



22 July 2021

Right to Repair Inquiry

Productivity Commission

via repair@pc.gov.au

Submission: Response to Issues Paper

We were very pleased to welcome this Inquiry and we agree with much of the contents and direction of the draft report.

We note that the Commission is seeking feedback on a range of issues including the matter of definitions and the recommended approach:

- We agree with the definition of right to repair as articulated in the report
- We agree that the issue is multifaceted – which is why the approach should be strategic because, in our experience, the policy direction can get become complicated and we found that diffused accountability for reform is generally a recipe for slow reform or no reform. As a result, we do support the recommended direction – which is based on strategic selection of sectors and reform mechanisms.

I want to restrict my comments to three areas:

- The increasing trend to capture aftersales through the restraint of trade or anti-competitive behaviour.
- The issue of warranty confusion and how this affects consumer rights.

And finally

- The recommendation regarding the three year review of the Vehicle Service And Repair Information Sharing Scheme.

Capturing the Aftersales Market

Given the journey that we have travelled for the past decade, we appreciate both the need to be strategic and to consider the policy options that are likely to have the greatest impact.

What is important is that this Productivity Commission inquiry and the Motor Vehicle Information Sharing Scheme that passed into law last month, are an encouraging sign regarding what should be considered to be appropriate business models for producing and selling goods and services. These recent developments are an important signal that the community has a considerably reduced tolerance for the cross subsidisation of the primary market with a secondary or aftersales market in a manner that is less than transparent to the consumer and results in less competition for aftermarket services.

The draft report refers to this model and notes for example that it could be an unintended consequence that the cost of new cars increases as the competition for service and repair is enhanced due to open competition created by legislated information sharing.

We certainly heard this argument many times throughout the long campaign for information sharing in our industry, but we argued at the time, and we still do today, that this is not a business model that is transparent to consumers. It does not allow consumers to make informed choices. Should the price of new vehicles be subsidised by the owners of older vehicles? There are nearly 20 million passenger vehicles in the national fleet (the average age of the Australian fleet is over 10 years) and the owners of these older vehicles should not necessarily be subsidising the sale of new cars through reduced competition for repair and service.

Our point here is that this draft report should serve to inform the Australian business community that the time is coming for transparency and open and fair competition and these future models should not assume that it is a reasonable business model to pursue artificial (or anti-competitive) capturing of the aftermarket.

Capturing a customers' loyalty should be achieved through good customer service, competitive pricing and value adding - not restricting trade through secrets and technological protection measures. Fair and open competition leads to price competition, service innovation and improved productivity. All optimum economic outcomes that we frequently referenced throughout our long campaign for a mandatory data sharing Law.

Warranties

The Draft Report notes that consumers are offered some protections because consumer law provides some rights to repair - but two issues affect a consumer's ability to exercise their rights in relation to their statutory guarantee: Lack of knowledge/awareness of statutory guarantees and the unequal power relationship between car owners and large multinational car companies.

It is noted that accessing consumer guarantees is often a struggle and we would totally agree - in fact, what is often not acknowledged for vehicles owners is the mental and physical health affects when a conflict arises. We provide a free legal hotline to support consumers seeking warranty repairs that encounter difficulties with the car manufacturer or dealership - this service is provided for the customers of our members. A car is a large financial purchase, and it is integral to the way of life for most households - the shock and fear of a large repair bill and the conflict ridden negotiation regarding what is a warranty claim and what is covered as part of a consumers statutory guarantee can often be confusing and overwhelming.

We provide this service to customers as a part of our consumer awareness efforts¹. Many studies have revealed that consumers are often of the view that using an independent repairer will **void their warranty** and we absolutely welcome your focus on these words. We totally agree - the term '**may void**' your warranty must not be tolerated. Neither should any material that contains misleading advice regarding warranties and statutory guarantees including the wording in the vehicle logbook that often contains highly misleading information regarding 'authorised' repairers. A consumers' ACL Statutory Guarantee rights should be highlighted in any material provided at the point of sale - and the term 'may void' should be removed. It is misleading and it adds a considerable level of fear and doubt.

Motor Vehicle Service and Repair Information Sharing Scheme 2021

The Motor Vehicle Service and Repair Information Sharing Scheme 2021 amends the Competition and Consumer Act 2010 to establish a scheme that mandates that service and repair information provided to car dealership networks and manufacturer preferred repairers be made available to independent repairers and registered training organisations to purchase at a fair market price.

We note the references to our legislation and the recommendation that the law is evaluated after three years and that alarmingly, this recommendation includes a final comment that the evaluation should include consideration of whether the law should continue.

After over 10 years of campaigning for this law, the fact that you would suggest that after three years the law could potentially be abandoned is alarming and importantly, the draft report provides no evidence that any legal or regulatory

¹ During the Public Hearings on Tuesday 20 July 2021, the Productivity Commission expressed interest in receiving additional information on this service. Our service is provided by our partner: Industry Legal Group and ILG are currently compiling this data as requested. We expect to be able to provide this additional information on 26 July 2021.

framework has been made redundant in a three year period – in fact Europe and the USA are moving in the opposition direction – greater coverage not less.

The European Block Exemption 2002 and the American 2012 Massachusetts Law have not been deemed to be no longer necessary and our experience of the failed voluntary agreement in 2014 certainly enforced our resolve that nothing happens on a voluntary basis. These large multinational corporations are seeking downstream market share, and they will do this in whatever way they can. Without legal barriers there are no boundaries to their drive to capture the consumer for all aftermarket parts and service.

Our view is that for balance, this recommendation should canvas **both options**: the likelihood of non-continuance and the **prospect of strengthening and expanding** the Scheme.

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 or **extensions and additions to the Scheme**, including consideration of whether the scheme should continue.

It is good practice to review all regulatory instruments – but we would not like to see the Australian government provide a signal to the foreign car makers that we may seek to abandon this important reform after only three years of operating a fair and open market for vehicle aftersales and repairs.

The only concluding remark that I would wish to add relates to the proposal for a **super-complaint mechanism**. We certainly support this option and agree with this approach as a potential game changing regulatory instrument. We would ask that consideration be given to not-for-profit industry associations being added to the group that can potentially raise a super complaint:

- providing regulators with alternative dispute resolution processes to assist consumers to resolve their claims, and enabling **designated consumer groups** to lodge ‘super complaints’ about consumer guarantees, with these fast tracked by the ACCC.

As you are aware, small business is captured in the definition of ‘consumer’ under the ACL, and we would certainly value an opportunity to lodge ‘super complaints’ on behalf of our small business members.

We welcome the opportunity to be involved in this important dialogue regarding the regulatory and legislative environment that supports consumers' rights to repair. This is an important national debate, and we look forward to an ongoing constructive relationship with the Productivity Commission, the Commissioners and policy team supporting this Inquiry.

Yours Sincerely,

Stuart Charity

Chief Executive Officer

Australian Automotive Aftermarket Association