

## ACCC unlikely to secure compensation for Volkswagen customers

Written by The Conversation

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The Australian Competition and Consumer Commission's (ACCC) is unlikely to secure compensation for customers from German car maker Volkswagen and its Australian subsidiary for breaching emission standards. This is because Australia standards, even though they are based on European emission standards, aren't as stringent as in Europe or the United States.

### [The ACCC alleges](#) :

“consumers rightly expect that their vehicle’s emissions would operate as advertised and this was not the case with more than 57,000 vehicles sold in Australia by Volkswagen over a five year period.”

The cars in question include various models made between 2008 and 2015 including the Amarok, Golf, Polo and Passat.

The ACCC alleges Volkswagen engaged in misleading or deceptive conduct, made false or misleading representations and engaged in conduct liable to mislead the public in relation to diesel vehicle emission. More specifically, that Volkswagen represented the vehicles as complying with Australian and European standards and all regulatory requirements, when this was in fact not the case.

The European emission standards for passenger cars (including SUVs) applied to the vehicles mentioned in the ACCC's claim, ranged from Euro 5 for new models in 2009 and all new vehicles 2011, to Euro 6 [for new vehicles sold from September 2015](#) . This means that Euro 5 applied for the above vehicles.

However in Australia, the European regulations Euro 4 applied to vehicles launched before November 1, 2013, and Euro 5 vehicle emission standards will only apply to all new cars ([including SUV's and LCV\) on November 1, 2016](#)

. In effect, Euro 4 regulatory standards applied and Euro 5 applied to new models.

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In the United States this is different again. The US Tier 2 and Tier 3 regulatory standards on nitrogen oxide emissions are stricter than Europe's regulatory standards for Euro 5 and Euro 6. So much so that Volkswagen diesel engine manufacturers concede it will be far harder to meet the stricter US standards.

This has led to [a US\\$10 billion buyback program](#) for turbocharged direct injection car owners. They can now sell their cars back to Volkswagen. The initial action was initiated by the US Department of Justice, which first sued Volkswagen on behalf of the Environmental Protection Agency.

This is not the case in Europe and in Australia. Volkswagen is recalling the affected vehicles and offering no compensation.

Pressure is mounting on countries in the Europe for not taking action. In the United Kingdom, Volkswagen appeared before the Transport Select Committee in 2015 to answer [questions on its emissions testing for its cars](#)

The UK arm of Volkswagen said it wasn't required to pay compensation because it removed the defeat device from its vehicles. This is the software in engines that could detect when they were being tested, changing the performance accordingly to improve results.

It said the removal won't have an impact on performance and the cars will pass the less stringent European Union emission tests after the approval of new technical measures by the relevant authorities.

When questioned whether vehicle owners would be compensated in the UK, Volkswagen said it was not necessary to do so. It argued compensation requires a fault which has given rise to some form of loss, and they did not believe this was the case. Any discrepancy between the advertised carbon dioxide emissions and fuel economy and actual performance was expected to be very slight in the UK. If this is the case, then the same argument could apply in Australia which adopts more lenient regulatory standards than in Europe.

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The ACCC's case assumes consumers expect vehicle emissions would operate as advertised. In the review of Euro 5/6 Light vehicle emission standards, the Australian [Department of Infrastructure and Transport](#) said for consumers buying a new car, emissions don't rate highly on their concerns.

This latest case brought against Volkswagen is likely do to little to alleviate the concerns from customers about whether the scandal will affect the value of their car.

*Anna Mortimore does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond the academic appointment above.*

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