

23rd July 2021

Right to Repair
Productivity Commission
4 National Circuit
Barton ACT 2600
Australia

John Deere thanks the Productivity Commission for the opportunity to make a submission in response to the Commission's draft report dated June 2021 (the "Draft Report"). Many of the issues discussed in this response are similar in form and content to our response to the Australian Competition and Consumer Commission (ACCC) regarding after-sales service and repair for agricultural machinery in Australia, in April 2020.

John Deere understands right to repair is an important conversation for the Australian agriculture industry. John Deere also understands what is required to effectively and efficiently run a farming business and supports a customer's right to safely maintain, diagnose, and repair their machinery.

John Deere supports the provision of tools and information for customers and independent third-party repairers to safely repair and maintain John Deere agricultural equipment. For decades we have led the industry in providing detailed product information, software solutions and parts needed for owners to keep their machines running. We are committed to providing the tools and resources for our customers to purchase or lease through authorised dealers to maintain and repair their agricultural equipment including:

- Access to manuals (Operator, Parts, Service).
- Product Guides.
- Customer Service ADVISOR™ our Electronic Field Diagnostic Service Tool. This is a digital database where customers have access to Operator, Diagnostic and Technical manuals for John Deere products. This subscription allows users to connect to machines with an Electronic Data Link (EDL) to clear and refresh codes, take diagnostic readings, and perform limited calibrations. Dealers can also provide supporting training for customers on how to utilise this tool.
- JDLink™ software that connects the machine's internal systems to the web and can alert customers to issues before they develop or explain what a particular alert means.
- Other publications with information on Service, Parts, Operation, and Safety.
- Parts and Diagnostic Tools.

John Deere's warranty terms do not restrict a customer from repairing equipment themselves or seeking repair from an independent third-party repairer, nor does it void the warranty for such actions.



John Deere does not support the modification of equipment and technology due to risks associated with safe operation, environmental emissions, and product performance.

John Deere considers that the markets for the sale of agricultural machinery and after-sales services and repair in Australia are competitive, and that there are no industry wide issues which would warrant legislative intervention beyond the retention of existing competition and consumer law protections. Both John Deere and its dealer network have invested significantly in recent times to ensure the competitive availability and reliability of parts supply to customers and independent repairers. This investment is supporting the employment of over 1,700 aftermarket dealer technicians and apprentices nationally, many in rural and regional communities.

Additional information is included below in response to the allegations raised in Section 3 of the Draft Report.

John Deere welcomes the opportunity to provide ongoing feedback and we are willing to provide an open information sharing session for the Productivity Commission to help better understand our position on right to repair issues.

Yours sincerely,

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Luke Chandler
Managing Director Australia/New Zealand

1. Access to Repair Supplies

John Deere has developed an extensive sourcing and distribution network to ensure the availability and reliable access to parts supplies for customers, dealers and independent third-party repairers. John Deere has recently undertaken significant investment in its parts storage and distribution centre in Melbourne to ensure the long-term security and reliability of supply of competitive parts into the Australian market.

The John Deere dealer network has also invested significantly in building aftermarket infrastructure and capabilities in recent years, including investment in service facilities and resourcing, many of which are supporting local economies in rural and regional locations. To support changes in customer requirements, new approaches to servicing have also been adopted including the introduction of dedicated parts and service locations to support isolated areas which may not warrant the investment of a full line dealership (sales/parts/service) and growth in connected support capabilities to provide remote technical support to customers – reducing problem resolution time and travel costs for the customer.

John Deere actively encourages dealers to develop a tiered approach to the supply of parts, offering customers a variety of options at a range of prices and levels of performance, including lower priced “will fit” parts distributed by Deere subsidiaries, A&I and Vapormatic which provide alternatives to genuine parts as well as a range of remanufactured ‘Reman’ parts.

Our Remanufactured Parts and Components provide an alternative to a new component saving customers up to 25-30% compared to the cost of a new component and can also reduce downtime by providing an exchange component alternative. Most John Deere dealers carry a variety of “will fit” parts supplied by third parties, including but not limited to Worthington, Neil’s, Shoup, Bareco, Sparex and AgParts, many of which we understand are generally offered by the independent repair shops, presumably at similar prices. John Deere makes parts available for a minimum of ten years and for some products up to twenty years after the last product has been produced.

With respect to the sale of genuine John Deere parts, more than 50% of such parts sold by John Deere dealers are sold “over-the-counter” and not as part of repairs made through the dealer repair shop. This suggests that customers are readily purchasing parts and performing repairs on their own or via independent third-party repairers.

A dealer’s market area, known as the Area of Responsibility (the “AOR”) is non-exclusive. Dealers may sell wherever and to whomever end customers they choose. The AOR is only used as the reference area in which the dealer is measured for the purposes of market share performance and customer and product support for the sale of whole goods.

2. Warranty Flexibility, Transparency and Clarity

John Deere's warranty (the "Warranty") does not restrict a customer from repairing equipment themselves or seeking repair from an independent third-party repairer, nor does it void the Warranty for such actions.

The Warranty is publicly available here: https://www.deere.com.au/assets/pdfs/region-4/parts-and-service/warranty/warranty-statements/AU_wty_statement.pdf.

Customers are free to perform all maintenance and repairs themselves or use independent third-party repairers at any time for warrantable and non-warrantable maintenance and repairs, but the costs of such maintenance and repairs will not be paid by John Deere. For instance, per the Warranty, John Deere will not pay for, among other things, "Any Equipment that has been altered or modified in any way not approved by John Deere Limited..." or "Failure caused by incorrect or improper service parts." John Deere does not void the Warranty in the event a customer uses non-John Deere parts or utilises a service provider other than an authorised John Deere dealer.

In accordance with the terms of the Warranty, John Deere will only pay for warrantable repairs if service is performed by authorised John Deere dealers and dealers using genuine John Deere parts. John Deere parts are designed and tested for use with Deere equipment to ensure safety and optimal performance. Authorised dealers have specific training and experience with repairing, servicing and maintaining John Deere machinery.

The Warranty specifically states that the warranty terms are in addition to and subject to any consumer guarantees which may apply under the Australian Consumer Law.

John Deere is supportive of clear and adequate disclosure of warranty terms at the point of sale. The Warranty, which includes all warranty terms and conditions, is made available to and signed by the customer at the point of sale and is also available at any time from the dealer or online (https://www.deere.com.au/assets/pdfs/region-4/parts-and-service/warranty/warranty-statements/AU_wty_statement.pdf).

The Warranty is non-negotiable to ensure the Warranty terms are equally available to all customers and is offered as an additional guarantee on the purchase of John Deere products. Dealers may offer additional warranties to customers if they so choose, but any such warranties are between the dealer and customer(s) and Deere does not endorse or support those warranties.

3. Public Access to Technical Information Without Unreasonably Asserting Intellectual Property Protections

Customers and independent repair shops may perform any and all maintenance and repairs on equipment. To aid in those efforts, John Deere offers operational, diagnostic and repair manuals and reference guides to the general public. These resources are available in both digital and print format and can be purchased from any of our John Deere dealers or via <https://techpubs.deere.com>. John Deere also offers mobile apps, online how-to videos (primarily via YouTube at <https://www.youtube.com/user/JohnDeere>), special repair tools and electronic service tools, including John Deere Customer Service ADVISOR™, diagnostic software available for purchase from authorised John Deere dealers that allows customers and non-authorised John Deere dealers to diagnose, repair and calibrate equipment. Similar diagnostic software is also available from aftermarket third-party sellers, including but not limited to TEXA s.P.A

(<https://www.texa.com/solutions/off-highway>).

When customers buy from John Deere, they own the equipment and can choose to personally maintain or repair the product. John Deere provides access to maintenance, diagnostic and repair information of equipment through the following means:

- (a) Manuals (Operator, Parts, Service).
- (b) Product Guides – Quick Reference Guides.
- (c) Product Service Demonstrations, Training, Seminars or Clinics:
 - a. Training and Safety Videos.
 - b. Simulators.
- (d) Fleet Management Information:
 - a. John Deere Connected Support.
 - b. JDLink™.
- (e) On-Board Diagnostics via diagnostics port or wireless interface:
 - a. Machine issues are identified by a specific Diagnostic Trouble Code (DTC) that can be accessed through the machine display or dash. Some machines allow for the basic description of the DTC to be viewed.
 - b. Mobile Apps (access through the John Deere App Center app) - provide operating tips and basic troubleshooting information. Some apps also provide the ability to look up Diagnostic Trouble Codes (DTCs) for more information.
- (f) Electronic Field Diagnostic Service Tools and training on how to use them:
 - a. Customer Service ADVISOR™: access to operator and technical manuals, look up diagnostics codes, machine diagnostic connectivity with electronic data link (EDL) and perform machine calibrations.
 - b. Other publications with information on service, parts, operation and safety.
 - c. Safety Information.
 - d. Operation Training.
 - e. Warranty & Protection Plans.



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Interested parties can contact their local John Deere dealer for more information on these resources. All tools/resources outlined are currently available in the marketplace to customers, independent repair personnel and end users – and will continue to be available in the future. For more information on Deere’s commitment to ownership and repair visit <https://www.deere.com.au/en/our-company/repair/>.

John Deere supports our customers’ right to maintain and repair their equipment, but not the right to modify embedded code in equipment, which raises safety, emissions and intellectual property infringement and misuse concerns. For example, the Australian market is replete with advertisements and offers to remap, chip or tune diesel engines, without regard to the impact on dealer and Deere emissions obligations, manufacturer warranty and engine durability. Manufacturers must be able to protect against the significant damage to their brand and reputation caused by potential safety and performance issues that could arise from third party modifications to embedded code. Additionally, such tuning of diesel engines is often not detectable to subsequent purchasers.

John Deere is concerned that the proposed changes to copyright and intellectual property laws could adversely impact investment and innovation. Businesses are more likely to invest, and lenders provide funding for technology and innovation when they have confidence in the protections offered by robust copyright and intellectual property regulations. Many of the productivity and performance gains that have been delivered to customers and the agricultural industry are a direct result of businesses willing to invest in the necessary R&D and technology knowing this investment is protected. As an example, John Deere’s See & Spray offers revolutionary technology to reduce costs and environmental impact of chemical use and improve yields. Such innovation would not be possible without protections from third-party access to trade secrets and software code. As an example of the productivity gains this offers for customers, through this integrated camera technology which rapidly detects green plants within fallow ground and automatically triggers an application to those plants. In doing so, it achieves a similar hit rate to traditional broadcast spraying but uses, on average, 77% less herbicide.

John Deere has significant concerns with the proposed inclusion of agricultural machinery in the Motor Vehicle Information Sharing Scheme, based on the safety, environmental and product compliance risks referred to throughout this submission.

Finally, John Deere has worked with industry partners, other manufacturers and dealers to educate legislators and regulators on "Right to Repair" legislation in the United States, generally advanced by special interest organisations. The U.S. Industry Statement of Principles created by manufacturers and dealers as well as additional information on Right to Repair are available here: <https://r2rsolutions.org/>. To date, legislators in more than 30 states in the U.S. have declined to enact Right to Repair legislation on the basis of the industry commitment and the fact that farmers, ranchers and independent repair shops do in fact have access to the necessary parts, tools, resources to perform their own repairs. Deere submits that these principles largely also apply to Australia, and to the extent the



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ACCC perceives there are issues is something that should be resolved with the relevant manufacturers or dealers which the ACCC considers are not making available information available in accordance with those principles rather than by broad ranging legislative intervention.