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MEMBER OF



Mandatory Motor Vehicles Scheme
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600
via email: repairinfo@treasury.gov.au

29 January 2021

Dear Sir / Madam

RE: Exposure Draft: Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2020

The Australian Automobile Association (AAA) welcomes the opportunity to respond to The Treasury's exposure draft of the Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2020.

The AAA supports a mandatory scheme that requires vehicle manufacturers to share service and repair information with all vehicle repairers in Australia on commercially fair and reasonable terms. The scheme is necessary to support competition in the service and repair sector, and enable consumers to choose the repairer they believe will give them the best possible value.

The ACCC New Car Retailing Industry Market Study released in December 2017 found that generally vehicle manufacturers are not providing independent service and repair operators with the same technical information they provide to their authorised dealerships.

The ACCC recommended regulatory intervention because the current situation is impacting on competition and affecting consumers through increased costs and delays in having their vehicle serviced and repaired. The AAA believes that without a mandatory scheme the current situation will continue to deteriorate as vehicles become more sophisticated.

The AAA believes the mandatory scheme must at a minimum:

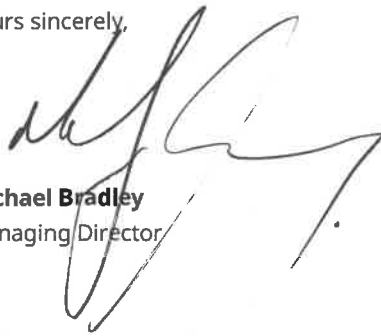
- require vehicle manufacturers to make available to independent operators on commercially fair and reasonable terms the same information and tools provided to their authorised dealership networks to diagnose, service and repair a vehicle
- clearly define what constitutes security, safety and environmental information
- clearly detail what requirements must be satisfied to access security, safety and environmental information
- cover all vehicle brands which sell vehicles in Australia
- stipulate an effective dispute resolution process that is accessible by all relevant stakeholders.



The exposure draft released on 18 December 2020 sets a clear intention to establish a level playing field amongst repairers, however the AAA believes there are key issues that need to be resolved, including access to vehicle communication through special tools or telematics.

The AAA has responded in detail to the proposed elements of the mandatory scheme in the enclosed document. The AAA looks forward to collaborating with the Government on the future implementation of the scheme.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael Bradley', written over a light grey circular watermark.

Michael Bradley
Managing Director

Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2020

Australian Automobile Association submission to the exposure draft legislation

The mandatory scheme for sharing of motor vehicle service and repair information must ensure that competition is unrestricted for the entire vehicle service and repair process. This includes the ability to interrogate vehicles; the ability to interpret vehicle data and diagnose faults; access to repair methods; and access to necessary training. The scheme may not achieve the goal of establishing a level playing field unless the whole service and repair process is captured.

Consumers, as owners and operators of vehicles, have an obligation to maintain their vehicle in a safe, roadworthy, and reliable condition. In addition, many consumers are obliged to meet the conditions of new vehicle warranties.

Choice for consumers as to who maintains their vehicle in order to meet these obligations is the foundation for the mandatory scheme.

Commencement and application

The AAA supports the proposed commencement date of July 2022. Based on the need demonstrated through the findings of the ACCC New Car Retailing Market Study¹, the AAA also supports initial application of the scheme to focus on light goods vehicles and passenger vehicles (other than omnibuses) built on or after 1 January 2002.

The AAA believes other motor vehicle categories may be added to the scheme in the future if there is a demonstrated need.

Definition of Australian repairer

The AAA supports the proposed definition of *Australian repairer*.

The AAA considers that the proposed definition captures all vehicle brands which sell new vehicles in Australia and is broad enough to capture new or alternative distribution models that may be introduced by vehicle manufacturers.

Furthermore, it is critically important that roadside assist businesses are included in the scheme. The AAA believes that the proposed definition does capture roadside assist services.

¹ Australian Competition and Consumer Commission, *New Car Retailing Industry – a market study by the ACCC*, December 2017.

Scheme information

Service campaigns

It is the AAA's understanding that service campaign materials would be captured by the proposed definition of scheme information, however this should be clarified in the explanatory memorandum.

Service campaigns are often circulated by OEMs or OEM representatives to address customer issues reported by vehicle owners and improve the vehicle.

The definition for scheme information proposed in the exposure draft captures information for use in conducting diagnostic, servicing or repair activities on scheme vehicles. The explanatory memorandum specifically identifies technical service bulletins as an example of scheme information, however there is no mention of service campaigns.

Tools

The AAA believes tools and devices facilitating the communication with vehicles for diagnostic and repair purposes should be included in the scheme in a similar manner to scheme information.

The exposure draft is silent on access to communication with vehicles for repair and diagnostic purposes. Without equal access to communicate with vehicles and diagnose faults, the scheme may not achieve its goal of establishing a level playing field, particularly for more sophisticated vehicles going forward.

The ability to interrogate vehicles and diagnose faults is a critical element to vehicle service and repair. Physical connection via suitable tools is common practice to facilitate the communication with vehicles necessary for interrogation and diagnostic purposes. However, there are alternatives emerging such as telematics.

It may be that the provisions of section 55, *Scheme information – terms and conditions of supply and use*, are intended to capture this issue and prohibit restricting access to tools, however this should be clarified in both the legislation and explanatory memorandum.

Telematics

The exposure draft explicitly states that 'telemetry' or telematics is not included in the scheme (section @25(2)). While the penetration of telematics in the Australian vehicle fleet is currently low², the AAA considers telematics to be an obvious example of technical progress in motor vehicles affecting vehicle service and repair activities.

Telematics, or 'telemetry' as defined in the exposure draft, is an emerging form of vehicle communication facilitating remote diagnostics and repair of motor vehicles. It is the ability for vehicles to transmit diagnostic data as well as vehicle activity data, location data and driver behaviour data to remote servers. Such functionality is already available in Australian vehicles, however it is more widely available in other markets such as Europe and the US.³

² National Transport Commission (NTC), *Government access to vehicle-generated data* discussion paper, 2020.

³ McKinsey & Company, *Telematics: Poised for strong global growth*, April 2018

(<https://www.mckinsey.com/industries/automotive-and-assembly/our-insights/telematics-poised-for-strong-global-growth>)

European studies have found that telematics creates possibilities to undermine a fair playing field. A study conducted by an Austrian Automobile Club (OAMTC) in 2019 found that, in at least one case, lockout times and data filtering applied by the OEM to diagnostic information transmitted remotely created a 48-hour delay before independent repairers could access the information, while the OEM had almost instant access.⁴

It is the AAA's view that excluding telematics or 'telemetry' as proposed in the exposure draft is too broad in scope and ignores technology development. At a minimum, 'telemetry' should not explicitly be excluded in the Act as is currently proposed. This is to ensure the scheme is future proof.

Because telematics data will also include data outside the scope of vehicle repair and maintenance, including personal information, appropriate measures to manage access will be necessary. This may be best handled by the scheme rules.

Automated driving systems

The AAA supports the intention to include traditional vehicle components in the scheme and to exclude components relating specifically to performance of automated driving systems at level 3 automation or above.⁵

While this approach seeks to achieve an appropriate balance, there may be complexities that need to be worked through in detail. For example, there are likely to be many common components between an automated driving system and traditional operation of a vehicle.

Detailed clarification of what is and is not considered part of an automated driving system will need to be developed.

Meaning of safety and security information

The AAA considers it critically important that the scheme clearly define what constitutes security, safety, and environmental information.

The broad intention of this is to ensure that information which could bypass or affect the vehicle's security, design standards, regulatory compliance, performance or legislated requirements is not openly available.

The exposure draft defines both safety and security, however makes no mention of environmental information. The AAA considers the exclusion of environmental information to be an oversight.

Safety information

The AAA considers the proposed definition of 'safety information' to be focussed on repairer safety and quality of repairs, rather than vehicle safety. These are not competition issues and the AAA questions whether there is a case to justify their inclusion in the scheme.

Repairer safety should be considered a work health and safety issue. Similarly, there are existing remedies available to consumers in the event of poor quality service. If there are concerns about vehicle service standards, this issue should be investigated and addressed separately.

⁴ OAMTC, *Proof of concept - remote diagnostics support - ExVe UC*, April 2019 (not publicly available).

⁵ As defined by SAE International J3016.

The consultation update paper provided to industry in October 2019 stated that “the Government has determined the most appropriate approach is to provide an explicit list of tight-defined types of SSE (safety, security, environmental) information and the relevant access criteria.”⁶

Safety information is defined in the exposure draft (section @35(2)) as information relating to any of the following systems installed in the vehicle:

- a) A hydrogen system
- b) The high voltage system
- c) The hybrid system
- d) The electric propulsion system
- e) Another system prescribed by the scheme rules.

The intent of defining safety information is to focus on vehicle safety information. (This is stated in the simplified outline within the exposure draft (section @5)). However, the systems listed in exposure draft would be considered vehicle drivetrain systems rather than vehicle safety systems, indicating the focus on repairer safety and quality of repairs.

The AAA accepts that the argument being put forward in favour of restricting information to those who have suitable skills is to protect consumers. The AAA strongly believes all vehicles on the road should be maintained in a safe, reliable and roadworthy condition. However, the AAA is not aware of evidence which shows the US or European schemes have increased consumer risk.

Security information

In addition to mechanical and electrical security identified in the exposure draft, the AAA suggests it is appropriate to include cyber security as security information. Cyber security is likely to become increasingly important as new vehicles become more technologically advanced.

Fair and reasonable commercial terms

The AAA is pleased to see the clear intention that the cost for accessing information is not to exceed the fair market value and notes the maximum financial penalty of \$10 million imposed on those who fail to comply.

Fair and reasonable terms for access to service and repair information are critical to ensure the goals of the scheme are delivered to consumers.

In establishing whether a price charged for access to information is fair and reasonable, the AAA believes it is appropriate to consider the prices charged to other repairers, prices charged for similar makes and models, and prices charged in overseas markets.

However, transparency of costs and terms around the supply of information may present as an issue for both repairers and consumers. Transparency should therefore be of focus in the implementation of the scheme to ensure the benefits are delivered.

⁶ Australian Government, *Mandatory scheme for the sharing of motor vehicle service and repair information* consultation paper, October 2019.

Supply of scheme information

The exposure draft proposes to require the supply of information before the end of two business days after the day of payment. Setting such a timeframe does not ensure that independent repairers receive information on the same terms as manufacturer-affiliated repairers and therefore does not ensure a level playing field.

The AAA believes the key principle missing in the exposure draft is that information is to be provided in the same timeframes for all repairers. This principle must be included in the Act to ensure consistent access across the market.

While the AAA understands the desire to create a clear expectation for compliance, setting a two-day timeframe has the potential to unintentionally allow anti-competitive behaviour. For example, a data provider may systematically respond to information requests from one repairer instantly, while responding to other repairers on the second day. Such a scenario would not be considered a level playing field.

Furthermore, if a two-day timeframe became normal practice, consumers and repairers are likely to be frustrated with the time taken to complete vehicle services. Such timeframes are also unsuitable for roadside assistance.

Prohibited terms

The AAA supports the intention to prohibit data providers from requiring the purchase of other services or products as a condition of purchasing scheme information.

The current wording prohibits the condition of tools having to be purchased with the information, however it is not clear whether special tools necessary to communicate with vehicles for repair and maintenance purposes will be available to all repairers.

Similarly, it is the AAA's interpretation that the term 'service' in the current wording would capture training services offered by the data provider, however this is not clear.

The AAA considers that the explanatory memorandum should provide further clarity of the prohibited terms.

Safety and security information – fit and proper person

The AAA is concerned by the potential for data providers to determine what competencies are necessary to access certain information, particularly relating to the proposed safety information.

The safety and security criteria that are to be developed and prescribed by the scheme rules must be clear in detailing the requirements that must be satisfied to access safety and security information.

The qualification requirements in the vehicle repair sector are not consistent across the states and territories. The AAA also notes that standardised qualifications may not exist for some systems captured by the proposed definition of safety information. For these reasons, the process for determining whether a person is fit and proper should address individual competency rather than specific qualifications.

Safety and security – records of access

The AAA supports the proposed requirements for recording access to security information, however questions the relevance of applying the same recording requirements to the proposed safety information.

The broad requirement to record individual information requests for the proposed safety information on an individual VIN basis is unnecessarily onerous on repairers and likely to negatively affect consumers.

It seems likely that many requests relating to the proposed safety information may not actually necessitate a specific VIN. Rather, such information is likely to be common across a vehicle model/variant level and information requested for one vehicle may be applicable to another vehicle of the same specification.

Dispute resolution

An effective dispute resolution process that is accessible by all relevant stakeholders is critical to the success of the mandatory scheme.

The process outlined in the exposure draft appears to be equally accessible to repairers and data providers. The AAA is also pleased to see that an industry body, or 'scheme adviser', will have a clear monitoring role in dispute resolution processes and report more generally about the operation of the scheme. Appropriate resourcing for the scheme advisor will be important to facilitate this role.

To ensure timely and effective dispute resolution processes are achieved, and success of the scheme more broadly, the AAA supports a scheduled review of the scheme 18 months from commencement.

Scheme rules

The exposure draft suggests that much of the specific details of the scheme requirements will be prescribed by the scheme rules. Consultation on the development of these rules is critical.

Consumer information entitlements

In addition to information available to repairers, consumer entitlements are also included in the voluntary *Agreement on access to service and repair information for motor vehicles* (2014). These entitlements are intended to help consumers make fully informed decisions in relation to any work carried out on their motor vehicle. The AAA supports such consumer entitlements and considers them complementary to the scheme.

In the voluntary agreement, these entitlements include making information available to consumers as to whether the parts used to repair/maintain their vehicles are genuine (OEM recommended) or non-genuine; fit-for-purpose; compatible with the operating systems of the recipient vehicle; and compliant with all regulatory requirements.