



11th March 2019

Mandatory Motor Vehicle Scheme
Consumer and Corporation Policy Division
The Treasury
Langton Crescent
Parkes ACT 2600

Email: repairinfo@treasury.gov.au

To: Mandatory Motor Vehicle Scheme

**RE: Mandatory scheme for the sharing of motor vehicle and repair information
Consultation Paper**

1. Introduction

1.1 The Motor Trades Association Queensland (MTA Queensland or the Association) responds to your request for feedback and comments to *the Mandatory scheme for the sharing of motor vehicle and repair information* – consultation paper by submitting the following views and issues for consideration.

1.2 The comments presented in this submission are substantially confined to the views and issues from the perspective of the MTA Queensland's Automotive Engineers Division (mechanical repairers) and the Australian Automotive Dealers Association (franchised dealers).

2 Preamble

2.1 This submission is neither intended to be exhaustive in its canvassing of matters in the paper nor is the analysis intended to examine issues in detail. Its purpose is to submit a catalogue of matters relevant to the automotive value chain for which the MTA Queensland requests consideration when determining the scope and competence of any mandatory Code that will be imposed on the industry as a mechanism to transfer technology and intellectual property from vertically integrated Original Equipment Manufacturers (OEMs) and their franchised dealers to independent providers of scheduled motor vehicle servicing.

2.2 The MTA Queensland would be pleased to provide further explanation if necessary, on the issues in this submission or to contribute in any further way which can assist in advancing deliberation to arrive at an equitable and effective policy framework for the proposed mandatory Code.

Motor Trades Association Queensland

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3. The MTA Queensland's policy support

3.1 The MTA Queensland supports the concept of enhancing the competitive operation of the private and commercial vehicle servicing and repair sector of the automotive chain by effecting the transfer of proprietary technology and operational procedural data to independent service and repair providers on fair and commercial terms to benefit consumers.

3.2 The Association in a supplementary submission to the Australian Competition and Consumer Commission's New Car Retailing Industry - a market study, stated its full support for a statutory mandated regulatory framework (25th October 2017) intended to enhance competition and mitigate distortions in the automotive services and repair sector delivering the consumer fairer outcomes.

3.3 The MTA Queensland in endorsing the concept, registered its concerns that in pragmatic terms the crafting of a policy framework and the commercial arrangements to achieve such an outcome would be extremely challenging. At the time the endorsement was made, the Association submitted that while the concept had been accepted as a remedy to market distortion in the automotive services and repair sector, in some national and multinational jurisdictions a successful operating framework had yet to be achieved. The example of the European Union (EU) was presented.

3.4 The EU introduced a multilateral requirement for OEMs to transfer the necessary data to repair and service vehicles to independent providers in parallel to the adoption of EURO 4 and 5 emissions reduction protocols. Since that time, amendments have been made to the technology transfer protocols to achieve enhancements to sectoral competition; however, to date market remediation has been difficult to achieve and results generally would be indicative of an underperforming policy framework.

3.5 The MTA Queensland in accepting the desirability of better outcomes in the automotive services and repair market remains of the view that the crafting of a mandatory Code that can achieve such an outcome will be a challenging task because of the technical disruption that the sector will experience over the near and medium terms.

4 A Basis for a Mandatory Protocol

4.1 The MTA Queensland submits a basis for a mandatory protocol for consideration to contribute to a satisfactory resolution to the development of the proposed mandatory Code.

4.2 The automotive scheduled servicing and mechanical repair market is a dichotomy comprised of two tranches that make up Australia's vehicle fleet. The first consists of vehicles that are covered by an OEM original motor vehicle warranty. The second is constituted by those vehicles or groupings of vehicles on which the OEM warranty has time expired.

4.3 The MTA Queensland advocates that this market structure needs to be recognised and incorporated into the framework of any mandatory Code if it is to achieve the outcomes intended from this reform.

4.4 Anecdotal workshop vehicle repair and service data reveals that the age range of vehicles was: 20% -1-3 years old; 60% - 4-10 years old; and 20% - 10+ years old. This suggests for the first 3 years approximately 80 percent of vehicles covered by OEM warranties are serviced by franchised dealers. Unless the proposed framework has the competence to deal with the market's

chronological characteristics, policy efforts to reinforce competition are likely to be limited to approximately 20% of the national vehicle fleet.

- (a) The Association submits that to achieve a more productive outcome for the policy effort, the mandatory Code should provide for differential obligations to be applied to stakeholders based on the status of the OEM warranties for a vehicle or a grouping of vehicles. This would include obligations being placed on the OEMs under the Code that would precede the date on which the mandatory framework comes into force.
- (b) The Association submits that obligations to transfer intellectual property, technology and access repair data in respect of vehicles with new or the balance of current OEM warranties should be enforceable from the date on which any mandatory framework is mutually agreed to operate. In respect of such obligations OEMs should be entitled to recover fair and reasonable audited costs and to apply a reasonable commercial rate of return on intellectual property that form part of such a transfer.
- (c) For vehicle models marketed in Australia by OEM franchised dealers for which the manufacturer's warranty has expired, the Association submits that additional obligations should be incorporated into any framework. The mandatory Code should have the competence to apply retrospectively in respect of transfers of intellectual property, technology and access protocols for a period of ten years prior to the date on which the Code comes into force. This would deliver benefits to stakeholders of increased competition and better consumer outcomes for owners of motor vehicles as they may access repairs on better prices.
- (d) The 10-year retrospectivity is based on the average age of Australia's vehicle fleet. In respect of vehicles no longer covered by a manufacturer's warranty, OEMs should be obligated to make available to 'independent repairers that comply with consumer protection and security compliance benchmarks', absolute access to intellectual property, all technical information and the necessary access codes and protocols for all and every category of vehicle models and editions for which the general original OEM warranty has expired in the Australian market in a period of ten years preceding the date of the implementation proposed mandatory Code.
- (e) Further, there should be a stipulation requiring the packaging of these properties relevant to subject vehicles in a way that provides reasonable access for complying independent repairers from the date of the commencement of this arrangement. OEMs should be entitled to only recover the audited direct costs of packaging and electronic warehousing of the properties that are the subject of the Code.
- (f) Such an arrangement would appear to have a number of stakeholder benefits and deliver good policy outcomes:
 - a. This arrangement would create a driver to extend the interval of the manufacturer's warranty on new cars;
 - b. There is likely to be enhanced support for the introduction of the latest technologies into Australia's automotive market because OEMs would recover the most attractive margins on new technology. The 'sweating' of redundant technology would have a low priority in business plans; and

- c. There is likely to be a considerable consumer benefit; lower socio-economic groups that cannot access the new car market would find the operating costs of their pre-owned vehicles should be reduced by downward pressure on service and maintenance costs as competition increases in the market segment.

5. Issues

5.1 Some issues the proposed mandatory Code would need to manage include:

5.1.1 Australia is a signatory to the international convention on intellectual property. Therefore, international registered patents, trademarks and designs have statutory protection consistent with Australia's international obligations. Any proposed Code would necessarily acknowledge the status of such intellectual property and the standing of the Registered Users entitled to the exclusive use and rent from such properties.

5.1.2 The intention as recommended by the ACCC in its market study is for a 'a mandatory scheme be introduced for car manufacturers to share technical information with independent repairers, on commercially fair and reasonable terms '(the paper, p.2). The challenge is how is this to be accomplished? The cost to independent mechanical repair businesses must be reasonable and affordable and yet the OEM balance sheets and those of their franchised dealers would be impacted by any impairments resulting from the revaluation of intellectual properties. The determination of fair and commercial terms is a value judgment and may need arbitration through an independent dispute resolution and mediation process.

5.1.3 The MTA Queensland considers the 'pricing' challenge to be a major issue. The OEM is entitled to protect the balance sheet by demanding a commercial price for the transfer of intellectual property. Their franchised car dealers only have to invest in a specific inventory of equipment relevant to the range of vehicle models the OEM intends supplying to Australia's market. On the other hand, the independent may need to have a number of repair lines to service a much broader range of vehicles to implement a successful business model because they don't have the advantage of market share generated by the original vehicle sale, OEM warranties and marketing packages that may subsidise warranties and scheduled servicing. The price at which the transfer is transacted therefore becomes a crucial consideration to the stakeholders and the success of the proposed mandatory Code.

5.1.4 There are also national economic considerations that the MTA Queensland draws to the attention of the mandatory motor vehicle scheme. The most important appears to be the potential for an inadequate price for intellectual property to cause a technology lag in Australia and impact productivity. If the transfer price is too low, it is possible that technology made available in Australia's automotive market may fall cyclically behind the latest developments in the global industry because OEMs wish to recover the real commercial value of their innovation. If such a situation eventuates, Australia will have a less sophisticated and less efficient private and commercial transportation compared to our international competitors causing a drag on the economy. The government may need to consider some liberalisation of the motor vehicle import regime contiguously with the implementation of the mandatory Code in order to ensure Australia receives the most recent vehicle technology available.

5.1.5 The Association draws attention to an unintended consequence that may impact the benefit that accrues to the motoring public. This is a possibility that due to the cost of transferring technology and training, independent repairers may develop small scale repair focus on providing the less sophisticated and demanding services which also carry the most attractive remuneration margins. In this case the franchised dealers would be left with the complex lower margin business and in the medium to longer term they would have to lift prices for these operations to protect their bottom line.

5.1.6 There remains the problem of ensuring that independent service providers receive appropriate training at a fair price and at a time that allows them to anticipate the introduction of new technology and vehicle models into the market. The issue of quality control and warranties on work by independents needs to be resolved by the proposed mandatory Codes as does 'brand' protection.

5.1.7 Enforcement is an issue that requires further consideration beyond that proposed in the paper which is 'to provide a reasonable period to settle arrangements and ensure all industry participants are well informed of the new requirements of the mandatory Code.' It is recognised the ACCC's role in enforcing the Code would form part of its existing enforcement activities for all Competition and Consumer Act codes, which ultimately would include the mandatory scheme for servicing of motor vehicles. The general view is that enforceable penalties for non-compliance should be included in the proposed Code and apply from the Code's gazettal date.

6. Service and Repair Information Sharing Advisory Committee

6.1 The Association notes consideration is being given to the establishment of a Service and Repair Information Sharing Advisory Committee (the committee) to provide a fair and transparent mechanism for industry to contribute to the development and implementation of service and repair information sharing protocols and operating procedural guidelines.

6.2 The Association notes too, the membership and the terms of reference of the Committee. The MTA Queensland earnestly requests consideration for membership of the proposed Committee in order to advocate the views of the state's automotive sector as it not affiliated with any of the national industry organisations that are proposed as members. It would be inequitable for the State's independent repair sector to be denied an opportunity to contribute its expertise to the deliberations of the committee when the interests of the other states and territories appear to be comprehensively represented.

7. Technology Disruption

7.1 The automotive value chain is facing the most severe technology disruption of any sector in Australia's economy. The advent of electric motor vehicles and the progression to autonomously controlled vehicles will significantly alter the profile of the industry and impact the servicing and mechanical repair sector - both the franchised dealerships and the independent repairers.

7.2 The most apparent change caused by the uptake of electric vehicles will be the extension to vehicle service intervals. The Tesla has a service interval of four years compared with the internal combustion engine (ICE) vehicle of just twelve months.

7.3 The vehicle technology will differ significantly with electric cars on average having twenty-five percent fewer manufacturing parts than conventional ICE vehicles. Importantly, the emissions equipment that is mandated by environmental protocols will no longer form an important servicing and repair consideration.

7.4 Both franchised dealers and independent repairers will need to invest in a new generation of equipment relevant to electric vehicles and undertake a new training syllabus to be able to properly service the new technology and ensure workplace health and safety.

7.5 Autonomous vehicles will represent a challenge as they will operate under computer guidance. There are likely to be legal consequences if product failure is substantially caused by inadequate repairs or maintenance programmes.

8. Spatiality

8.1 Australia's demographics are characterised by a decentralised population distribution. Regional and remote communities comprise approximately a third of the Australian population and are dependent on road transport logistics both personal and commercial for their quality of life and standard of living.

8.2 Automotive service and mechanical repair businesses in many remote and rural locations face the challenge of operating in a dispersed or extended market catchment with diseconomies of scale.

8.3 In many cases the businesses in rural and remote locations, particularly independent service providers are forced to operate on tighter margins than their metropolitan counterparts.

8.4 In determining fair and equitable outcomes in respect of automotive scheduled servicing and mechanical repairs in these geographically remote regional areas the Association submits that the proposed mandatory Code should take into consideration the economic geography of service providers and the costs of operating in these more challenging business environments.

9. Repair Sector – An overview

9.1 The automotive service and mechanical repair sector comprises an important and integral part of the automotive value chain. The market is divided into two groups: firstly, the vertically integrated franchised automotive dealers who service the vehicles; and secondly, independent service providers mainly comprising small/medium enterprises (SMEs) including a number of dedicated servicing and repair franchises which have gained worthwhile market positions e.g. K Mart, Midas, Repco, Lube Mobile. There is usually a considerable differential in scale and economic capacity between the independent repair service providers and the vertically integrated franchised dealers.

9.2 The market space in which these businesses operate has undergone significant changes and will continue to evolve driven by the need to manage technology advances and earn a fair return on sunk intellectual capital and acquired knowledge and expertise.

9.3 Recent major changes include a tightening in the automotive new vehicle market which is forecast to continue for some time. In response to this contraction in consumer demand, the OEMs and their franchised dealers have been incorporating vehicle maintenance and scheduled servicing into the marketing packages created to sell new cars. The scheduled service intervals have been extended due to improved technology and designs and significantly, new vehicle warranties have been extended with five-year warrants being usual and a number of brands offering seven-year coverage on their vehicles. Perhaps more importantly in many instances, a new vehicle marketing pack offers 'fixed price servicing' and some innovating package are offering 'free scheduled servicing for three years'.

9.4 Further evolution by the incorporation of maintenance and servicing into marketing packages for new vehicles would not be an unreasonable assumption as consumers continue to place great emphasis on operating costs in making vehicle purchase decisions.

9.5 A Code which mandates behaviour intended to transfer the necessary technology and intellectual property for independent service providers to participate in providing scheduled maintenance and service repairs would need the competence to respond to the evolving incorporation of these services into new vehicle marketing promotional packages.

9.6 Each OEM brand franchise has its own 'business model' and the details of financial arrangements are commercially sensitive and protected. The Association does not have empirical data, it does however hold information which indicates that in a franchised dealership the scheduled service and mechanical repairs cash flow contribute significantly to the viability of these businesses.

9.7 It appears that the contribution of the mechanical services cost centre is an important element of all the new vehicle franchise business models irrespective of scale or brand. Any arrangements to transfer all or part of the servicing cost centres from existing franchises could precipitate an economic rationalisation of the sector. It would therefore appear that any codification that mandated a transfer of business along the value chain must have a competence to ensure that intended consequences are mitigated and managed and that in correcting one distortion, another statutory distortion is not created as a replacement.

10 Conclusion

10.1 The MTA Queensland supports the proposal to enhance competition in Australia's automotive scheduled service and mechanical repair market and in so doing remedy some of the distortions and rigidities that currently persists and general inequitable outcomes for consumers.

10.2 The Association is in agreement that technology and intellectual property must be made available to independent repair providers to allow them to compete in the market mitigating market distortions by providing competition.

10.3 The Association remains concerned about 'real' issues that are raised by the application of a mandatory Code of Conduct, the unintended consequences and further distortions that could be generated by the incorrect transfer pricing of technology and intellectual property exchanges.

10.4 The European Union has grappled with problems since the beginning of the 21st century without satisfactory progress. The Association in submitting the views expressed in part 4 - 'A Basis

for a Mandatory Protocol' - does so for the purpose of identifying a pathway to reconcile the interests of all stakeholders and achieve a fair and equitable mandatory protocol.

10.5 The MTA Queensland considers that there will need to be some form of regulatory enforcement for a mandatory Code to be effective. The regulating regime is likely to benefit by referencing matters to the automotive value chain to manage unintended consequences. The MTA Queensland would be please to contribute its expertise to such an arrangement.

11. Background

11.1 The MTA Queensland is the peak organisation in the State representing the specific interests of businesses in the retail, repair and service sector of Queensland's automotive industry located in the State. There are some 15,500 automotive value chain businesses employing approximately 88,500 persons generating in excess of \$20 billion annually. It is an industrial association of employers incorporated pursuant to the *Fair Work Act* 2009. The Association represents and promotes issues of relevance to the automotive industries to all levels of Government and within Queensland's economic structure.

11.2 Australia's first automotive hub, the MTA/Q, has been established in specially prepared space at the corporate office. The hub is an eco-system that supports innovation for the automotive industry.

11.3 The Association is the leading automotive training provider in Queensland offering nationally recognised training, covering technical, retail and the aftermarket phases of the motor trades industry through the MTA Institute - a registered training organisation. It is the largest automotive apprentice trainer in Queensland employing trainers geographically dispersed from Cairns to the Gold Coast and Toowoomba and Emerald. The MTA Institute last financial year accredited courses to in excess of 1,600 apprentices and trainees.

Thank you for your deliberation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brett Dale', with a small flourish at the end.

Dr Brett Dale DBA
Group Chief Executive
MTA Queensland