



Automotive Industry Group

REGULATORY UPDATE

DECEMBER 2025

HWLE
LAWYERS

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Introduction

WELCOME TO THE HWLE LAWYERS AUTOMOTIVE INDUSTRY GROUP - REGULATORY UPDATE

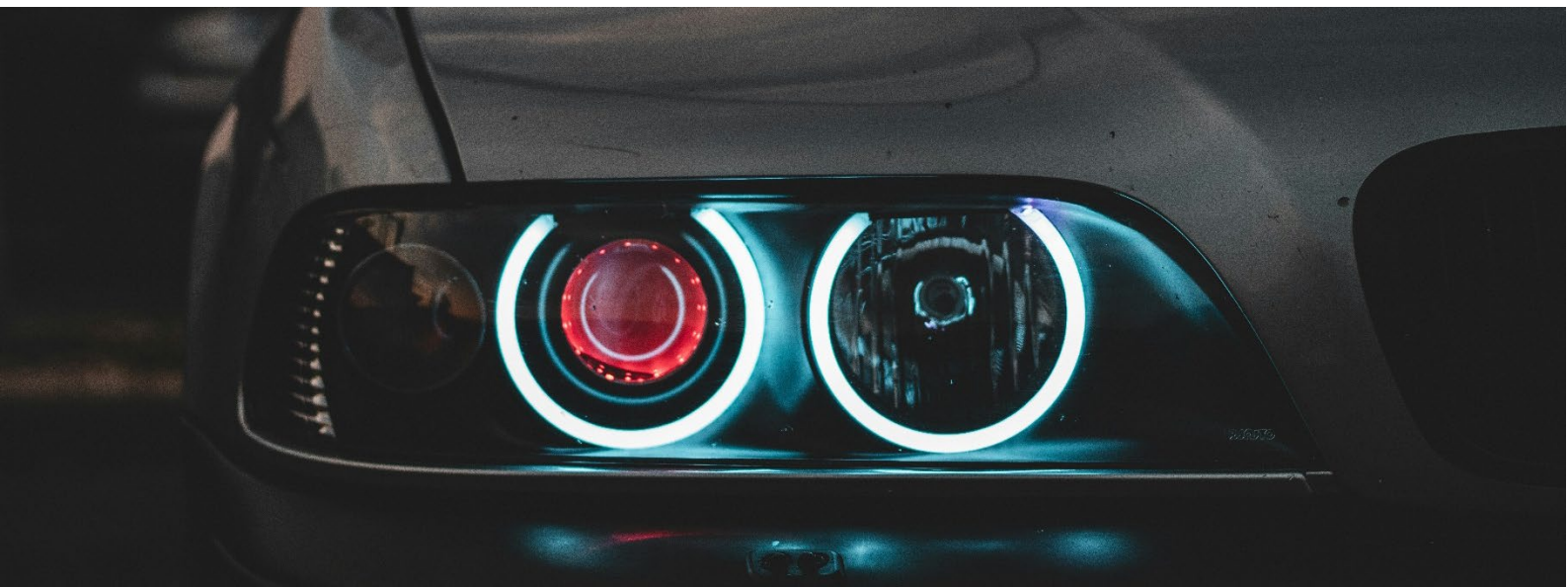
HWLE Lawyers seeks to keep you updated with the changing automotive industry environment across new legislation, developing policy and pertinent case law developments.

Through our Regulatory Updates we provide essential information for those wanting to stay abreast of the challenges and issues facing the automotive industry, especially those affecting new motor vehicle dealers.

This Regulatory Update has been published with the assistance of Maria Townsend (Partner), Evan Stents (Partner) and Yudi Vorchheimer (Solicitor) who are members of the HWLE Lawyers Automotive Industry Group.

HEADLINES

- ▼ Introduction of the *Motor Dealers and Repairers Regulation 2025* (NSW) ([see Part 1.1](#))
- ▼ Amendments to the *Second-hand Vehicle Dealers Act 1995* (SA) ([see Part 1.2](#))
- ▼ Mandatory Merger Notification Regime from 1 January 2026 ([see Part 1.7](#))
- ▼ *Repeal Net Zero Bill 2025* (Cth): A Turning Point for Automotive Emissions Regulation ([see Part 2.1](#))
- ▼ Australian Grands Prix Amendment Bill: Extended Event Period Creates Branding Opportunities ([see Part 2.3](#))
- ▼ China Set to Dominate Australian Vehicle Imports by 2035: Strategic Implications for Dealers ([see Part 3.1](#))
- ▼ AAA Proposal for National EV Road-User Charge ([see Part 3.2](#))
- ▼ *ACCC v Jayco* - Off-Road Marketing Claims Under Scrutiny ([see Part 4.1](#))
- ▼ Toyota Class Action - High Court Clarifies ACL Damages ([see Part 4.2](#))
- ▼ Tesla Class Action: Autonomous Driving Claims Under Fire ([see Part 4.8](#))



1. Legislation Update

1.1 INTRODUCTION OF THE *MOTOR DEALERS AND REPAIRERS REGULATION 2025* (NSW)

On 1 September 2025, the *Motor Dealers and Repairers Regulation 2025* (NSW) (**Regulation**) commenced, replacing the *Motor Dealers and Repairers Regulation 2014* (NSW) (**Previous Regulation**). The Regulation establishes the framework governing the buying, selling and repair of motor vehicles in New South Wales.

The updated Regulation was issued following the statutory review of the *Motors Dealers and Repairers Act 2013* (NSW) (**MDR Act**), and the amendments introduced by the Motor Dealers and Repairers Amendment Act 2023 (NSW) (**Amendment Act**) which modernise compliance obligations, strengthen consumer protections, and align the legislative scheme with current industry practices.

ENHANCEMENTS TO THE MOTOR DEALERS AND REPAIRERS COMPENSATION FUND

The Regulation strengthens consumer protection by improving access to the Motor Dealer and Repairers Compensation Fund (**Fund**), established by section 165 of the MDR Act. The Fund provides financial redress for consumers affected by losses arising from transactions with licensed dealers or repairers and is financed through industry levies.

Key changes introduced by the Regulation include:

- ▼ **Expanded eligibility:** Removal of age-based restrictions on vehicles that previously prevented claims being made on vehicles (previously cars over 35 years and motorcycles over 10 years were excluded), allowing claims to be made on older vehicles, provided other conditions for compensation are satisfied;
- ▼ **Broader coverage:** Claims now permitted for vehicles not primarily used for private purposes and for trailers and towable vehicles; and
- ▼ **Increased compensation cap:** Maximum claim amount raised from \$40,000 to \$100,000.

These reforms enhance consumer access to compensation and provide clearer guidance for Fund administrators.

DECLARATION OF TRADE SHOWS

The Regulation introduces a streamlined process for declaring trade shows, enabling interstate motor dealers to participate in events without holding a NSW motor dealer licence - provided the event is a 'declared trade show'. Under the Amendment Act, section 11 of the MDR Act was amended to allow the Regulation to exempt persons from penalties for carrying on business without a licence when offering or displaying vehicles for sale at a declared trade show. These exemptions may be subject to conditions imposed by the Regulation or by the Secretary via notice published on the NSW Fair Trading Website.

The Regulation removes the previous requirement for a Ministerial Order published in the Government, giving the Secretary authority to declare trade shows directly. This change improves administrative efficiency and reduces processing delays for organisers.

Key conditions for interstate dealer participate include:

- ▼ Activity limited to displaying vehicles and providing information; no binding contracts or deposits may be taken at the event.

- ▼ Dealers must clearly display signage stating their business is located outside NSW, including their registered name, address, and interstate licence details.
- ▼ Sales agreements must be completed outside NSW.

DEALER GUARANTEES FOR TRAILERS AND TOWABLE VEHICLES

From 1 September 2026, dealer guarantees will extend to trailers and towable vehicles, removing the current exemption. Motor dealers will have 12 months to prepare for this change. Under the guarantee, dealers must repair defective trailers or towable vehicles they sell.

A trailer or towable vehicle is considered defective if it is not fit for purpose. Examples include:

- ▼ structural defects (e.g., bent chassis, cracked welds);
- ▼ faulty braking systems;
- ▼ lighting or wiring faults; or
- ▼ axle or suspension defects.

For trailers or towable vehicles up to 10 years old, the guarantee period is:

- ▼ 6 months for a new vehicle; and
- ▼ 3 months for second-hand vehicles.

REGULATING ONLINE SALES OF MOTOR VEHICLES

The Regulation establishes a framework for online motor vehicle sales, supporting changes introduced by the Amendment Act. Licensed motor dealers selling online must comply with the following requirements:

- ▼ Maintain a website with a '.au' domain name to enhance consumer confidence.
- ▼ Display the dealer licence number prominently on the website and in advertising.
- ▼ Limit deposits to a maximum of 10% of the purchase price before the buyer inspects the vehicle.
- ▼ Provide inspection opportunities before sale and at delivery.
- ▼ Locate premises for vehicle storage and records in NSW, ensuring accessibility for inspections and regulatory checks.
- ▼ Observe a cooling-off period for dealer financed online sales, ending at 5pm the next day.

Dealers must notify NSW Fair Trading of their online selling arrangements and comply **by 1 December 2025**. During the transition, Fair Trading will adopt an educational compliance approach.

SIMPLIFYING RECORD KEEPING REQUIREMENTS

The Regulation modernises record-keeping obligations for motor dealers and repairers by allowing electronic records, provided they:

- ▼ Can be displayed and produced on demand at each notified premises.
- ▼ Include the date each record was created.
- ▼ Are regularly backed up to prevent data loss.

Additionally, the retention period for dealer notices has been extended from 3 to 6 years, reinforcing transparency and auditability.

PENALTIES

The Regulations introduces new Penalty Infringement Notices (**PINs**) and increases existing PIN amounts, complementing the Amendment Act's higher maximum penalties. Key changes include:

- ▾ Increased PINs for serious offences such as odometer tempering and unlicensed trading.
- ▾ New PIN categories to strengthen enforcement and deter unethical practices.

These reforms enhance compliance and provide regulators with stronger tools to protect consumers.

REPAIR CLASSES AND QUALIFICATIONS

Tradespersons must hold a certificate for each class of repair work they perform, supported by prescribed qualifications. While the Regulation defines battery electric vehicles (**BEVs**) as vehicles powered solely by an electronic motor (excluding fuel cells or internal combustion engines), the proposed new repair class for electronic vehicle (**EV**) motor mechanics was not implement.

The Government remains committed to introducing EV-specific repair class and training framework to ensure safety and consumer protection and will continue industry consultation on these reforms.

IMPACTS ON INDUSTRY AND CONSUMERS

The Regulation delivers significant benefits by:

- ▾ **For industry:** Streamlining administrative processes, improving enforcement consistency, and reducing non-compliance risks.
- ▾ **For consumers:** Enhancing access to the Fund, strengthening protections for online vehicle purchases, and ensuring high standards of repair and dealer conduct.



1.2 AMENDMENTS TO THE *SECOND-HAND VEHICLE DEALERS ACT 1995* (SA) AND *SECOND-HAND VEHICLE DEALERS REGULATION 2025* (SA)

From 1 September 2025, the *Second-hand Vehicle Dealers Regulation 2025* (SA) commenced, repealing the *Second-hand Vehicle Dealers Regulations 2010* (SA) and introducing significant compliance reforms. These changes follow amendments to the *Second-hand Vehicle Dealers Act 1995* (SA) (**Dealers Act**) effective 1 July 2025, which introduced the nation's toughest penalties for misconduct.

Key penalty reforms include:

- ▼ **Unlicensed dealing:**
 - Up to \$150,000 for a first or second offence.
 - Up to \$250,000 or 2-years imprisonment (or both), for a third or subsequent offence.
 - Up to \$500,000 for corporations.
- ▼ **Odometer tampering:**
 - Maximum penalty increased 15-fold to \$150,000 for initial offences; repeat offences may attract imprisonment.
- ▼ **New offence:** Providing false or misleading odometer statements (section 34A of the Dealers Act).
- ▼ **Compensation orders:** Courts may require offenders to compensate purchasers for losses or rectification costs (section 34(6) of the Dealers Act).

STATUTORY DUTY TO REPAIR

Dealers can no longer allow purchasers to waive the statutory duty to repair. Under section 23 of the Dealers Act:

- ▼ Dealers must repair defects that render a vehicle unroadworthy or illegal to driver at delivery, regardless of price or distance travelled.
- ▼ Duty to repair does not apply to vehicles first registered more than 15 years ago or driven over 200,000 km, except to ensure roadworthiness.
- ▼ Dealers may disclose defects that fall outside the duty to repair, provided the vehicle remains roadworthy.

EXPANDING THE DEALER'S DUTY TO REPAIR

From 1 September 2025, amendments to the *Second-hand Vehicle Dealers Act 1995* (SA) clarify that a dealer's statutory duty to repair extends to the main propulsion battery of prescribed electric and hybrid vehicles within the warranty period (sections 3(2), and 23 of the Dealers Act; regulations 3(3)-(4) of the *Second-hand Vehicle Dealers Regulation 2025* (SA)).

The duty applies in addition to the requirement that vehicles be roadworthy at delivery and varies based on the vehicle's age, price, and distance travelled.

Exclusions:

- ▼ Tyres and non-propulsion batteries (unless defects affect roadworthiness); and
- ▼ Reasonably apparent cosmetic defects (e.g., upholstery or paintwork),

(sections 23(6)-(7) of the *Second-hand Vehicle Dealers Regulation 2025* (SA)).

PRACTICAL CHANGES FOR DEALERS

The *Second-hand Vehicle Dealers Regulation 2025* (SA) introduces several administrative simplifications:

- ▼ Removal of the requirement to display the previous owner's name and address on the vehicle.

- ▼ Removal of the requirement to display details of the last lessee for vehicles previously used as taxis or hire cars (information remains available on request).
- ▼ Streamlining of the prescribed sale form, while allowing dealers to include additional information without omitting mandatory disclosures.

1.3 DISCLOSURE REQUIREMENTS UNDER THE NEW FRANCHISING CODE

The *Competition and Consumer (Industry Codes - Franchising) Regulations 2024* (Cth) (**Code**) introduced a new Franchising Code of Conduct, which commenced on 1 April 2025 and came into full effect on 1 November 2025. The Code aims to strengthen transparency, financial accountability, and dispute resolution in the franchising sector.

KEY CHANGES FOR FRANCHISORS

▼ Enhanced Disclosure Obligations

- On 1 November 2025, the Code came into full effect requiring disclosure documents to now include:
 - o Details of any significant capital expenditure required during the franchise term, including rationale, timing, and expected benefits.
 - o Information on specific purpose funds (e.g., marketing or cooperative funds), including financial reporting and audit requirements.

▼ Reasonable Return on Investment

- Franchise agreements must provide franchisees with a reasonable opportunity to recoup their investment during the term.

▼ Compensation for Early Termination

- Agreements must include provisions for compensation if the franchisor exits the market or restructures its distribution model.

▼ Cooling-off and Consideration Periods

- Agreements must include provisions for compensation if the franchisor exits the market or restructures its distribution model.

▼ Civil Penalties

- Non-compliance can attract penalties of up to \$10 million for corporations or 600 penalty units for individuals.

Please see the HWLE Lawyers [Automotive Regulatory Guide for July 2025](#) regarding the updates required to disclosure documents under the Code.

For detailed guidance, refer to the HWLE Lawyers article at [The New Code is Here...](#) or consult the HWLE Franchising team.



1.4 COMMENCEMENT TO *ROADS AND ROAD SAFETY LEGISLATION AMENDMENT ACT 2024*(VIC)

The *Roads and Road Safety Legislation Amendment Act 2024* (VIC) (**Road Safety Amendment Act**) has introduced significant reforms to the *Road Safety Act 1986* (VIC) (**Road Safety Act**). Most provisions commenced on 20 November 2024, with remaining changes - including no-trucking zone enforcement becoming effective from 13 August 2025.

KEY REFORMS TO THE ROAD SAFETY ACT

▼ No-Truck Zone Enforcement

- Heavy vehicle bans in designated no-truck zones are now enforced using prescribed camera systems, reducing reliance on roadside intercepts.
- Driving a heavy vehicle in a no-truck zone is an offence under section 65BA(1).
- New section 66A classifies this as an **operator onus offence**, meaning responsibility rests with the registered operator rather than requiring driver identification.

New section 80E allows evidence from prescribed cameras to be admissible as proof of the offence.

▼ Registration Number Rights

- Regulations may now impose fees for transferring registration number rights and clarify conditions for holding these rights.

▼ Accessible Parking Terminology

- Language modernised to improve inclusivity.

▼ Refunding Fees

- Provides for refund of additional fees added to infringement fines where the fine is later refunded.

▼ Digital Driver Licenses and Learner Permits

- Enables the issue and use of **digital licences** via approved apps (eg, myVicRoads, Service Victoria).
- Digital licences can be used for identity verification and proof of age; physical licences remain valid.
- Real-time updates ensure licence conditions and personal details are current.

1.5 REMINDER: COMPLIANCE WITH ADRs 79/05, 111/00 AND 112/00

The Australian Government has introduced the nation's first carbon dioxide emission standards under the *New Vehicle Efficiency Standard Act 2024* (Cth) (**NVES Act**) and adopted more stringent Euro 6d equivalent noxious emission standards for light vehicles.

The NVES Act applies to all new passenger cars and light commercial vehicles up to 4.5 tonnes GVM, with the NVES Act defining two categories:

- ▼ **Type 1:** Passenger cars, forward-control passenger vehicles, and light off-road vehicles (vehicles up to 3.5 tonnes GVM).
- ▼ **Type 2:** Light and medium goods vehicles, and heavy off-road passenger vehicles (vehicles between 3.5 and 4.5 tonnes GVM).

The Australian Design Rules (**ADRs**) 79/05, 111/00 and 112/00 apply to type 1 vehicles, being passenger and light commercial vehicles up to 3.5 tonnes GVM.

NEW ADRS FOR LIGHT VEHICLES

▼ ADR 79/05 - Emission Control for Light Vehicles

Based on UN Regulation 83/08; sets limits for tailpipe emissions.

▼ ADR 111/00 - Advanced Emissions Control for Light Vehicles

Introduces improved laboratory tests for tailpipe and evaporative emissions and durability (UN Reg 154).

▼ ADR 112/0 - Control of Real Driving Emissions for Light Vehicles

Requires on-road emissions testing to ensure compliance under real-world conditions (UN Reg 168).

KEY BENEFITS

- ▼ 55% reduction in Nox limits for diesel vehicles.
- ▼ Particle number limits for petrol direct injection engines.
- ▼ Enhanced OBD requirements for emissions control monitoring.
- ▼ Improved lab and on-road tests to ensure real-world compliance.

POLICY OBJECTIVES

- ▼ Increase consumer choice and accelerate EV adoption.
- ▼ Lower fuel costs.
- ▼ Align Australia with global markets where similar standards have long been in place.

COMPLIANCE DEADLINES

- ▼ New vehicle models approved and supplied from 1 December 2025 must comply with ADRs 79/05, 111/00 and 112/00.
- ▼ Existing models supplied after 1 July 2028 must comply if they continue to be offered in Australia.

DEALER IMPACT AND COMPLIANCE CONSIDERATIONS

While the NVES Act primarily imposes obligations on manufacturers and importers to meet fleet-wide carbon dioxide emissions targets, dealers are not entirely insulated from its effects. There will likely be changes in vehicle supply mix, pricing strategies and consumer demand, however, there are two key considerations:

1. Commercial Impact

Manufacturers facing compliance costs or penalties may adjust wholesale pricing or rebate structures to offset these expenses. This could reduce dealer margins or alter the mix of vehicles supplied, as manufacturers prioritise low-emission models to meet targets. Dealers should anticipate potential changes in stock availability, pricing strategies, and consumer demand for fuel-efficient vehicles.

2. Legal and Regulatory Risk

Dealers are suppliers under the Australian Consumer Law (ACL). When a dealer sells a vehicle to a customer (who meets the definition of consumer under the ACL), the dealer gives non-excludable consumer guarantees at the point of sale (including acceptable quality, fitness for purpose and compliance with description). The acceptable quality guarantee requires goods to be safe, durable and free from defects. While the guarantee provisions do not expressly state 'mandatory standards must be met', compliance with applicable safety standards is relevant to whether a vehicle is safe and thus of acceptable quality. Dealers must ensure that any vehicles they import and/or supply

meet applicable ADRs and emissions standards. Supplying non-compliant vehicles can expose dealers to:

- ▼ Regulatory penalties under the *Road Vehicle Standards Act 2018* (Cth) and related legislation.
- ▼ Civil liability under the ACL for breach of consumer guarantees (acceptable quality and compliance with mandatory standards).
- ▼ Reputational risk and potential enforcement action by regulators.

Statements that a vehicle 'meets ADRs' or complies with the NVES Act when it does not, may also breach section 29 of the ACL (false and misleading representations).

PRACTICAL STEPS FOR DEALERS

- ▼ Confirm compliance status for all vehicles before sale, particularly for parallel imports or niche models.
- ▼ Review contractual arrangements with manufacturers to understand how compliance costs may be passed through.
- ▼ Monitor policy developments and maintain transparent communication with customers regarding emissions standards and vehicle specifications.

Please see the HWLE Lawyers [Automotive Regulatory Update for December 2024](#) for more detail regarding the key changes to emission limits for vehicles from the previous ADR 79/04.



1.6 REMINDER: ADR 80/04 COMPLIANCE DEADLINES

The Australian Government has introduced ADR 80/04, adopting Euro VI-equivalent emission standards for heavy vehicles (passenger and commercial vehicles over 3.5 tonnes GVM). These reforms aim to reduce health impacts from noxious emissions, delivering an estimated \$7.4 billion in benefits by 2050.

COMPLIANCE TIMELINE

- ▼ **Stage 1:** New heavy vehicle models supplied from 1 November 2024 must comply with ADR 80/04.
- ▼ **Stage 2:** Existing models supplied from 1 November 2025 must comply if they remain in production.

KEY DIFFERENCES BETWEEN EURO VI AND EURO V

- ▼ Increased durability requirements for emissions control systems.
- ▼ 70% reduction in hydrocarbons (HC).
- ▼ 77-80% reduction in NOx emissions.
- ▼ 50-66% reduction in particulate mass emissions.
- ▼ Introduction of particle number limits for fine particle control.
- ▼ Enhanced laboratory and on-road emissions testing.
- ▼ Stricter OBD monitoring thresholds and increased in-use performance checks.

DEALER IMPACT AND COMPLIANCE CONSIDERATIONS FOR ADR 80/04

While compliance obligations primarily rest with manufacturers and importers, dealers should be aware of two critical aspects:

1. Dealers as Suppliers Under ACL

When selling heavy vehicles, dealers provide consumer guarantees under the Australian Consumer Law (ACL) that the vehicle complies with mandatory standards. Selling a non-compliant vehicle - even if supplied by a manufacturer - can expose dealers to consumer claims as noted above, reputational risk, and potential enforcement action.

2. Dealers Acting as Direct Importers

Dealers who import heavy vehicles directly assume full compliance obligations, including meeting ADR 80/04 requirements. Failure to ensure compliance before supply can result in:

- ▼ Regulatory penalties under vehicle standards legislation.
- ▼ Civil liability for breach of consumer guarantees.
- ▼ Significant reputational and financial risk.

PRACTICAL STEPS FOR DEALERS

- ▼ Confirm compliance status for all heavy vehicles before sale, particularly for parallel imports or niche models.
- ▼ Review contractual arrangements with manufacturers to understand how compliance costs or penalties may be passed through.
- ▼ Monitor compliance deadlines:
 - Stage 1: New heavy vehicle models supplied from 1 November 2024 must comply.
 - Stage 2: Existing models supplied from 1 November 2025 must comply if still in production.

Please refer to the HWLE Lawyers [Automotive Regulatory Update for December 2024](#) for further details.

1.7 REMINDER: MANDATORY MERGER NOTIFICATION FROM 1 JANUARY 2026

The *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024* (Cth) (**Mandatory Notification Regime**) introduces Australia's most significant merger law reform in 50 years. From 1 January 2026, the current informal clearance process will be replaced by a mandatory and suspensory merger notification regime.

KEY REQUIREMENTS

- ▼ Any acquisition of shares or assets meeting the notification thresholds must be notified to the Australian Competition and Consumer Commission (**ACCC**) before completion.
- ▼ Transactions cannot be implemented until the ACCC grants clearance.
- ▼ Non-compliance consequences:
 - the transaction is void; and
 - Penalties up to \$50 million, three times the benefit, or 30% of the Australian group turnover.

PROPOSED REFINEMENTS TO EXEMPTIONS

The Government intends to refine the regime through subordinate legislation before commencement, including:

- ▼ Exemptions for leases and land interests in the ordinary course of business (subject to targeted rules).
- ▼ Simplified monetary thresholds for asset acquisitions.
- ▼ Streamlined notification for serial acquisitions.
- ▼ Clarified and expanded exemptions for financial market activities.

For more information, please read the following articles published by HWLE Lawyers:

- ▼ [New mandatory merger notification regime: Further details released](#); and
- ▼ [New mandatory merger notification regime passed by Parliament](#).

Additionally, please see the HWLE Lawyers [Automotive Regulatory Update July 2025](#) for more detail.



2. Proposed Legislative Updates

2.1 REPEAL NET ZERO BILL 2025 (Cth) - A TURNING POINT FOR AUTOMOTIVE EMISSIONS REGULATION

The *Repeal Net Zero Bill 2025* (Cth), introduced as a private member's bill by Nationals MP Barnaby Joyce, seeks to dismantle key legislation underpinning Australia's climate change and emissions reduction strategy, including the *Climate Change Act 2022* (Cth), the *Net Zero Economy Authority Act 2024* (Cth), and the recently enacted NVES Act.

This proposal has sparked significant debate across industries, with the automotive sector particularly exposed to the consequences of repealing the NVES Act, a law that only recently came into effect and was designed to align Australia's vehicle emissions standards with international benchmarks.

LEGISLATIVE BACKGROUND

The NVES Act, effective from 1 January 2025, introduced Australia's first mandatory carbon dioxide (CO₂) emissions targets for new light vehicles (passenger cars, SUVs, and Utes under 4.5 tonnes) sold in Australia.

- ▼ Manufacturers and importers must meet fleet-wide emissions caps, tightening annually until 2029.
- ▼ Non-compliance attracts financial penalties.
- ▼ The NVES Act aimed to align Australia with international standards and accelerate EV adoption.

IMPLICATIONS OF REPEAL

If the NVES Act is repealed:

- ▼ **Regulatory uncertainty:** Manufacturers face sunk costs from compliance investments and disrupted long-term planning (including for distributors and dealerships).
- ▼ **Market impact:** Reduced availability of fuel-efficient and EV models; potential increase in fuel costs; risk of Australia falling behind OECD standards.
- ▼ **Inventory relief vs reputational risk:** Dealers could sell non-compliant stock but may face backlash from environmentally conscious consumers.
- ▼ **Global positioning:** International manufacturers may deprioritise Australia in product rollouts due to perceived policy instability.

INDUSTRY RESPONSE

The automotive industry's reaction has been mixed:

- ▼ Some stakeholders welcome removal of penalties, citing cost savings.
- ▼ Others warn repeal would undermine progress toward cleaner transport and harm competitiveness.
- ▼ The Federal Chamber of Automotive Industries (FCAI) supports an 'ambitious and achievable' standard, urging balanced policy.

The *Repeal Net Zero Bill 2025* (Cth) represents a pivotal moment for Australia's climate and automotive policy. For industry stakeholders, particularly those in manufacturing, distribution and retail, the potential repeal of the NVES Act demands close attention and strategic reassessment.

Whether the Bill passes or not, it highlights the importance of regulatory stability and the need for clear, long-term policy direction.

Automotive businesses should remain engaged in the policy process, monitor developments closely and prepare for multiple scenarios, including the continuation, amendment or repeal of emissions standards.

To read HWLE Lawyers' past commentary on the NVES Act, please see the July 2024 Automotive Regulatory Update, accessible [here](#).

2.2 COMPETITION AND CONSUMER AMENDMENT (DIVESTITURE POWERS) BILL 2024 (CTH) - IMPLICATIONS FOR AUTOMOTIVE MARKET CONDUCT

The *Competition and Consumer Amendment (Divestiture Powers) Bill 2024* (Cth) proposes significant reform to Australia's competition law by introducing structural remedies for misuse or market power. If passed, Courts could order corporations to divest assets or restructure operations where contraventions of section 46 of the *Competition and Consumer Act 2010* (Cth) (CCA) are proven, being the forced sale or separation of business assets where a corporation has been found to misuse its substantial market power.

LEGISLATIVE OVERVIEW

- ▼ **Current position:** Section 46 of the CCA prohibits corporations with substantial market power from engaging in conduct that substantially lessens competition. Remedies have traditionally included injunctions, penalties, and behavioural undertakings.
- ▼ **Proposed change:**
 - ACCC could seek Federal Court orders for divestiture within three years of the contravention, enhancing regulators' arsenal to address entrenched market dominance.
 - Powers would apply beyond merger enforcement, aligning Australia with jurisdictions such as the United States.
- ▼ **Status:** The *Competition and Consumer Amendment (Divestiture Powers) Bill 2024* (Cth) was negatived in June 2024 but restored to the Senate Notice Paper on 27 August 2025, indicating continued interest in reform and structural remedies to address market dominance.

RELEVANCE TO THE AUTOMOTIVE INDUSTRY

- ▼ **Metropolitan markets:** Highly competitive, making misuse of market power unlikely.
- ▼ **Regional markets:** Limited dealership presence can create concentration risks.
- ▼ **Example:** A dealership engaging in exclusionary conduct or price gouging could face structural remedies under the proposed regime.
- ▼ **Supply chain limitations:** Parts distributors, finance providers, and fleet operators may also be scrutinised as industry consolidation and EV /adoption reshape market dynamics.

As public and parliamentary debate continues regarding the *Competition and Consumer Amendment (Divestiture Powers) Bill 2024* (Cth), the necessity of structural remedies in addressing market concentration and anti-competitive conduct continues to be highlighted. For the automotive industry, particularly in regional contexts, the debate underscores the need for vigilance in market behaviour and preparedness for potential regulatory reform.

Automotive businesses should monitor developments and ensure compliance programs address section 46 risks, particularly in regional operations and supply chain arrangements.

2.3 AUSTRALIAN GRANDS PRIX AMENDMENT BILL 2025 (VIC) - STRATEGIC OPPORTUNITIES FOR AUTOMOTIVE BRANDING

The Victorian Government has introduced the *Australian Grands Prix Amendment Bill 2025 (Vic)*, proposing key changes to the *Australian Grands Prix Act 1994 (Vic)*. The most significant amendment extends the declared race period at Albert Park from seven days to a maximum of 21 days, enabling a longer window for event setup, fan engagement, and associated activities.

LEGISLATIVE OVERVIEW

The Bill introduces several key amendments, including:

- ▼ **Extended Access:** The Australian Grand Prix Corporation (AGPC) will have exclusive access to Albert Park for up to 21 days, allowing for safer and more efficient infrastructure setup and dismantling.
- ▼ **Pre-Race Activations:** The extended period supports fan activations, hospitality events, and brand showcases ahead of race day.
- ▼ **Non-Motorsport Events:** AGPC will be permitted to host exhibitions and cultural activations during the declared period, subject to ministerial approval.

IMPLICATIONS FOR THE AUTOMOTIVE INDUSTRY

- ▼ **Enhanced Brand Exposure:** Formula 1 remains a powerful marketing platform, influencing consumer interest in performance and luxury vehicles.
 - For example, Alpine, Renault's performance sub-brand, has tripled its brand value over four years, largely due to its F1 involvement. Resultantly, sales of the Alpine A110 surged during this period. This trend underscores the direct correlation between motorsport visibility and consumer interest in performance and luxury vehicles.
- ▼ **Extended Engagement Window:** Manufacturers and dealerships can leverage the longer event period for branded activations, test drives, and immersive experiences.
- ▼ **Market Diversification:** With Ford and Audi joining the F1 grid in 2026, the sport's appeal extends beyond traditional supercar brands, creating new marketing and dealership engagement opportunities for mainstream automotive players.
- ▼ **Economic Impact:** The 2025 Australian Grand Prix attracted 465,000 fans and contributed \$268 million to the Victorian economy, underscoring the commercial potential of extended event programming.

The *Australian Grands Prix Amendment Bill 2025 (Vic)* represents a strategic opportunity for the automotive industry to deepen its connection with motorsport fans and mainstream consumers. By extending the race period and enabling broader event programming, the proposed legislation supports economic growth, brand engagement, and innovation in automotive marketing.

Automotive businesses should explore partnerships with AGPC and plan activations that align with the extended event period to maximise brand visibility and consumer engagement.



2.4 CONTROL OF VEHICLES (OFF-ROAD AREAS) AMENDMENT BILL 2025 (WA) - WA'S OFF-ROAD VEHICLE REFORM: STREAMLINED REGISTRATION AND INDUSTRY OPPORTUNITIES

The *Control of Vehicles (Off-road Areas) Amendment Bill 2025* (WA) introduces significant reforms to Western Australia's off-road vehicles (ORVs) regulation, modernising registration processes and strengthening enforcement mechanisms. These changes aim to improve accessibility for recreational users and create new opportunities for automotive businesses and industry stakeholders.

LEGISLATIVE BACKGROUND

ORVs - such as quad bikes, all-terrain vehicles (ATVs), and trail bikes - are widely used for recreation in WA's expansive terrain and designated ORV areas. Under the previous framework, registration required an in-person statutory declaration, creating administrative burdens for users, limiting dealership involvement, and creating barriers to accessibility of registering ORVs.

Registration fees collected under the *Control of Vehicles (Off-road Vehicles) Act 1978* (WA) are deposited into a special purpose account, which local governments can access to fund the development and maintenance of ORV areas.

KEY AMENDMENTS

The *Control of Vehicles (Off-road Areas) Amendment Bill 2025* (WA) introduces several practical reforms, including:

- ▼ **Online Registration:** Removal of the statutory declaration requirement enables online registration and renewal, significantly improving accessibility, convenience and compliance.
- ▼ **Flexible Identification:** Registration stickers permitted as an alternative to traditional number plates, benefiting vehicles not designed to accommodate plates, aligning with best practice in other jurisdictions.
- ▼ **Stronger Penalties:** Maximum court-imposed fine increased to \$5,000, aligning with penalties under the *Road Traffic (Vehicles) Act 2012* (WA). Offences include operating unregistered vehicles, riding in prohibited areas, and engaging in unsafe or antisocial behaviour.

IMPLICATIONS FOR THE AUTOMOTIVE INDUSTRY

- ▼ **Dealership Integration:** Dealers can assist customers with ORV registration at point of sale, enhancing customer experience and driving sales.
- ▼ **Market Growth:** WA's geography and recreational culture, supported by five designated ORV areas, position the state as a key market for ORVs and related services.
- ▼ **Industry Opportunity:** Simplified compliance and improved enforcement are expected to boost participation in off-road activities, increasing demand for vehicles, accessories, and servicing.

The *Control of Vehicles (Off-road Areas) Amendment Bill 2025* (WA) represents a forward-looking approach to ORV regulation in Western Australia. By simplifying registration, introducing flexible compliance options, and strengthening enforcement, the legislation supports safer and more accessible off-road recreation while creating new opportunities for the automotive industry.

Automotive businesses should prepare to integrate ORV registration services and leverage marketing opportunities tied to WA's growing off-road recreation sector.

3. Policy Update

3.1 CHINA'S PROJECTED DOMINANCE IN AUSTRALIAN VEHICLE IMPORTS BY 2035

The Australian Automotive Dealer Association (AADA) projects that China will become Australia's leading source of automotive imports by 2035, accounting for 43% of all new vehicles sold. This represents a dramatic shift in the landscape of automotive imports into Australia, whereby a decade ago, there were near-zero imports from China.

KEY DRIVERS OF GROWTH

- ▼ **EV Leadership:** China dominates global EV manufacturing, supported by over \$250 billion in government investment between 2009-2023.
- ▼ **Cost Advantage:** Lower production costs and economies of scale.
- ▼ **Policy Incentives:** Australia's New Vehicle Efficiency Standards (NVES) encourage low-emission imports, a segment where Chinese brands excel.
- ▼ **Global Trade Dynamics:**
 - US imposed 100% tariffs on Chinese vehicles (May 2024).
 - EU introduced tariffs of 17-35% (October 2024) based on state support.
 - Australia maintains zero tariffs on imported vehicles, making it an attractive market for Chinese automakers.

CURRENT MARKET POSITION

Chinese brands already hold a 65% share of BEV imports as of 2024, signalling rapid growth in the segment.

IMPLICATIONS FOR INDUSTRY AND CONSUMERS

- ▼ **Market Disruption:** Analysts predict the influx of these brands may force some incumbent brands to exit the Australian market.
- ▼ **Consumer Risks:** Brand withdrawals could create challenges for servicing, spare parts availability, and recall obligations.
- ▼ **Dealer Considerations:** Dealers must plan for increased competition, evolving consumer preferences, and potential regulatory responses as well as carefully consider the structuring of businesses partnering up or proposing to represent these new market entrants and the risk associated with the supply of vehicles where not just incumbent brands but some of these new brands may not remain in the Australian market.

Automotive businesses should monitor trade policy developments and assess partnerships or diversification strategies to remain competitive in a market increasingly shaped by the new brands.



3.2 AAA PROPOSAL FOR NATIONAL EV ROAD-USER CHARGE

The Australian Automobile Association (AAA) is advocating for a nationally consistent road-user charge for EVs to address declining fuel excise revenue - a key source of road funding - as EV adoption accelerates.

KEY FEATURES OF THE PROPOSAL

- ▼ **Distance-Based Levy:**
 - Similar to the NSW model.
 - Would apply once EVs reach 30% market share or by 2027, whichever occurs first.
- ▼ **Revenue Reinvestment:**
 - Funds would be directed toward expanding EV charging infrastructure, particularly in underserved regions.
 - Aims to reduce range anxiety and support broader NVES objectives.
- ▼ **Political Viability:**
 - AAA argues reinvestment makes the policy more acceptable than a general tax with no infrastructure benefit.

IMPLICATIONS FOR INDUSTRY AND CONSUMERS

- ▼ **Infrastructure Expansion:** Improved charging networks could accelerate EV uptake and support long-term sustainability goals.
- ▼ **Consumer Confidence:** Addressing range anxiety is critical to overcoming one of the main barriers to EV adoption.
- ▼ **Strategic Considerations:** Automotive businesses should monitor policy developments and prepare for potential cost implications and consumer demand shifts.

Industry stakeholders should engage in consultations to ensure any road-user charge framework balances revenue needs with incentives for EV adoption.

3.3 INTERNATIONAL POLICY UPDATE

USITC SECOND REPORT ON USMCA AUTOMOTIVE RULES OF ORIGIN

The U.S. International Trade Commission released its second report on the USMCA automotive rules of origin on 1 July 2025, highlighting mixed impacts:

- ▼ **Parts Suppliers:** Significant gains - adding \$3.42 billion in revenue and nearly 5,400 jobs.
- ▼ **Automakers:** Higher production costs and reduced profitability due to stricter sourcing requirements.
- ▼ **Trade Patterns:** Imports from Canada and Mexico declined; imports from non-USMCA countries increased.
- ▼ **Investment:** U.S. auto manufacturing investment peaked at \$87.8 billion in 2023 before easing in 2024.
- ▼ **Competitive Factors:** Cost, investment, and production differentiation most likely affected. Stakeholders are expected to advocate for adjustments during the 2026 review, focusing on electrification and labour standards.

CHINA EV BATTERY MARKET EXPANSION

China's domestic power battery installations reached 58.2 GWh in June 2025, a 35.9% year-on-year increase.

- ▼ Lithium iron phosphate (**LFP**) batteries dominated with 81.5% share of installations (growing nearly 50% year-on-year).
- ▼ Battery exports rose 22.5% year-on-year.

This surge reinforces China's leadership in global EV battery production and global competitiveness.

EU 'VEHICLE OF THE FUTURE' INITIATIVE

The European Commission launched its 'Vehicle of the Future' initiative to strengthen the EU's position in software-defined vehicle (**SDVs**).

- ▼ **Investment:** €250 million in public-private investment (2023–2024), aligned with the European Chips Act.
- ▼ **Focus Areas:** Open-source collaboration, semiconductor supply chain resilience, AI-driven innovation, and next-generation vehicle platforms.

The initiative reflects Europe's strategic push to secure leadership in mobility technology.

Automotive businesses should monitor these global developments—particularly in electrification, supply chain resilience, and software integration—as they will influence trade, investment, and competitive positioning.

CANADA REMOVES COUNTER-TARIFFS ON U.S. GOODS

Effective 1 September 2025, Canada removed 25% counter-tariffs on most U.S. goods, including:

- ▼ \$14.2 billion in goods subject to tariffs since 13 March 2025.
- ▼ \$30 billion in goods subject to tariffs since 4 March 2025.

However, Canada maintains 25% tariffs on steel, aluminium, and automobiles, as the U.S. continues to impose tariffs on these sectors without exemptions under the United States-Mexico-Canada Agreement (**USMCA**).

PREVIOUS MEASURES

Since 9 April 2025, Canada imposed:

- ▼ 25% tariffs on non-USMCA compliant U.S. vehicles.
- ▼ 25% tariffs on non-Canadian/non-Mexican content in USMCA-compliant vehicles.

IMPACT AND POLICY INTENT

These tariffs have increased costs for businesses and consumers in both countries, contributing to higher prices, supply chain disruptions, and potential job losses. However, Canada's approach signals a clear policy objective: to incentivise domestic manufacturing and protect Canadian jobs and economic interests.



4. Case Law Update

4.1 ACCC v JAYCO CORPORATION PTY LTD

BACKGROUND

The Australian Competition and Consumer Commission (ACCC) has commenced proceedings in the Federal Court against Jayco Corporation Pty Ltd (Jayco), a leading caravan manufacturer. The case concerns marketing claims about the off-road capabilities of several RV models, including the Outback, All Terrain, and CrossTrak series.

This case follows a 2021 Federal Court decision in a separate matter where Jayco was fined \$75,000 for misleading one customer about refund rights, though allegations of unconscionable conduct were dismissed.

ISSUE

According to the ACCC, since January 2020 Jayco allegedly advertised these RVs as suitable for off-road and 4WD use, using phrases such as '*purpose-built off-road hybrid RV*' and '*can tackle just about any terrain*'.

ACCC claims these representations were misleading because:

- ▼ the vehicles were not designed for rugged terrain; and
- ▼ off-road use was excluded from warranty coverage.

ACCC argues consumers may have paid a premium based on these claims, impacting informed purchasing decisions.

OUTCOME

Jayco denies the allegations and intends to defend the claims, asserting its advertising was consistent with product capabilities and warranty terms.

ACCC is seeking declarations, penalties, compliance orders, injunctions and costs.

SIGNIFICANCE TO THE AUTOMOTIVE INDUSTRY

- ▼ **Marketing Compliance:** Promotional language must accurately reflect product capabilities and warranty terms.
- ▼ **Consumer Law Risk:** Misleading claims can lead to enforcement action, financial penalties, and reputational damage.
- ▼ **Precedent Setting:** The case may influence how courts assess advertising language in relation to product design and warranty coverage.

The outcome of this case may set a precedent for how promotional language is assessed in relation to product design and warranty coverage.

Dealers should review advertising practices and warranty disclosures to ensure transparency and compliance even when these are supplied by manufacturers to avoid being implicated in such conduct.

4.2 KENNETH JOHN WILLIAMS & ANOR V TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED (ACN 009 686 097)

BACKGROUND

A class action was commenced against Toyota Motor Corporation Australia (**Toyota**) concerning vehicles sold between 1 October 2015 and 23 April 2020 equipped with allegedly defective diesel engines. The claim relates to breaches of the Australian Consumer Law (**ACL**) guarantee of acceptable quality.

ISSUE

The core dispute concerns how damages should be assessed under section 272(1)(a) of the ACL for reduction in value caused by the defect.

Competing positions:

- ▼ **Williams (Plaintiffs):** Williams argued that the 17.5% assessment of the reduction of value should be restored as they believed the assessment should be made by reference to the value of the goods at the time of supply. Therefore, the assessment of the value of the goods will include any defect that exists at the time of purchase.
- ▼ **Toyota:** Toyota appealed on the basis that damages for the reduction in value of the vehicles should be assessed at the time of supply, considering what is known at the trial about the capacity to repair the defect, including the time from supply until such a repair would be implemented. Therefore, Toyota argued that a person cannot claim damages for reduction in value of goods if the defect can be remedied free of charge and the value of the goods restored by the time of trial.

OUTCOME

- ▼ **Federal Court** - [2022] FCA 344: Found vehicles were not of acceptable quality; awarded damages based on a 17.5% reduction in value.
- ▼ **Full Federal Court** - [2023] FCAFC 70: Reduced damages to 10%, considering repair availability at trial.
- ▼ **High Court** - [2024] HCA 38:
 - Upheld Williams' appeal and dismissed Toyota's.
 - Held that damages must reflect the reduction in value at the time of supply, regardless of later repairs.
 - Remitted proceedings to the primary judge for recalculation of damages.
- ▼ **Further update:**
 - On 5 August 2025, the Federal Court made procedural orders for a two-week hearing in 2026 to:
 - Calculate compensation for eligible group members.
 - Determine the impact of Toyota's DPF repair on entitlement to damages.
 - Next case management hearing: 19 December 2025.

SIGNIFICANCE TO THE AUTOMOTIVE INDUSTRY

- ▼ **Legal Precedent:** Confirms that damages under ACL are assessed at the time of supply, reinforcing strict liability for defects present at purchase.
- ▼ **Compliance Risk:** Manufacturers must ensure product quality and transparency about defects to avoid significant class action exposure.
- ▼ **Strategic Implications:** Extended litigation timelines and high-profile cases increase reputational risk and highlight the importance of robust warranty and recall processes.

Automotive businesses should review quality assurance, disclosure practices, and litigation risk management strategies in light of this decision.

Please see the HWLE Lawyers [Automotive Regulatory Update July 2025](#) for an earlier summary prepared on the Toyota class action.



4.3 AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION V MONEY3 LOANS PTY LTD (NO 3) [2025] FCA 1086

BACKGROUND

The Australian Securities and Investments Commission (**ASIC**) commenced proceedings in the Federal Court against Money3 Loans Pty Ltd, a car finance provider, alleging breaches of responsible lending obligations under the *National Consumer Credit Protection Act 2009* (Cth).

The case involved five loans issued between May 2019 and February 2021 to borrowers largely or solely reliant on Centrelink payments.

ISSUE

ASIC alleged that Money3:

- ▼ Failed to make reasonable inquiries into borrowers' living expenses.
- ▼ Did not verify expenses using bank transaction data.
- ▼ In one instance, failed to inquire into a borrower's requirements and objectives.
- ▼ ASIC also argued that Money3's internal expense guide was arbitrary and that benchmarks such as the Household Expenditure Measure (**HEM**) should have been used.

OUTCOME

Findings: Justice McElwaine held that Money3 contravened sections 128(d) and 130(1) of the *National Consumer Credit Protection Act 2009* (Cth) by failing to verify expenses and, in one case, failing to inquire into borrower objectives.

Rejected Claims: The Court dismissed ASIC's broader allegations, including:

- ▼ entering into unsuitable loans;
- ▼ failing to assess loan suitability;
- ▼ inadequate training of representatives; and
- ▼ arbitrary expense guide or failure to use HEM benchmarks.

ASIC Chair Joe Longo emphasised the importance of enforcement action to protect vulnerable consumers, even where outcomes are mixed.

A case management hearing is scheduled for 30 October 2025..

SIGNIFICANCE TO THE AUTOMOTIVE INDUSTRY

Compliance Risk: Dealers facilitating vehicle finance must ensure robust processes for verifying customer financial data and making inquiries into requirements and objectives.

Avoid Generic Approaches: Reliance on internal expense guides without verification can attract regulatory scrutiny.

Focus on Vulnerable Consumers: Sales-driven lending practices involving financially vulnerable customers pose heightened legal and reputational risks.

Dealers acting as credit intermediaries should review responsible lending procedures and training programs to ensure compliance with statutory obligations.

4.4 ASIC V DIAMOND WHEELS PTY LTD (ACN 068 677 163) & ORS

BACKGROUND

ASIC has commenced proceedings in the Federal Court against Diamond Wheels Pty Ltd and Keo Automotive Pty Ltd, alleging widespread contraventions of the *National Consumer Credit Protection Act 2009* (Cth) and the National Credit Code.

ASIC also alleges that Ken Keomanivong, a director of both companies, was knowingly involved in the contraventions.

ISSUE

Between 2014 and 2024, the companies allegedly:

- ▼ Provided vehicle finance to consumers without holding an Australian Credit Licence.
- ▼ Entered into hundreds of credit contracts to facilitate vehicle purchases, receiving repayments of principal, interest, fees, and charges despite being unlicensed.

ASIC further alleges:

- ▼ Flat interest rates applied to original loan amounts, resulting in consumers paying up to double the interest permitted under the National Credit Code.
- ▼ Failure to provide required disclosures, depriving consumers of critical information.
- ▼ Keo Automotive purported to act under a third party's Australian Credit Licence, but the appointment was legally ineffective.
- ▼ Mr Keomanivong, as director and operator of both entities, was knowingly involved in all alleged contraventions.

OUTCOME

ASIC is seeking:

- ▼ Declarations of contravention.
- ▼ Pecuniary penalties against the companies and Mr Keomanivong.
- ▼ Injunctions to prevent future breaches.
- ▼ The matter remains before the Federal Court.

SIGNIFICANCE TO THE AUTOMOTIVE INDUSTRY

- ▼ **Licensing Compliance:** Dealers and finance providers must ensure all credit activities are conducted under a valid Australian Credit Licence.
- ▼ **Disclosure Obligations:** Failure to provide accurate and complete information exposes businesses to significant regulatory and financial risk.
- ▼ **Director Liability:** Individuals involved in contraventions can face personal penalties.

Automotive businesses should audit finance arrangements and confirm that all credit activities comply with licensing and disclosure requirements under the National Credit Code.

4.5 ACCC V ATECO AUTOMOTIVE PTY LIMITED

BACKGROUND

The ACCC has instituted proceedings in the Federal Court against Ateco Automotive Pty Ltd, trading as LDV Automotive Australia (**LDV**), alleging breaches of the Australian Consumer Law (**ACL**). The case concerns representations made about the durability and suitability of LDV-branded vehicles, including models in the T60 and G10 series.

ISSUE

The ACCC alleges that:

- Between 23 April 2019 and 30 November 2024, LDV advertised certain vehicles as 'durable and tough' and suitable for use in, near, or on various environments and off-road terrains.
- These representations were misleading because the vehicles had a propensity to rust or corrode within five years of manufacture, particularly when used in or near certain terrains.
- LDV also promoted a 10-year anti-corrosion warranty (April 2019–August 2020), representing that T60 models had no material risk of rust during that period. The ACCC alleges these claims were false due to the vehicles' susceptibility to corrosion.

OUTCOME

The ACCC is seeking:

- Declarations of contravention.
- Pecuniary penalties.
- Consumer redress orders.
- Injunctions and costs.

The matter remains before the Federal Court.

SIGNIFICANCE TO THE AUTOMOTIVE INDUSTRY

- Marketing Compliance:** Dealers and manufacturers must ensure promotional claims about durability and warranties are accurate and supported by product testing.
- Risk of Enforcement:** Misleading representations can lead to significant penalties, consumer redress obligations, and reputational damage.
- Dealer Exposure:** LDV dealers may face increased scrutiny and consumer complaints regarding affected models.

Automotive businesses should review advertising materials and warranty terms to ensure they align with actual product performance and legal obligations.



4.6 AHG WA (2015) PTY LTD V MERCEDES-BENZ AUSTRALIA/PACIFIC PTY LTD [2025] FCAFC 86

BACKGROUND

On 9 July 2025, the Full Court of the Federal Court dismissed an appeal brought by a group of Mercedes-Benz dealers challenging the company's transition from a dealership model to an agency model. This case is significant as it addresses the scope of unconscionable conduct under section 21 of the Australian Consumer Law (ACL) and obligations under the *Competition and Consumer (Industry Codes - Franchising) Regulations 2024* (Cth) (Franchising Code), in a context involving commercial parties rather than end consumers.

ISSUE

The dealers alleged that Mercedes-Benz engaged in:

1. Unconscionable conduct under section 21 of the ACL.
2. Breach of the duty of good faith under clause 6 of the Franchising Code.
3. Contractual breaches.
4. Economic duress.

At first instance, the Court dismissed all claims. On appeal, the dealers limited their arguments to unconscionability and breach of good faith.

OUTCOME

The Full Court upheld the original decision, finding:

- ▼ It is not unconscionable for a commercial party to act in its own self-interest when changing contractual terms, even if detrimental to another party.
- ▼ Exercising contractual rights for one's own benefit does not in itself breach good faith obligations.
- ▼ Robust, arm's length negotiations aimed at securing the best commercial outcome are permissible, provided conduct is honest and not capricious or arbitrary.

SIGNIFICANCE TO THE AUTOMOTIVE INDUSTRY

- ▼ **Agency Model Transition:** Confirms that manufacturers can restructure distribution models without necessarily breaching ACL or good faith obligations. However, each situation will turn on its own fact.
- ▼ **Commercial Negotiations:** Reinforces that strong bargaining positions and self-interest are lawful if exercised transparently and without bad faith.
- ▼ **Dealer Strategy:** Dealers should anticipate structural changes and negotiate proactively, as courts will uphold contractual rights absent dishonest or arbitrary conduct.

Automotive businesses should review franchise agreements and prepare for potential shifts toward agency models, ensuring compliance strategies and negotiation frameworks are robust.

4.7 PENTANA SOLUTIONS PTY LTD V TITAN DEALER MANAGEMENT SOLUTIONS PTY LTD & ORS

BACKGROUND

In September 2020, Pentana Solutions Pty Ltd (**Pentana**) commenced Federal Court proceedings against Titan Dealer Management Solutions Pty Ltd (**Titan**), alleging copyright and related IP infringement concerning Pentana's Dealer Management System (**DMS**) software and materials.

Titan has filed a cross-claim alleging Pentana's misuse of market power and misleading or deceptive conduct in representations to dealerships.

ISSUE

The allegations include:

- ▼ Pentana alleging Titan copied protected elements of Pentana's DMS intellectual property and related materials.
- ▼ Titan alleging Pentana leverages its dominant market position to restrict competition and uses renewal/extension mechanisms and termination charges in ways that deter switching and substantially lessen competition.
- ▼ Titan alleging Pentana engaged in misleading or deceptive conduct via representations in statements made to dealers about contract terms and switching costs.
- ▼ Titan alleging Pentana impeded customer data export, effectively keeping dealer data as leverage to retain customers.

OUTCOME

- ▼ The matter commenced its allotted three-week trial in the first week of December 2025.
- ▼ Pentana continues to press its intellectual property claims and contends that Titan's counter allegations regarding unlawful competition practices are a distraction.
- ▼ The matter remains before the Federal Court, with judgment to be provided in the New Year.

SIGNIFICANCE TO THE AUTOMOTIVE INDUSTRY

- ▼ **Dealer reliance on integrated DMS:** The case underscores switching frictions (contract renewals, termination costs, data portability) that can amplify lock-in risk for dealerships. This illustrated dealer dependence on integrated DMS platforms which makes dealerships susceptible to restrictive terms and lock-in practices.
- ▼ **Competition law focus:** Allegations test the post-2017 effects-based section 46 framework of the *Competition and Consumer Act 2010* (Cth) - conduct that has the purpose, effect or likely effect of substantially lessening competition may attract scrutiny.
- ▼ **Competition law concerns:** Dominant providers using renewal mechanisms may attract scrutiny under the *Competition and Consumer Act 2010* (Cth) for misuse of market power.
- ▼ **Industry Implication:** Influences future disputes involving software providers and dealership agreements across automotive and related sectors.
- ▼ **Contracting & compliance:** Providers and dealers should review renewal mechanics, termination fees, and data portability practices for *Australian Consumer Law and Competition and Consumer Act 2010* (Cth) compliance.

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