



AUSTRALIAN
AUTOMOTIVE
DEALER
ASSOCIATION

RESPONSE TO EXPOSURE DRAFT & EXPLANATORY MEMORANDUM

MOTOR VEHICLE SERVICE AND REPAIR
INFORMATION SHARING SCHEME

31 JANUARY 2021



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FOREWORD

The AADA is pleased to be able to provide a response to Treasury regarding the exposure draft legislation for the Motor Vehicle Service Information Sharing Scheme.

The AADA is the peak automotive industry advocacy body, exclusively representing franchised new car Dealers in Australia. There are approximately 1,500 new car Dealers in Australia that operate some 3,200 new vehicle dealerships.

All franchised new car Dealers operate mechanical repair workshops as part of their franchise agreement. These workshops are built to exacting standards prescribed by the OEMs to whom Dealers are franchised and are equipped with the latest workshop tools and equipment. Dealers also employ apprentices and qualified, OEM trained technicians in their workshops.

The AADA welcomes the draft legislation and is on record as being a supporter of its introduction as well as being a contributor to its development, along with other key stakeholder organisations. We consider it essential that information is only shared on fair and reasonable commercial terms, as per the recommendation of the ACCC in its *New Car Retailing Industry Market Study of 2017*. We are pleased to see a commitment to this principle adopted in the draft legislation which also expressly states that promotion of competition among repairers is an objective. Most of our comments reflect our view of the importance of competitive neutrality in the automotive repair sector.

Equally, we hold that certain types of service and repair information are sensitive and must be provided only to professional repairers who can demonstrate the appropriate credentials, sufficient to grant them access to the scheme. We support the sections of the draft legislation which restrict information to fit and proper repairers who meet prescribed safety and security criteria.

Our comments are limited to those parts of the legislation with which we have concerns.



James Voortman

Chief Executive Officer



KEY POINTS

1. The *New Car Retailing Market Study* conducted by the ACCC and released in 2017 makes no detailed assessment of the impact of regulation and is not a suitable resource for understanding the effects of the draft legislation.
2. Competition in the vehicle repair sector must be enhanced by the legislation and preclude the creation of loopholes which allow for opportunistic behaviour. The principle of commercially fair and reasonable terms must apply broadly and be adhered to.
3. The commercially fair and reasonable principle is negated by the provision of information to any division of the repair sector which can avoid the expenses associated with training, equipping or establishing themselves as professional, qualified repairers.
4. The assessment of fair value for the information must be made with respect to Dealer investment in the service and repair side of Dealership operations.
5. Manufacturers of integrated aftermarket systems and accessories should be included in the scheme as data providers.
6. The definition of a repairer must be revised to ensure it excludes “back yard” repairers.
7. Safety and security information must be restricted as described in the draft legislation. However, OEM data providers should not be required to maintain records of Dealer access for these types of information.

REGULATION IMPACT ON BUSINESS

The ACCC Market Study of 2017 provided a comprehensive assessment of the new car retailing sector about a range of issues that had come to the regulators attention, namely concerning consumer guarantees, access to technical information and the integrity of published fuel consumption and emissions information. The final report by the ACCC was tremendously important for consumers and industry in identifying the issues, creating an understanding of why they were occurring and providing recommendations as to how they could be resolved.

Appendix H.1 of the report dealt specifically with the proposal to create a technical information sharing scheme and concluded with a recommendation to consider three regulatory options.

These options are as follows:

- A change to the existing regulation applying to new cars supplied to the Australian market (e.g. the Motor Vehicle Standards Act or Australian Design Rules).
- A mandatory industry code under the Competition and Consumer Act.
- New stand-alone legislation administered either by an Australian Government agency or jointly with the states and territories.

In presenting these options, the ACCC concluded:

“The ACCC has not sought to specify what particular form of regulation should be adopted. This will require careful consideration of the costs and benefits of alternative approaches and is beyond the scope of this study.”

It is clear that the Market Study was never intended by the ACCC to be the considered the equivalent of a Regulation Impact Statement and the expectation by the ACCC was that further work would be done to assess in detail what the impact of each option would be and consult widely with stakeholders about the merits or weaknesses of each of them. This issue is of critical importance to franchised new car Dealers who invest large sums of money in servicing and repair facilities at the direction of their OEM franchisors, who then supply them with the information necessary to the operation of their workshops. Without a full understanding of these expenses, establishing a scheme based on commercially fair and reasonable term is not possible.

1.20 SCHEME INFORMATION

Franchised new car Dealers are the experts in service and repair of the respective brands of vehicle they represent. Dealers provide customers with high quality, cost effective repairs and maintenance, using genuine parts and the best available diagnostic and repair methods available. Provision of such a premium service comes at great expense to Dealers, however it enables them to cater to the needs of their customers in a way that many independent repairers cannot. A key consideration of Dealers making this investment is that compliance with Manufacturer requirements entitles them to access OEM provided service and repair information. Dealers commit to these expenses in the hope and expectation that doing so will help them stand out in a crowded repair sector and that they will be able to generate a profitable return on their investments.

The Exposure Draft provides an explanation of Scheme Information as being information necessary for use in diagnosing, servicing or repairing scheme vehicles. Section 1.1 of the Explanatory Memorandum adds to the understanding of Scheme Information referring to it as information of a type ordinarily provided to car dealership networks.

Adopting this definition of Scheme Information creates significant challenges and potential conflict with the stated purpose of information provision on fair and reasonable commercial terms. It is simply not equitable that an independent repairer operating from a one person, one hoist workshop and who may not have invested in training since completing an apprenticeship 10 or 20 years ago can be considered to provide a facility the equal of a Dealer who has invested hundreds of thousands of dollars in a modern workshop, up-to-date equipment and ongoing technician training. Put simply, an independent repairer who has neglected to invest commensurate amounts in their business, is poised to enjoy a significant commercial advantage if they can obtain the same information as a Dealer without the investment expenses.

Great care must be taken in the development and implementation of this legislation to ensure that competition is stimulated and not distorted by the creation of opportunities which commercially favour certain repair sectors.

1.22 TECHNICAL INFORMATION FOR AFTERMARKET ACCESSORIES AND SYSTEMS

There are many aftermarket Manufacturers of vehicle accessories and systems. These are widely available and are popular among motorists who have a need to modify their vehicle for camping, towing or to alter the performance characteristics in some way. Some of these are sophisticated microprocessor-controlled systems and come in the form of alarms, brake controllers, reprogrammable ECUs and vehicle management systems. Aftermarket systems add considerable complexity to diagnostic and repair processes, and it is important that repairers are provided with information sufficient to determine if symptoms are caused by faults with embedded systems or by aftermarket products or systems fitted to the vehicle. Section 1.22 of the Explanatory Memorandum states that Scheme Information does not include information pertaining to aftermarket parts, however this fails to recognise these systems are often heavily integrated into the vehicle. It is critical that all repairers can access technical and repair information for these products so that vehicles fitted with them can be efficiently diagnosed and repaired.

1.40 DEFINITION OF AN AUSTRALIAN REPAIRER

We accept that a repairer is a person who carries on repairs as a professional service, but care needs to be given to the inclusion of those who “actively seek” to carry on such a business. This is less of an issue in jurisdictions which require repairers to hold a licence but in those that do not, it would be impractical for data providers to assess if an applicant seeking information has vocational tertiary or professional qualifications. The definition given of a repairer in the Exposure Draft could potentially include those working from backyards and driveways in domestic homes. Individuals engaged in this type of work are a risk to consumers, threaten the livelihoods of legitimate repairers in dealerships and operating as independents and should be considered outside of the scheme.

1.56 SCHEME INFORMATION PRICING

It is not clear how data providers under the scheme are expected to determine that pricing is consistent with fair market value. Franchised Dealers may be considered to receive information free of charge as its supply does not typically come with an invoice. However, as discussed above, Dealers spend hundreds of thousands of dollars on facilities training and equipment, in order to comply with obligations prescribed by their franchisor. Only by meeting these obligations and by virtue of their Dealer agreement do Dealers receive technical information from their OEM franchisor. These costs to Dealers must be taken into consideration when assessing the fair market value of information provided through the scheme. Failure to do so will negate the aim of the legislation to provide information on commercially fair and reasonable terms and is counter-intuitive to the intent of improving competition across the entire automotive repair sector.

1.112 SAFETY AND SECURITY INFORMATION – RECORDS KEEPING

The franchise relationship between Dealers and OEMs is based on comprehensive contracts between the parties which fully detail the nature of the relationship and the obligations of both. Dealers are fully accountable to their franchisor OEMs for ensuring compliance with all safety and security protocols. Given these arrangements the requirement for OEMs as data providers in the scheme to retain details of the supply of safety and security information for five years creates unnecessary administration that will ultimately only add to the cost of repair for consumers. Data providers in a franchise relationship with Dealers should be exempt from this requirement.

AUSTRALIAN PRODUCTIVITY COMMISSION – RIGHT TO REPAIR INQUIRY

We note the Australian Productivity Commission (APC) is conducting a “Right to Repair” inquiry which includes application to motor vehicle repairs and in that respect, closely parallels the intent of this draft legislation. The concept of choice repairer described in the APC inquiry is also an objective of the draft legislation. We believe that re-visiting this issue in the APC inquiry creates significant risks to the draft legislation, which has undergone many years of negotiation and development by industry stakeholders. It is unclear to us why the APC has been asked to look at this issue given the years of work are only now coming to fruition and would we contend that motor vehicle repair and servicing should sit outside of the scope of the APC inquiry.

REPAIR STANDARDS AND THE USE OF GENUINE PARTS

The provision of service and repair information is essential to achieving safe, effective and efficient motor vehicle repairs but it alone does not guarantee consumers will receive the best care for their cars. Contemporary motor vehicles are at the forefront of technological innovation and the latest service and repair information is only one component of the repair process. Effective utilisation of the information can only occur when technicians are trained on up-to-date diagnostic and repair methods and have at their disposal the latest tools, equipment and fit for purpose replacement parts. Without these things, consumers are at risk of having to pay higher repair costs and there are dangers to the safety of customers, technicians and potentially other road users.

Franchised Dealers have a contractual obligation to use only genuine parts and follow factory repair methods and maintenance schedules. This is widely understood by consumers and is the basis on which technical information is provided to Dealers by the OEMs. Independent repairers have no such obligation and are free use to non-genuine parts or consumables, utilise their own repair methods and determine their own maintenance tasks, even though most would claim to provide an equivalent level of service to that of Dealers. While this may be acceptable to their customers, the legislation needs to require independent repairers to declare when non-genuine parts are used, and maintenance and repair procedures are different from those specified by the vehicle Manufacturer.

The consumer benefits of the scheme can only be realised if it imposes total transparency and allow consumers to fully understand the services they are paying for.

CONCLUSION

Implementation of the legislation in a way that does not closely align with the stated intent of the scheme risks creating unintended consequences that will be very difficult to undo. Many thousands of businesses are dependent on this legislation being implemented in a balanced way that does not lead to a distorted market. The AADA remains supportive of the intent, however the legislation must accurately reflect this in practice and should be subject to an annual review to ensure it is delivering the benefits expected.

If you have any questions, please contact me on:

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