



AUSTRALIAN
AUTOMOTIVE
DEALER
ASSOCIATION

RESPONSE TO THE PRODUCTIVITY COMMISSION RIGHT TO REPAIR ISSUES PAPER

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FOREWORD

The AADA is pleased to be able to provide a response to the Productivity Commission Right to Repair issues paper.

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

The AADA believes that it is critical that consumers be able to obtain motor vehicle repairs that provide them with choice of repairer and the cost and efficiency benefits which derive from strong competition. The delivery of these consumer benefits, however, will only be realised if any government intervention ensures all parties are able to compete on equal grounds. Failure to do so will result in a distorted market and lead to unintended consequences, contrary to consumer interests and damaging to business.

This point was noted by the ACCC in its New Car Retailing Industry market study of 2017 which noted:

“...the ACCC recommends regulatory intervention to mandate the sharing of technical information with independent repairers on ‘commercially fair and reasonable terms’, subject to appropriate safeguards to enable the sharing of environmental, safety and security-related technical information.”

The ACCC recommendations contained in this report also helped provide the impetus for the Government to initiate work on legislation requiring technical repair and service information to be shared with independent repairers. The AADA notes that this issue has, for several years, been the subject of several detailed studies and an inquiry by Treasury. This process has included the participation of the AADA and other industry associations representing independent repairers, consumers and the Original Equipment Manufacturers (OEMs). This work has led to the publication of exposure draft legislation which is currently under review. If it passes, this legislation will conditionally allow repairers access to service, diagnostic and repair information.

While the AADA fully supports the principles underpinning the right to repair initiative, the process of introducing them into the automotive repair sector is already well advanced and has been under development for more than eight years. The AADA believes that any additional intervention in the automotive sector is duplicitous and unwarranted.

The AADA has limited its responses to those areas of the inquiry which are relevant to the automotive repair sector and to the automotive repairers more broadly.



James Voortman
Chief Executive Officer



INFORMATION REQUEST 1

What would a 'right to repair' entail in an Australian context? How should it be defined?

For consumers:

The ability to be able to obtain repair services from professional repairers of their choice.

For repairers:

For trained, experienced and appropriately equipped professionals to be able to acquire technical information necessary for the repair of consumer goods, without need to access Manufacturers intellectual property.

INFORMATION REQUEST 2

a. What types of products and repair markets should the Commission focus on?

Work is already underway on draft legislation being prepared by the Treasury, which establishes a scheme requiring automotive service and repair information to be made available to professional independent repairers. The AADA recommendation is that this process, which has been underway for many years, should be allowed to continue without interference from this inquiry.

The AADA has no comment to make regarding other products that should fall within Right to Repair requirements.

b. Are there common characteristics that these products share (such as embedded technology and software or a high/low degree of product durability), and which characteristics would allow policy issues to be considered more broadly?

Modern motor vehicles are among the most technically sophisticated products consumers can buy. They contain embedded microprocessor controlled mechanical systems which are fully integrated and highly complex. These systems govern nearly every feature of the modern motor vehicle, from passenger comfort to steering and suspension control and automatic emergency braking. Motor vehicles are also designed to meet stringent environmental and safety standards. This level of sophistication creates a demand for repairers to be highly trained and equipped, particularly given the safety issues associated with these repairs. No other commonly available consumer product combines this level of sophistication, complexity or regulatory control.

c. If there are particular products that the Commission should focus on, what are the unique issues in those product repair markets that support such a focus?

The AADA has no advice for the Commission regarding consumer products other than motor vehicles.

INFORMATION REQUEST 3

- a. **Do the consumer guarantees under the ACL provide adequate access to repair remedies for defective goods? If not, what changes could be made to improve access to repair remedies? Are there barriers to repairing products purchased using new forms of payment technologies, such as ‘buy now pay later’?**

The ACL provides broad and comprehensive protection to consumers, protecting them against defective goods or products that are not fit for purpose. These protections exist over and above the express warranties that exist in the new car sector, which are transferrable from one owner to the next and can be as long as seven years with an unlimited kilometer limit.

Historically, car Manufacturers share technical and service information with their franchised Dealer networks who they have contractual arrangements with. The terms of these agreements require Dealers to invest in ongoing training, tools, equipment, and facility. Franchised Dealers are also required to exclusively use genuine parts in the servicing and repair of the vehicles they work on. These obligations, which can cost a Dealer hundreds of thousands of dollars or more, provide Manufacturers with an assurance that buyers of their cars will receive the best possible service and the reputation of their brand is protected.

Independent repairers have, for some time however, held a view that service and repair information made available to Dealers should also be shared with aftermarket repairers. The Government have shown support for this point of view and through Treasury, have now released draft legislation setting out how this will occur in future.

Consumers have always benefited from competition in the automotive repair sector, with about 23,000 independent repairers and 3,200 dealership workshops all competing for business. The provision of factory (OEM) information to independent workshops will only strengthen the position of independent workshops and remove any perception that independent repairers are blocked from performing certain repairs as they cannot obtain the correct information.

- b. **Is the guarantee of available repair facilities and spare parts effective in providing access to repair services and parts? Or is the opt-out clause being widely used, making the guarantee ineffective?**

The AADA is not aware of the opt-out clause being used in the automotive repair sector. Additionally, safety issues that may arise on older vehicles are still captured by the vehicle recall scheme and even vehicles which are 20 years old or more are subject to recall.

- c. **Should consumer guarantees seek to balance the broader societal costs of remedy choices (such as the environmental impacts of replacements) with consumer rights, and if so how? For example, should repairs be favoured as a remedy?**

Motor vehicles on Australian roads are among the oldest in the world and on average are 10.4 years old, according to the Australian Bureau of Statistics (ABS). It is evident from this that motor vehicles are commonly repaired and there are parts and repairers available who can perform this work effectively, and in a cost effective manner.

Section 4

d. Are consumers sufficiently aware of the remedies that are available to them, including the option to repair faulty products, under the ACL's consumer guarantees?

It is difficult to find reliable empirical evidence which provides an accurate assessment of consumer awareness of the ACL, however consumers in the automotive sector are provided with warranty statements which provide an understanding of consumer guarantees. This is normally communicated through the vehicle owners manual warranty statement which makes reference to consumer guarantees and the ACL. In 2018 the AADA worked with the ACCC on a developing and distributing a *New Car Fact Sheet* which was [sent on 4 September and again on 24 September](#) of that year, to all franchised new car Dealers across the country. Dealers were instructed to provide this guide to all new car purchasers, along with another ACCC publication which was also included in the AADA Bulletin, the *Motor Vehicle Sales & Repairs - An industry guide to the Australian Consumer Law*.

The AADA has anecdotally received reports from Dealers which indicate that consumers have a good understanding of the ACL and their rights under this legislation.

e. If not, would more information and education be a cost-effective measure to assist consumers understand and enforce guarantees? What would be the best way to deliver this information? What other measures would be more effective?

The AADA do not consider this necessary.

INFORMATION REQUEST 4

a. **The Commission is seeking information on the nature of repair markets in Australia, including detailed data on the repair markets for specific products, covering:**

- **market size — by employment, revenue, number of businesses, profit margins**

Net profit as a percentage of sales is 2.6-3.1%. Gross profits in parts is 21-24% and 66-68% in the service department.¹

There are approximately 1,500 franchised new car Dealers who operate 3,200 Dealerships. Dealers employ 55,000 people and generate \$56 billion in turnover / sales.²

- **market size — by employment, revenue, number of businesses, profit margins**

The AADA understand there are approximately 23,000 independent mechanical repair businesses in Australia.

b. **Is there any evidence of a difference in quality, safety or data security between authorised repair networks and independent repairers? Are there ways to address concerns around quality, safety or data security while promoting a vibrant independent repair market?**

Franchised new car Dealers receive ongoing factory training and are contractually obliged to use the latest OEM specified special tools, equipment and genuine parts. Dealers also have uniform policies for obtaining, using and handling of data which are communicated to customers.

There is a wide variation in the facility, equipment levels and expertise in the independent repair sector, which is generally not held to the same standards as a Dealership, especially in those states and territories which do not have licensing of technicians.

c. **Are there available examples of the contracts between OEMs and authorised repairers? Do these contracts limit effective competition in repair markets (such as by limiting the number and reach of authorised repairers or requiring authorised repairers to not be authorised by a competing brand)?**

- **What is the process to become authorised? Is it open and competitive?**

Contracts between authorised repairers and franchised new car Dealers are subject to confidentiality clauses which prevents them being shared. Dealer agreements are in almost all instances, characterised by the power imbalance that exists between the OEM and Dealer. Manufacturers in the automotive sector are multinational fortune 500 companies located offshore in places like Germany, Japan, Korea and the US. Dealer agreements often contain many objectionable, unfair clauses however Dealers agree to them based on existing employment and investment levels and a positive entrepreneurial outlook.

Manufacturers appoint Dealers at their sole discretion and do so based on selection criteria that they determine. The process of becoming authorised requires an investment by the Dealer measurable in millions of dollars, meaning franchised new car Dealers are unique in the world of franchising given their financial commitments and the obligations they are subject to.

¹ Deloitte, [2020 Dealership Benchmarks Motor Industry Services](#)

² <https://dealernomics.aada.asn.au/>, accessed 4 February 2021

Section 5

d. Are there specific examples or other evidence of practices by OEMs or their authorised repairers that create barriers to competition in repair markets?

- **Do other factors also create barriers to competition in repair markets, such as short-sighted consumer behaviours, switching costs, poor information availability or consumer lock-in?**

As described earlier, the automotive repair sector is extremely competitive and is one of the most concentrated in the world. In 2020, 916,968 vehicles were sold by over 60 brands supplying hundreds of models, all supported by comprehensive Dealer networks. Consumers not only benefit from the competition between Dealers and independent repairers, but also benefit from strong intra-brand competition that exists between Dealers belonging to the same franchise network.

e. What is the relationship between the intensity of competition in the primary product market and the risk of consumer harm from a lack of competition in repair markets? Can competitive primary markets compensate for non-competitive repair markets?

- **Is an absence of effective competition in the primary market a necessary condition for consumer harm from non-competitive repair markets?**
- **To what extent would measures that enhance competition in the primary market address concerns about a lack of competition in repair markets?**

There is an abundance of competition in the automotive repair sector, as evidenced by the tens of thousands of repair facilities.

f. Are the restrictive trade practices provisions of the CCA (such as the provisions on misuse of market power, exclusive dealing or anti-competitive contracts) sufficient to deal with any anti-competitive behaviours in repair markets?

Yes.

g. What policy changes could be introduced if there is a need to increase competition in repair markets and improve consumer access to, and affordability of, repairs?

- **What are the costs and benefits of any such proposal to the community as a whole? How does it balance the rights of manufacturers and suppliers, with those of consumers and repairers?**

The incoming legislation being drafted by Treasury which requires automotive Manufacturers to share service and repair information with aftermarket repairers is intended to increase competition and give consumers greater choice of repairer.

INFORMATION REQUEST 5

- a. **To what extent do current IP laws already facilitate repairs by consumers or independent third parties (e.g. the spare parts defence under the Design Act)?**
- b. **Are there any aspects of IP laws where consumers' rights with respect to repairs are uncertain?**
- c. **Do current IP protections (e.g. intellectual property rights, technological protection measures, end-user licencing agreements) pose a significant barrier to repair in Australia? If yes, please comment on any or all of the following:**
- **the specific IP protections that prevent consumers from sourcing competitive repairs and/or inhibit competition in repair markets**
 - **the types of products or repair markets these barriers mainly affect**
 - **the prevalence of these barriers**
 - **the impacts of these barriers on third party repairers and consumers (e.g. financial cost, poorer quality repairs) options for reducing these barriers and their associated benefits, costs and risks (including potential impact on market offerings).**
- d. **In what ways might government facilitate legal access to embedded software in consumer and other goods for the purpose of repairs? What are the pros and cons of these approaches?**

Given the highly competitive sector in which car makers operate, the inclusion of features in a car which may give a competitive edge are critical to the success of multinational car companies. Given the tight regulatory, environmental and safety constraints associated with manufacturing, these features cost millions or even billions in R&D to develop. It is to be expected that Manufacturers will take every measure to protect this IP and seek to obtain a commercial return on it. This process has created countless innovations which eventually flow through to all makes and models.

The AADA is not aware of any instances in which IP protection is taken with the intent of reducing competition in the repair sector creating barriers for third party repairers.

INFORMATION REQUEST 6

- a. **What evidence is there of planned obsolescence in Australian product markets? Do concerns about planned obsolescence principally relate to premature failure of devices or in them being discarded still working when more attractive products enter the market?**
- b. **How can the Commission distinguish between planned product obsolescence and the natural evolution of products due to technological change and consumer demand?**
- c. **How does planned obsolescence affect repairers, consumers and the broader community in Australia?**
- d. **What measures do governments currently use to prevent planned obsolescence or mitigate its effects (in Australia and overseas)? How effective are these measures?**
- e. **What are the benefits, costs and risks of Australia adopting measures similar to those currently used overseas, such as product design standards and reparability ratings?**
- f. **Do consumers have access to good information about durability and reparability when making purchases? If not, how could access to information be improved?**

There is no evidence that planned obsolescence plays a part in the automotive manufacturing sector. Among developed western countries, Australia has a relatively old car parc at 10.4 years on average. By comparison, the average age of vehicles in Germany is 9.5 years, Japan 8.6 years and the US is 11.9 years. Motor vehicles normally remain repairable for more than a decade and when they reach end of life are largely recyclable.^{3,4,5,6}

3 <https://www.abs.gov.au/statistics/industry/tourism-and-transport/motor-vehicle-census-australia/latest-release>, accessed 4 February 2021

4 https://www.acea.be/uploads/publications/ACEA_Report_Vehicles_in_use-Europe_2019.pdf, accessed 4 February 2021

5 <https://www.statista.com/statistics/680051/japan-passenger-car-average-age/#:~:text=In%20fiscal%202019%2C%20passenger%20cars,age%20of%20approximately%208.65%20years,> accessed 4 February 2021

6 <https://www.caranddriver.com/news/a33457915/average-age-vehicles-on-road-12-years/#:~:text=A%20study%20from%20IHS%20Markit,vehicles%20on%20the%20road%20higher,> accessed 4 February 2021

INFORMATION REQUEST 8

- a. **What policy reforms or suite of policies (if any) are necessary to facilitate a 'right to repair' in Australia?**
- b. **Are there any other barriers to repair and/or policy responses that the Commission should consider?**
- c. **What are the costs and the benefits of the various policy responses that have been proposed to facilitate repair (such as those outlined in table 1)?**
- d. **Are there other international policy measures or proposals that the Commission should consider as part of this inquiry?**

Right to repair is being facilitated by the legislation for information sharing in the automotive repair sector.

CONCLUDING COMMENTS

Motor vehicles differ from other consumer products

Modern motor vehicles are the most technically advanced products a consumer can buy. They contain sophisticated mechanical systems with complex embedded microprocessor controls. The safety of consumers and all other road users depends on these vehicles being maintained and repaired by professional repairers of which there are some 3,200 franchised and 23,000 independents available for consumers to choose from.

The car market in Australia is one of the world's most competitive and concentrated. Often the embedded technology in vehicles is proprietary and has been developed to provide consumers with features not available in other brands or models, thus creating a competitive advantage for the OEM. This leads to innovation in cars that makes them safer, more practical, efficient and comfortable. Any regulatory intervention needs to carefully consider the broader costs to consumers in terms of normalising these technologies which could threaten innovation which benefits buyers.

Australian motor vehicles also comply with regulatory standards covering safety and emissions while meeting exacting market requirements pertaining to utility, comfort and build quality. Equally demanding are the non-regulatory safety standards established by ANCAP who evaluate motor vehicles and play an influential role in determining community expectations regarding vehicle safety.

Few if any other consumer products are subject to the same level of public scrutiny and regulatory compliance. Put simply, motor vehicles are very different to TVs, fridges or mobile phones and should not be treated as such.

If you have any questions, please contact me on:

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