

CAR MANUFACTURERS AND DEALERS IN ACCC'S SIGHTS

As you may be aware, the Australian Competition and Consumer Commission (ACCC) has been investigating competition and consumer issues in the new car retailing industry over the last 12 months

It will come as no surprise to many AAAA members that the draft report (released last month) has identified a very concerning level of non-compliance with the Australian Consumer Law (ACL) in the new car industry.

The draft report raises concerns about:

- Manufacturer's compliance with ACL and the way that manufacturers and dealers represent consumer rights;
- The effect of limited access to information and data required to repair and service new cars; and
- The lack of accurate information being received by consumers about the fuel consumption or emissions performance of new cars.

In relation to the first point (which is the focus of this article), one of the ACCC's concerns is that consumers have been deliberately misled into believing that they will void their manufacturer's warranty if they do not use an authorised dealer or do not fit manufacturer branded original equipment (OE) parts. In fact, 30 percent of consumers surveyed by the ACCC take their vehicle to their dealership for servicing because they believe it is compulsory according to their logbook or warranty.

According to the ACCC's research, this is due to a mistaken belief that the manufacturer's warranty makes the use of an authorised dealer mandatory. Contributing to this misunderstanding are direct and implied representations made by a number of manufacturers in their logbooks and service manuals to the effect that authorised dealers must carry out services or repairs (or that OE parts must be used).

What is the ACCC doing about it?

The ACCC has made a number of recommendations for improving consumer protection and promoting competition.

The ACCC has recently instituted proceedings against Ford and has accepted a court enforceable undertaking from Holden in relation to alleged contraventions of and non-compliance with the ACL.

Among other things, Holden undertakes that it will cease making misleading representations that a remedy will not be provided to consumers, or that a remedy will only be provided to a limited extent, because the vehicle has not been serviced by a Holden dealer.

The proceedings and undertakings put manufacturers and dealers on notice that the ACCC is committed to continuing to address non-

compliance with the ACL and will take enforcement action where appropriate.

What does this mean for the automotive aftermarket industry?

The action taken by ACCC reinforces the position that consumers have the right to choose independent repairers for servicing (and use non-OE parts) without voiding the manufacturer's warranty or otherwise limiting their rights under the ACL.

Complaints handling systems

According to the ACCC, one of the biggest obstacles to consumers not receiving the remedies under the ACL is the failure of manufacturers' complaints handling systems and policies to take consumer guarantees into account. It appears that the manufacturers' focus is on their warranty obligations and a 'culture of repair' without considering their obligations under the ACL.

To avoid enforcement action by the ACCC, it will be necessary for manufacturers and dealers to review their complaints handling process to ensure that they are not creating confusion or misleading consumers about their rights.

This will have a positive impact on the aftermarket industry as there should be a reduction in manufacturers denying warranty claims on the basis that the vehicle has been serviced by an independent repairer (or that OE parts have been used).

Scheduled servicing

As you may be aware, manufacturers typically include clauses in their warranties noting that to avoid voiding or limiting the warranty, service or repair work must be carried out by qualified staff, according to the manufacturer's specification and using appropriate quality parts.

Consumers are not required to have their new car serviced or repaired within the authorised dealer network. Instead, consumers have the right to choose a qualified independent repairer who will comply with the relevant specifications and use suitable non-OE parts.

Fault with vehicle

Moving away from scheduled servicing, there is still a very high level of confusion among consumers about their rights if they experience a fault with their vehicle that is not caused by accidental damage or misuse.



Under the ACL, if there is a fault with a vehicle that can be fixed relatively easily and within a reasonable time (i.e. a non-major fault), the dealer is required to fix the issue at the dealer's cost. If the dealer refuses or fails to remedy the fault within a reasonable time, the consumer can go to an independent repairer to remedy the fault and recover costs incurred from the dealer. Subject to complying with the requirements of the manufacturer's warranty, the repair and installation of any non-OE parts by a qualified mechanic outside the authorised dealer network will not void any express warranty given by the dealer or manufacturer. Nor will it void or limit any remedies available to the consumer under ACL.

The dealer must comply with its obligations under both the express warranty and the automatic consumer guarantees under the ACL. When a consumer raises concerns about a fault, the dealer cannot attempt to avoid its obligations by relying on its complaint handling systems or shifting blame to the independent repairer to limit or deny the options available to the consumer under the ACL.

What is next?

The ACCC will be holding a roundtable with invited stakeholders on 25 September 2017 and plans to release the final report in late 2017. Industry Legal Group will update AAAA members when the final report is released.

In the meantime, for more information on the key findings and recommendations by the ACCC, AAAA members can access the full draft report at www.accc.gov.au/about-us/market-studies/new-car-retailing-industry-market-study/draft-report

Need assistance?

Industry Legal Group can provide AAAA members with information and advice on the ACCC's draft report and ACL.

AAAA Member Benefits

Contact Industry Legal Group on 1300 369 703 or aaaa@industrylegalgroup.com.au if you have any questions relating to this article or to discuss any legal issues that arise in your business.