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ACCC New Car Retailing Market Study Final Report 14 December 2017

FACT SHEET FOR MECHANICAL REPAIRERS

Overview

- The Australian Competition and Consumer Commission (ACCC) has spent 18 months studying the new car retailing market and in particular consumer guarantees and warranty; access to technical and repair information; parts; the relationship between market participants and in particular between manufacturers and dealers; fuel and emissions and a range of other matters including telematics.
- The 198 page final report was released on Thursday 14 December 2017 with a number of recommendations and actions.
- With many of the outlined actions within the powers of the ACCC, they will now move to implement those actions starting early in 2018.
- Some of the recommendations will require industry, the Federal Government, and industry and the Federal Government, to consider and act on them such as calls for the establishment of a mandated scheme to ensure access to technical and repair information.
- The Motor Trades Association of Australia (MTAA) and your Association are now working on making this happen as quickly as possible. Further updates will be provided over coming weeks on actions being taken to bring these recommendations to reality.
- The following are the key recommendations and what it means for your independent repair business to supplement a Fact Sheet produced by the ACCC, which is included for your information.

Key Points

- A mandatory scheme should be introduced for car manufacturers to share technical information with independent repairers on commercially fair and reasonable terms.
- The Mandatory scheme should provide access to the same technical information which car manufacturers make available to their authorised dealers and repairers, including environmental, safety and security-related information where such information is made available to dealers.
- Repairs and servicing are to be carried out correctly to car manufacturer specifications to assure the safety of consumers.
- Access should be real time and cover all cars sold in Australia
- There should be a dispute resolution mechanism and all relevant terms conditions and exclusions should be defined.

Next Steps:

MTAA and your association are now:

- Starting a campaign targeting Federal Ministers, Parliamentarians and Commonwealth bureaucrats to get action on implementing the ACCC's recommendations.
- Finalising an action plan and arrangements to facilitate and develop a Mandated Code of Conduct, prescribed under the Competition and Consumer Act including appropriate safeguards, dispute resolution and definitions. Expertise is being sought and there will be engagement with government regulators and Departments and other key industry associations to progress.
- Aiming for a completed draft code to be ready for consideration as early as possible in 2018 to allow for the necessary regulations to be put into Parliament and passed for introduction in February 2019.

Recommendations on access to technical information for new cars

Recommendation 4.1

A mandatory scheme should be introduced for car manufacturers to share technical information with independent repairers, on commercially fair and reasonable terms. The mandatory scheme should provide independent repairers with access to the same technical information which car manufacturers make available to their authorised dealers and preferred repairer networks, including environmental, safety and security-related information (if it is made available to dealers).

The mandatory scheme should place an obligation on car manufacturers and other industry participants to achieve the underlying aims and principles of the Heads of Agreement (including those in relation to training and reinforcing existing statutory obligations on independent repairers to ensure repairs and servicing are carried out correctly to car manufacturers' specifications to assure the safety of consumers).

The mandatory scheme should, subject to the type of regulation used, address the following operational matters:

Real time access

- Car manufacturers should make available to independent repairers, in real time, the same digital files and codes, such as software updates and reinitialisation codes, made available to dealers to repair or service new cars.

Coverage

- Obligations on sharing technical information should apply to all car manufacturers in Australia.
- Relevant intermediaries should have options to access technical information from car manufacturers on commercially fair and reasonable terms.

Definitions

- All relevant terms, conditions and exclusions should be defined in the regulation, for instance, defining diagnostic tools and their relevance to facilitating access to technical information, as well as defining environmental, safety and security-related information.

Dispute resolution

- Any dispute resolution processes should be timely and accessible by all relevant stakeholders.
- Any dispute resolution processes should be subject to compulsory mediation and binding arbitration by an independent external party.

Governance/consultation

- Key stakeholders should meet regularly to discuss the rapidly changing nature of repair and service information.

Security-related information and data

- Similar to the EU or US models, a process for the secure release of environmental, safety and security-related technical information should be established or authorised under the mandatory scheme.
- The mandatory scheme should also set out a process for vetting end users accessing environmental, safety and security-related technical information and for tracing the use of that information.

Enforcement

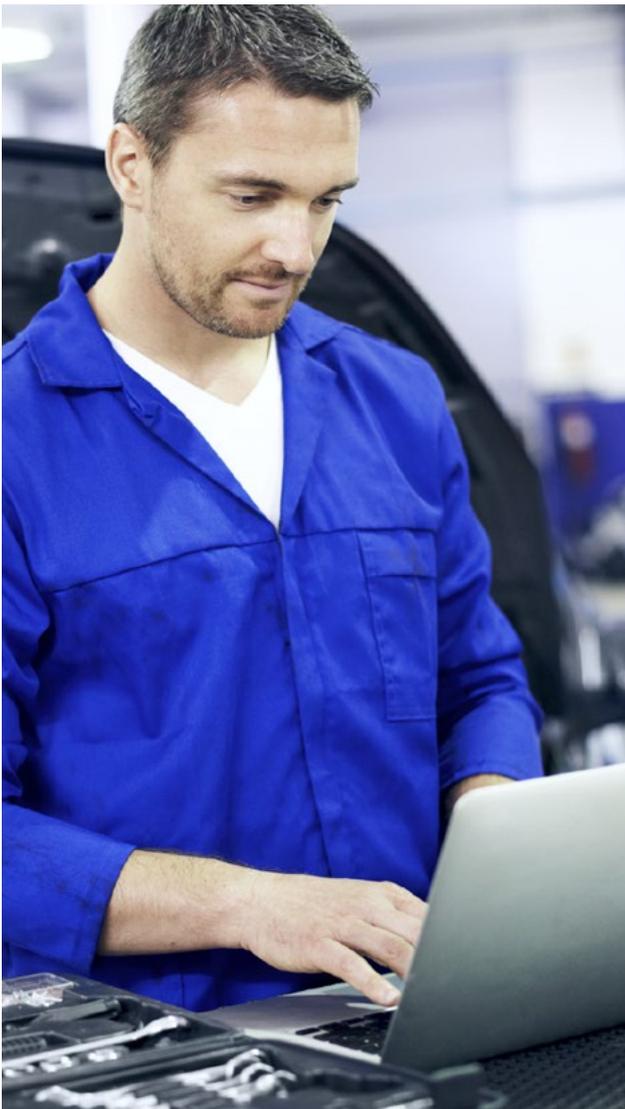
- If appropriate, options to enforce the terms of any regulation should be included (e.g. penalties).



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

New Car Retailing Industry market study: independent repairers' factsheet

December 2017



The ACCC has looked into competition and consumer issues in the new car retailing industry.

We considered a number of issues which affect independent repairers in the repair and servicing of new cars. **We're recommending that a mandatory scheme be introduced to give independent repairers access to the technical information they need to repair and service new cars.**

What we found

Independent repairers are experiencing issues gaining access to technical information needed to repair and service new cars

Access to technical information held by car manufacturers is becoming increasingly important as repairing and servicing new cars relies on access to electronic information and data produced by car manufacturers.

Car manufacturers have previously committed to providing independent repairers with the same access to technical information as the manufacturers' authorised dealers, on commercially fair and reasonable terms. However, we discovered problems with the detail and timeliness of the technical information given. These problems can impact on competition in the repair and service market, which ultimately hurts consumers.

As well, of those car manufacturers that do share technical information, some restrict independent repairers' access to environmental, safety or security-related technical information due to perceived risks of increased car thefts or unauthorised modifications. In other countries, appropriate safeguards have been developed to securely share these types of information with vetted independent repairers.

It's not clear to independent repairers' why access to certain parts is restricted

We found that car manufacturers and dealers sometimes restrict access to certain parts for legitimate reasons that may benefit consumers. This includes parts that can compromise car security and encourage theft.

However, the lack of transparency and consistency across manufacturers about what are security-related parts means that access restrictions can be arbitrary, increasing uncertainty and costs for independent repairers. This can reduce competition for repair or servicing work and raise prices.

Consumers are not receiving adequate information about their rights

We found that some consumers are confused about warranty and servicing requirements. If information provided to consumers is not clear, this can result in consumers choosing not to use independent repairers to repair and service new cars. They might worry that they risk voiding either their consumer guarantee rights under the Australian Consumer Law (ACL) or their rights under the manufacturers' warranty.

Manufacturer warranties in Australia for new cars, in most if not all cases, do not require that a new car must be serviced by authorised dealers during the warranty period to maintain the warranty. Generally therefore, consumers may choose who carries out repairs and service on their cars under the manufacturer's warranty, subject to the work being performed in accordance with the manufacturer's standards.

We found a number of statements in logbooks and in service manuals prepared by car manufacturers that contribute to consumers' confusion about using their choice of repairer, and which are likely to mislead consumers about their statutory rights.

Recommendations and ACCC actions

In our final report, we recommend:

- a new mandatory scheme be introduced setting out the rules for car manufacturers to share technical information with independent repairers. This should:
 - cover all car manufacturers who sell their cars in Australia
 - include real time access for independent repairers to the same technical information car manufacturers make available to dealers
 - provide a process for independent repairers to access environmental, safety and security-related technical information, including the vetting of those seeking to access such information and tracing its use
 - be available on commercially fair and reasonable terms

- car manufacturers should develop publicly available policies which clearly outline any parts subject to restricted access on security-related grounds, and that the industry should consider agreeing on a standard definition of 'security-related' parts to provide certainty to parts customers.

We're also going to:

- work with car manufacturers and dealers to develop a concise and simple explanation of consumer guarantee rights under the ACL, and their interaction with warranties, which should be provided to consumers when they buy a new car
- update the *Motor vehicle sales and repairs—an industry guide to the Australian Consumer Law*, to ensure this publication provides additional guidance to consumers about consumer guarantees under the ACL. Guidance may also be designed for use by business, including dealers, regarding their rights and obligations under the ACL.

Enforcement

We'll continue to enforce the law including to target claims or conduct that may mislead or deceive consumers about their consumer guarantee rights.

More information

For more information on the study and to read the final report, visit www.accc.gov.au/newcars.