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Market Conduct Division

The Treasury

Langton Crescent

PARKES ACT 2600

via email: repairinfo@treasury.gov.au

24 September 2021

Dear Sir / Madam

MEMBER OF



RE: Exposure Draft: Competition and Consumer (Motor Vehicle Service and Repair Information Sharing Scheme) Rules 2021

The Australian Automobile Association (AAA) welcomes the opportunity to respond to the exposure draft legislation of the Competition and Consumer (Motor Vehicle Service and Repair Information Sharing Scheme) Rules 2021 (the draft rules).

The AAA is the peak organisation for Australia's motoring clubs and their eight and a half million members. The association's constituent clubs are the NRMA, RACV, RACQ, RAA, RAC, RACT and the AANT. The AAA regularly commissions research and develops in-depth analysis of issues affecting transport systems, including affordability, road safety and fairness.

The AAA supports the mandatory scheme which 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.

Without a mandatory scheme, the AAA believes the current situation restricting competition and impacting consumers 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 and safety information
- clearly detail what requirements must be satisfied to access security and safety information
- cover all vehicle brands which sell vehicles in Australia
- stipulate an effective dispute resolution process that is accessible by all relevant stakeholders.



The AAA feedback to the exposure draft rules focusses primarily around ensuring appropriate measures are in place so as to not unnecessarily restrict access to information and therefore competition.

Safety Information

The AAA considers the proposed wording intended to ensure the safety of vehicle repairs and repairers to be unnecessarily broad. As currently worded, the AAA believes this definition will lead to varying interpretations across the industry which will ultimately impact consumers.

Part 2, 5(2) of the draft rules states:

(2) For the purposes of paragraph 57BF(2)(e) of the Act, each system connected to any of the following systems is prescribed:

- a) the hydrogen system;
- b) the high voltage system;
- c) the hybrid system;
- d) the electric propulsion system

The AAA suggests the definitions of restricted materials should focus on the specific elements or systems which are the primary concern. Based on the *Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Act 2021* (the Act) and draft rules, these primary elements seem to be high-voltage systems and hydrogen systems.

The scheme rules present the opportunity to provide additional clarity regarding the technical details of the scheme. However, the proposal in the draft rules to include 'each system connected to' the hydrogen, high voltage, hybrid, or electric propulsion system provides little clarity. This is particularly problematic for hybrid systems.

Hybrid systems

Hybrid systems are described in the Explanatory Memorandum as being powered by an internal combustion engine (regardless of fuel type) and at least one electric motor or traction. Each system connected to this broadly defined system would include a variety of different systems for which restricted access would not be justified. Examples include mechanical components found in typical internal combustion engine vehicles and air conditioning.

The AAA suggests that the generalisation to include each system connected to hydrogen, high voltage, hybrid or electric propulsion systems overlooks the specific systems of concern, which seem to be primarily high voltage or hydrogen systems.

In particular, the 'electric propulsion' system is already a system connected to the high voltage system. Systems connected to the electric propulsion system may be as simple as wheels or wheel nuts.

The AAA notes that the Explanatory Memorandum provides tyres, oil changes, air conditioning, suspension, basic sensor replacement and panels not connected to electric sensors, internal components and mechanical systems as examples of scheme information that would not be captured as safety information. However, this general statement does not necessarily support the words of Part 2, 5(2) of the draft rules nor provide clarity for the interpretation of systems to be considered safety information in hybrid vehicles.

Hydrogen and battery-electric vehicles

The Explanatory Memorandum also includes the following statement:

The majority of scheme information about systems in hydrogen and battery-electric vehicles (and to a lesser extent, hybrid electric) is effectively prescribed as safety information¹.

This statement does not support the wording of Part 2, 5(2) of the draft rules and adds uncertainty as to what is considered safety information in hydrogen or battery-electric vehicles. The assertion that the majority of systems in such vehicles are connected to the high-voltage system, or hydrogen system, offers little clarity.

Work health and safety

The AAA maintains that the focus on repairer safety and quality of repairs are not competition issues and questions the case for 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.

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

The definition of motor vehicle component

Part 1, Section 4 of the draft rules includes the definition for 'motor vehicle component'. In both the draft rules and the explanatory memorandum there are references to 'component of a motor vehicle'. The AAA assumes these are intended to be used interchangeably, however this is not clear.

National police check report

Part 3, Section 7(3) of the draft rules sets the requirement for national police check reports about individuals seeking access to security information to be dated no earlier than 2 years before the information request.

Supporting security information requests where the police check report is dated within 2 years, the individual is also required to declare in writing that the individual has not been convicted of an offence since the date of the report.

The AAA agrees that a balance must be struck between the affordability and accessibility of information and the prevention of crime, however, has concerns that the proposed reliance on self-declarations may create a loophole for exploitation for criminal activity.

¹ Page 6 of the Exposure Draft Explanatory Materials

The AAA believes that the prevalence of vehicle theft and associated crime must be monitored alongside the scheme to ensure the scheme provisions provide a suitable balance between affordability and accessibility of information and the prevention of crime.

Alternative pathway: recognition of State and Territory repairer licence

The draft rules provide an alternative pathway for individuals requesting security information by recognising licencing regimes applicable in some States and Territories. These proposed provisions apply only to individual licences, rather than business licences.

Business licenses in some States and Territories require regular renewal, including the provision of an updated national police check report, meeting the elements of the definition of 'repairer licence' included in Part 1, Section 4 of the draft rules.

The AAA suggests that State and Territory motor vehicle repair business licences can be recognised as an alternative pathway in a manner that does not compromise the balance between affordability and accessibility of information and the prevention of crime.

Other comments

The Act has provision for the scheme rules to provide greater detail on:

- scheme vehicles
- excluding information from the definition of scheme information
- safety and security information
- terms and conditions that are not allowed.

The AAA agrees that the draft rules focus on the priority elements requiring clarity prior to the scheme commencement date of 1 July 2022.

However, there are some elements that the AAA considers will require additional detail in the near-to-medium term in order to keep pace with technological development. The AAA encourages early consideration of these issues to ensure a considered and balanced framework.

Cyber security

The draft rules limit 'security information' to the kind of information prescribed for the mechanical and electrical security systems installed in a scheme vehicle. It is not clear whether cyber security would be captured by the current definitions.

As vehicles become increasingly connected, cyber security will become a critical element of vehicle security. The AAA considers this an obvious example of technological development with which the scheme should keep pace. Clarity over restrictions to this information will be required.

Information related to an automated driving system

The Act excludes information relating to an automated driving system² of a vehicle from being considered scheme information, meaning data providers are not required to share this information. The wording of this exclusion is vague and open to interpretation.

² Automated driving systems are defined in the Act as being Level 3 or greater under the Surface Vehicle Information Report J3016 published by SAE International.

The legal frameworks and sales or ownership models for automated vehicles in Australia are yet to be finalised and these vehicles are not currently available for purchase by the general public.

However, the AAA expects that once these vehicles are introduced to the Australian market, further detail will be required in the scheme rules to provide clarity around what information is and isn't considered scheme information.

The AAA thanks The Treasury for the opportunity to provide feedback on this important consumer issue and is more than happy to further discuss any elements of this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M. Bradley', with a stylized flourish at the end.

Michael Bradley
Managing Director