



EGLINTON BROS PTY LTD



Submission to the ACCC re Agricultural machinery: After-sales markets

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As a farm machinery dealer with 50 years' experience in this industry I am providing input to this submission & will comment point by point as per the discussion paper.

- 1) The first point that I would make in regard to this issue is that a farm machinery dealer is generally doing business with another business & so we are doing business to business transactions which are outside of the consumer laws & regulations. Many of the points & comments that are made by those who are critical of the farm machinery dealers are made by people who are business people & who should be making business decisions. They are not consumers who lack understanding of the industry but should be aware of the various aspects of purchasing machinery. These customers do the research & understand what they are buying & what they want it to do along with understanding what the service back up would be. If this point was upheld then there would be no need for an inquiry at all.
- 2) Many people look at a farm machinery dealer & consider that they make a lot of money & have no regard for their customers. That perception by some is quite false. In order to become a farm machinery dealer of most reputable brands there is a great deal of monetary input required as well as a great deal of long term commitment. A dealer has to either own or lease a premises that is considered to be large enough & modern enough to be able to sell & service a product as well as projecting a good image of the brand. That initial cost is very high. The dealer then has to be able to buy spare parts in sufficient quantities to be able to service the products that he sells. This cost is very high. The dealer has to buy special tools as mandated by the parent company in order to qualify for the ability to sell a particular product. The dealer has to employ sufficient staff who are qualified to work on the machinery that he sells & he also has to send staff to brand specific schools to learn about the product. That also is very costly. A dealer must have in place sufficient financial

arrangements so that he can pay for new product as well as carry used equipment on floor plan. This is a very high cost. The dealer signs a contract with a manufacturer which is long term & requires ongoing costs associated with that franchise agreement. The dealer will pay for signage, access to up to date parts listings & pricing, up to date technical information & must have computer capability that enables him to be able to communicate with the parent company. This also is very expensive & an ongoing cost. Along with this is the cost of communication itself which is high due to the many functions that are involved with sales, parts, service & daily communications with the parent company & which must be available to all relevant staff in the dealership. We then have the need to have sales vehicles & service vehicles sufficient in number to service the area in which we work. This cost is very high. There are also the extra costs of insurance, work cover levies etc. They too are very high. It is important that these fixed costs are taken into account before we begin to address the concerns & comments made by those who want to simply use the dealer for free information, tools or advice & replace the dealer outlet with independent technicians or non-genuine parts. If the dealer is undermined by people who have no similar costly overheads but use the dealer who has made costly decisions in order to service his customers so that these independents have access to technical advice, special tools, & as well as charging a lot less in labour rate because their overheads are very low by comparison, then the dealer will go out of business. That means the customer will ultimately suffer. The dealer will no longer be able to be there as a source of free information or as a backup for their parts etc. If dealers go out of business there will be less competition & it will lead to a monopoly or the loss of any local dealer.

- 3) There is a suggestion that it is not right for a dealer to have a specific area of responsibility. The reality is that a dealer is given an area of responsibility because it is for the benefit of the customers in that area. If dealers look after the customers who are nearer to them & in a specific area then the customer will get good service, service at less cost due to less travelling time & they will get long term personal service which is very good. If a dealer sells randomly & has to travel large distances & a neighbouring dealer has to do the same, then they will cherry pick & customers will lose out. If a dealer looks after customers close to the dealership, which is what an area of responsibility gives us, then the customer gets custom service at the best cost. To suggest that an area of responsibility reduces competition or service is incorrect. Most dealers of a particular brand do not need competition from another dealer of the same brand since all the other brands are also looking for that business & so competition is very high. This drives best prices for a customer. To suggest otherwise is not facing the reality of the markets.

- 4) Farmers know that dealers want their business so they use the various brands to push the lowest prices from the particular dealer that they wish to deal with. The dealer never knows what a customer will ultimately buy. However the customer gets prices from various brand dealers & uses the lower prices to push for the best deal. This may include a trade in & often the trade in is traded by a dealer at too high a price due to this market practice. For a customer to then suggest that they are hard done by when they cannot get all that they expect from a product & complain that they do not get backed up by warranty when they do in fact get company warranty but have also gained a product that has been sold to them at very good value because they have often been given higher than market value for their trade in. We need also to take into account that often a customer does not reveal that a trade in has a problem that they know about which turns out to be very costly to the dealer. One wonders if the dealer who is actually buying a trade in from another business could actually claim the cost of an unrevealed failure in a trade in from the customer who sold it to them & call it warranty. As I read the complaints that are listed in the ACCC discussion paper it seems that business customers want a one way street where they get all the warranty claims that they want regardless of time or hours used but want no responsibility for trade ins given to a dealer that have costly repairs. There are times that it is the customer who complains about warranty problems who is most likely to be guilty of passing a problem on to a dealer or to another customer.
- 5) The discussion paper refers to Company warranties. It seems that there is a lack of understanding regarding warranty policies from major suppliers. Most farm machinery will have at least 12 months warranty. Tractors these days often have 24 months or 2000 hours with extended warranty either offered or as a part of a retail sale. Some extended warranties are 5 years or 4000 hours. The extended warranties are limited to engine & power train failures & include the payment of an excess similar to an insurance policy. The warranty period & the extended warranties are very good. I find it hard to understand why a customer complains about the warranties given by major manufacturers in the current times. The companies themselves want satisfied customers. Harvesters usually have a 12 month coverage with a 2 year limited engine & power train warranty. Not only that, but most manufacturers will conduct what is called a product improvement program for a failure that is considered to be found in sufficient numbers to be a common problem. The problem with this is that every customer considers that a problem in their machine should be a product improvement program regardless of time that they have had the product or regardless of the hours that they have worked the product or, more importantly, regardless of how they have abused the operation of the product or neglected the service requirements of the

product thus causing problems of their own making. The ACCC needs to take these things into account when considering the suggested complaints about company warranty.

- 6) Companies also make allowance for out of warranty issues based on their assessment & will do public relations policies where a customer may get what some call special allowance. Obviously, not all customer concerns are treated this way, but it needs to be noted that industry tries to meet customer concerns where they consider that there is sufficient reason to do so when a machine failure takes place outside of a warranty time frame. When this takes place it is not an admission of liability for warranty but a good will action.
- 7) It needs to be noted against customer complaints as recorded in the discussion paper that many customers do not read operator's manuals & do not follow the operating procedures or follow servicing procedures. This means that customer complaints can be problems that they have generated by their own neglect, not because there has been a fault in the product. Customer expectation is often unrealistic because they consider that nothing should ever go wrong. The fact that companies warrant their products indicates that they recognise that sometimes failures will take place & that they cover such possibilities with a time frame or hours of use. It cannot be unlimited time or usage as some people expect.
- 8) Dealers will go through the correct operation of a machine with a customer at delivery. The customer will be given the operator's manual & shown how to reference the manual. The customer then has the opportunity to contact the dealer with questions. The warranty policy is explained at delivery. There should be no reason to suggest that this does not take place. The problem today is that there is so much to take in & a customer often does not read the operator's manual or take the time to read the warranty statement. There is no excuse for a customer to say that they do not know about warranty or about how a machine should be operated or serviced. Not only that, but these days there are many other ways to get information like You Tube clips that go through machine operation.
- 9) Some customers have difficulty with modern technology. One notes the comments re software & data in the discussion paper. The first type of software & data issue relates to the software used in autotrac applications & data collection during in field applications. Customers often rely on a dealer to do the processes for them rather than read the manuals & learn how to do things for themselves. These things are not warranty issues but learning issues for customers who need to take responsibility for their own learning rather than just ring a dealer every time they cannot remember how to do something & then complain that the item is not working as it should & call it a warranty issue. We know that dealers

spend inordinate amounts of time on the phone for customers who find it easier to ring a dealer & take up their time rather than look into a manual for themselves & find the answer. There is an expectation that such use of the dealer is free or at least should be when in fact the dealer has to train people who have to learn the systems just like the customer should & is quite entitled to charge for the service that is rendered to such a customer.

- 10) The second software type is related to software that is loaded onto controllers on tractors, harvesters & other machines. It is not practical to allow customers or independents to be able to load software or to have access to this process. The controllers such as an engine control unit or a central control unit or one of many other control units on a machine have software that has been specifically developed by the manufacturer for a specific product. If just anyone was able to tamper with this or allowed to load new software without correct training & controls from the company then many expensive things might go wrong. Software is used to control a machine via the hardware called a controller. If it is incorrectly loaded it can cause problems. If it is incorrectly loaded it cannot necessarily be reversed. If it is incorrectly loaded it may cause irreversible damage to a very expensive controller. If a customer or independent caused a controller to be inoperative would they then be willing to pay the cost of a \$2,000-\$5,000 controller just because they did not have the correct equipment to download it or did it incorrectly? I suggest that they would claim that the controller was faulty or that the company should pay for their mistake. There is a reason why manufacturers do not allow just anybody to do this type of work because it requires training, equipment designed for the task & expertise all of which are required at dealer level. It is to protect the customer from costly mistakes.
- 11) The manufacturers also develop the software that is used on their products & this requires much development & cost on their behalf. It is their intellectual property & so should not be just open for all & sundry to have the ability to have access to this software. Not only that, but the companies develop their own peculiar software so that they can enter into competition with the other manufacturers. One wonders why the ACCC would allow people to suggest that this type of competition should be reduced simply because some people want to have the ability to access & use that software for free themselves. That is not competition. It is theft. The comments that are reported to have been made by farmers in this discussion paper suggest that they do not want competition among the various manufacturers but want all manufacturers to be the same so that there are no distinguishing features in a particular product. Being the ACCC I wonder why such suggestions that actually reduce competition are even being considered by the ACCC when the current market

situation encourages aggressive competition among manufacturers & the customer base is demanding such competition.

- 12) We also know that many manufacturers are meeting an ISO standard with their technical products so that one manufacturer's equipment will now communicate with another manufacturer's equipment. As time goes on this will be more common. The concern that manufacturers lock people into their own product lines with technology is not facing the reality of what is happening in this field where different manufacturer's products work with another manufacturer's product.
- 13) There is a concern noted in the discussion paper (page 15) that a customer is unable to take data from one manufacturer to another without great difficulty or cost. The reality is that a customer has chosen one brand at one time & if they wish to change then there are changeover costs just the same as other hardware that may need changing with an equipment change. It is a cost of doing business & it is unreasonable to suggest that manufacturers should meet this concern. Not only that, but a customer is able to save data from one system & then enter that data into another system. It may take time & effort but many of the objections to this are based on the fact that the customer wants it to be so easy at some other person's cost rather than their own. However, data can be saved & then re-entered into another system. It is not lost. Not only that, but a customer is not locked into one manufacturer but can change. This is not stopping competition.
- 14) We are aware that computing is constantly changing but the ACCC is not expressing any concerns about computer companies changing their products & software often & making products outdated in only a few years or less. Why then would the ACCC be concerned that farm machinery manufacturers who use controllers which are small computers in their products would be changing these along with software that drives them on a frequent basis as the market drives innovation & competition drives the speed with which these things change. The customer demands are actually what cause the rapid change that we see in machinery controllers & software.
- 15) The massive amount of technology that is built into a tractor or some other farm machine today creates a problem for a customer who is unable to comprehend all the functions that are at his or her fingertips. This in itself causes frustration & leads some to complain that a manufacturer is not helping them to operate the technology. However, the problem is the limitation of a person's ability to understand the technology or their unwillingness to study the operator's manual & learn how to do the things that are available to him. Often when we have given extensive training the customer simply has not taken it in & has not comprehended the instruction. Instead of then going back & reading

about it in the manuals the customer puts up with his limitation & also complains about the equipment when there is no fault in the equipment or the dealer or manufacturer. The dealers run schools for owners & also do one on one training with a new owner so there is ample opportunity for a customer to learn about the machinery.

- 16) On page 7 there is a note about the car industry. The retail car industry is different to the agricultural machinery industry. Car dealers face a dismal future. There is perception that car dealers make a lot of money at the expense of the general public. That is a falsehood. Car dealers make low returns on sales & rely on workshop sales to stay viable in business. The costs to run a dealership are huge. If you keep making one sided laws like this that make it hard for them then they will cease to exist & the customer will have no competition & will have no place to take their car to for repairs. Consumer law is weighted against a car dealer. The consumer law that applies to farm machinery dealers when we sell to a consumer & not a commercial business is also weighted against the dealer & is weighted towards the customer regardless of fairness. Consumer guarantees for goods priced over \$40,000 do not protect dealers but allow consumers to have effectively unlimited warranty & lead to totally unfair situations to occur to the detriment of the dealer who has to make his business viable. This is totally unfair & should be changed. This type of thing should never be introduced into the farm machinery industry where we are selling to commercial businesses & commercial businesses sell their machines to us as trade-ins.
- 17) On page 7 & 8 there is mention made of customers not being able to use independent repairers. Independent repairers are able to work on machinery in general service work & on machinery once warranty period has expired. It is important that during warranty period that the dealer has the ability to deal with warranty issues. There are a number of things to consider here. The first is that a manufacturer is the body that warrants a product & they warrant it through a designated dealer who has staff who have been trained to work on that machinery, has purchased special tools so that they can do specialised work on that machine, & processes the warranty claim at his cost as a part of being a dealer. The independent has no training, no special tools, no agreement with a company to process warranties, has not paid for specialised training, not been willing to purchase special tools & has not had to pay for technical information. A dealer under the dealer agreement has to pay for parts information on a regular basis, pay for technical information on a regular basis, pay for special tools that are mandated in order to sell a product, send staff at high dealer cost to technical schools & be instructed in the way to repair & diagnose faults, buy service vehicles & maintain them in sufficient numbers so as to service a large customer base, pay wages for a large

number of technicians, parts people, service administration people & management staff, pay for insurance that covers things like faulty workmanship etc etc. The independent usually is a lone worker or has only one or two working for him & has none of the overhead costs that a manufacturer demands of a dealer before they can become a dealer. The manufacturer demands this of a dealer so that there is a very good dealer network in place to back up the product & the customers who buy that product. If an independent was able to bypass a dealer & do warranty work without all of the safeguards that are put in place by a manufacturer when they appoint a dealer or all of the costs incurred by a dealer in becoming a dealer then we have the situation where a dealer will ultimately be beaten by an independent on price charged & dealers will go out of business because they have born all the costs for setting up a dealership with good service but have no ability to gain business to cover those costs. Not only that but it will mean that there is no point in having dealers. That in turn will lead to poor service for a customer & competition will actually be less since one large monopoly with big financial backing will be all that will be left. Many independents do not remain long term in business but being a dealer is a long term commitment for decades, not short term. An independent cannot cover a number of customers at one time whereas a dealer has a number of staff who are able to deal with a number of customers at one time. The suggestion that an independent can address a repair more quickly than a dealer is not the rule but an isolated exception to the rule. We need to remember that there will always be times when a failure on a machine cannot be addressed immediately because there may be a number of other customers needing repairs on the same day. An independent who is a sole operator is in the same situation but worse if a number of failures occur on the same day since he has no ability like a dealer to designate a number of technicians to the jobs that have come up. A dealer will have a number of technicians who are able to address field repairs.

- 18) On page 8 there is a comment that manufacturers restrict access to diagnostic tools, & information to dealers. There is a reason for this & I have covered it in the item above.
- 19) On page 8 there is a comment that manufacturers refuse to pay independents for warranty repairs. Once again there is a reason for this. Warranty is set up by the manufacturer. The manufacturer is the one paying for repairs under warranty & the dealer often does such a repair based on a designated time for that repair even though that repair may take a lot longer than the company has designated which means that the dealer also is paying for that warranty repair. An independent does not have dealer training so one has to question the independent's ability to correctly diagnose & the repair the machine. We have seen many an

instance where a person has had limited knowledge of a product & made a diagnosis based on their own experience which was an incorrect premise & so expensive parts were fitted which were not at fault then the part was removed & the customer or independent wanted to return those parts. For example, if the part is an electronic controller & the person diagnosing the problem has misdiagnosed the problem & fitted this controller worth say \$2,000 instead of finding the real problem in a low cost sensor, once it has been fitted it cannot be returned since the once fitted it may easily damage the component while uploading software or incorrectly connecting the controller so that it is now faulty & cannot be used. The customer or independent who has limited understanding or training on this equipment will want to return the component that may have been especially ordered in for them & expects the dealer to give them back their money & pay the cost for their mistake. This happens too often so manufacturers do not want customers or independents doing warranty work. Not only that, but if an independent or customer did warranty work what would they expect in payment? Would they want the whole time that they spent doing the job or would they be content as is the dealer with a designated time frame & a designated hourly rate rather than their hourly rate & their time taken to do the job? If they do not fix the problem due to faulty diagnosis or faulty workmanship will they expect the dealer/manufacturer to cover their mistake? I suggest that the independent or customer will want all the time paid for at their hourly rate which is not going to happen & that if they make a mistake they will want the dealer to pay for that mistake rather than reimbursing the dealer for a warranty job that they messed up. It is also probable that the independent will not have insurance to cover faulty workmanship so the customer & dealer both lose out. This concern & suggestion in your discussion paper needs to be thrown out as a bad idea before it creates more problems than it suggests it will cure.

- 20) The suggestion on page 8 that lower cost parts could be used in warranty are fraught with danger. We have seen people use what are perceived as lower cost items with similar quality only to find that the low-cost item is low quality. The manufacturer has quality criteria that it demands of its supplier so that it can supply those goods to a customer with a degree of confidence that the part will meet the requirements of service. The reputation of the Company is at stake here. They warrant their own product & they have the right to say what part goes into a warranty job so that the machine is not likely to fail again. Not only that, but under warranty the dealer/manufacturer is paying for the part & supplying the part free of charge to the customer so they should have the right to dictate the terms. Once a machine is out of warranty a customer or independent is able to buy whatever they like & fit it to the machine

but the quality of that item is then on their head, not the dealer or manufacturer. I have seen instances where a machine is out of warranty & a customer or independent has fitted lower priced parts that ultimately were proven to be less durable & then they wanted to blame the manufacturer for a low quality product based on the failure of a part that was not genuine.

21) In page 8 there is a suggestion that genuine parts are not available to an independent. A dealer will sell to a customer regardless of who they are. Parts are sold to customers or independents. The usual problem is that an independent wants to buy at a dealer price & so cut out a dealer who has spent the money stocking millions of dollars' worth of parts & who relies on the sale of those parts to recoup costs & to make a profit. The suggestion that a dealer inflates a price & makes an inordinate profit ignores the reality that there is a competitive market out there & a customer can go to any dealer & get a price & if one dealer is actually inflating his price the other dealers probably are not. This suggestion is without merit. The reality is that dealers put parts into stock & carry that cost so that they can service customers & not have to order in only as required. If a dealer has parts in stock a customer will have access immediately to the part & will not be held up. An independent will not carry stock & so relies on a dealer or some other supplier to supply the goods. The independent does not have to pay for stock, pay parts people, bear the cost of parts on shelf for lengthy periods. A dealer does this & so the cost will be a little higher than if an independent went to a single outlet warehouse selling lower priced imitation parts & had to get them freighted to his location on the day. In actual fact the dealer network is the best for a customer & the little extra that they perceive that they may pay is actually for their benefit seeing that dealers will have many parts in stock. Not only that, but manufacturers are very conscious of the competition so price the parts dealers buy so that they are very competitive. It is not factual that dealers are always dearer than other sources. It is simply a perception driven by comments such as those that are recorded here by customers who are quoted in this discussion paper. Those who have done the research often find that the dealer prices are as good as other sources.

22) On page 8 it is suggested that repair information is not available. In reality, technical repair manuals can be purchased. Those who complain about not having access to technical information usually want the information for free & do not want to pay for the information. The dealer has to pay for the information but the independent or customer wants the dealer to give that information to them for nothing. That is not just. The concern is not factual seeing that manuals can be purchased.

- 23) Specialised tools are bought at a high cost to the dealer. The dealer is not going to just lend or hire these costly tools to others who do not wish to spend the money for tools or who do not treat the tools with the same care that a dealer would. This too is an unjust expectation by customers & independents.
- 24) There is a concern on page 8 that a customer is a long distance from a dealer. When a purchase is made that distance factor has to be taken into account. A customer should have a backup plan rather than expect the dealer to just allow a customer or independent to deal with warranty failures. Where a customer talks it over with a dealer often a plan can be worked out so that a customer or an independent is able to do a low technical repair for the dealer. Parts can be supplied to a customer by the dealer if the dealer is prepared to do this. However, if the repair is a major one or a very technical one the reality is that neither the customer nor independent has the up to date knowledge on how to diagnose or repair the machine & it would be the wise thing to wait for a dealer to respond. In these circumstances one has to ask if the customer has made provision for failures so that he has a backup plan with a spare machine rather than demanding that a dealer try to do the impossible.
- 25) As stated on page 9 manufacturers do not void warranty if small or minor warranty repairs are made. Most dealers work with their customers. The manufacturers do surveys asking about customer satisfaction so they do all that they can to satisfy customers while at the same time maintaining the integrity of their warranty work. This must happen & not be compromised by the complaints of a very few customers or independents who do not want any rules to apply in order to keep a very good system which gives very good outcomes for customers.
- 26) Page 9 comments that independents make themselves available during peak periods & outside normal hours. The truth is that dealers all work during peak periods as well as making staff available outside normal hours. Many of us have worked the 12-16 hour days all of our life during peak periods & have been there after hours including public holidays & often when some customers have finished & gone on holidays. It does not mean that we are on standby for 24/7. We often work six long days but we are aware of the need for staff to have a break. If there is no break then we fail in OH&S. Some customers think that we should have staff on standby all night every day while they are working. This is not practical. If an independent works long hours & does not observe OH&S by taking a decent break to sleep or to eat then the customer using him may well be liable if there is an accident due to fatigue because he did not stop for a sleep or for meals. Some customers have an unreal expectation & do not really have any consideration for the human beings involved in servicing machinery. To use this as a reason to

bypass a dealer when a dealer does do the long hours is not reasonable or fair.

- 27) In answer to the ACCC question on page 9 the restrictions placed on repairs under warranty are reasonable & necessary. If we looked at the majority of our customers, they are satisfied with how it works. In my experience the ones who complain the most & who make it public through forums like this are the minority & they often are unreasonable with unrealistic expectations. They sometimes are hard to work with & will not accept the limitations of the system which we need in order to make it work for all customers, not just these people. If they break the system that the Companies have put in place which works really well then the result will be that the majority will suffer from a lesser service. It has taken years for the service systems & warranty back up to get to where it is today & it is a really good system even if there are areas where some argue that it could improve. The restrictions do achieve the balance between the needs of the purchaser & the commercial consideration of the manufacturer. The manufacturer competes with other manufacturers so you can be assured that competition drives improvement in these processes, not restrictive legislation which puts onerous legal obligation onto the dealer.
- 28) Once warranty term has expired any one can work on a customer's machine. There will be limitations due to special tools & diagnostic tools but these areas can be a trap for any who have enough knowledge to get them into trouble & not be able to correctly diagnose or repair. To force dealers to allow access to such tools may well lead to more expensive problems for the customer in the long term. I would discourage this. I have been a technician with 50 years' experience & seen examples of people with a little knowledge under the banner of an independent who have caused costly problems & have not fixed the original problem.
- 29) On page 11 there is a suggestion that the consumer law with goods priced over \$40,000 should be raised to a \$100,000 figure & applied to farm business. That is something that should not happen. In fact, most of us in the industry believe that the ACL should be changed to reduce the figure as it is now & be less able to be used by a disgruntled consumer who has an unrealistic expectation about warranty. There should not be an open-ended time frame such as seems to be the situation with consumer law. It should be time based or use based. With farm machinery we have a time based or use based. For example, with a tractor for some manufacturers we have 24 months' time or 2000 hours use as a base warranty period. That works. There is no ambiguity, no stretching the time out with undefined parameters. The companies adjudicate the merit of a warranty claim & this must happen or we get fraudulent claims where abuse of machinery has happened, lack of service has happened, a

part from another machine has been put on a new machine in order to get warranty when it is not a true warranty issue. The manufacturers have a decent time or use base for warranty built into the purchase of a machine. If a customer is buying a lawn tractor the warranty on some products with some manufacturers is 24 months or 150 hours of use with normal wear & tear items excluded. That is very reasonable. If the lawn tractor is used in commercial mowing but is considered a residential mower then the warranty is less e.g. perhaps 6 months, which is again reasonable if you take into account the usage for commercial lawn mowing. For a lawn tractor or mower that is designated commercial use the warranty is back to the time frame or usage of the likes of tractors etc. You cannot have indefinite warranty. We know that some consumers abuse a product & then want to blame it on a faulty product. There is no definite parameter with ACL but only a subjective one based on a customer's perception & expectation of what should be warranty. This situation is totally unreasonable. Once a product is out of warranty the customer should take responsibility for his purchase & not expect that a manufacturer/dealer will just meet all of his demands if a repair is required.

- 30) On page 11 there is a suggestion that some purchasers do not understand the warranty & what is warranted. I suggest that many people simply do not take the time to read & understand the warranty terms which are always given or are written in one of the publications. If they are not given to the customer then the customer can ask for the terms so that they can have a copy. To plead that they do not know is no defence nor is it an argument that things need to change from a dealer/manufacturer perspective. The customer needs to do the homework for himself or herself so that they know what is covered by warranty. My customers either ask or we tell them but there is no excuse on a customer's behalf to plead ignorance. I note that there is a suggestion that a purchaser should have the ability to negotiate a warranty term. While there is that ability based on a dealer's own actions outside of a manufacturer's warranty, there should not be a mandated ability by law. The manufacturer gives a warranty & the customer knows what that is & may choose to buy another brand product that lines up with his desired warranty term if he so wishes. That is competition. Let competition bring about change, not legislation if this is a real issue. Do not spoil a good warranty system that is in place now for most manufacturers & dealers.
- 31) There is a suggestion on page 12 that manufacturers & dealers should be liable for consequential losses as a part of the warranty process. This is inordinate & should never be considered. Some people are ever ready to use legal options to recoup any losses they feel that they have incurred as a result of a product not working as they expected or if there is a failure, particularly at a critical time in a season. Most dealers do

repairs as quickly as possible, but they employ staff who are human & who need to have time for rest, meals etc. They cannot just work 24/7 as some people expect as if they are an automaton or a machine. OH&S would be violated. Not only that but if there is a number of breakdowns at the same time it is impossible to cover all of them at one time so someone will have to wait. If customers had the ability to claim for consequential losses farm machinery dealers would potentially go out of business with one serious claim for crop loss. This would be counterproductive for continuous dealerships delivering service to a large customer base & would also lead to a monopoly where one large group would be left & they would charge huge labour rates so that they could insure against claims for consequential losses. Competition would simply not be there. This suggestion must not be allowed to happen. It also leaves the field open for customers who have made a mistake in operating a machine to fall back on a dealer & blame the dealer or the product so as to pass the cost on to a third party & not meet their own responsibility. I have had customers threaten such action for crop losses when I actually found that it was due to their own action & mistake that they had a loss. The customer has to be responsible for a purchase that they have made & not think that everything that goes wrong can be brought back to a warranty claim. The current ACL law is in need of changing so that there is more fairness in it rather than being so biased in favour of a consumer & disadvantaging a business. There is a reference in this page to defects outside the warranty period. How does one determine that a failure is simply a defect? Who defines a defect so that it is considered a warranty? How does one determine a time frame or use a parameter that a dealer can work on rather than an indefinite time or use that is arbitrary based on a customer's belief of what is a reasonable time or use? How can that be even considered fair & equitable as if only dealers or manufacturers are at fault & customers are always at a disadvantage & not at fault or that customers do not take an unfair advantage of a dealer? It is about time that this inequity was addressed. The reality is that items used will wear out & warranty is not unlimited. Where the law gives any suggestion that a customer can make a claim against a dealer or a manufacturer then people will be encouraged to make outlandish claims in the court.

- 32) On page 13 there is a comment that suggests that there is a problem with a manufacturer giving a dealer an area of responsibility. The reality is that a dealer area is to the benefit of the customer. When we had the situation where a dealer could roam about the country with no particular area of responsibility then customers would be far flung & have little personal service. The whole approach of this discussion is to try to have close contact with a customer, have warranty problems sorted out quickly so that a customer can get back into the field, or have a repair carried out

as quickly as possible in a seasonal operation & these scenarios are best covered by a dealer who has an area of responsibility & who actually is in the area close to the customer. To suggest that dealers should not have such areas of responsibility is counterproductive to some of the concerns already covered in this discussion paper. We also need to note that most manufacturers do not enforce areas of responsibility since it is contrary to ACCC laws. Manufacturers can give AOR's but cannot enforce them. Common sense calls for dealers to look after customers close to them in their areas so it is driven by customer satisfaction & competition in that regard. If a customer is a long way away from the selling dealer then there is always the option of another dealer doing a job. Most manufacturers do not prevent other dealers from doing a warranty claim on a customer product regardless of where they bought it. A customer may have to pay for some items if another dealer is asked to do the claims since that dealer has no income from the initial sale to compensate for incidentals that are not covered in warranty but there is no restriction in general for a selling dealer to be the one who is the only one allowed to do warranty work. For example, a contract harvester may be in another dealer's territory & he can get another dealer to do warranty on his machine. Or a customer may have farms in two different locations a long way away from each other & differing dealers would be able to look after his machines.

- 33) On page 13 there is a reference to transport costs or travelling times. When a dealer sells a machine that dealer cannot cover transport costs or travelling costs under warranty if a customer is a long distance from a dealership. If this had to happen then products would increase in cost to cover this added burden. If a customer is a long distance from a dealer then they need to take this into account when purchasing machinery & factor this in.
- 34) On page 14 there is a suggestion that geographical restrictions on dealerships may limit competition for repairs. As covered in a previous comment in this submission, areas of responsibility are necessary in order to give a customer a good service base as well as making sure that a dealer has sufficient business so that the business is viable & that the dealer does not go broke. A dealer who goes out of business is of no use to anyone. We have seen times when dealerships have disappeared due to bankruptcy & the impact on customer service & community employment is massive. The last thing that is needed is for more legal liability on a dealership that adds to the overhead costs & ultimately leads to a dealership becoming unviable & who then goes broke. Some of the customer complaints & suggestions seen in this discussion paper would do just that.

- 35) On page 15 there is a comment that data cannot be stored by a customer but that it is locked up in a particular manufacturer's product. That is not correct. Any data collected is the customer's & that can be stored in the place of the customer's choice. There is a comment that a manufacturer is producing equipment that will be compatible only with other machinery that they produce. One would have thought that in a competitive market that this would be expected & a benefit, not a detractor for a customer. However, if a customer has mixed brands of machinery that are current with current technology they can now be used together. This has been the case for some time. It would seem that some people do not understand that older machinery with older technology simply cannot be compatible with later machines with later technology. That is the fact with computing & machinery technology is no different. The concern stated here indicates an ignorance of what is happening in the market place as more & more machinery of different brands are being produced that have ISO compatibility & so will work together. Tractors coupled to different brand air seeders or pull type sprayers are classic examples.
- 36) On page 15 there is a comment about data collection & contractual terms. There will always be licences just as there are licences with computer people like Microsoft. How many people read the licences attached to computer software? Why should there be a question like this regarding farm machinery & data collection. If a customer collects data using one manufacturer's machinery they will have that data stored on such a way that they can retrieve it & then transfer it to another means of storing it. The licences prevent abuse of the use of that data collection.
- 37) There was a recent Landline feature on the right to repair which spoke about some of these issues. It was interesting to note that some people wanted the right to electronic diagnosis service tools & other items that have been used by dealers. In considering this desire for the ability to diagnose & repair in the same way as a dealer one has to ask the question, how competent are the people who wish to use these tools & do the repairs? If a customer or independent has some ability but in reality does not really know what they are doing, will they take responsibility for failing to do the job correctly & if there is a costly fault generated will they take responsibility for this & not want the dealer or manufacturer to pay for their mistake? We have had people in the past who have some skill in the repair of machinery but were out of their depth with some of the components in our machines & made incorrect diagnoses which were very costly. In some cases they wanted us to order in specific parts quickly using high cost freight. They were parts that they had incorrectly identified as faulty & when what they fitted did not work because they had misdiagnosed the fault, they wanted us to take the expensive part

back into stock. The part was not fast moving & so the dealer would have been stuck with an expensive part. Not only that but they did not want to pay for air freight because the part they chose to order was not the problem. When they tried to return the parts that were not needed the packaging was soiled & damaged so that it was not in a saleable condition. This is the type of problem we face if customers are to have access to & use our tools for diagnosis & they do not know how to read manuals or interpret diagnostic tools. We also have the problem of people currently going to the web where parts manuals are available. These people have no understanding of how parts manuals are set out & have no understanding of the fact that there are serial number breaks in models which means that a machine with a higher serial number from a certain serial number point may have different parts from an earlier serial numbered product. Unless people are aware of this & keep up to date with these things they will make mistakes & ask dealers to order incorrect parts based on their diagnosis & their parts research. Will customers who have access to parts & technical information who make value judgements in the diagnosis & ordering of parts or the repair of components & ordering of parts for those components expect the dealer to pay for their mistakes? By suggesting that they want to do the task of the dealer in diagnosis, repair & ordering of parts they will have to bear responsibility for the risks that they face & they are high risks & expensive ones. Dealers will not be prepared to take back incorrectly ordered parts based on customer research into parts, or customer input & request for parts to be ordered. Many do not understand the level of skill required in a dealership so that all processes result in correct diagnosis, correct ordering of correct parts & correct repair procedures. Too many people know a little but enough to get them into trouble because they do not know enough to do these things correctly. That is why we have dealerships that are backed up by the manufacturers with systems that work for the customer. Please do not undermine the dealer networks.

- 38) The majority of farmers that we deal with are happy with the dealer networks & would not be party to some of the complaints & suggestions that we see here publicised in the discussion paper. Our experience is that very few farmers have these concerns while a very few farmers are very vocal & want to replace the dealer with an independent or do their own work. We have the vocal few who are never satisfied with a warranty policy & expect life time warranty which is unreasonable & unfair. The truth is that most of these vocal critics are not really capable of doing what dealers do in selling & servicing the products even though they may do some tasks & manage to do them successfully. As in all things there will be exceptions to this general statement but that is no reason to change the way things have progressed because the dealer groups today

are highly trained, very costly to set up & maintain & are very essential for long term competition & for long term service to the farming community. With the many challenges that dealers have to face such as drought, fire, floods, low commodity prices, high operating costs, & now the corona virus impacts it would be counterproductive to bring in more legislative liability to machinery dealers or to allow customers & independents to undermine dealerships with the suggestions seen in this discussion paper. One would hope that the ACCC will see that the concerns expressed by some farmers as reported in the discussion paper will not lead to any actions by the ACCC or by law makers but that you will see that the system works regardless of the few detractors & that if left to the market place, competition between manufacturers & dealers will lead to the best practical outcomes for all parties. We have seen how legislators who have been well meaning have introduced laws into the marketplace that have actually caused problems for the business world. This has led to less competitive conditions for customers. One has to remember that every time we face another law or some form of liability or red tape that our costs go up & they in turn must be passed onto the customer. Manufacturers & dealers do not have a bottomless pit of money & must make a profit in order to finance their operations or they go bankrupt. Recent history gives us examples of even large dealer groups who have been bankrupted due to drought, downturn in sales & service & all other costs that they had to face. Many of us have had to deal with these seasonal fluctuations as well as the many government regulations that relate to our industry. It is particularly important that in this discussion & its outcome that it is noted that this industry like all industries will be facing extra costs & less sales & service as a result of the problems brought upon us by the corona virus. We do not need extra problems, liabilities or costs brought upon us at this time. I am a member of the Farm Machinery & Industrial Dealers Association in SA & am currently the chairman of that body. As such I have had feedback from many dealers & understand the concerns of dealers who sell the different brands of machinery across the State & across Australia. I also have a good working relationship with farmer groups in this State of SA. My comments are made with an understanding across the broad spectrum of this industry & of the needs of all stakeholders. Please leave the system of repair & warranty as it currently is since it actually works & works well. Thankyou.