



AUSTRALIAN  
AUTOMOTIVE  
DEALER  
ASSOCIATION

# RESPONSE TO THE PRODUCTIVITY COMMISSION DRAFT REPORT INTO RIGHT TO REPAIR

10 AUGUST 2021



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# FOREWORD

The AADA is the peak automotive industry advocacy body, exclusively representing franchised new car Dealers in Australia. There are around 1,500 new car Dealers in Australia that operate over 3,000 new vehicle dealerships. Franchised Dealers sell approximately 1 million new cars a year and directly employ some 60,000 Australians.

We thank the Productivity Commission for the opportunity to provide feedback to their comprehensive report into right to repair. The automotive industry is somewhat advanced on this issue and a positive obligation on car Manufacturers to make available service and repair information has been legislated and will take effect from 1 July 2022. The operation of this legislation will no doubt provide significant learnings and we support the Commission's recommendation of a review after three years.

We agree with the report's finding that there is scope to enhance the consumers ability to exercise their rights and we would argue that the strengthening of indemnification of suppliers as recommended by Consumer Affairs Ministers in 2019 should proceed as soon as possible.

Our industry is not opposed to legislating against warranty voiding terms as they do not exist in Manufacturer warranties, but it is important that any such change is accompanied by the right to include terms which limit Manufacturer and Dealer liability in the event of damage caused by unauthorised repairs or parts.

Automotive Manufacturers and their Dealers stand by their products and offer generous warranties. We believe our products are durable and can last for decades if appropriately serviced and maintained. Durability guidance for vehicles is fraught with risk given there are many variables which exist in owning and operating a motor vehicle. We believe our industry is not one that typically requires durability guidance.

We would also question the need to formally implement a system for super complaints. Customer complaints need to be as organic as possible, and we are unaware of any limitations which currently exist to stop consumer groups from lodging such complaints.

Finally, product obsolescence is not a problem in our industry. E-waste is a growing problem, particularly the emerging problem of electric vehicle lithium-ion batteries. We believe this is something Government and industry will respond to, and we believe the best way to do this is to allow the automotive industry to take on a stewardship role and handle it in a similar manner to how recalls are dealt with.

**James Voortman**  
**Chief Executive Officer**



# RECOMMENDATIONS

- 1** Progress Consumer Affairs Ministers' commitment to conduct public regulatory impact assessment on enhancing Australian Consumer Law (ACL) indemnification provisions.
- 2** Motor vehicles should be exempt from any minimum durability guide.
- 3** Support the evaluation of the Motor Vehicle Service and Repair Information Sharing Scheme once in operation for three years.
- 4** Consider some obligations for car companies that leave our market in terms of making available spare parts for a defined period of time.
- 5** Consider the Australian Government's Specialist and Enthusiast Vehicle Scheme's effect on E-Waste in terms of the spread of older lithium-ion batteries.
- 6** No need to formalise a system of super complaints.
- 7** Exercise caution with the development of product labelling schemes.

# DRAFT FINDINGS

## 3.1: SCOPE TO IMPROVE THE APPLICATION OF CONSUMER GUARANTEES

**The Australian Consumer Law provides consumers with considerable legislative rights to obtain a remedy (repair, replacement or refund) for defective products through consumer guarantees.**

**The consumer guarantees are comprehensive and operate reasonably well but there is scope to enhance consumers' ability to exercise their rights when their product breaks or is faulty — by providing guidance on the expected length of product durability and better processes for resolving claims.**

### AADA RESPONSE

Dealers, as retailers of new cars, have direct responsibility to provide remedies to consumers under the ACL. Dealers also have a right to recover the costs of remedies from Manufacturers, where the Manufacturer is responsible for the failure.

In practice, Dealers often have difficulty enforcing their indemnification rights due to the nature of their commercial relationship with the OEMs to whom they are franchised. Dealers who enter into a franchise agreement (Dealer Agreement) with OEMs are given the exclusive right to market and sell new vehicles and associated services within a specific geographic location. In return, Dealers are bound by these Dealer Agreements, the terms of which are very much skewed in favour of the OEM.

All franchise agreements are specific, to varying degrees, as to performance requirements including stipulating compliance with policies effecting warranty payments, prior approval levels and authorities to repair or replace components and vehicles.

In a number of instances, Manufacturers in their Dealer Agreements:

- a. Require Dealers to adhere strictly to the Manufacturers' 'policy' regarding warranty or potential product defect claims (which policies can be unilaterally varied by the Manufacturers at any time);
- b. Prohibit Dealers from making any admission of liability to a consumer in relation to a potential product defect without the prior approval of the Manufacturer;
- c. Require Dealers to obey any instructions received from a Manufacturer in relation to a consumer's request, complaint, claim or legal proceeding in relation to a potential product defect;
- d. Grant the Manufacturer the ability to assume total control of a Dealer's handling of a request, complaint, claim or legal proceeding in relation to a potential product defect (in some cases at the Dealer's cost); and
- e. State that Dealers will lose their right of indemnity against Manufacturers if the steps set out above are not adhered to.

## Section 3 - Draft Findings

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Dealers that breach the terms of their franchise agreements risk loss of franchise. While Dealers do all in their power to satisfy customer concerns, in the final analysis they are limited to responding as per the Manufacturers directives.

Often, what may appear to be reluctance on the part of a Dealer to assist a customer may in fact be the result of the influence of a Manufacturer's policies and procedures.

Even if the terms of a particular Dealer Agreement are not as prescriptive as those set out above, Dealers still face commercial pressure to cede to and obey the wishes of Manufacturers when it comes to any potential product defect, by reason of the significant imbalance of power described in this paper.

In addition, the statutory indemnity against Manufacturers available to Dealers under section 274 of the ACL is of very limited practical value as it can only be exercised if there is an actual finding of liability against a Manufacturer. This rarely occurs as most claims are settled before any 'finding of liability' by a Court or Tribunal of competent jurisdiction.

These issues were well documented during the ACCC's new car market study released on 14 December 2017. Furthermore, in August 2019, Commonwealth, State, Territory and New Zealand Ministers responsible for fair trading and consumer protection met in Queenstown, New Zealand, and supported a public regulatory impact assessment of proposals to prohibit Manufacturers from failing to indemnify suppliers and prohibit retribution by Manufacturers against suppliers who seek compensation under the indemnification provisions.<sup>1</sup>

Such a RIS process has not yet occurred, and we believe the final report should recommend progress on this front. We believe strengthening indemnity is crucial when considering better processes to enhance consumers' ability to exercise their rights when their product breaks or is faulty.

<sup>1</sup> <https://consumer.gov.au/consumer-affairs-forum/communiques/meeting-11-0>

### 4.1: VOIDING WARRANTIES FROM INDEPENDENT REPAIR

**Terms within Manufacturer warranties that automatically void such warranties if non authorised repairs are undertaken (including ‘warranty void if removed’ stickers) can deter consumers from using third party repair during the warranty period. The Commission found examples of such terms in warranties for mobile phones, gaming consoles, washing machines and high-end watches.**

**Even where these terms do not exist, many consumers appear to be under the mistaken belief that their warranties will be void if they undertake third party repair. They may also not be aware that consumer guarantees (that they are entitled to under the Australian Consumer Law) cannot be displaced by terms in warranties and are not extinguished due to independent repairs.**

#### **AADA RESPONSE**

In the automotive industry, Manufacturer warranties on motor vehicles generally do not contain voiding clauses. While these warranties do have conditions limiting coverage in the event that the product is damaged due to non authorised repairs, maintenance or modification, this is perfectly reasonable given the complexities of the modern-day motor vehicle and the costs associated with repairing defects caused by poor workmanship.

Manufacturer warranties generally specifically acknowledge the pre-eminence of the Australian Consumer Law and a number of them have a 60-day money back guarantee in the event that the vehicle is undrivable.

While the AADA takes the point that some consumers are operating under the mistaken belief that their warranties will be void if they undertake third party repair, this represents a failure in consumer education. Following the ACCC’s new car retail market study, we have encouraged our members to distribute a new car fact sheet for consumers.<sup>2</sup> The fact sheet provides customers with an understanding of their rights under the ACL and how these exceed but intersect with both Manufacturer warranties and extended warranties.

<sup>2</sup> <https://www.aada.asn.au/wp-content/uploads/2018/09/18.09.04-AADA-Dealer-Bulletin-ACCC-New-Car-Fact-Sheet-web-version.pdf>

## 6.1: PREMATURE OBSOLESCENCE IN AUSTRALIA

There is growing community concern in Australia and overseas that product lifespans are becoming unnecessarily short (premature obsolescence), with detrimental impacts on consumers and the environment.

Premature obsolescence is unlikely to be a significant problem in Australia.

- There is little evidence that Manufacturers are intentionally reducing product lifespans.
- Consumers often choose to upgrade their products well before they come to the end of their useful life or break.

Additional policies to prevent premature product obsolescence (in the form of product standards or expanded consumer protection laws to address planned obsolescence) would be unlikely to have net benefits to the community.

Further views and evidence (in response to information request 6.1) will help clarify the potential net benefits of a product labelling scheme in Australia.

### AADA RESPONSE

There is no evidence of the practice of premature obsolescence in the automotive industry where new cars have increased their lifespan over the years.

In 2021, the Australian Bureau of Statistics noted that the average age of all cars on the road is almost 11 years, up from 9.8 years in 1991. The increasing durability of motor vehicles in Australia has seen a growth in the length of the Manufacturer's warranty with five-years almost industry standard and some brands offering seven-years or more.

### 7.1: E-WASTE IS A SMALL BUT GROWING WASTE STREAM

Annual e-waste generation is growing relatively quickly (more than doubling by weight between 2009-10 and 2018-19), but is a small share (less than one per cent by weight) of total waste generated in Australia.

Information on e-waste is limited, but available data suggests that:

- The main sources of e-waste (by weight) over the past decade were tools, washing machines, air conditioners, small domestic appliances (such as adapters, irons and clocks), cooking appliances (such as food processors and grills), and cathode ray tube televisions.
- Solar panels and lithium-ion batteries are expected to generate growing quantities of e-waste over the coming decade.

Although e-waste contains some hazardous materials that can be harmful to the environment and human health, Australia's landfill management systems and regulations are generally effective in substantially reducing these impacts (particularly in newer and larger landfills).

#### AADA RESPONSE

The draft report rightfully flags the emergence of lithium-ion batteries as a growing cohort of e-waste in the coming years. The emergence of electric vehicles will bring with it batteries which are large and heavy, sometimes weighing in excess of 500kg, and are made up of several hundred individual lithium-ion cells.

These batteries contain hazardous materials and recycling them comes with risks. It will be necessary for Government and industry to ensure that a safe process exists for the disposal/recycling of these batteries. Recycling techniques will almost certainly improve in the coming years, but it will almost require an industry-led product stewardship approach.

In this regard the AADA is concerned about the current ability of individuals to import certain electric vehicles under the Australian Government's Specialist and Enthusiast Vehicle Scheme. Currently, the scheme allows for eligible electric vehicles up to eight-years old to be brought in unlimited numbers to Australia.

It is concerning that these used vehicles could be imported close to the end of their battery life as Australia risks becoming the final destination for these batteries while the country of origin is able to absolve itself of recycling/disposal obligations. It is also concerning that these vehicles can come in and no Manufacturer would be responsible for the provenance of these vehicles, meaning they will be outside of any recall and/or Manufacturer/supplier product stewardship scheme.

# DRAFT RECOMMENDATIONS

## 3.1: GUIDANCE ON REASONABLE DURABILITY OF PRODUCTS

**The Australian Competition and Consumer Commission (ACCC) should develop and publish estimates of the minimum expected durability for products within major categories of common household products.**

**The estimates would be a guide only to support application of the acceptable quality consumer guarantee in section 54 of the Australian Consumer Law. It could use ranges to take into account lower and higher value products in each category.**

**The ACCC guidance should be developed in consultation with State and Territory consumer law regulators, consumer groups and business groups representing product suppliers and Manufacturers, and should be updated over time.**

### AADA RESPONSE

In the automotive industry, estimating the minimum expected durability of motor vehicles will be a challenging task.

The lifespan of cars is highly dependent on the way the vehicle is used. Vehicle owners are all different and there are so many variables which would affect the lifespan of the car, including - servicing history, frequency of use, driving style, fuel quality, vehicle modifications, accident history, etc.

Adding to the complexity of assigning a lifespan to a modern-day motor vehicle is the fact that these machines are made up of a vast array of components which may have different lifespans. Batteries for example will have a different life expectancy to tyres, which may in turn have a different life expectancy to the reversing camera for example.

Furthermore, the automotive industry is different to other industries in that there is a strong culture of repair in the industry. There are no products which have a burgeoning aftermarket repair sector like the one that exists in the automotive industry. Consumers generally accept that car ownership is accompanied by the need for regular maintenance and occasional repair.

It is an incredibly competitive market particularly with the development of legislation mandating the sharing of repair information. Prescribing a minimum expected durability for products will potentially confuse consumers and develop a set of expectations which do currently not exist.

The automotive industry is nervous about any Government information requirement that provides an expectation for consumers about the quality and performance of the product. A recent VCAT ruling which has been upheld by the Victorian Supreme Court found that a car Dealer and the Manufacturer contravened section 18 of the ACL by engaging in misleading and deceptive conduct in representations made to a consumer on the fuel consumption label of a vehicle.

For context, the fuel consumption label is an Australian Design Rule and its placement on a new car is a requirement for a new car to be approved for first use in the Australian market. The label is informed by a laboratory test which is determined by the Australian Government.

The laboratory test allows new car buyers to compare fuel consumption across new cars, but it does not represent real world performance because every driver has a different driving style (this is made explicit on the label). By not affixing the label Dealers and OEMs would be breaching the law, but by affixing the label the court has found that Dealers and OEMs are misleading the consumer.

### 3.2: POWERS FOR REGULATORS TO ENFORCE GUARANTEES

We would argue that motor vehicles should be exempt from any minimum durability guide. The Manufacturer warranty already provides for a minimum guide to the durability but is commonly accepted that modern day motor vehicles can run smoothly long beyond the period of the warranty. In fact, durability in the Australian market is clearly a selling point for Manufacturers and warranties have become longer in recent years.

If the Government is inclined to use such guides to support consumer guarantees, they should be developed in conjunction with industry and provide broad ranges, given the many variables which can affect vehicle durability. These should not become defacto standards.

**State and Territory Governments should introduce alternative dispute resolution mechanisms to better resolve complaints about the consumer guarantees, such as compulsory conciliation or direction powers (as are used in South Australia and New South Wales).**

**To inform the most effective design and use of any alternative dispute resolution mechanism, appropriate cost-benefit analysis and sufficient regulator resourcing would be required prior to implementation.**

#### AADA RESPONSE

The AADA believes strengthening indemnity is crucial when considering better processes to enhance consumers' ability to exercise their rights when their product breaks or is faulty.

In August 2019 state and territory Consumer Affairs Minister's supported a public regulatory impact assessment of proposals to prohibit Manufacturers from failing to indemnify suppliers and prohibit retribution by Manufacturers against suppliers who seek compensation under the indemnification provisions. No action has occurred in the 24 months since and is important that this action is taken prior to introducing alternative dispute resolution mechanisms.



### 3.3: ENABLING A SUPER COMPLAINTS PROCESS

**The Australian Government should enable designated consumer groups to lodge ‘super complaints’ on systemic issues associated with access to consumer guarantees, with the complaints to be fast tracked and responded to by the Australian Competition and Consumer Commission (ACCC).**

**The Australian Government should design the super complaints system in consultation with the ACCC, relevant State and Territory regulators and consumer groups. The system should be underpinned by sound operational principles – including criteria for the assignment (or removal) of designated consumer bodies, evidentiary requirements to support a complaint, and the process and time period by which the ACCC should respond.**

The ability to lodge complaints clearly exists and one could argue that the ACCC is already benefitting from the additional intelligence brought forward by consumer groups. It appears a system of super complaints allows prescribed consumer groups to have direct line to the ACCC and requires the ACCC to formally respond and outline a course of action to respond to the complaint. The key motivation seems to be dissatisfaction with the ACCC’s response to current complaints.

The ACCC would receive tens of thousands of complaints each year and the question should be asked, would we not be better served resourcing the regulators complaints department so that it could identify trends which could then inform their enforcement priorities.

The AADA is concerned that the draft recommendation does not specify that consultation on a super complaints system will include industry. We believe OEMs and suppliers should form part of the consultations on any super complaints system. The operational principles, criteria for determining which bodies are to be designated, evidentiary requirements and timings are all issues which industry should be able to weigh in on if this recommendation is to proceed.

#### AADA RESPONSE

Consumer groups already have the ability to bring forth complaints on behalf of a class of customer to the ACCC<sup>3,4</sup>. In the automotive industry the ACCC justified is new car retail market on the basis of complaints received by consumers.<sup>5</sup> While it is not a complaint handling body, it is assumed that complaints received by the ACCC under the existing system go some way toward informing their compliance and enforcement policy and priorities.

<sup>3</sup> <https://www.choice.com.au/consumer-advocacy/policy-submissions/2020/august/complaint-to-the-acc-cc-about-tinder-misuse-of-data-and-discriminatory-pricing>

<sup>4</sup> <https://www.choice.com.au/travel/on-holidays/airlines/articles/choice-lodges-airline-super-complaint-with-acc-061216>

<sup>5</sup> <https://www.accc.gov.au/media-release/accc-launches-market-study-into-new-car-retailing-industry>

## 4.1: EVALUATE MOTOR VEHICLE INFORMATION SHARING SCHEME

The Australian Government should evaluate the Motor Vehicle Service and Repair Information Sharing Scheme that is designed to improve access to repair information, once it has been in operation for three years.

The evaluation should focus on compliance with the scheme, the costs imposed on Manufacturers, the benefits to independent repairers and consumers, and any implementation issues that require changes to the scheme, including consideration of whether the scheme should continue.

### AADA RESPONSE

The AADA agrees that the scheme should be reviewed after three years. The AADA did not agree that there was a need for a mandatory data sharing law, but we have accepted that such a positive obligation enjoys broad based support from the majority of legislators. As a result, the AADA has decided to cooperate with the Government and give effect to these laws.

## 4.2: ADDITIONAL MANDATORY WARRANTY TEXT

The Australian Government should amend r. 90 of the Competition and Consumer Regulations 2010, to require Manufacturer warranties ('warranties against defect') on goods to include text (located in a prominent position in the warranty) stating that entitlements to consumer guarantees under the Australian Consumer Law do not require consumers to use authorised repair services or spare parts.

### AADA RESPONSE

Our understanding is that voiding terms are not a problem in the automotive industry and thus we are not opposed to provisions similar to those which exist in the United States. We believe the evidence shows that automotive Manufacturers have been extending the length of their warranties in recent years while not using the voiding terms discussed in this paper.

Manufacturers should be allowed to include warranty terms limiting Manufacturer and Dealer liability in the event of damage caused by unauthorised repairs or parts.

# INFORMATION REQUEST

## 3.1: REPAIR FACILITIES, SPARE PARTS AND SOFTWARE UPDATES

To better understand whether consumers have reasonable access to repair facilities, spare parts and software updates, the Commission is seeking further information on:

- **Whether consumers have faced difficulties accessing spare parts or repair facilities under guarantees when their product breaks or develops a fault, including specific examples of the type and age of the product, and the costs incurred by the consumer.**
- **Costs and benefits of businesses being required to hold physical spare parts or operate repair facilities for fixed periods of time.**
- **Whether consumers are experiencing problems using their products due to a software fault or lack of software updates, including specific examples where Manufacturers have not addressed the problem because of claims that it is not covered by consumer guarantees.**
- **The costs and benefits of requiring that software updates be provided by Manufacturers for a reasonable period of time after the product has been purchased.**

### AADA RESPONSE

The automotive industry has a good track record of providing spare parts to customers. Dealers through their franchise agreements are required to hold a minimum level of spare parts to service their customers. There are examples of when the supply chain is tested such as the Takata airbag recall, but even in this scenario which was global in nature, the industry managed to respond and make available replacement airbags for all the affected cars.

One concern is an example of when a major Manufacturer withdraws from the Australian market. In February 2020, General Motors withdrew the Holden brand from Australia. There remain approximately 1.5 million registered Holdens on Australian roads and while General Motors has made a commitment to honour its obligations to these owners for the next decade, this is something that will need to be monitored. Over the years we have seen a number of brands come and go from our market and the Commission may consider some obligations for car companies that leave our market in terms of making spare parts available for a defined period of time.

### 4.1: REPAIR FACILITIES, SPARE PARTS AND SOFTWARE UPDATES

The Commission is seeking feedback and evidence on its preliminary assessment of consumer harm (chapter 4) in repair markets for agricultural machinery, mobile phones and tablets. In particular:

- is there any evidence of systematic differences in quality, safety or security between authorised and third-party repairers? If so, what is the cost to Manufacturers (for example, damaged brand reputation, determining the cause of a fault, or other liability issues)?
- What is the size of the repair market compared to the primary market? What proportion of repairs are conducted by authorised repairers?
- How difficult is it for consumers to estimate the lifecycle costs of these products at the time of purchase?
- To what extent are consumers locked in to using authorised repairers (for example, can consumers easily switch to other products or non Manufacturer repair supplies)?
- Is competition in the primary market sufficient to compensate consumers for any harm in the repair market (as indicated by low concentration and/or barriers to entry)?
- To what extent are consumers harmed by less choice, high transportation or travel costs, delays, and inconvenience, particularly in regional and remote locations?

The commission is also interested in evidence of where there is substantial consumer harm in other repair markets, including but not limited to medical equipment and high end watches (which were raised as areas of concern by participants to this inquiry) as well as construction machinery.

#### AADA RESPONSE

AADA is unable to offer insights into agricultural machinery, mobile phones, and tablets.

### 4.2: A POSITIVE OBLIGATION TO PROVIDE ACCESS TO REPAIR SUPPLIES

The Commission is seeking feedback and evidence on the costs and benefits of different approaches to designing and implementing a positive obligation on original equipment Manufacturers to provide access to repair supplies to third-party repairers. In particular:

- Evidence on the effectiveness of positive obligation schemes overseas (such as motor vehicle repair information schemes in the United States and Europe, and spare parts requirements in Europe).
- Should a positive obligation be applied across all product markets or targeted towards particular product markets? If so, which product markets, and why?
- Should a positive obligation mandate access to all repair supplies or a subset of repair supplies (such as repair information, spare parts, or diagnostic tools)?
- How should a positive obligation be implemented and enforced in practice?

#### AADA RESPONSE

The AADA has no view on whether a positive obligation should be applied to all product markets. Our Association has now accepted that such an obligation will be applied to the repair information in the automotive market. It is too soon to ascertain the costs and the benefits of the system which been developed in Australia and the benefits of the legislated path which is being implemented. The AADA suggests that the review of the sharing of Automotive Repair information scheme recommended by the Commission's review will provide insights into these questions and provide lessons for other industries.

## 4.3: A PROHIBITION ON WARRANTY VOID TERMS

The Commission is considering recommending provisions similar to the Magnuson-Moss Warranty Act in the United States, which prohibit Manufacturer warranties from containing terms that require consumers to use authorised repair services or parts to keep their warranty coverage. We are seeking feedback and evidence on the costs and benefits of this approach. In particular:

- **Would Manufacturers respond by increasing product prices or making their warranties less generous? Would this latter change have any practical impact on consumers given they are also covered for defects under consumer guarantees?**
- **How could such a prohibition be designed and communicated to ensure that consumers are aware that voiding terms are now prohibited?**
- **How could the prohibition be designed to limit Manufacturer liability for damage beyond their control? For example, the Magnuson-Moss Warranty Act permits warranty terms that limit Manufacturer liability for damage caused by unauthorised repairs or parts, if they can demonstrate third-party fault.**

**In a similar vein, should terms within end-user license agreements that purport to restrict repair related activities (discouraging third-party repair) also be prohibited? Is a disclosure as proposed under draft recommendation 4.2 sufficient or is a legislative prohibition required?**

### AADA RESPONSE

Our understanding is that voiding terms are not a problem in the automotive industry and thus we are not opposed to provisions similar to those which exist in the United States. We believe the evidence shows that automotive Manufacturers have been extending the length of their warranties in recent years while not using the voiding terms discussed in this paper.

In terms of educating consumers of the fact that voiding terms are prohibited, this should be the work of the ACCC and consumer organisations. It is not the role of industry to educate consumers on their consumer law rights, even though we have demonstrated that are willing to work with the ACCC to improve their understanding.

We believe it is essential that warranty terms limiting Manufacturer and Dealer liability in the event of damage caused by unauthorised repairs or parts.

### 6.1: PRODUCT LABELLING SCHEME

**The Commission is seeking further evidence on the significance of information gaps that might contribute to premature obsolescence, including:**

- **The specific type of information gaps (such as on product repairability, durability, or the environmental impacts of products) that prevent consumers from making informed purchase decisions**
- **The significance of these information gaps (for example, the cost to consumers from obtaining information independently)**
- **Evidence that these gaps are undermining the efficient operation of the market (for example, evidence that consumers are systematically overestimating product durability and repairability when making purchase decisions)**
- **Whether these information gaps affect specific types of products more than others.**

**The Commission is also seeking input on how government and industry might work together to design a product labelling scheme to maximise the net benefits to consumers and the community.**

#### **AADA RESPONSE**

We do not believe there is an information shortfall for consumers looking to purchase a vehicle. The Manufacturer warranty serves as a de facto minimum durability rating and it is well understood that motor vehicles can last even decades beyond the Manufacturer warranty.

Our industry has recent experience with unintended consequences of a labelling scheme relating to the fuel consumption label which is mandated for each car sold on the Australia market. The label lists the results of a laboratory test determined by the Federal Government and the label itself cites that the results are not representative of fuel consumption in the real world, which is appropriate given the host of variables which can affect fuel consumption. Nevertheless, recently a consumer who claimed their vehicle had not achieved a similar performance to the label took both a Dealer and a Manufacturer to VCAT. Both VCAT and the Victorian Supreme Court has found the Dealer and the Manufacturer engaged in misleading and deceptive conduct under the ACL. A situation in which businesses are required by law to comply with a Government-designed fuel consumption test only then to be found to be misleading consumers is a prime example of the unintended consequences of labelling schemes.

# CONCLUSION

We would be happy to discuss and answer any questions about our submission. If you require further information or clarification in respect of any matters raised, please do not hesitate to contact us.

If you have any questions, please contact me on:

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