regardless of the franchisee's size.

> **Question 16. If unfair trading protections were to apply to franchisees who exceed the small business threshold, what is the most appropriate mechanism to do this?**

The most appropriate mechanism is a deeming provision within the legislation that applies the unfair trading practices prohibition to all businesses regulated by the Franchising Code of Conduct, irrespective of size. This approach is simple, avoids threshold gaming, and reflects the policy rationale that the power imbalance in franchise relationships exists independently of the franchisee's size.

MTAA supports a mechanism that:

- Deems all franchisees regulated by the Franchising Code to be within the scope of the prohibition for the purposes of their dealings with their franchisor.
- Does not require franchisees to demonstrate that they fall below a size threshold, which would add complexity and create incentives for franchisors to argue that specific franchisees are too large to be protected.
- Is consistent with the approach already taken in the Franchising Code, which applies to all franchise relationships and does not exclude franchisees on the basis of size.

[3] Derived from Blue Flag Automotive Intelligence forecasting commissioned by MTAA, January 2025.

This mechanism should be embedded in the primary legislation rather than relying on regulations or subordinate instruments that could be more easily amended.

4. Remedies

Effective enforcement should be accompanied by clear guidance, ensuring businesses understand how to comply without reliance on litigation.

> **Question 17. If a general prohibition that addresses the unfair trading practices affecting small businesses was introduced, should the full range of remedies, including civil pecuniary penalties, be available? Why, or why not?**

MTAA supports the availability of the full range of remedies, including civil pecuniary penalties. The automotive sector's experience demonstrates that voluntary frameworks and codes without adequate enforcement mechanisms do not change the behaviour of large counterparties.

The MVIRI Code of Conduct illustrates this clearly. Where the Code is mandatory in South Australia, the maximum penalty is $50,000 for a company. By comparison, Allianz Group had a global capitalisation of approximately €114.3 billion (roughly $188 billion) at end-December 2024.[4] A $50,000 penalty is not material to a corporation of this scale.

MTAA's experience with manufacturer conduct in the warranty context reinforces this point. Certain manufacturers may see modest penalties as a cost of doing business, while small suppliers could not sustain the same approach.

The full range of remedies should include:

- Civil pecuniary penalties at levels sufficient to deter the conduct.
- Injunctions to prevent ongoing harm.
- Compensation orders for affected small businesses.
- Enforceable undertakings with conditions and monitoring.
- Publicly stated outcomes to leverage reputational risk, which MTAA has observed is of greater concern to large corporations than modest monetary penalties.

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[4] Allianz Group Investor Relations, https://www.allianz.com/en/investor_relations/share/share-price.html (Accessed: February 2025).

> **Question 18. What is the maximum civil penalty a court should be able to impose for a breach of any such provision? Should this be aligned with the maximum penalties available for other key provisions under the ACL?**

MTAA supports aligning maximum penalties with those available for other key provisions under the ACL. Penalties should be set at the greater of $100 million, three times the value of the benefit obtained, or 30 per cent of adjusted turnover where the benefit cannot be determined.

MTAA refers to its established position that any penalty should be guided by the factors set out in sections 21 and 22 of the ACL relating to unconscionable conduct, including:

- The relative strengths of the bargaining positions of the parties, including scale and resources of the contravener.
- Whether any undue influence or pressure was exerted.
- The extent to which the conduct was consistent with the party's conduct in similar transactions.
- The financial harm or loss as a result of the conduct.

Penalties for repeat offenders should escalate. MTAA supports a higher penalty regime for recidivist manufacturers and serial litigants who seek to game the system.

For the automotive sector, where the counterparties include some of the world's largest corporations, alignment with existing ACL penalty provisions is the minimum threshold for credible deterrence.

The effectiveness of any reform will depend on implementation. MTAA considers that:

- Guidance should be issued prior to commencement
- Industry-specific examples should be provided
- Sufficient transition time should be allowed
- Interaction with existing codes should be clearly defined
- The ACCC should be funded to pursue 'test case' to support prohibition interpretation
- Treasury examine initiatives to improve small and family business access to justice by enabling smaller businesses to pursue their own economic interest through self-initiated affordable action to remedy harm caused by unlawful commercial conduct

> **Question 19. Should there be a transition period before any new laws commence, or before civil penalties apply to any new laws?**

MTAA supports a transition period of no more than 12 months to allow businesses to review their contracts, training, and operational practices. The period also recognises that the earlier implementation of B2C prohibition provide useful and practical implementation insights to guide the sure-footed and effective commencement of B2B provisions.

However, MTAA cautions that the transition period should not become a grace period for businesses to continue engaging in unfair practices with impunity. The conduct that the prohibition is designed to address, including warranty underpayment, retaliatory conduct, and deliberate delays, is already inconsistent with the existing obligations under the ACL, the Franchising Code of Conduct, and the MVIRI Code of Conduct. A transition period should provide time for procedural adjustment, not a reprieve from standards of fair dealing that businesses should already be meeting.

MTAA recommends that during the transition period:

- The ACCC issue guidance on the operation of the prohibition, drawing on transportable learning from the B2C implementation and including how the prohibition is expected to interact with existing industry codes.
- An education campaign be conducted targeting both small businesses (to inform them of their new rights) and larger counterparties (to clarify expectations).
- The prohibition take effect in full on the nominated commencement date, without a further staggered introduction of penalty provisions.

Delaying the commencement of penalties beyond the general commencement date would undermine the deterrent effect of the prohibition during the period when compliance norms are being established. If a business cannot adjust its practices within 12 months to meet standards of fair dealing, the issue is not one of transition but of intent.

5. Conclusion

The automotive sector provides compelling evidence of systemic unfair trading practices that are not adequately addressed under current frameworks. The MTAA member survey demonstrates the scale, nature and impact of unfair conduct across the sector, and the near-universal view that current protections are inadequate.

Documented case studies, including manufacturer restrictions on access to genuine parts, warranty extrapolation and clawbacks, insurer overreach into repair decisions and commercial retaliation against businesses that exercise their rights, illustrate the range and severity of unfair practices that current law fails to address.

MTAA supports extending unfair trading protections to address well-evidenced harms, including in business-to-business relationships where structural imbalance is most pronounced.

At the same time, reform must be targeted, clearly defined and supported by practical implementation measures, ensuring it operates effectively across complex commercial environments.

A calibrated, evidence-based approach will deliver meaningful improvements in fairness and competition, while maintaining certainty and workability for businesses.

Like with other competition and consumer law protections and safeguards intended to support small businesses with fair commercial dealings and a predictable business environment in which to invest, the utility, efficacy and confidence in unfair trading protections prohibitions will be vastly improved by greater predictability of its application and enforcement. Treasury should examine initiatives to improve small and family business access to justice by enabling smaller businesses to pursue their own economic interest through self-initiated affordable action to remedy harm caused by unlawful commercial conduct. MTAA welcomes the opportunity to discuss any aspect of this submission further. Please get in touch via info@mtaa.com.au.

Contact

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