



VACC's response to the Productivity Commission Draft Report – Right to Repair

July 2021

About VACC

VACC is Victoria's peak automotive industry association, representing the interests of more than 5,000 members in over 20 retail automotive sectors, who employ over 50,000 Victorians.

VACC members range from new and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery), repairers (mechanical, electrical, body and repair specialists, i.e. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacture (e.g. specialist vehicle, parts or component modification and/or manufacture), and automotive dismantlers and recyclers.

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1. The automotive industry and the role of VACC

The Victorian Automotive Chamber of Commerce (VACC) thanks the Productivity Commission for the opportunity to comment on the draft Right to Repair Report.

VACC is Victoria's peak automotive industry association, representing the interests of over 5,000 members in 20 retail automotive sectors that employ more than 50,000 Victorians. VACC members include:

- New and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery).
- Repairers (mechanical, electrical, body and repair specialists, i.e., radiators and engines).
- Vehicle servicing (service stations, vehicle washing, rental, windscreens).
- Parts and component wholesale/retail and distribution and after-market manufacture (i.e., specialist vehicle, parts, or component modification and/or manufacture).
- Automotive dismantlers and recyclers.
- Vehicle rental.

VACC works closely with its corresponding Motor Trade Associations, who represent the automotive industry in their respective states. The automotive industry contains approximately 75,521 businesses registered nationally, the vast majority of whom (96.6 percent) are small family-owned and operated businesses.

For the year ended June 2019, aggregate employment for the industry was recorded at 384,810 people. In gross domestic product (GDP), the automotive industry accounted for approximately \$39.35 billion or 2.1 per cent of Australia's annual GDP in current prices in 2019/2020.

The automotive service and repair industries are extremely competitive, resulting in slim profit margins. Consumer behaviour limits the capacity of industry to raise prices, and large multinationals (auction houses, insurance companies, the oil industry, supermarkets, and vehicle manufacturers) heavily influence consumer behaviour and price.

The cost of doing business is high, due in part, to the regulatory burden and rapid vehicle technology advances that require high-level skills and expensive equipment in the vehicle repair and service process. The once-local vehicle market is now a truly international market with the advent of the digital age.

The Licensed Motor Car Trader (LMCT) industry sectors, whom VACC represents, includes sophisticated multi-franchise companies retailing new and used cars, motorcycle dealers, commercial vehicle dealers, farm machinery and automotive dismantlers. Predominantly, these LMCT businesses are comprised of more than 20 employees, with a reasonable proportion of micro businesses who employ fewer than five people. They all rely on VACC to ensure compliance with a broad range of legislative requirements including the Australian Consumer Law (ACL). Vice versa, VACC relies on feedback from its members to ensure adequate and informed policy and advocacy representation.

Approximately 80 per cent of VACC's membership is made up of repairers from various sectors including: mechanical, electrical, collision and specialist repairers. Together, VACC covers almost all aspects of the automotive sector. In this regard, VACC's submission presents a unified and comprehensive response that is truly representative of the Victorian automotive industry.

The following submission addresses recommendations raised in the draft report.

2. Section 3.3 - Reasonable product durability needs clarification

2.1 Draft Recommendation 3.1 Guidance on reasonable durability of products

The Australian Competition and Consumer Commission (ACCC) should develop and publish estimates of the minimum expected durability for products within major categories of common household products.

The estimates would be a guide only to support application of the acceptable quality consumer guarantee in section 54 of the Australian Consumer Law. It could use ranges to take into account lower and higher value products in each category.

Whilst draft recommendation 3.1 lies largely outside VACC's purview, VACC makes the point that there are complex differences regarding the durability of motor vehicles, farm machinery, and automotive parts. This includes driving habits, road conditions, regular maintenance schedules and intended purposes. These factors can all affect the overall performance and durability of an automotive product.

Further, the Australian vehicle fleet is aging, with an average vehicle age of 10.4 years (as of January 2020), which represents an increase of 0.2 years from 2019.¹ Consumer buying behaviour has also changed due to the COVID-19 pandemic. The new car market (sales) has been in decline for several years prior to the pandemic; however, it is encouraging Australia is now showing signs of growth (up 11.1 per cent in January 2021). The used car market has also experienced unprecedented change, with consumer demand for secondhand vehicles at an all-time high.

Typically, modern vehicles consist of over 30,000 mechanical and electrical components. Each component varies in lifespan and requires rectification or replacement depending on driving behaviour and road conditions. Introducing durability estimates for motor vehicles would, in VACC's opinion, create confusion for consumers and potentially increase misguided claims made against a business.

New vehicle and farm machinery manufacturers invest millions of dollars in research and development to enhance their vehicles and gain a competitive edge. A significant proportion of this investment is allocated to rigorous testing of their vehicles to ensure customer expectations are met, and improve the durability of their product. The process of vehicle prototype testing is usually performed in controlled environments, such as proving grounds and specialist research and testing facilities. This may also include real world driving in various conditions.

Typically, manufacturer warranties are a guarantee that the manufacturer will be responsible for any vehicle defects during the warranty period. These repairs are usually performed at a franchised or authorised repairer. There are obligations on the consumer to maintain and service the vehicle in accordance with manufacturer recommended service schedules using genuine or equivalent aftermarket parts and lubricants. This can be performed at a dealer or an independent service centre. VACC members often come across poorly maintained vehicles and farm machinery that have not been serviced at recommended service intervals and usually after the warranty period has expired.

VACC maintains there is sufficient ACL guidance information available through Consumer Affairs Victoria (CAV) and the Australian Consumer Law portal; however, it would be helpful if the Australian Competition and Consumer Commission (ACCC) focused on a consumer's obligation to prolong the durability of a product rather than placing the onus on the product manufacturer or service provider.

¹ Motor Trades Association of Australia. (2021). Directions in Australia's Automotive Industry Report.

2.1.1 Second-hand vehicles

Guidance notes on 'reasonable durability' regarding highly travelled second-hand vehicles are noticeably lacking and require development. A key example is a 15 year old vehicle with 290,000 kilometres on the odometer. This vehicle is long absolved of any manufacturer warranty and has gone beyond what is considered to be its useful life. It has been traded multiple times with no reliable history of use or service log. Such vehicles are typically sold by second-hand car dealers at very low prices (circa \$3,000). If, after eight months, the original automatic transmission fails, the question is posed "how does 'reasonable durability' apply?" Such cases are open to different interpretation by courts, tribunals, dealers, and consumers. Having effective guidance notes is critical in the education of the public on such matters.

In the above example, short of completely dismantling the transmission and examining the state of its component parts, it is not possible to determine its durability through simple assumptions, a visual inspection, or a short drive of the vehicle. The complex nature of this item makes the guarantee of 'reasonable durability' difficult, particularly when the product has exceeded its expected lifespan. This places an unreasonable impost on dealers and gives rise to unrealistic expectations amongst consumers.

VACC has long argued that appropriate technical information needs to be developed as a reference point for the guidance of decision-makers in complex disputes pertaining to the durability of highly travelled, second-hand motor vehicles.

Better guidance on 'reasonable durability' would also help consumers and businesses better manage expectations in such matters and help reduce any costly and unnecessary litigation.²

3. Section 3.4 Access to spare parts and repair facilities

3.1 Information Request 3.1 Repair Facilities, Spare Parts and Software Updates

To better understand whether consumers have reasonable access to repair facilities, spare parts and software updates, the Commission is seeking further information on:

- *whether consumers have faced difficulties accessing spare parts or repair facilities*
- *under guarantees when their product breaks or develops a fault, including specific*
- *examples of the type and age of the product, and the costs incurred by the consumer*
- *costs and benefits of businesses being required to hold physical spare parts or*
- *operate repair facilities for fixed periods of time*
- *whether consumers are experiencing problems using their products due to a software*
- *fault or lack of software updates, including specific examples where manufacturers*
- *have not addressed the problem because of claims that it is not covered by consumer*
- *guarantees*
- *the costs and benefits of requiring that software updates be provided by manufacturers*
- *for a reasonable period of time after the product has been purchased.*

There are 40,220 businesses automotive repair facilities in Australia. This includes Original Equipment Manufacturer (OEM) franchised and independent service and repair providers.³ There is also 4,285 automotive vehicle parts and tyre retailers registered who support OEM and aftermarket parts to the repairer network. There is no evidence to suggest consumers face difficulty in accessing automotive repair facilities in Australia for repairs covered by consumer guarantees. Usually, vehicle repairs covered by a manufacturer's warranty return to the manufacturer's franchised or authorised repairer for rectification. Similarly, repairs performed by an independent repairer are also covered by consumer guarantees. The ACL provides adequate consumer protection where problems such as these arise.

2 VACC. (2019). Response to CAANZ consultation on 'unsafe' and 'reasonable durability' draft guidance. <https://vacc.com.au/Portals/0/Guidance%20for%20ACL%20concepts.pdf>

3 Ibid (n1), p. 18

Furthermore, Motor Vehicle Service and Repair Information Sharing legislation will strengthen consumer choice and access to repair facilities in the future.

The objective of this legislation is to:

- Promote competition between Australian repairers of passenger and light goods motor vehicles and establish a fair playing field by mandating access to diagnostic, repair, and servicing information on fair and reasonable commercial terms.
- Enable consumers to have those vehicles attended to by an Australian repairer of their choice who can provide efficient and safe services.
- Encourage the provision of accessible and affordable diagnostic, repair, and servicing information to Australian repairers, and to RTOs for training purposes.
- Protect safety and security information about those vehicles to ensure the safety and security of consumers, information users and the public; and
- provide a low-cost alternative dispute resolution mechanism.

The impact of the pandemic has caused global supply chain disruptions, resulting in limited access to automotive parts for numerous retail automotive businesses across Australia. A recent survey of VACC members found that 97 per cent of repairers experienced delays in obtaining automotive replacement parts – ranging from one to six months. Factory closures, shipping and port delays, redirection of parts to different jurisdictions and forecasting errors have all contributed to the delay resulting in high demand and extended repair wait times. OEM parts, lubricants, and mechanical and collision parts for all makes and models are all in short supply.⁴ Victorian dealerships have also experienced major disruptions with new and used stock.

Prior to the pandemic, issues relating to the supply of automotive replacement parts were minimal. However, it has emerged that a multinational electric car manufacturer has been deliberately restricting the supply of automotive parts to consumers, independent mechanical and electrical repairers, and non-authorised smash-repairers in Australia. Their refusal to supply, if left unchecked, will result in higher servicing costs, repair delays, and inconvenience due to a dearth of service centers available to repair specific vehicle types. VACC further argues it most significantly impacts competition and consumer choice. If such behaviour is allowed to continue unfettered, it is likely to set a precedent for other car manufacturers resulting in severe and far reaching impacts to the broader automotive industry.

The Competition and Consumer Act 2010 (CCA), Schedule 2 and Section 58 of the ACL requires a manufacturer of goods to take reasonable action to ensure that facilities for the repair of the goods and parts for the goods, are reasonably available for a reasonable period after the goods are supplied, unless the manufacturer has explicitly informed the consumer prior to the supply of goods that facilities and parts for the goods would not be available or would not be available for a specific period. The car manufacturer in question only allows the following parts to be available to non-approved body shops:

- Wheels
- Exterior lighting
- Windscreens/glass
- Badges

VACC has received written confirmation from the car manufacturer stating their reasons for restricting supply of parts, including examples of where independent repairers have been denied access. These are outlined in Appendix 1 and are submitted as **confidential**.

4 VACC. (2021). Response to the Productivity Commissions Inquiry into Vulnerable Supply Chains (2021). <https://vacc.com.au/Portals/0/Submissions/VACC%27s%20response%20to%20the%20Productivity%20Commission%27s%20Inquiry%20into%20Vulnerable%20Supply%20Chains.pdf>

VACC is unaware of an exclusive dealing arrangement permitting vehicle manufacturers to restrict the supply of parts to the automotive repair industry. VACC calls on the ACCC to investigate this issue in the interest of fair competition and consumer choice.

3.1.1 Extended warranty provisions

VACC aftermarket repairer members are extremely concerned by multinational car manufacturers imposing vehicle servicing and maintenance restrictions on the aftermarket sector under extended warranty provisions.

The Motor Trades Association of Australia (MTAA) (of which VACC is a member) generally supports any car manufacturer or their distributors/importers providing improved warranty coverage or length of warranty coverage for Australian consumers. However, this support is conditional that any action to improve warranty coverage or length of warranty coverage is in accordance with the ACL, and the CCA. There should be no potential detriment to consumers, or other market participants, including dealers, and third-party service and repair service providers.

Mitsubishi Motors Australia Limited (MMAL) offer of a 10-year warranty that may appear, on the surface, to be of significant consumer benefit. VACC notes the announcement of this offer has already generated considerable and generally positive exposure. It has created a point of difference in the volatile and highly competitive Australian new car market. MMAL's offer of a 10-year warranty will be the longest available for any brand – with the nearest competitor offering a manufacturer backed warranty period of seven years and unlimited kilometres.

Given the average age of the Australian passenger vehicle fleet is currently 10.4 years, the MMAL offer arguably provides warranty protection for almost the entire anticipated practical life of a Mitsubishi vehicle, noting that cars can and do last considerably longer.

VACC's concerns centre on inconsistency with consumer protections in the CCA, competition provisions in the CCA, previous ACCC findings and actions in the new vehicle retail market resulting from a comprehensive market study, and potential consequential impacts on other market participants that are not readily apparent within the notified conduct.⁵

Specifically:

- A lack of transparency on the terms and conditions of the 10-year offer, which in the view of VACC has the potential to give rise to consumer confusion and unintended consequences for consumers.
- A lack of transparency and clarity on the terms and conditions for Mitsubishi Dealers on the processes and requirements to ensure fair, reasonable, and equitable reimbursement and/or compensation for warranty service repairs undertaken on behalf of the manufacturer over a longer period.
- The intent of the MMAL exclusive dealing notification is to restrict consumer choice by making a condition that owners who purchase a Mitsubishi vehicle covered by the offer must only use MMAL dealers or service agents from the outset. VACC respectfully suggests such a condition may cause consumer confusion and potential conflict in relation to:
 - Consumer protections provided for in the ACL.
 - Competition provisions in the CCA.
 - Additional specific jurisdiction legislation and regulations governing product warranties and consumer protections.
- Many of the ACCC's own findings and recommendations contained in the 2017 'ACCC New Car Market Study'.

⁵ Motor Trades Association of Australia. (2020). Submission Mitsubishi Motors Australian Limited (MMAL) Exclusive Dealing Notification N10000433. https://www.accc.gov.au/system/files/publicregisters/documents/Submission%20by%20Motor%20Trades%20Association%20of%20Australia%20%28MTAA%29%20-%2009.10.20%20-%20PR%20-%20RN10000433%20MMAL_0.pdf

VACC and MTAA have suggested the ACCC should not confine considerations to just the impact of the notification on Mitsubishi's 7.8 per cent share of the Australian market, but the real potential for other car manufacturers and their representatives to make similar exclusive dealing notifications, which may undermine the intent of the Motor Vehicle Service and Repair Information Sharing legislation and competition matters it seeks to address.

3.1.2 Right to choose repairer

Further, a consumer's choice on accessing a repairer is limited without the right to choose their own repairer. Therefore, the legislation that this review is considering becomes void should the consumer not retain the right to choose which repair facility they can go to.

Insurance policies usually give the insurer the discretion to reject the consumer's chosen repairer. The consumer is made to either pay a premium for choosing a repairer, yet are then disparaged – even after paying for the privilege that should be considered a given right. Unfortunately, insurance companies are not making a conscious decision to support the broader automotive industry and retain choice of repairer. Such practices go against the ACL. VACC recommends such practices should be reviewed as right to repair issues extend further than baseline standard consumer products.

VACC argues the vehicle owner, and only the vehicle owner, should be free to choose who repairs their vehicle in the event of an accident. Most vehicle owners, regardless of their expertise on the vehicle's make and model, would agree that the insurer is not an expert. Subsequently, steering a vehicle to a specific repairer is not always the best option.

Being able to choose your repairer can have many benefits. From choosing a specialist repairer, to ensuring the repairs are completed to the quality and standard expected – including repairing the components that are not always seen. The exorbitant pressure placed on network repairers by insurers is a direct result of potential poor repairs and the need for rectifications. Repairers at times have no voice, or choice themselves, hence why the consumer should feel in control of their vehicle when repairs are required.

Finally, the insurer is not the rightful owner of the vehicle. Recent legislative amendments to unfair contract terms in insurance contracts for motor vehicles and product disclosure statements highlights the need for greater consumer protection given the unfettered discretion and control an insurer can have on steering a vehicle to a particular facility that may not be in the best interest of the consumer or the repairer.

The VACC welcomes an opportunity to speak to the Productivity Commission about these restrictive trade practices.

4. Section 3.5 Consumer guarantee enforcement issues

4.1 Draft Recommendation 3.2 – Powers for regulators to enforce guarantees

State and Territory Governments should introduce alternative dispute resolution mechanisms to better resolve complaints about the consumer guarantees, such as compulsory conciliation or direction powers (as are used in South Australia and New South Wales).

It is VACC's view that Victoria has adequate alternative dispute resolution process available via the Victorian Small Business Commission (VSBC), along with conciliation services provided by the well-resourced Consumer Affairs Victoria (CAV). Mediation and Compulsory Conferences are readily available through the Victorian Civil & Administrative Tribunal (VCAT).

4.2 Draft Recommendation 3.3 – Enabling a Super Complaints Process

The Australian Government should enable designated consumer groups to lodge 'super complaints' on systemic issues associated with access to consumer guarantees, with the complaints to be fast tracked and responded to by the Australian Competition and Consumer Commission (ACCC).

The Australian Government should design the super complaints system in consultation with the ACCC, relevant State and Territory regulators and consumer groups. The system should be underpinned by sound operational principles — including criteria for the assignment (or removal) of designated consumer bodies, evidentiary requirements to support a complaint, and the process and time period by which the ACCC should respond.

As motor vehicles are becoming increasingly complex, it is VACC's view that a one-size-fits-all approach to consumer complaints is not the correct approach. It is anticipated that the proposed super complaints provisions may lead to frivolous, or vexatious claims being promulgated by consumer groups who may have ulterior motives for targeting the automotive industry.

As previously stated, ample provisions exist for consumers and large consumer groups to access small claims tribunals and consumer complaints authorities (e.g., VCAT, Australian Financial Complaints Authority, the ACCC). It is VACC's strong view that a super complaints system is not necessary.

ACCC resources and investigations should be reserved for complaints as referred by the directors of state consumer affairs, along with the ACCC chair itself. There are numerous examples of automotive companies giving an undertaking to ensure compliance with the ACL and consumer guarantees. These should remain the primary avenue through which consumer complaints are pursued.

Examples of the current system working include undertakings made by the following companies:

- Undertaking by Ford Motor Company of Australia Limited, for the purposes of section 87B of the Competition and Consumer Act (CCA).⁶
- Undertaking by Toyota Motor Corporation Australia Limited, for the purposes of section 87B of the Competition and Consumer Act 2010 (CCA).⁷
- Undertaking by Volkswagen Group Australia, for the purposes of section 87B of the Competition and Consumer Act 2010 (CCA).⁸
- Undertaking by Hyundai Motor Company Australia Pty Ltd, for the purposes of section 87B of the Competition and Consumer Act 2010 (CCA).⁹
- Undertaking by GM Holden Ltd, for the purposes of section 87B of the Competition and Consumer Act 2010 (CCA).¹⁰

5. Section 4 Competition in repair markets

5.1 Information Request 4.1 – Consumer Harm from Limits on Access to Repair Supplies

The Commission is seeking feedback and evidence on its preliminary assessment of consumer harm (chapter 4) in repair markets for agricultural machinery, mobile phones and tablets.

6 Undertaking of the Australian Competition and Consumer Commission given for the purposes of Section 87B by Ford Motor Company of Australia Limited. (2018). <https://www.accc.gov.au/system/files/public-registers/undertaking/Section%2087B%20Undertaking%20-%20Ford%20Motor%20Company%20of%20Australia%20Limited.pdf>

7 Undertaking of the Australian Competition and Consumer Commission given for the purposes of Section 87B by Toyota Motor Corporation Australia Limited. (2020). <https://www.accc.gov.au/system/files/public-registers/undertaking/EO%20-%20Section%2087B%20undertaking%20-%20Toyota%20-%20signed%20by%20Chair%20-%20December%202020.pdf>

8 Undertaking of the Australian Competition and Consumer Commission given for the purposes of Section 87B by Volkswagen Group Australia. (2018) <https://www.accc.gov.au/system/files/public-registers/undertaking/EO%20-%20Section%2087B%20Undertaking%20-%20Volkswagen%20Group%20Australia%20-%20signed%20-%20September%202018.pdf>

9 Undertaking of the Australian Competition and Consumer Commission given for the purposes of Section 87B by Hyundai Motor Company Australia Pty Ltd. (2018) <https://www.accc.gov.au/system/files/public-registers/undertaking/1205015-1-%20Undertaking%20-%20Hyundai%20-%20signed%20-%20February%202018.PDF>

10 Undertaking of the Australian Competition and Consumer Commission given for the purposes of Section 87B by GM Holden Limited. (2017). <https://www.accc.gov.au/system/files/public-registers/undertaking/1203115-1-EO%20-%2087B%20Undertaking%20-%20GM%20Holden%20Ltd%20-%20signed%20Undertaking%20for%20public%20register%20-%202020August%202017.PDF>

5.1.1 Systemic differences

Is there any evidence of systematic differences in quality, safety or security between authorised and third-party repairers? If so, what is the cost to manufacturers (for example, damaged brand reputation, determining the cause of a fault, or other liability issues)?

There is evidence of differences in quality, safety and security between authorised and third-party repairers. The infrastructure development and capital expenditure requirements to maintain such infrastructure is mandated under dealer agreements. That infrastructure contains prescribed processes and hazard identifications, as well as further layers of what an OEM would regard as best practice. An aftermarket operator would typically not have the same infrastructure expense or requirement.

On site repairs carried out by service technicians trained by OEMs in Occupational Health and Safety are usually available to purchasers. The cost to manufacturers, dealers and aftermarket operators is usually inflated when farmers attempt to rectify an issue with limited knowledge, diagnostic equipment or tooling. These costs are invariably absorbed by the dealer, manufacturer or aftermarket operator to placate the farmer under the guise of customer retention and reputational damage within a local rural community.

VACC's Farm and Industrial Machinery Dealers Association (FIMDA) recommends an independent be mandated to use service and repair information consistent with manufacturer guidelines and continually seek appropriate education/training where required at their own expense. This is at a minimum to ensure repairs are carried out correctly and safely.

Further, a consumer will need to satisfy themselves that any business they choose to conduct repairer are suitably qualified, is a registered Australian business, required to adhere to all relevant laws.

5.1.2 Size of market

What is the size of the repair market compared to the primary market? What proportion of repairs are conducted by authorised repairers?

There is no data available to answer this question with certainty.

5.1.3 Lifecycle costs

How difficult is it for consumers to estimate the lifecycle costs of these products at the time of purchase?

It is not difficult for consumers to estimate the lifecycle costs of products at the time of purchase. Consumers must follow the manufacturer's servicing criteria and ensure they are not using the product inappropriately. Agriculture machinery is typically built to be more robust than a standard motor vehicle – or, for comparison (and purposes of this report) a toaster, dish washer or television.

However, the non-passive nature of an agriculture machine would generally suggest that a piece of farm equipment would be susceptible to greater misuse, abuse and trauma, compared with a non-passive toaster. The lifecycle of the product in this instance can only be measured by how it is used by the end-user. Putting a timeframe on that lifecycle is inappropriate and unhelpful in this instance. VACC once again argues that a one-size-fits-all approach is not suitable in this context.

5.1.4 The use of authorised repairers

To what extent are consumers locked in to using authorised repairers (for example, can consumers easily switch to other products or non-manufacturer repair supplies)?

There is no evidence to suggest that farm machinery supplied by manufacturers or dealers must be serviced at an authorised dealer to maintain the owner's consumer guarantee rights. Any advice to the contrary is incorrect.

VACC recommends the ACCC make a statement clarifying that should a farmer or independent repairer cause a defect when repairing a vehicle, then that defect is unlikely to be covered by the manufacturer's warranty. It is also the responsibility of the consumer to seek a remedy from the independent repairer at their own cost.¹¹

5.1.5 Barriers to entry

Is competition in the primary market sufficient to compensate consumers for any harm in the repair market (as indicated by low concentration and/or barriers to entry)?

It is VACC's view that there are currently no barriers to entry as the industry does not require a trading licence in Victoria.

That said, most farm machinery dealers will obtain a Licenced Motor Car Traders (LMCT) or Second Hand Dealers licence if they intend to acquire or sell farm machinery that can be used for highway use.

5.1.6 Consumer choice in regional or remote locations

To what extent are consumers harmed by less choice, high transportation or travel costs, delays, and inconvenience, particularly in regional and remote locations?

Consumers are not inconvenienced by a lack of choice in any sector. VACC makes the point that Australia has an oversaturated automotive market.

5.2 Information Request 4.2 - A Positive Obligation to Provide Access to Repair Supplies

The Commission is seeking feedback and evidence on the costs and benefits of different approaches to designing and implementing a positive obligation on original equipment manufacturers to provide access to repair supplies to third-party repairers.

In particular:

- *Evidence on the effectiveness of positive obligation schemes overseas (such as*
- *motor vehicle repair information schemes in the United States and Europe, and spare*
- *parts requirements in Europe).*
- *Should a positive obligation be applied across all product markets or targeted towards*
- *particular product markets? If so, which product markets, and why?*
- *Should a positive obligation mandate access to all repair supplies or a subset of repair*
- *supplies (such as repair information, spare parts, or diagnostic tools)?*
- *How should a positive obligation be implemented and enforced in practice?*

The European automotive right to repair legislation Article 101(1) and regulation (EU) No 461/2010 known as the Motor Vehicle Block Exemption Regulation (MVER) was recently evaluated by the European Commission with a report published on 31 May 2021.

The report summarises the evaluation of the MVER and provides evidence on the functioning of the rules applicable to vertical agreements in the automotive sector to decide whether the regulations should lapse, be renewed, or be revised.

The evaluation report found that, overall, the competitive environment in the motor vehicle markets has not significantly changed since the Commission last evaluated these markets in 2010, however, recognises that the automotive sector is now under intense pressure to adapt in line with the green and digital transformation.¹²

11 ACCC. (2020). Motor vehicle sales and repairs. An industry guide to the Australian Consumer Law. https://www.accc.gov.au/system/files/1449_ACL%20Motor%20vehicle%20sales%20and%20repairs_FA_WEB.pdf

12 European Commission. (2020). Commission Evaluation Report on the operation of the Motor Vehicle Block Exemption Regulation (EU) No 461/2010 [https://ec.europa.eu/transparency/documents-register/detail?ref=COM\(2021\)264&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=COM(2021)264&lang=en)

The evaluation report also highlights that authorised repairers enjoy considerable local market power and that intra-brand competition within the authorised networks appears to be limited by strict and detailed quality criteria. The report also states that independent repairers will only be able to continue to exert vital competitive pressure if they have access to spare parts, tools, training, technical information, and vehicle generated data. For motor vehicle spare parts, the evaluation has shown that the market is less flexible due to contractual arrangements between original equipment suppliers and vehicle manufacturers, which ultimately reduce the choice available to consumers.¹³

The evaluation report concludes that current regulations have proven to be effective and have adapted to diverse situations, however, some provisions and policy objectives may require updating. A review by the EU Commission is now underway on whether to renew, revise or let the MVBBER lapse on 31 May 2023.

The Massachusetts right to repair law received a tick of approval when 2,599,182 or 74.97 percent of voters voted in favour of ballot Question 1 during the 2020 election. Ballot question 1 was based on an amendment to the right to repair law, requiring manufacturers who sell vehicles with telematics systems in Massachusetts to equip them with standardised open data platform beginning with model year 2022. The objective of this amendment provides vehicle owners and independent repair facilities access to retrieve electronic and diagnostic information required to repair a vehicle efficiently and safely.

Following the approval of Question 1, Kyle Wiens, CEO of iFixit argued that “There is no fundamental difference between the challenges that the farmers are having and the challenges that independent mechanics in Massachusetts are having, or the challenges that we’re having like with Apple pairing cameras to iPhones. It is fundamentally the same set of monopolistic tactics, it’s the same technical solution. So, passing a different law for different industries isn’t really needed. It’s really just a question of: Do we have the political will to pass something that is broad?”.¹⁴

Shortly after the passing of Question 1, the Alliance for Innovation, a group representing General Motors, Toyota, Volkswagen, and other car manufacturers filed a lawsuit in the United States District Court for the District of Massachusetts on November 20, 2020. The lawsuit is based on the 2020 right to repair law violating federal law and raises safety and privacy concerns for vehicle owners. The Alliance for Innovation argue that making personal driving data available to third parties with no safeguard to protect core vehicle functions will result in consumers’ private information or physical safety being compromised.

The amendment to the Massachusetts right to repair law is now on hold until a decision is reached by the US Federal court.

More recently, President Biden signed an Executive Order to promote competition in the American economy, which will lower prices for families, increase wages for workers, and promote innovation and faster economic growth. The Executive Order regarding the right to repair directive is aimed at making it easier and cheaper to repair items you own by limiting manufacturers from barring self-repairs or third-party repairs of their products including motor vehicles. The Executive Order also has a direct reference to the following industries:¹⁵

13 European Commission. (2021). Antitrust: Commission publishes findings of evaluation on the Motor Vehicle Block Exemption Regulation. https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2673

14 Ballotpedia. (2020). Massachusetts Question 1, “Right to Repair Law” Vehicle Data Access Requirement Initiative (2020). [https://ballotpedia.org/Massachusetts_Question_1,_%22Right_to_Repair_Law%22_Vehicle_Data_Access_Requirement_Initiative_\(2020\)](https://ballotpedia.org/Massachusetts_Question_1,_%22Right_to_Repair_Law%22_Vehicle_Data_Access_Requirement_Initiative_(2020))

15 The White House (2021). Fact sheet: Executive Order on Promoting Competition in the American Economy. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/>

- Encourages the Federal Trade Commission (FTC) to limit powerful equipment manufacturers from restricting people's ability to use independent repair shops or do DIY repairs — such as when tractor companies block farmers from repairing their own tractors.
- Encourages the FTC to issue rules against anticompetitive restrictions on using independent repair shops or doing DIY repairs of your own cell phone devices and equipment.

VACC has long supported, and is a major advocate for, the automotive right to repair legislation, which places an obligation on vehicle manufacturers to make available the repair information, tools, parts, and training required to give independent repairers the best chance of repairing a vehicle efficiently, safely and in accordance with the manufacturer's specifications. VACC's focus remains purely on automotive and the legislative frameworks that surround the automotive sector.

The recently passed Motor Vehicle Service and Repair Information Sharing Information Scheme in Australia provides the necessary mechanism for other automotive applications, such as farm machinery, to be adopted into the same legislation and is well placed to facilitate the relevant right to repair gaps in that market.

VACC believes vehicle and machinery repairs must be performed by trade qualified or experienced professionals, due to the technical complexities and safety characteristics of a motor vehicle.

This position confirms the need for a fit and proper persons requirement (test) for technicians working on hydrogen, electric and hybrid vehicles.

VACC supports a positive obligation on manufacturers to provide parts, tooling, and equipment to the automotive aftermarket.

Recent developments have revealed instances where multinational companies are refusing to deal in the supply of OEM parts to the aftermarket. As previously stated, Appendix 1 is submitted as evidence of this occurring.

5.3 Draft Recommendation 4.1 – Evaluate Motor Vehicle Information Sharing Scheme

The Australian Government should evaluate the Motor Vehicle Service and Repair Information Sharing Scheme that is designed to improve access to repair information, once it has been in operation for three years.

The evaluation should focus on compliance with the scheme, the costs imposed on manufacturers, the benefits to independent repairers and consumers, and any implementation issues that require changes to the scheme, including consideration of whether the scheme should continue.

VACC welcomes and supports the proposed government evaluation of the Motor Vehicle Service and Repair Information Scheme once it has been in operation for three years. However, VACC notes that the Minister responsible has the powers to prescribe technical details about the coverage of the scheme, update the scheme as necessary to ensure it keeps pace with technology and deal promptly with attempts to frustrate the scheme. Furthermore, this evaluation should not be used as a benchmark or timeframe for reform for other industry sectors as it would cause unnecessary delays.

5.4 Draft Recommendation 4.2 – Additional Mandatory Warranty Text

The Australian Government should amend r. 90 of the Competition and Consumer Regulations 2010, to require manufacturer warranties ('warranties against defect') on goods to include text (located in a prominent position in the warranty) stating that entitlements to consumer guarantees under the Australian Consumer Law do not require consumers to use authorised repair services or spare parts.

VACC repairer members often report that consumers are not aware of their rights regarding the servicing of their vehicle while under warranty. This was substantiated in the ACCC New

Car Market Study, which found that most consumers take their new car to a manufacturer's authorised dealer for repairs and service because of a mistaken belief that the manufacturer's warranty requires them to only use an authorised dealer.¹⁶ Following the publication of the market study, the ACCC embarked on updating the Motor Vehicle Sales and Repairs Industry Guide¹⁷ and published the "Just bought a car"¹⁸ factsheet, which provides consumers with adequate information regarding consumer guarantees including servicing and repair options.

VACC believes that any guidance material that provides more clarity on consumer rights is welcomed. However, making additional warranty text mandatory for manufacturers of products would result in unnecessary financial burdens on local and international manufacturers.

Information regarding a consumer's right to repair and choice would be better placed more prominently on the ACL and relevant consumer affairs portals, including the distribution of similar factsheets and guidance materials.

VACC has, for many years, published consumer guidance material including brochures, posters and countertop displays to ensure consumers are aware of their rights as it relates to repairs to motor vehicles. See Appendix 2

6. Section 5 – Intellectual property protections and repair

6.1 Draft Finding 5.2 – Options to Improve Access to Repair Information

There are two main options to amend intellectual property protections to improve access to repair information.

- *Amend the Copyright Act 1968 to allow for the reproduction and sharing of repair information, through the introduction of a fair use exception or a repair-specific fair dealing exception.*
- *Amend the Copyright Act 1968 to allow repairers to legally procure tools required to access repair information protected by technological protection measures (TPMs), such as digital locks. This may also require the Australian Government to clarify the scope and intent of the existing (related) exception for circumventing TPMs for the purpose of repair.*

6.2 Information Request 5.1 Improving access to repair Information

The Commission is considering recommending amendments to intellectual property laws to improve access to repair information through the options outlined in draft finding 5.2. It is seeking views on each option, in particular:

- *whether the proposed reform options will assist repairers in accessing repair information, and therefore facilitate third-party repair*
- *what types of contractual arrangements that could override such reforms are most likely to be of concern*
- *the costs, benefits and risks of pursuing each option.*

VACC is unable to comment in detail on this topic, but makes the point that manufacturers invest millions of dollars to develop repair manuals, tools, and training packages to support its own repairer network. While there should be a positive obligation on manufacturers to share this information, making it available for free via fair use exceptions is not in the best interest of industry and the wider community. It could result in untrained persons attempting to repair complex vehicle systems and risk significant injury to themselves or others.

16 ACCC. (2017). New Car Retailing Industry A market study by the ACCC.

https://www.accc.gov.au/system/files/New%20car%20retailing%20industry%20final%20report_0.pdf

17 Commonwealth of Australia. (2018). Motor vehicle sales and repairs: An industry guide to the Australian Consumer Law. https://www.accc.gov.au/system/files/1449_ACL%20Motor%20vehicle%20sales%20and%20repairs_FA_WEB.pdf

18 ACCC. (2018). Just bought a new car? Know your consumer rights. <https://www.accc.gov.au/system/files/Just-bought-a-new-car.pdf>

Manufacturers should have the opportunity to make a return on their investment, and repairers should be required to pay a fair and reasonable price to access the information they need to repair products safely and efficiently. The Motor Vehicle Service and Repair Information Scheme mandates that manufacturers will supply repair information at a price that does not exceed fair market value.

Fair market value is defined in various ways under the legislation, including:

- The number of permitted users, and the frequency or duration of use of the information.
- The anticipated demand by Australian repairers and scheme RTOs for supply of the scheme information.
- The reasonable recovery of costs incurred in creating, producing and providing the scheme information for supply.
- The price charged for the supply of information similar to scheme information in overseas markets.
- The amount (if any) payable by the data provider to any person who has a proprietary interest in the scheme information.¹⁹

As outlined in VACC's original submission to this inquiry, in December 2016, a US Copyright office, after a full year study on software enabled consumer products, released a report containing elements of right to repair. They concluded that manufacturers were blocking repair with the false threat of copyright infringement, but the real issue related to contract law, particularly End User License Agreements ("EULA"). When equipment is purchased, the consumer has the right to repair and tinker, but once agreed otherwise, as within a EULA, the contract supersedes copyright law. Therefore, the legislative solution for unlocking repair information belongs to states who have control over general business law and contracts.²⁰

It is VACC's view that significant changes to the Copyright Act is not required to improve the sharing of repair information in the automotive industry, however, VACC notes that for other industries it may be necessary.

7. Section 6 – Product design and obsolescence

7.1 Information Request 6.1 Product Labelling Scheme

The Commission is seeking further evidence on the significance of information gaps that might contribute to premature obsolescence, including:

- the specific type of information gaps (such as on product repairability, durability, or the environmental impacts of products) that prevent consumers from making informed purchase decisions
- the significance of these information gaps (for example, the cost to consumers from obtaining information independently)
- evidence that these gaps are undermining the efficient operation of the market (for example, evidence that consumers are systematically overestimating product durability and repairability when making purchase decisions)
- whether these information gaps affect specific types of products more than others.

VACC is unaware of any planned obsolescence in the automotive industry other than the Tesla case in the United States regarding software updates to deliberately reduce the battery capacity of the Model X and S vehicles. VACC believes there is sufficient consumer protection under the ACL. All road vehicles delivered to Australia must meet the requirements of the Motor Vehicle Standards Act 1989 (now known as the Road Vehicle Standards Act), which applies to new

19 Schedule 1 - Motor Vehicle Service and Repair Information Sharing Scheme. (2021). <https://www.legislation.gov.au/Details/C2021A00054>

20 Repair.org. (2021). Working Together to Make Repair-Friendly Public Policy. <https://repair.org/legislation>

and used imported vehicles and locally manufactured vehicles. The Act requires vehicles to meet the national standards covering safety and emission requirements known as the Australian Design Rules (ADRs). Furthermore, there are Australian and international standards available for companies to voluntarily comply with. They set out specifications, procedures and guidelines that aim to ensure products, services, and systems are safe, consistent, and reliable.

Motor vehicle companies also develop detailed specification sheets, which are included in their marketing material. Any information pertaining to product repairability, durability, or the environmental impacts of products is best captured within these documents, rather than a labelling scheme that may, or may not, provide consumers' peace of mind when procuring products.

8. Section 7 - Managing e-waste

8.1 Draft Recommendation 7.1 Improving the Management of E-Waste

The Australian Government should amend the National Television and Computer Recycling Scheme (NTCRS) to allow e-waste products that have been repaired or reused by co-regulatory bodies to be counted towards annual scheme targets.

The exact design features that need to be incorporated into the NTCRS to enable reuse options should be determined in consultation with the scheme's liable parties and co-regulatory bodies. The changes should be designed in a way that minimise any adverse incentives, including risks from:

- *double-counting, where the same products cycle through the scheme without legitimately being reused*
- *unlawful exports for reuse that result in more products in the informal recycling sector, generating worse health and environmental outcomes.*

Any future co-regulatory or mandatory product stewardship schemes should also include repair and reuse as options within their targets.

VACC has no comment on this draft recommendation.

8.2 Draft Recommendation 7.2 Use of GPS Trackers to Monitor E-Waste Exports

The Australian Government should amend the monitoring arrangements for the National Television and Computer Recycling Scheme so that global positioning system (GPS) trackers can be used to determine the end-of-life location of e-waste collected for recycling as part of the scheme. This should be done using a risk-based sampling approach that focuses on the types of products and supply chains that present the highest risk of unlawful exports or disposal of e-waste.

VACC has no comment on this draft recommendation, however, VACC raises the following issues regarding the management of e-waste and waste in general.

A move to a circular economy must incorporate an End-of-Life Vehicle (ELV) scheme for the proper disposal of end-of-life vehicles. Currently over 63,000 tonnes of plastics from ELVs are committed to landfill annually in Victoria, which is of serious harm to the environment. Australia is the only developed country without a policy dealing with ELVs, and this has also given rise to 'illegal wreckers' that operate outside current regulatory guidelines.

These operations undermine lawful vehicle recyclers and have been reported as illegally supplying vehicle components to the black market. Without a properly implemented, government mandated ELV scheme, a significant proportion of vehicle waste, including e-waste, would be unaccounted for –undermine the principals and pursuit of a circular economy.

