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# MTAA Submission to Treasury Department Consultation Paper on Mandatory scheme for the sharing of motor vehicle service and repair information



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## 1. Executive Summary

- 1.1. The MTAA welcomes the decision of Government to the implementation of a prescribed Mandated Code of Conduct for Access to motor vehicle service and repair information (**Code**) as the appropriate mechanism to satisfy government intervention as recommended by the Australian Competition and Consumer Commission (ACCC).
- 1.2. The MTAA also appreciates the efforts of the Treasury Department and its officials in the development of a Consultation Paper to expedite the finalisation and implementation of the Code.
- 1.3. After extensive consultations by MTAA and Members, the Federation confirms there is overarching support by all automotive sector industries impacted and potentially party to the Code including broad concepts and objectives as outlined in the Consultation Paper released in February 2019.
- 1.4. Some MTAA Members and many of their constituents expressed disappointment that some elements of the Consultation Paper appeared to fail in providing surety and clarity on key areas - suggesting further consultation - and thereby raising the prospect of further delays to the introduction of a solution. Most stakeholders are of the view that such matters have already been extensively canvassed through the ACCC New Car Retailing Market Study and other investigations with a clear expectation that the final draft mandated Code would be further advanced than the Consultation Paper suggested.
- 1.5. While MTAA understands the need for robust policy exploration to ensure a sustainable regulatory solution to such complex matters, the Federation nonetheless shares Member and Constituent concerns about the significant time delays and lack of some specificity in the Consultation Paper.
- 1.6. The use of broad policy objectives and definitions in the Consultation Paper to allow flexibility for rapid technological developments in the automotive sector, and industries within it, is understood and supported by MTAA.
- 1.7. However MTAA cautions against an over reliance on broad language. In certain areas greater specificity is required to mitigate any risk of ambiguity fueling further delays to implementation or potential undermining of the intent and operation of the Code. The failure of the Heads of Agreement should serve as a reminder to Government that broad based principals and objectives can have limitations.

- 1.8. MTAA believes it achieved a reasonable compromise of broad objectives along with specific definitions in its submitted draft code. As Treasury is aware this draft code was arrived at after extensive analysis of definitions and objectives of other jurisdictions in the Australian context.
- 1.9. MTAA has never suggested the definitions and other elements of the Federation's draft code are absolute. Nor does MTAA necessarily reject other definitions and provisions provided by other kindred organisations in their submissions to Treasury. The MTAA is committed to expediting a solution to these matters and is encouraged that this can be achieved quickly given some work undertaken during the industry round table on 7 March 2019. The role of government policy determination is critical to this process.
- 1.10. As an example of how a broad objective and definition could coexist with a detailed list potentially contained in a schedule is 'what is or isn't service and repair information?'
  - a. The Broad definition as an example may take the form of:
    - i. *'If information is made available to a franchised new car dealer then it must be made available to other parties including independent repairers, third party information aggregators etc.'*
  - b. While the specific details, potentially contained in a schedule to the Code (and therefore more readily able to be updated), may take the form of a combination of definitions provided by MTAA, AAAA and FCAI. The example in the MTAA draft code clearly defines what is considered repair information and is not restricted by further changes with technology.
- 1.11. A significant concern is an apparent omission in the Consultation Paper in regard to the intersect between the mandated Access to Motor Vehicle Service and Repair Information Code and Australian Consumer Law (ACL) and the Competition and Consumer Act (CCA).
- 1.12. MTAA respectfully suggests that clarity must be provided in regard to the interrelationship between the Code and other relevant laws and regulations relating to consumer guarantee and warranty in particular. MTAA considers it important that a mandated Code clearly identifies the obligations of all parties to be bound by the Code, but also clarity in obligations in regard to other relevant laws and regulations and the interrelationship between all.
- 1.13. This submission will present other key areas relating the to the distributed consultation paper and outline potential areas for consideration by Treasury.

## 2. MTA and Member organisations in context

- 3.1 The Automotive sector and the multiple industries within it, are undergoing unprecedented structural adjustment brought about by external global influences including automation, the rapid application of advanced technology, increasing influence of increasingly larger and consolidated market participants, and changes to consumer purchasing behaviours.
- 3.2 Modern motor vehicles are now highly complex, integrated, and increasingly inter-connected products. Increased safety, efficiency, environmental, mobility and connectivity outcomes are being achieved with increasing reliance on computerisation, often with multiple third party Original Equipment Manufacturers (OEMs) creating and supplying technologies particularly in advanced systems and sub-system integration.
- 3.3 MTA Limited is the national association of participating State and Territory Motor Trades Associations and Automobile Chambers of Commerce Members, and discrete national industry associations that exist under the MTA umbrella providing unparalleled coverage and access to the nation's automotive and related businesses.
- 3.4 MTA and members represents and is the national voice of the 69,365 retail motor trades businesses which employ over 379,365 Australians that contributed \$37.1 billion to the Australian economy in 2015/16; which equates to 2.2% of Australia's GDP. <sup>1</sup> The vast majority of these businesses are small and family owned and operated enterprises.
- 3.5 MTA member constituents include automotive retail, service, maintenance, repair, dismantling recycling and associated businesses, that provide essential services to a growing Australian fleet of vehicles fast approaching 20 million (expected by 2020) and growing annually by 2.1%<sup>2</sup> that has rapidly advancing technological systems and capabilities.
- 3.6 MTA Limited Members have almost all industries (more than 95%) of the automotive sector represented as business member constituents. This allows MTA Limited Members the ability to understand the operations, issues, concerns and risks of participating automotive industries including but not limited to:
- *New car retailing (including service)*
  - *Used car retailing (including some who service)*
  - *New and used motorcycle retailing (including service and recycling / dismantling)*
  - *Vehicle body repair (smash repair)*
  - *Independent automotive servicing*
  - *Service station and convenience stores (franchise and independent)*
  - *Auto recyclers, dismantlers and part suppliers*

<sup>1</sup> Australian Automotive Directions Industry Report, August 2017

<sup>2</sup> Australian Automotive Directions Industry Report, August 2017

- *Farm and industrial machinery retailing (including service and in some cases dismantling and recycling)*
- *Tyre retailing, retreading and recycling*
- *Towing*
- *Bus and coach*
- *Heavy vehicle*
- *Specific service professions including glass, transmission, engine replacement and reconditioning, brakes, steering, automotive electrical and air- conditioning*
- *Vehicle Rental*

2.7 Most MTAA Limited members are also automotive sector training providers and possess extensive operations and facilities in apprenticeship training and skills development and post trade qualifications. In many jurisdictions MTAA Members are the largest employers of automotive apprentices and trainees.

## 4. MTAA Member input to this submission

- As part of preparing this submission in response to the Treasury Consultation Paper, MTAA members have provided significant input and feedback based on individual consultations with their constituents across franchised new car retailing, motor body repair, independent and franchised independent automotive industries. Some MTAA members may have elected to provide separate submissions and these should be read in conjunction with this MTAA submission.
- Some of these internal consultations which contain some specific jurisdiction views of discrete industry participants are contained in **Attachment 1** to this submission, while others are incorporated into the body of this submission.

## 5. Principals and Features of a Mandatory Code

### 5.1 General Observations

Department Questions	MTAA Response
<p>5.1. Are possible elements of a mandatory code of conduct and a Service and Repair Information Sharing Advisory Committee appropriate as a starting point for developing and consulting on detailed provisions?</p>	<p>Yes. However, MTAA and Members urge finalisation and implementation of the Code as a policy and regulatory priority given the extensive investigations and consultations over the past four years.</p>
<p>Do possible elements of a mandatory code of conduct and a Service and Repair Information Sharing Advisory Committee provide significant improvement on the current voluntary scheme?</p> <p>And</p> <p>Are possible elements of a mandatory code of conduct and a Service and Repair Information Sharing Advisory Committee a suitable alternative to a legislated scheme, which would enable the creation of an industry-funded body to advise on the scheme but would be slower to implement and update.</p>	<p>Absolutely.</p> <p>MTAA, the organisation that assisted in leading the coordination and facilitation of the Heads of Agreement (HoA) with the then government; has consistently indicated a staged approach ensuring maximum opportunity for industry to resolve the matter.</p> <p>I.e. If unfortunately the HoA failed (which it has), then regulatory intervention through a prescribed and mandated Code of Conduct has always been the MTAA recommended and supported next step.</p> <p>If the Code fails to address critical industry and consumer matters through a review process, over time, then a legislated outcome may still need to be considered and necessary as a final solution.</p>

- MTAA applauds the Consultation Paper recognition that a prescribed mandated Code of Conduct is the preferred method to address the ACCC recommendation for a mandated scheme and MTAA, Members and automotive business members support this outcome.
- **Avoidance of generalisations:** MTAA respectfully suggests there are some significant generalisations throughout the Consultation Paper and care should be exercised not to overly rely on such generalisations in a finalised prescribed Mandated Code and allow for some specificity and clarity where required.
- For example:
  - MTAA is of the view that language in the consultation paper in regard to the protection of vehicle security, environmental, and safety information could be read by some that this type of information may be restricted generally and contrary to the ACCC recommendation.



- The MTAA and Member position on this issue is clear that such information must be made available to ensure vehicles are repaired according to manufacturer's specifications so that vehicle safety is not compromised. Safety information is becoming increasingly important as more Advanced Driving Assist Systems (ADAS) are introduced into the vehicle which requires complex system calibrations. Without access to some safety information the consumer will have no choice other than to return to the dealer. In regulated states, the departments responsible for ensuring vehicles are kept to a standard considered acceptable according to manufacturer's guidelines are increasingly looking at ways where ADAS are included in the overall roadworthiness inspection of a vehicle.
- *'Safe vehicle service and repair requires sufficient information regarding the vehicle and the expertise to use that information appropriately' – Background 2.2 Pg. 2.*
  - MTAA suggests a need to define some terms such as 'sufficient'. 'Sufficient' in the view of MTAA is all repair information provided to a dealership is made available to all participants bound by the Code. MTAA suggests there are areas where a broad intent is complimented by specific definitions. MTAA maintains definitions provided in its draft code are a base for resolving this matter given they draw extensively on existing definitions, legislation, regulation and agreements in other jurisdictions, but are not largely at odds with other suggested solutions.
- *'In developing this scheme, the Government will also carefully consider data access eligibility requirements, such as appropriate skills, training and equipment, to ensure that repairers are able to repair cars safely and securely using this information' – Background 2.6 Pg. 3.*
  - MTAA cautions that such statements are not interpreted or misinterpreted as rationale for car manufacturer's to demand that repairers acquire the same equipment that dealers are obligated to purchase and use under a franchise agreement. Similarly if alternative equipment exists that is fit for purpose (and indeed even supported in some cases by manufacturers) then dealers should not be denied equal access to such equipment and not be disadvantaged by being forced through dealer agreements to purchase manufacturer demanded equipment.
  - Similarly "eligibility requirements" may cause future risk of contention between car manufacturers and independent providers unless properly defined. MTAA makes some suggestions in regard to this matter later in this submission.

## 5.2 Code Scope

- The scope of the Code must include all vehicles, not just new vehicles from the date of implementation. The purpose of the introduction of a Code will be undermined from the outset if the majority of the Australian passenger and light commercial fleet, fast approaching 20 million vehicles, is not afforded inclusion.
- **Consultation Paper Paragraph 3.4 – Vehicles covered:** MTAA does not want the final development and implementation of the prescribed and Mandated Code of Conduct to be delayed any further as a result of considering the necessary and supported inclusion of other types of vehicles that must be covered by the Code.
- In the MTAA draft code provided to Treasury the same *Vehicle Standard (Australian Design Rule - Definitions and Vehicle Categories) 2005*<sup>3</sup> was used to define vehicles covered by the Code. However, MTAA did not qualify or quantify exceptions as the Consultation Paper has by only referring to categories 4.3 or 4.5.5.
- MTAA understands the rationale of the Consultation Paper, and is agreeable that the Code initially covers categories 4.3 or 4.5.5 only in order to expedite implementation.
- However, MTAA reiterates that the Code must ultimately include access to service and repair information for all vehicles powered by a motor including motorcycles, omnibuses, off road, goods and heavy vehicles, and farm and industrial machinery that are primarily for use on public roads or use public roads.
- MTAA is of the view that investigations, resolution and inclusion of other vehicle categories be concluded three months before the time of the initial review with recommendations provided to the responsible Minister prior to that for final consideration. MTAA suggests this task could be assigned to the advisory committee and appropriate departments as part of accountabilities to provide advice to the responsible minister.
- In any event the inclusion of other vehicles should occur no later than 24 months after the Code implementation date. MTAA does not envisage major issues with the incorporation of vehicles such as motorcycles, but recognises as other industries will require additional consideration.

<sup>3</sup> <https://www.legislation.gov.au/Details/F2016C00487>

**Section Recommendations:**

- The scope of the Code must include all vehicles from an agreed date, not just new vehicles from the date of implementation in order for the Code to apply to the majority of the national fleet from date of implementation.
- MTAA suggests a mutually agreed date for vehicle coverage be determined. A possible solution may include:
  - All vehicles 10 years prior to date of implementation ( to mirror average age of national fleet) which would mean if the Code was implemented in late 2019 then model 2010 vehicles onwards would be covered by the Code.
- The Code should contain a balance of broad policy definitions supported by specific detail to provide surety and clarity to all parties and prevent potential ambiguity.
- MTAA recommends that simultaneous to the final development and implementation of the Code, a consultation schedule and timetable for investigation and inclusion of other vehicle categories be determined. The implementation should be no longer than 24 months after implementation and following the initial review at 18 months.

## 5.3 Sharing of diagnostic, repair and servicing information

### Scope

- MTAA does not support earlier suggestions that the Code only apply to new vehicles sold from date of Code implementation as this will preclude more than 99% of the national fleet. If car manufacturers need to create a system to provide access, MTAA does not think this is an impossible task to include the previous information. MTAA investigations reveal that service information is largely already in electronic form by almost all car manufacturers for most vehicles back to 2000, particularly in the United States.
- MTAA suggests that the Code obligations would not apply to vehicles where the manufacturer no longer exists, or historic vehicles, or vehicles older than the national average age of 10+ years.

- The provision of information is a cost of retailing the products in the Australian market as it is in Europe, the United States and other markets and MTAA does not support commercial reasons as a rationale for not providing access to information.

### Timing of access to information

- In accord with MTAA suggestions to remove generalities, MTAA suggests the removal of the word 'generally' in the sentence 'made *generally* available' (3.13).
- MTAA supports the intent of 3.14 provided a known repair solution is not being withheld from the independent sector. If made available to a dealer then same information must be made available to the aftermarket. An example is VW emissions software updates.
- In regard to Item 3.15 and specifically '*For example, where delaying broader access to certain information is necessary to protect the safety of users, repairers or the general public*'; MTAA suggests an actual example be provided to reduce ambiguity and does not support a lag in time to make information available.
- Under Australian Consumer Law, independent repairers can service new vehicles without voiding the new vehicle warranty, providing they follow the recommended service schedule of the manufacturer and use fit for purpose replacement parts and a range of other requirements. Most service schedules have a requirement to check for software updates. Without access to manufacturer service schedules and software updates, including technical service bulletins and related information, independent repairers are risking voiding their client's vehicle warranty.
- MTAA suggests the Code should clarify warranty and consumer guarantee obligations for all Code participants and ensure that irrespective of the nature of the business (franchised dealer, franchised independent, independent, sole trader, specialist etc.) that access to service and repair information does not limit a business's obligation in these areas.
- There have been some suggestions that a remedy on the warranty and consumer guarantee issue is that scope be provided in the Code to acknowledge the franchised dealer as the primary repair for all warranty and consumer guarantee service and repair provision for a specified timeframe. However, the inclusion of such a provision may be at odds with Australian Consumer Law.
- Equally many independent repairers expressed little to no interest in warranty work during the first two to three years after manufacture as they are not interested in competing directly with dealers for this type of customer or taking on the costs and risks associated with warranty work.

## The use of parts in completing a repair

- New vehicles can unfortunately be involved in a collision within days, weeks or months of purchase. Withholding repair information for a six-month period can severely impact body repairers and mechanical repairer's ability to repair the vehicle back to manufacturer specifications.
- As discussed at the Industry round table on 7 March 2019, there remain critical differences in opinion between industry associations on the matter of genuine, non-genuine, parallel, and other parts descriptors and parts use.
- MTAA's view is that there is room for all parts descriptors and parts supply depending the nature and type of mechanical or body repair, whether parts provided are fit-for-purpose, meet manufacturer's or Original Equipment Manufacturers (OEM) specifications, do not dilute the safety or security of the motor vehicle and the consumer, and the consumer is informed and aware.
- With rapid application of advanced technology and the increasing interdependence of vehicle systems and sub-systems combined with an appropriate increasing focus on warranty and consumer guarantees; MTAA suggests it is essential that government policy, as expressed through instruments such as the Code provide clarity and guidance around this issue. Significant education is required regarding the obligations and potential consequences of not being aware of consumer rights.
- MTAA recognises the parts matter goes beyond just the scope of the Code and is a critical issue in other automotive arenas such as motor body repair where the type and use of parts can be a significant issue with car insurance companies. MTAA is aware of and provided submissions to other government inquiries on problems experienced when non-genuine parts have been authorised and demanded to be used by insurance company assessors, contrary to the wording of many insurance contract disclosure statements that specify only genuine parts will be used for vehicles under manufacturer's warranties except in relation to specified parts.
- MTAA holds the view that consumers should at a minimum be informed by the repairer and other parties where appropriate (such as insurance companies) of the type of part to be used on the repair to their vehicle and what if any implications, including fit for purpose, price, manufacturer specifications, etc., there may be to the use of such a part.

## 5.4 Restrictions for safety, security or environmental (SSE) information

### Scope of SSE information

Departmental Consultation Questions	MTAA Summary Response
<p>5.2 Treasury is also interested in feedback on the following possible elements of the Code in particular:</p> <p>The principled definitions of SSE Information</p> <p>And</p> <p>The principles guiding access to SSE information.</p>	<ul style="list-style-type: none"> <li>▪ MTAA and Members share the importance of a principal that protects the safety of repairers, users and the general public. Any restriction of access to SSE information to mitigate any public or personal safety or security risks and ensure repairs maintain environmental compliance standards; must be considered and balanced.</li> <li>▪ MTAA supports responsible, accountable, identifiable, qualified access to certain safety, security, and environmental (SSE) information in accordance with definitions and actions already implemented and operating in international jurisdictions including the United States and Europe.</li> <li>▪ MTAA supports the development and implementation of mechanisms and processes as suggested in its draft code that enable the Code's access requirements including determined SSE information.</li> </ul>

- MTAA supports responsible, identifiable, qualified access to certain safety, security, and environmental (SSE) information in accordance with definitions, mechanisms, processes and actions already implemented and operating in international jurisdictions, particularly the United States and Europe.
- In terms of determining what information is or is not excluded, MTAA sees little value in wider consultation on this issue and activities should be to direct the five peak automotive organisations to resolve and agree to definitions and mechanisms already agreed international jurisdictions and the development of a suitable mechanism and processes for the Australian context.
- MTAA acknowledges that there is certain SSE information that cannot and should not be made generally available, but cautions against the Code unilaterally containing wholesale restrictions that enable or give capacity to car manufacturers to avoid the provision of SSE information that prevents the successful completion of otherwise usual repairs.
- Ensuring technicians have the appropriate skills, training and equipment will in part require manufacturers and / or their suppliers to make available the same training material provided to their franchised networks on fair and reasonable commercial terms. For example motor body repair businesses that have a manufacturer accredited or preferred business model are provided significant training. Associated costs are included in that business model.

- While MTAA does not want to necessarily revisit the need for a mandated scheme (the ACCC investigations through an 18 month Market Study clearly concluded the need), MTAA is mindful of continuing commentary by some of the apparent lack of examples through the consultation process for the introduction of a Code.
- Since the release of the Consultation Paper further examples have been provided by MTAA Member business constituents. Included were some basic examples of where OEM's may use security as a barrier for access to repair information:
  - Volkswagen Touareg – Tow bar module requires coding to vehicle. Only dealer can perform this task.
  - Late model BMW's – Headlight control module requires coding to vehicle using only a BMW scan tool.
  - Late model BMW's – Handbrake control modules requires coding to vehicle using only BMW scan tool.
  - Late model Mercedes Benz - front and rear Signal Acquisition Module (SAM) need to be coded to vehicle using a factory scan tool
  - Late model Land Rover Discovery requires factory tooling to code to vehicle
  - Most late model transmission requires factory tooling to code to vehicle
  - AH ASTRA – Column integrated module which is gateway and store data for vehicle keys, lighting options, suspension options, and SRS configuration requires factory tooling to code to vehicle.
- On the following page is correspondence by a consumer received by an MTAA Member highlighting the core of the issue during consultation on the matters raised in the Consultation Paper.

### **Mercedes Benz C180 Coupe:**

I received a recall notice for my Mercedes Benz C class [C204]. It goes without saying that these recalls cannot be addressed by your members. I rang the Mercedes Benz dealer and to my surprise the dealer advised that there is quite a bit of outstanding work to be done on my car. I told the Service Manager that I had not received any notification for the stated work. *'Sorry sir, but they are Mercedes Benz in-house service fixes at no cost to the customer'. 'It is not a recall, but the work needs to be done. They are serious issues, for example the replacement of the water pump, which is complex on a C204, and normally costs around \$1200. There are required software updates, etc. all up 8 hours work at no charge'.*

You can see the issue here for your member. These service fixes are not know (sic) to your member. I bring my car to your member believing that a "factory service" is carried out, but outside the control of your member, only half the work is done. The work that is not carried out [service fixes] could become costly to the vehicle owner in the long run and could have been avoided and was avoided, not by the member (business), but by the dealer.

What confidence can I have in a member (business) and what is your organisation doing to overcome these issues?

### **Ford Everest**

Also Ford has many software upgrades. Some are no recall, but again, they are a service fix. The Member (business) has no transparency in relation to software updates. Your member (business) is in no position to undertake upgrades or is even aware of them. My last engine management software upgrade was undertaken by Ford and it made a big difference to the problems I was having. Without software transparency, your member starts to look for issues which can be overcome by a Ford dealer in no time, but they are a big mystery to your member resulting in possible unnecessary repairs. You as an organisation should find a way that members have access to this kind of information and/or software, otherwise there is no future for any of your members [with the exception of vehicles older than 10 years].

- MTAA after extensive investigations and as detailed in its already provided Draft Code of Conduct has provided potential definitions for SSE. MTAA remains of the view that SSE relates to any information relating to the supply of coded keys, information relating to resetting or reinitialising antitheft systems. This does not include information to diagnose and repair security related issues i.e. trouble codes, diagnostic information, wiring diagrams, removal and installation procedures etc.



- MTAA again refers officials to the definition of the Secure Data Release Model (SDRM) of the United States National Automotive Service Task Force (NASTF) as outlined in the MTAA provided Draft Code and previous submissions to various inquiries; the definitions provided by the Massachusetts, US Law and the European Commission. MTAA respectfully suggests there are sufficient definitions available to properly inform and define SSE in the Code.
- MTAA respectfully is of the view that the Code can and should reflect definitions with the Advisory Committee tasked with additional matters requiring clarity that may arise from time to time within the context of the provided definitions.

## 5.5 Access to information

### Mechanism

- Clause (e) of the Massachusetts Law refers: ‘Manufacturers of motor vehicles sold in the Commonwealth may exclude diagnostic, service and repair information necessary to reset an immobilizer system or security-related electronic modules from information provided to owners and independent repair facilities. If excluded under this subsection, the information necessary to reset an immobilizer system or security-related electronic modules shall be obtained by owners and independent repair facilities through the secure data release model system currently used by the National Automotive Service Task Force or other known, reliable and accepted systems.’
- It is the view of MTAA that a two-tiered access regime could be established. The first tier would capture general access requests of the business, individual technicians, qualifications etc. to ensure appropriate monitoring, data gathering, ability to follow up disputes or queries etc. The second would relate only to approved and agreed security information and would require a higher level of identification including police and security checks and a range of other requirements designating the importance and securitization of the information.
- As Treasury is aware, the NASTF SDRM is a data exchange system conceived and designed cooperatively by automakers, the independent repair, insurance and law enforcement communities; it allows the aftermarket to access security sensitive information related to automobiles, i.e. key codes, PIN numbers, immobilizer reset information, and similar types of information. Security information in the United States covers:
  - Key codes
  - Pin numbers
  - Immobiliser reset information
  - Process for ordering MB theft relevant parts

- Some OEM's provide immobiliser codes through their portal; some others use the vehicle security credential to authenticate a scan tool user for security operations.
  
- The NASTF also provides a baseline access gateway which would, with some modifications, meet a potential mechanism for Australia.
- MTAA has initiated discussions with the NASTF in regard to the potential of using the NASTF software, processes, in a form acceptable to Australian stakeholders, under license or some other arrangement to be determined and if proceeded with. In short there is significant scope for the application of the United States NASTF model as a potential solution / enabler in Australia.
  
- In the European Security Related Repair and Maintenance (SERMI) Definition: repair and maintenance of security-related features includes:
  - The required information, software, functions and services to repair and maintain the features included in a vehicle by the manufacturer to prevent the vehicle from being stolen or driven away and to enable the vehicle to be tracked and recovered.
  
  - Updating a functionally coherent software when that software performs functions to prevent the vehicle from being stolen or driven away
  
  - Purchasing parts that prevent the vehicle from being stolen or towed away or that could be used by unauthorised persons to give the vehicle a new identity.
  
- The SERMI solution is also built on a similar concept to NASTF albeit with significantly greater legislative and regulatory oversight.
  
- In regards to environmental and safety information, MTAA suggests it is important this topic is directly linked to the repair and maintenance of a vehicle, that is, all information required to repair a vehicle back to manufacturers specification and is supplied to a dealer must be made available to an independent repairer. Anything else that permits altering OEM specifications is off limits.
  
- In regard to access standards, there are currently global ISO standards that outline how repair and maintenance information for road vehicles should be disseminated. These Australian Standards standard should be adopted in the code and include:
  - <https://infostore.saiglobal.com/en-au/Standards/ISO-18541-1-2014-1759548/>
  - <https://infostore.saiglobal.com/en-au/Standards/ISO-18541-2-2014-1759549/>
  - <https://infostore.saiglobal.com/en-au/Standards/ISO-18541-3-2014-1759550/>
  - <https://infostore.saiglobal.com/en-au/Standards/ISO-18541-4-2015-1826449/>

## Eligibility and Terms of access SSE information

- There was universal support for minimum qualifications and eligibility requirements to access information depending on whether security related or not.
- MTAA as outlined in its draft code, provided a starting point and agrees with the need for appropriate training and skills to use the information once accessed appropriately, particularly for highly specialised repair requirements. One of the key elements put forward in the MTAA draft code is potential access to OEM education and training resource materials. Such materials could be provided directly by OEMs, by their franchised dealers, by dedicated and qualified automotive training providers or a combination of these avenues.
- Many OEMs in the United States provide OEM training and resource materials to non-franchise dealer repairers. MTAA and Members researched this aspect and found many references to National Automotive Service Task Force discussions regarding OEM training in the United States which focused on preparing the technician to be service ready (irrespective of the business they employed in). MTAA refers policy makers to the following for background information:
  - 2013 NASTF Spring meeting, discussion includes OEM representatives from Toyota, GM, Subaru and Nissan: <https://www.youtube.com/watch?v=j7X73fGAWGM>
  - 2017: NASTF Spring Meeting, road to great technicians: <https://www.youtube.com/watch?v=0TjQYwtNc8Y&t=2462s>
  - 2017 NASTF Fall Meeting includes presentations from VW, Honda, Toyota and Nissan including how to access calibration procedures and education resources. Fast forward to (2:00:40): <https://www.youtube.com/watch?v=N0odOota6u0&t=10220s>
- However, many constituents are concerned about the costs associated with OEM delivery of training. Some suggested pricing of such training would be set at a level that made it prohibitive and thereby locked out access on a 'technicality' rather than qualifications or capability.
- Potential solutions included rather than OEM administered training, a standardised package be developed as an end-to-end solution and provided by existing registered and government training providers.

- Many cautioned not to make the access system or its baseline eligibility requirements including qualifications so onerous and complicated that 95% of the problems being experienced still could not be addressed including:
  - Turn off engine light.
  - Other dashboard lights (e.g. remove service indicator light once the service is completed).
  
- Conversely, another group indicated that access criteria should be based on workshop (business), not individual:
  - ABN /CAN
  - Member of an approved industry body.
  - Accredited workshop – motoring organisation, government, industry association, manufacture etc.
  - Minimum number of employees
  - Definitely Certification III minimum

## 5.6 Obligation to act in good faith

- MTAA stresses the utmost importance of inclusion of provisions that outline the obligation for all parties to act in good faith.
- MTAA strongly suggests the provisions of good faith obligations is an example of where penalties may apply to mitigate the risk of parties not behaving reasonably or arbitrarily or for some irrelevant purpose, and to have regard to the legitimate interests of other parties. This is one of the strongest reasons why penalties should be included from the outset – even with a transition period.
- MTAA also agrees with the Consultation Paper suggestion that provisions also be included that the obligation to act in good faith regarding the Code cannot be limited by other agreements between the parties.

- This is particularly important in regard to dealer / car manufacturer or representative agreements currently included in the Franchising Code. An example is a potential requirement by a car manufacturer to demand through the dealer agreement, the purchase and use of certain tooling, equipment, parts etc., when manufacturer sponsored / approved alternatives may be available to other participants in the Code.
- The Code must by design and implementation ensure a level playing field for all participants with appropriate care that the impost of franchise agreements or other arrangements do not place franchised dealers at a disadvantage.

## 5.7 Dispute Resolution and Mediation

- MTAA and members are generally supportive of the outlined principals and processes.
- There should be, as far as practicable, the flexibility to resolve matters first through mediation, then determination while allowing for legal avenues at any stage.
- MTAA is concerned that power imbalances that already exist in the automotive sector are not amplified through the introduction of a Code that replicates already identified shortcomings as outlined in other forums (Franchising Code investigation).

## 5.8 Enforcement

- MTAA does not agree with clause 3.1 of the Consultation Paper. An 18 month intensive investigation by the ACCC through the new car retailing market study concluded the need for a Mandated Scheme. The Treasury Department after a further 13 months of investigations into the ACCC finding and recommendation has confirmed a prescribed mandated Code of Conduct is the appropriate regulatory intervention by Government.
- MTAA considers it an immensely unhelpful precedent to design, develop and implement a prescribed mandated Code and then almost immediately undermine its capacity by not including penalties.

- MTAA is of the view that the intent of ‘allowing a reasonable period to settle arrangements’ can still be achieved through a transition period of 6 or 12 months, BUT with penalties included in the mandated Code provisions from the outset to ensure all parties are aware that penalties will apply after transition; for compliance; and to provide enforcement capability should it be necessary.
- The Federation is of the view that to introduce a Mandated Code of Conduct without an accompanying penalty regime undermines the intent and purpose of government regulatory intervention through the provision of a mandated Code and is seemingly at odds with public commentary by the ACCC Chairman Rod Sims on the need for penalties to ensure the capacity and capability of the regulatory to enforce government policy.
- MTAA believes waiting for a review some 18 months after the introduction of the Code sends the wrong message and is unnecessary.

## 5.9 Review

- MTAA and Members support a review of the initial Code after introduction. Further, provisions should be included that the Code be reviewed on a regular basis similar to statutory reviews of other mandated Codes.
- However the inclusion and conduct of an initial review at 18 months should not be a mechanism for not taking appropriate policy and implementation decisions regarding the contents of the initial Code including penalties.
- As outlined in the previous section, MTAA does not agree with the suggestion that such a review could be used to determine whether penalties should apply or not. Penalties should be included at the outset because of the mandated nature of the Code.
- MTAA understands a review involves a public consultation process to seek feedback from a wide range of stakeholders and is normally conducted by the appropriate Government department with policy accountability (in this case Treasury). It may also be undertaken by an independent body or industry experts duly appointed. The review may consider options for repealing the code or amending it.
- 18 months from date of implementation is considered appropriate provided other matters as outlined are taken into account.

## 6. Service and Repair Information Sharing Advisory Committee

### 6.1: Consultation Paper reference 4.1:

- This was a key element of the MTAA draft code submission to The Treasury, although the advisory committee as suggested in the Consultation Paper has different terms of reference.
- MTAA and Members support the establishment of a Service and Repair Information Sharing Advisory Committee and commits to being an active participant.
- MTAA and Members are the only not-for-profit industry associations that represent the entire automotive sector and industries within it, post manufacturing, as outlined earlier in this submission. The Federation and its members have a long history and unparalleled capability of seeking specific industry input on issues impacting the supply chain including identifying and analysing differences and the exploration of potential solutions that accommodate the needs of all automotive industries.

### Membership:

### 6.2: Consultation Paper reference 4.2:

- MTAA respectfully suggests that Membership of the Advisory Committee is kept at the five peak automotive organisations that are signatories to the original Heads of Agreement (FAI, MTAA, AAA, AAAA, and AADA); and that the five organisations be permitted two representatives each, but one vote in the event of a recommendation being put to the responsible Minister.
- Consideration should be given to the role and functions of the Independent Chair appointed to represent the Minister on the Committee including the capacity for the Chair, on behalf of the Committee, to seek independent external advice in order to clarify any matters where there is not a clear majority view.
- MTAA is aware that some peak associations may seek additional participants on the Committee for the reasons of 'balance' of interests. MTAA believes this is not appropriate rationale for inclusion of other parties and is likely to only complicate matters under consideration further. In any event the composition of the initial committee, its operation and performance can be a term of reference for any required review.

- MTAA strongly holds the view that all impacted industries and consumers are more than adequately represented through these five organisations and that government and the Minister of the day can have confidence in these organisations to meet obligations associated with the implementation of the mandated Code and perform advisory accountabilities.
- MTAA respectfully suggests that the Advisory Committee can co-opt any additional expertise, advice, input, technical assistance etc. it requires. Such co-opting should be on a needs basis pending the matter to be investigated or determined and as part of comprehensive consultation the Advisory Committee will be required to undertake in the discharge of its accountabilities and ultimate provision of advice to the Minister and Government of the day.

### Terms of Reference

- MTAA generally supports the functions and obligations outlined in the Terms of Reference, cognisant of matters raised in this submission.
- MTAA notes the Consultation Paper preference for a consensus approach with a majority view being put forward as resolutions to matters considered, including recommendations to the responsible Minister.
- Given the lack of performance of the Heads of Agreement process in reaching consensus on some matters given participant's adopted positions, issue complexity, and the inter-relationship with other laws, regulations, and competition matters; MTAA understands there may be potential concern or caution about the capacity of existing parties to reach consensus on some matters.
- It is the view of MTAA that that the bipartisan political support for government intervention, the actual implementation of a mandated Code, regulatory oversight of it, clear requirements and obligations, and the presence of penalties, will significantly mitigate the risk of poor consensus outcomes.
- The Consultation Paper touches on a capability that the Advisory Committee may have '*to perform other functions if agreed by members*' including providing '*advice on and assist to design and implement mechanisms for providing access to information such as the secure data release mechanism*'.
- The ACCC in its market study report recommended a process be established for the secure release of security related information. In response, the MTAA in its draft code outlined what that process should look like and reiterated this earlier in this submission.



- MTAA strongly recommends that the provision of such a mechanism should be an early priority for the Committee and included in responsibilities and obligations rather than simply being referred to as a potential opportunity.
- It is suggested that such systems and process could be created and managed by a ‘Service and Repair Task Force or Council’ reporting to the Advisory Committee.
- MTAA respectfully suggests clarity from a Constitution / Policy / Regulatory viewpoint on how such an industry-led / government over sighted mechanism can be provided and referred to in the Draft Code.
- MTAA considers mention of a minimum number of meeting times to ‘at least annually’ may be potentially restrictive. If guidance is to be provided in relation to this matter, MTAA suggests that in the initial term an indication of a minimum of once per quarter up to the 18 month initial review is considered more appropriate.

## 7. Conclusion

- MTAA welcomes the opportunity to contribute to the finalisation and implementation of a Prescribed Mandated Code of Conduct for Access to Automotive Service and Repair Information. MTAA and Members remain available at any time should the review team wish to pursue matters raised in this submission further, or to access members or investigate workshop operations.

END OF SUBMISSION

1. Appendices – Member input

## SUMMARY OF MTA-SA CONSULTATION

Issue	Consultation Paper	Independent Repairers	Franchise Repairers	Franchise Dealerships	Overall Recommendation
Scope of Coverage	The Code would apply to new passenger and light goods vehicles, as defined in the Vehicle Standard (Australian Design Rule - Definitions and Vehicle Categories) 2005.[1] This definition captures passenger cars and off-road passenger vehicles (such as four wheel drive vehicles), as well as vehicles designed for transport of goods with a gross vehicle mass of up to 3.5 tonnes. It would cover most vehicles manufactured primarily for use on public roads including four wheel drive passenger vehicles, vans and utility vehicles.	Supported	Supported	Supported	Supported
	The Government is considering whether the Code could apply only to new vehicles made available for sale after the Code has come into effect, or could apply a different criterion including vehicles sold before that date. The Government would engage closely with industry on this issue prior to implementing a Code.	Support inclusion of all available data.	Support inclusion of all available data. Stated that in reality almost all repairers would only do mechanical warranty work (ie not software updates), and that the denial of repair data only really started to affect them at and beyond Year 3.  Another franchise repairer group indicated the Code should cover cars from the last 20 years – lots of their work is older vehicles. Wants service codes, specialised information, firmware updates, compete for warranty work	Do not support application at time of implementation. A time restriction of 3 to 5 years would be manageable from a cost and time perspective and cover almost all affected vehicles.	Support open access, for with practical consideration of available data on cost benefit basis, ie the length of time vs cost of making available, using the ACL definition of “reasonable time”

<p>Access to Information - Scope</p>	<p><b>Two Tier Structure</b></p> <p><b>Tier One:</b></p> <p>a. Manuals and procedures such as repair manuals/updates, wiring diagrams, technical specifications for components and lubricants and testing procedures;</p> <p>b. on-board information and telemetry, and codes for computerised systems (where necessary and appropriate for safe repair or service of the vehicle);</p> <p>c. Access to electronic log books/data for a particular vehicle where this information is needed to repair the vehicle or there is a need to update them; and</p> <p>d. Diagnostic, service and repair tools made available to dealerships.</p> <p><b>Tier Two (SSE)</b></p> <p>a. diagnostic service and repair information necessary to reset an immobiliser system or security related electronic modules, where it was made available through a secure information sharing system/requirements agreed to by the Minister; and</p>	<p><b>Support structure of tiered access and the information currently grouped within those tiers.</b></p>	<p><b>Support structure of tiered access and the information currently grouped within those tiers.</b></p> <p>Indicated that as a Franchise Repairer, their business model relied heavily on being able to work on any make or model vehicle that comes into the workshop.</p> <p>Costs related to OEM specific training, tools and information access would drastically alter their business model, which may not necessarily be a problem, but it is not what was expected to be a result of information sharing.</p> <p>One possible solution suggested was rather than OEM administered training, a standardised package be developed as an end-to-end solution.</p> <p>One group stated that:</p> <p>95% of the problem is accessing low level technical data like: Turn off engine light. Code a new factory key Other dashboard lights (eg. Remove service indicator light once the service is completed). No interest in warranty work the first two years after manufacture, not interested in competing directly with dealers for this type of customer.</p>	<p><b>Support structure of tiered access and the information currently grouped within those tiers.</b></p> <p>Indicated that while there was OEM only data captured, it was of no interest to dealerships to have access to that because the support and compliance costs were too great to justify for such little use. Very little demand for that data anyway.</p> <p>Significant doubts about the ability of independent workshops to be able to absorb the training costs associated with multiple OEM systems. This will lead to repairers specialising in OEM brands.</p> <p>Questioned how Independent repairers could implement customer management systems for warranty servicing in terms of compliance with the update scheduling, notification, installation, trouble shooting and follow up. Did not think they could recover that cost.</p>	
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	<p>b. Information that may result in non-compliance with relevant safety or environmental regulations or legislation.</p>		<p>Conversely, another group indicated that access criteria should be based on workshop, not individual:</p> <ul style="list-style-type: none"> <li>- Member of an approved industry body.</li> <li>- RAA accredited workshop (however, this is problematic as, in the member's eyes, RAA gives out accreditation to anyone who can pay). MTA has a more stringent application/acceptance process.</li> <li>- Minimum number of employees</li> <li>- Definitely Cert III minimum</li> </ul>	<p>Also, unsure repairers would have the IT capacity to integrate with OEM systems that are required for these procedures.</p> <p>Also, where does Privacy Act intersect with this? During Takata Recall, dealerships have not been supplied customer details within the PMA to enable the recall to be done.</p> <p>If repairers are working in the warranty space, how will recalls be implemented as they do not have PMAs, any real level of customer data nor any real claim on the OEM customer data over the dealerships?</p>	
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