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## NEW CAR RETAILING INDUSTRY MARKET STUDY

Submission to the Australian Competition and  
Consumer Commission

### ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

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## INTRODUCTION

CHOICE appreciates the opportunity to provide the following comments to the ACCC to assist in its market study of new cars. CHOICE recently completed a significant research project into consumers' experiences in the new car market, which has been referenced in the ACCC's Issues Paper (CHOICE's Lemon Report).<sup>1</sup> We do not intend to repeat information already provided in that report, except to note that we remain concerned about the issues it raises.

### 1. Consumer guarantees, warranties and new cars

CHOICE's Lemon Report highlighted issues including misrepresentation of consumer guarantee rights particularly in relation to the heavy-handed use of non-disclosure agreements, difficulties in seeking redress and the frequency with which consumers experience major and minor failures with new cars. While we will not repeat the bulk of the report here, it is worthwhile emphasising that more than 50% of all respondents to our survey had experienced minor problems with their new cars in the first few years of ownership. While major problems are also a concern, it is often these minor problems that cause consumers particular issues when seeking a remedy.

A related issue is problematic or misleading sales practices. Respondents to CHOICE's survey were unlikely to state that fraud or deception by salespeople was an issue, and by and large respondents reported that they would trust their dealer to provide them with a remedy if things were to go wrong. However, cases of potentially misleading advertising and poor sales practices have come to CHOICE's attention through our dispute resolution service, CHOICE Help.

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<sup>1</sup> 15 March 2016, CHOICE, 'Turning lemons into lemonade: consumer experiences in the new car market', available at <https://www.choice.com.au/transport/cars/general/articles/lemon-cars-and-consumer-law>

### **When leather isn't all it's cracked up to be: problems with optional extras and misleading sales**

CHOICE recently received an enquiry from a member, Adam\*, who paid a premium to have leather seats included in the purchase of his new Volkswagen Golf Cabriolet.

After 18 months of ordinary use, the driver's seat became cracked and damaged. The car was still under manufacturer's warranty, but when Adam sought a remedy he was initially told that the damage was ordinary 'wear and tear', and therefore not covered. Later, he was told the damage was "due to an external influence, not a manufacturer's fault".

There were several problems for Adam. The first is that it is reasonable to expect a car seat, leather or not, to last for more than 18 months without becoming visibly damaged and worn.

The second issue is that the seats were not actually leather. When CHOICE contacted the dealer on behalf of the customer, we were told that the "leather" seats are actually "leather appointed upholstery, which is a combination of genuine and artificial leather, however not wholly leather". The implication in this statement by the dealer is that the consumer should expect the seats to wear more rapidly than actual leather seats would.

The dealer stated that this is "clearly advertised in our product brochures", but at the end of the sales process Adam was under the impression he was paying a premium for leather seats. CHOICE suspects that many other consumers have been misled into paying more for "leather".

A final issue is that Volkswagen asserted that they could not provide a remedy unless Adam was willing to engage an "independent qualified upholster" to provide an expert report on the faulty driver's seat. In CHOICE's view, a car that is still under warranty and only 18 months old should not be experiencing problems like Adam's. Requesting an expert report in order to progress direct consumer-to-business dispute resolution appears to be a bullying tactic intended to discourage the consumer from pursuing a remedy.

\* Name changed to protect privacy.

CHOICE recommends that when conducting its market study, the ACCC particularly focus on potentially misleading conduct or false representations made about premium accessories, both in sales material and in actual sales interactions. This should include representations made about interior and exterior vehicle treatments marketed to consumers at the point of purchase phase, for example upholstery or exterior paint protections.

From anecdotal reports, CHOICE believes it is likely many consumers are informed that vehicles will be more vulnerable to ordinary wear and tear without such premium treatments, when in fact their reasonable expectations should be that vehicles will remain in relatively good condition when maintained through normal use over time. Additionally, there should be a focus on examining whether or not manufacturers' and dealers' complaints-handling processes are genuinely supporting consumers in resolving complaints, or are actually functioning as deterrents to complaining.

In addition to the above example, CHOICE Help receives a comparatively significant number of enquiries relating to lemon cars generally, consistent with the overall complaint trends discussed in the ACCC's Issues Paper. We also receive complaints about poor complaints-handling by manufacturers (e.g. calls that are not returned and other difficulties in seeking a response to a complaint), problems receiving remedies for failures that were fixed during the manufacturers' warranty period but later recurred, and how to get a remedy when there is a safety recall.

## 2. Fuel consumption, CO2 emissions and car performance

For an overwhelming majority of consumers (89%) the fuel efficiency rating of a new car is important when deciding which model of car they will purchase.<sup>2</sup> Vehicle emissions are not only important to those who wish to make environmentally conscious purchases, but more broadly because efficient cars are cheaper to run. It is therefore crucial that the right incentives are in place for fuel efficient models to be sold in Australia, and this requires mandatory emissions standards in line with leading markets overseas. However, as the Volkswagen scandal has shown, mandatory standards are not enough to ensure consumers benefit from lower fuel consumption. While it is mandatory to display the fuel consumption of new vehicles sold in

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<sup>2</sup> CHOICE, March 2016, *Consumer Pulse Survey*, n=1062, Q, If you were to buy a car tomorrow, how important would the fuel economy / fuel efficiency rating of different cars be, in determining which model you would purchase? Very important – 49%, somewhat important – 39%.

Australia, it is evidently not mandatory that this information be accurate. Stringent real-world testing is needed in order for consumers to be able to rely on the information displayed and make informed choices.

Fuel costs consistently rank as the second or third highest cost-of-living concern for Australian households as measured in CHOICE's nationally representative Consumer Pulse survey, behind electricity and food and groceries.<sup>3</sup> It should not be surprising therefore that research by the Australian Bureau of Statistics shows that fuel efficiency is a major concern for consumers who purchased a new vehicle over the past 12 months.<sup>4</sup> According to the research, 'fuel economy/running costs' is considered by 45% of consumers when buying a new car, making it the second most important factor after cost (54.6%). This also makes efficiency more important than the type of vehicle (e.g. car, van, 4WD etc. which is considered by 37.1%), size (40.5%), appearance (22.7%) and safety (25.2%). Consumers can't control the price of fuel, but they should be able to make an informed choice about the fuel efficiency of the vehicle that they purchase.

CHOICE has recommended that Australia adopt mandatory carbon dioxide emissions to create the right incentives for fuel-efficient cars to be made available to Australian consumers, in its submission to the Federal Government's Vehicle Emissions Discussion Paper.<sup>5</sup> However, the Volkswagen (VW) scandal raised broader questions about the degree of self-regulation in the motor vehicle market internationally, with claims that certain tests have been manipulated and 'gamed' by manufacturers.<sup>6</sup> There is also evidence of a substantial and growing gap between the fuel efficiency and noxious emissions claims of manufacturers based on laboratory testing, and the performance of vehicles in the 'real world'.

Research from Europe has shown the gap between car makers' claims and real-world performance has grown consistently over time, and is now at 40%<sup>7</sup>. Data published by UK consumer group Which? in April 2015 showed that 98% of 200 vehicles tested over the preceding two years could not match or exceed their claimed fuel efficiency as listed on the manufacturers' websites.<sup>8</sup> Which? concluded that the result is significantly higher running costs

<sup>3</sup> CHOICE, (2015), *Consumer Pulse: Australians' attitudes to cost of living 2014-15*

<sup>4</sup> Australian Bureau of Statistics, (2012), *Environmental Issues: Waste Management, Transport and Motor Vehicle Usage, Mar 2012*

<sup>5</sup> 8 April 2016, CHOICE, submission to the Federal Government's Vehicle Emissions Discussion Paper, available at <https://infrastructure.gov.au/roads/environment/forum/submissions.aspx>

<sup>6</sup> For example, see Transport and Environment, (2015), *VW's cheating is just the tip of the iceberg*, available at <http://www.transportenvironment.org/publications/vw%E2%80%99s-cheating-just-tip-iceberg>

<sup>7</sup> See ICCT, (2015), *Real-world vehicle fuel economy gap continues to widen in Europe [press release]*, available at <http://www.theicct.org/news/real-world-vehicle-fuel-economy-gap-continues-widen-europe-press-release>

<sup>8</sup> See Which?, (2015), *False economy - 98% of cars can't match their mpg claims*, available at <http://www.which.co.uk/news/2015/04/false-economy--98-of-cars-cant-match-their-mpg-claims-401750/>

for consumers compared to the ‘official’ figures – a yearly average of £133 (\$284AUD), with an upper range of £459 (\$981AUD).

A subsequent analysis of the 20 ‘worst performing’ vehicles from the Which? test identified nine models sold in the Australian market, and found the average difference between Australian claims and the test performance was 37%.<sup>9</sup> These results are consistent with CHOICE’s own real-world testing of nine vehicles since September 2014, which found these cars consumed on average 25% more fuel per 100km than manufacturer’s claims.<sup>10</sup> Overall 53 of the vehicles tested by Which? are sold in the Australian market, all of which were shown to have misrepresented their fuel efficiency.<sup>11</sup> This included 10 of Australia’s 20 best-selling cars of 2014, collectively representing 45% of passenger vehicles and 22% of all vehicles sold in that year.<sup>12</sup>

The ACCC issues paper asks whether consumers are aware that fuel consumption and CO2 emissions values are designed to be comparative. There is a broader issue to consider, however. Even if consumers were aware that the values are designed to be comparative, this would not assist them because the labels fail to provide consistent information.

### Claimed versus actual emissions of popular models in Australia

Tested model	Class	Year tested	Claimed mpg	Tested mpg	Discrepancy	Rank in Australia 2014
2013 Toyota Auris (1.8L Hybrid)*	Small	2013	74.3	62.8	15.5%	1
2014 Mazda 3 (2.2L Diesel)	Small	2014	68.9	61.4	10.9%	2
2014 Hyundai i30 Tourer (1.6L Diesel)	Small	2014	67.3	61.4	8.8%	3
2013 Mazda CX-5 (2.0L Petrol)	SUV	2013	47.1	44.8	4.9%	6
2013 Volkswagen Golf (1.4L Petrol)	Small	2013	53.3	51.4	3.6%	9
2013 Toyota RAV4 (2.0L Diesel)	SUV	2013	57.6	52.3	9.2%	11
2014 Hyundai ix35 (1.7L)	SUV	2014	53.3	46.3	13.1%	12

<sup>9</sup> John Rolfe, (2015), ‘Fuel efficiency scandal: independent testing shows cars use 10% more petrol than advertised’, *The Advertiser*

<sup>10</sup> Based on CHOICE results for Mazda CX-3, Honda HR-V, Audi Q5, Mercedes GLA 250, Lexus NX200t, Volvo XC60, BMW X3, Holden Trax, and Honda Odyssey.

<sup>11</sup> CHOICE, (2015), *Car fuel efficiency labels a lot of hot air*, available at <https://www.choice.com.au/about-us/media-releases/2015/november/test-of-car-fuel-efficiency-claims>

<sup>12</sup> Calculated using National Transport Commission, (2015) and Australian Bureau of Statistics, (2016), *Sales of New Motor Vehicles, Australia*

<b>Diesel)</b>						
<b>2014 Jeep Grand Cherokee (3.0L Diesel)</b>	SUV	2014	37.7	24.4	35.3%	14
<b>2013 Ford Focus (1.0L Petrol)</b>	Small	2013	60.1	51.4	14.5%	17
<b>2014 Subaru Forester (2.0L Diesel)</b>	SUV	2014	47.9	41.5	13.4%	20
*Called a Toyota Corolla in Australia SOURCE: Which? Testing data. Ranks from the NTC (2015).						

Industry regularly argues that cars cannot be expected to perform in the ‘real world’ as they do in standardised laboratory tests, and that manufacturers are simply providing information through processes mandated by regulation<sup>13</sup>. There are two issues with this response. Firstly, it does not explain the significant variation between models tested and secondly, the gap has been growing over time. The Which? tests are standardised and conducted in a laboratory, albeit using more demanding cycles that are more representative of real-world driving<sup>14</sup>.

It is absurd for Australian consumers to be provided with comparative information on vehicle fuel efficiency that bears no resemblance to how the vehicles consume fuel in the real world. While some industry responses appear to suggest consumers should be satisfied with inaccurate information, provided it is consistently inaccurate and therefore representative of relative differences between vehicles, even this is clearly not the case. The Which? real-world testing showed significant inconsistencies in the discrepancies, ranging from 3.6% to 35.3%.

The Federal Government needs to intervene, and manufacturers need to take responsibility for the accuracy of the information they provide consumers about their vehicles.

There is movement across jurisdictions to improve testing procedures for both greenhouse emissions and air pollutant emissions. The United Nations is currently adopting a new test procedure for measuring greenhouse emissions from passenger cars and light commercial vans in the laboratory, the Worldwide Harmonized Light Vehicles Test Procedure (WLTP).<sup>15</sup> As well as harmonising standards across jurisdictions, this will define test procedures that are more realistic and representative of real-world driving conditions. Meanwhile, on 12 February 2016 the European Council approved a new Real Driving Emission (RDE) testing procedure for air

<sup>13</sup> For example, see <http://www.goauto.com.au/mellor/mellor.nsf/story2/61CE4929A9878DD5CA257ED200057098> and <http://www.fleetnews.co.uk/news/manufacturer-news/2015/04/24/mitsubishi-responds-to-real-world-fuel-economy-criticism>

<sup>14</sup> Which?, (2015), *How we test – how we test cards*, available at <http://www.which.co.uk/cars/choosing-a-car/how-we-test-cars/how-we-test-mpg/>

<sup>15</sup> United Nations Economic Commission for Europe, (2012), *Worldwide harmonized Light vehicles Test Procedure (WLTP)*, available at <https://www2.unece.org/wiki/pages/viewpage.action?pageId=2523179>



pollutant emissions that will be implemented in stages starting in September 2017.<sup>16</sup> This will test the air pollutant emissions of cars driven outside on real roads, replacing current laboratory-based testing of the type that was manipulated through VW’s ‘defeat device’ (the subject of the EPA’s notice of violation).

While better test procedures are critical, there is also a need for greater assurance around the rigour and independence of the testing process. CHOICE supports calls from Australia’s peak motoring body, the Australian Automobile Association, for a process to ensure motor vehicles imported into Australia comply with standards – beyond simply assurances from manufacturers.<sup>17</sup> Whether this is a fully independent testing regime or enhanced independent auditing of vehicles imported into Australia, it is critical that car manufacturers are made accountable for claims made regarding vehicle fuel efficiency and environmental performance.

CHOICE recommends that the ACCC investigate potentially misleading or deceptive claims made by manufacturers found to have real-world emissions that differ from claimed levels, and are supportive of the ACCC’s ongoing investigation into VW.

### 3. Access to repair and service information and data for new cars

There is an increasing amount and depth of proprietary information held by consumers’ cars via on-board computers. CHOICE agrees with the comments made by the Australian Automobile Association in its submission to the Competition Policy Review Draft Report, that “there is a concern that vehicle manufacturers are looking to restrict access to data produced by vehicles to advance their own commercial interests”.<sup>18</sup> We note that in a United States copyright hearing last year, General Motors argued that consumers are licensees rather than owners of software systems that are integral to running their vehicles.<sup>19</sup>

<sup>16</sup> European Commission (2015), *FAQ - Air pollutant emissions standards*, available at [http://europa.eu/rapid/press-release\\_MEMO-15-5705\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-5705_en.htm)

<sup>17</sup> Australian Automobile Association (7 December 2015), media release, *Motoring peak body to test Australian vehicle emissions*, available at <http://www.aaa.asn.au/news-and-publications/news/article/?id=motoring-peak-body-to-test-australian-vehicle-emissions> and European Council (2016), *Vehicle emissions in real driving conditions: Council gives green light to second package*, available at <http://www.consilium.europa.eu/en/press/press-releases/2016/02/12-vehicle-emissions-in-real-driving-conditions-2nd-package/>

<sup>18</sup> Australian Automobile Association, 11 November 2014, submission to the Competition Policy Review Draft Report, available at <http://competitionpolicyreview.gov.au/files/2014/11/AAA.pdf>

<sup>19</sup> Autoblog, 20 May 2015, ‘General Motors says it owns your car’s software’, accessed at [www.autoblog.com/2015/05/20/general-motors-days-owns-your-car-software/](http://www.autoblog.com/2015/05/20/general-motors-days-owns-your-car-software/)

Given the increasingly sophisticated operation of motor vehicle software, this issue will have significant impacts on consumers' rights and also the subsequent costs of vehicle repair and maintenance. Providing consumers, and independent repairers of their choice, with access to car service and repair data will empower consumers to engage more effectively with the market and will encourage a more competitive marketplace.

There are risks associated with locking up proprietary data. For instance, many consumers sign up for roadside assistance services, reasonably expecting them to provide rapid, on-the-spot assistance when their car breaks down on the side of the road. However, their service of choice may arrive and find that they cannot access the car's information, and therefore cannot repair the car. This leaves consumers either stranded, or forced to pay to have their car taken to an authorised repairer at an increased cost.<sup>20</sup>

The ACCC's market study is not considering insurance, but access to car data is increasingly linked with the provision of insurance products. Telematics are somewhat novel in Australia; the first insurance product linked to in-car telematics technology was released only a few years ago.<sup>21</sup> These boxes, or dongles, collect information on a consumer's driving habits. This information can then be used to calculate the level of risk associated with insuring the driver of the car – if the data collected indicates that they are not likely to cause an accident, they may be offered a better deal on insurance.<sup>22</sup> This data is generated by the consumer as they use their car. Ideally, data collected in this way should be able to be exported by the consumer in a machine-readable, consistent format for use by third parties with the consumers' consent. Using data this way the consumer would be more easily able to choose a better deal for their car insurance. While insurance issues may be out of scope for the ACCC's market study, this is something to consider in relation to access to data about driving habits.

When considering access to cars' telematics data, rather than repair data, it is important to acknowledge that simply making this data available will not empower consumers or necessarily result in more competitive markets. The data must be accessible and useable. The United States' "smart disclosure" policy memorandum provides some guidelines to ensure that data is not merely released, but is provided to consumers in a format that will aid their ability to make informed decisions. The characteristics of smart disclosure include accessibility, machine readability, standardisation, timeliness, interoperability and privacy protection. The importance

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<sup>20</sup> For more information, see the Australian Automobile Association's website 'My Car My Data', available at <http://mycarmydata.com.au/get-the-facts/>

<sup>21</sup> Eddy, K., 15 October 2013, 'Insurer introduces Australia's first in-car black boxes', Insurance Business Online, accessed at <http://www.insurancebusinessonline.com.au/au/news/breaking-news/insurer-introduces--australias-first-incar-black-boxes-180458.aspx>

<sup>22</sup> For example, see QBE's Insurance Box, <https://www.qbe.com.au/personal/quote/vehicle/insurance-box>

of the end user experience cannot be understated – anything more cumbersome than ‘one click’ processes for downloading/uploading data risks undermining the value of that data for consumers.