



PO BOX 6298
Kingston ACT 2604
Phone: 02 51008239
Email: admin@mtaa.com.au

7 September 2017

Market Study Team
New Car Retailing Industry Market Study
Australian Competition and Consumer Commission

Via Email: newcars@accc.gov.au;
paul.mulhall@accc.gov.au
david.salisbury@accc.gov.au

**Submission by the Motor Trades Association of Australia Limited (MTAA) to the
ACCC New Car Retailing Industry Market Study Interim Report**

Dear Market Study Team,

The Motor Trades Association of Australia Limited (MTAA) and Members welcomes the opportunity to make a submission to the ACCC New Car Retailing Industry Market Study Interim Report released on 10 August 2017.

This submission is provided as a public submission.

This Submission should be considered alongside any of those that may have been submitted by any of the Association's Members. The Motor Trades Association of Australia Limited (MTAA) on behalf of its State and Territory Association Members remain available to assist with any additional line of inquiry or to access automotive industry businesses if required.

Please do not hesitate to contact MTAA Limited should you require any additional clarity or further information in regard to this submission or more generally.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Richard Dudley".

Richard Dudley
Chief Executive Officer
Motor Trades Association of Australia Limited



PO BOX 6298
Kingston ACT 2604
Phone: 02 51008239
Email: admin@mtaa.com.au



MTAA Limited
Submission to the
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Market Study Interim Report
September 2017



Executive Summary to Interim Report

KEY OBSERVATIONS

- The MTAA and Members:
 - Generally agree with the focus of the Interim Report on the areas of consumer guarantees and warranties; accessing technical information to service and repair new cars; parts supply; fuel consumption and emissions; and telematics.
 - Generally supports suggested actions and recommendations designed to improve consumer awareness, understanding and education of consumer guarantees and manufacturer warranties.
 - Warmly welcomes the draft recommendation and actions that assures a mandated process for access to technical information.

- MTAA believes the Interim Report has failed to adequately or satisfactorily ‘unpack’ the relationship between motor vehicle manufacturers and their distributors and retail dealers, and dealership agreements in particular, that underpin and influence many areas of investigation in the interim report.

- MTAA is surprised and disappointed with the public and media commentary surrounding the release of the interim report. MTAA believes the commentary has been populist, political, and whether intentional or not, perpetuates misconceptions and misnomers about an automotive industry sector that is integral to Australia’s reliance on motor vehicle transport.

- MTAA rejects the ‘bundling’ of manufacturers / distributors with retail dealerships in terms of accountability and responsibility in the critical areas under investigation.

- MTAA strongly rejects unsubstantiated claims in the interim Report that Original Equipment Manufacturers and Dealers are steering the automotive retail market.

- MTAA believes the ACCC Market Study teams understanding of insurers and crash repairers relationships, business models, and supply chain particulars are flawed and do not reflect real industry conditions and the detriment to consumers.

Overview

- While welcoming the interim report in general and in particular certain recommendations and actions relating to mandated access to repair information, and improving consumer awareness and understanding of the ACL and consumer guarantees; MTAA respectfully suggests significant work remains to be done before the market study is finalised.
- Some of the current proposed actions and recommendations could have unforeseen and potentially detrimental impacts on various sectors of the automotive industry, consumers and the broader economy. As an example, the simple application of consumer guarantee recommendations from the ACL review, and endorsed in the Interim report, may actually create larger issues than those they are attempting to resolve.
- The market study investigations have by necessity unpacked the highly complex and multifaceted matter that is access to technical information. The market study team is to be congratulated on the depth of their investigation and suggested actions and recommendations. While it will not please all stakeholders, the interim report provides excellent visibility on this important issue that is growing more complex daily.
- Of particular note is the recognition within the interim report that the matter is more than just access on fair and reasonable commercial terms, but what is done with it, and by whom, and how consumers must be protected and security assured through proper training, equipment and scrutiny of those accessing it. Also noted is that any solution must not disadvantage any particular sector.
- Unfortunately the resources and time available to investigate this critically important matter, appears to have had a negative impact on other important themes the market study into new car retailing should be canvassing.
- MTAA is of the opinion that the relationships between manufacturers and retail new car dealers, and in particular dealership agreements, have not been satisfactorily investigated and this reduces the completeness of the interim report's understanding of the industry.
- Of even greater concern to the MTAA is that insufficient exploration of the manufacturer / distributor / dealer relationship and underlying agreements, appears to have given way to perpetuating urban myths that dealers are an extension of the manufacturer / distributor in some sections of the report and commentary surrounding it.
- This is particularly disappointing as MTAA made the point in its original November 2016 submission that new car retailing did not deserve the negative reputation, perception or the imputation it endures. MTAA went further and stated *'More often than not the new car retailing industry and its dealer participants are the 'scapegoats' or the 'meat in the sandwich' for problems and issues created by other sector industries and supply chain participants who obfuscate their own obligations and relationships to, and with, consumers.'*
- The MTAA is concerned with the pejorative commentary surrounding the release of what is only an interim report, and use of selective 'findings' of the report, which unjustifiably attacks new car dealerships. To smear an entire industry sector without adequate evidence and to use selective, and in some cases MTAA would argue misleading or incomplete information, detracts from the value of the investigations and study.

- A case in point is the selective use of gross profit margins for one element (service) of a dealership business model. There was no explanation of the costs and requirements. There was clear avoidance of other readily available data on actual dealership net profit. There is ignorance of significant difficulties and exposure to behaviours and pressures dealerships endure from powerful market players. There was no balance or comparison with the gross or net profits of independent repair companies.
- The MTAA requests clarification on the apparent contradiction between the reports emphasis on what it perceives to be a diminishing of consumer warranties and guarantees, while at the same time attempting to undermine the necessity for the use of genuine parts and trained staff in maintaining and repairing vehicles.
- MTAA believes there is scope for a comprehensive mandated and prescribed *Automotive Code of Conduct* to provide the mechanism for an access to technical information process and to cover the relationship of dealerships and manufacturers / distributors. If this were to occur then dealership agreements would be removed from the Franchising Code coverage.
- MTAA has taken the liberty of starting to draft a mandated code of conduct to capture the findings and recommendations in regard to access to technical information and also produce a version which attempts to include matters pertaining to the manufacturer / dealer relationship. The intent is for these documents to be used as a thought provoker or even the base for the development of outcomes.
- The final report should build on some very good work in some sections and restore some balance and address unhelpful and unwarranted references and commentary in others.
- The outcomes of government consideration of the final report of the market study into new car retailing has the potential to either influence the long term sustainability of all participants to the benefit of consumers; or lay the foundations for accelerated industry upheaval resulting from the rapid exit of many brands, the closure of many businesses, associated increase in job losses, and significant negative impact on the economy.

Chapter 2: New car retailing industry characteristics

- The Interim Report notes a disconnection between manufacturer's understanding and their approach to consumer guarantees and warranties. However, it does not explore the difficult operating environment many dealers experience in attempting to meet consumer guarantee requirements and warranty service and repair provision. MTAA would argue this is largely as a result of not delving into dealership agreements. The interim report does not explore the reluctance of dealers to speak out about known problems experienced in meeting manufacturer demands for warranty work or the lack of manufacturer support and onus for putting the consumer accountability back onto dealers.
- MTAA reminds the market study team of just one case with one brand, highlighted in its November 2016 submission, of the problems being experienced now and will undoubtedly grow if the onus is placed on dealerships and action is not taken to ensure manufacturers / distributors accountability for consumer guarantees and warranty requirements and outcomes.

Case Study: The influence of manufacturer requirements on dealers in relation to warranty work (2016)

- In April 2016 Dealerships of a prominent brand received advice regarding changes to 'a warranty audit processes.
- The internal correspondence to Dealers outlined revised requirements of the manufacturer / distributor to substantiate a dealer claim for warranty work performed, and future 'audit' processes outlining levels of charge back and rights of appeal.
- Of critical concern was the inclusion of changed policy indicating that any warranty claim would be rejected if it failed to meet '12 mandatory steps' outlined in the correspondence and required by the manufacturer / distributor.
- It is understood that failure to meet one of the '12 mandatory steps' would trigger rejection of the claim with no right of appeal. This would force the Dealer either to satisfy consumer requirements by absorbing the costs or alternatively not undertake the repair exposing the consumer to lengthy delays to a resolution bought about because of the 'rules' of the manufacturer.
- The '12 mandatory steps' along with other requirements it is understood would require a total of 31 different processes to support one (1) warranty claim.
- There is usually no consideration of reimbursement of administrative costs in dealing with this process, nor the potential time impost on the consumer and the business.

- The highly competitive and volatile Australian automotive market is governed by rules of engagement that are predominantly set by manufacturers and their distributors. These rules are not negotiated they are provided and impact every element of a dealership operation. They are classic 'take it or leave it' terms and conditions masquerading as agreements and supposedly covered by the Franchising Code. Any study of the new car retailing market should attempt to lift the lid on these agreements as they can and do impact on the central themes the interim report.
- References to dealer agreements with one manufacturer (out of 69 currently in the Australian market), under one heading in the content of the interim report, does not go anywhere near unbundling the intricacies, requirements and costs a dealership must endure for the right to sell, service and repair motor vehicles of a particular brand /s and models of those brand/s.
- As outlined in the MTAA original submission in November 2016, dealer agreements are essentially an 'instruction manual coupled with copious policies and procedures manuals' which detail the conditions under which a dealer will be granted access to the brand. The balance of power lies clearly in favour of the manufacturer / distributor who have the capacity to dominate the dealer and dictate the terms of the relationship. It is important to point out that not all manufacturers choose this option, although it is available to them all.
- This imbalance can be clearly identified by examining manufacturer / distributor policies and procedures. The worst aspect is their right to amend or change any policy or procedure, at will, without discussion with dealers irrespective of the impact and consequence. This is evidenced in:
 - The process for performing warranty work
 - Reimbursement for warranty work carried out on behalf of the manufacturer
 - Factory audit processes
 - Mandatory tool requirements
 - Rationale and action relating to Prime Market Areas (PMAs) or other acronyms used to describe the market area assigned to a new car dealership in a geographic location.
 - Marketing and advertising including web based
 - Trading margins / bonus payments /campaigns
 - Stock policies
 - Plant, equipment, signage and facility investment.
- The above list coincidentally reflects proposed actions and recommendations in the interim report. MTAA raises exploration of dealer agreements again because without a thorough exploration as part of the study, any proposed action or recommendation could be undermined from the outset; may inadvertently and wrongly place a greater onus on new car retail dealerships; or potentially create unintended advantages for one sector over another.
- MTAA questions the emphasis placed on some independent participants over others in describing car servicing characteristics and consumer choice in Chapter 2. The lack of any exploration of those multi-site repair companies' business models and operating environment could imply a bias over the thousands of other participants in the market.

- The use of the term 'whole of life' in describing the characteristics of new cars and aftermarket services is considered ambiguous and could imply that a consumer will keep a new vehicle from purchase to end of its life which is rare. Such a definition has implications when consumer guarantees and warranties are then considered.
- MTAA does not believe there should be government intervention / restrictions in the provision of capped or free price servicing arrangements, particularly as similar products or service options are available from independent providers and inherently offer consumer choice.
- However MTAA agrees capped or free servicing arrangements / conditions / inclusions / exclusions should be disclosed at the point of sale, and there should be clear definition of what is included in these arrangements, to ensure consumers are equipped with transparent information. Perhaps consideration could be given to emphasis on the value of the service as opposed to describing it as free, or describe it as 'free' but with value qualifiers. It is for this reason there a need for reform to either the Franchise Code to better protect Consumers and dealers or to incorporate into a new fit for purpose Automotive Code.
- MTAA believes the Interim Report confirms the need to either:
 - a) Make further changes to the Franchising Code through amendments to provisions to address weaknesses identified in the report and strengthen accountabilities particularly between manufacturers / distributors and dealers; or
 - b) Take out dealership agreements from the Franchising Code and include in a mandated and prescribed Automotive Code of Conduct that includes the Access to Technical Information requirements.

Only with such action will there be real accountability for manufacturers / distributors, dealerships and other participants in the automotive supply chain.

ACCC Interim Report Chapter 3: Consumer guarantees and warranties

ACCC Draft recommendations on proposed amendments to enhance the ACL

Draft recommendation 3.1

The ACCC supports the amendments proposed by CAANZ in the recent ACL Review to enhance the ACL and address any uncertainties about the application of consumer guarantees. Of particular relevance to issues arising in this study, the ACCC supports proposals 1, 2 and 3 in the final report on the ACL Review:

Proposal 1: Where a good fails to meet the consumer guarantees within a short specified period of time, a consumer is entitled to a refund or replacement without needing to prove a 'major failure'.

Proposal 2: Clarify that multiple non-major failures can amount to a major failure.

Proposal 3: Enhance disclosure in relation to extended warranties by requiring:

- agreements for extended warranties to be clear and in writing
- additional information in writing about what the ACL offers in comparison to the extended warranties
- A cooling-off period of ten working days (or an unlimited time if the supplier has not met their disclosure obligations) that must be disclosed and in writing.

MTAA and Member Observations

- MTAA does not support the proposals as outlined by the CAANZ and endorsed by the ACCC.
 - MTAA believes that any evaluation of major or minor failures should not be linked to any specific time periods such as 30 or 60 days. The existing provisions within the ACL framework allow for the adequate resolution of major and minor failures without reference to scheduled time periods.
 - MTAA rejects the implied notion that there is something wrong with a 'culture of repair'. Given the expense of vehicles and the often minor or vexatious nature of claims, it would be unsustainable to replace every vehicle a consumer had issue with. Recall defects are not dealt with this way so why should other faults.
 - Indeed S64 of the *Act* explicitly states that repair is a reasonable expectation and a fault does not require the full replacement of the part.
 - MTAA queries the implied assertion that there is something sinister with non-disclosure agreements. There is nothing illegal in non-disclosure agreements. Online platforms, which the ACL failed to address, provide ample opportunity for consumer to voice their views on these issues. MTAA respectfully suggests the market study team must take into consideration harm to brand and lack of ability for dealerships to respond without significant cost or reputational risk, even if claims are proven to be false. There is no realistic ability to seek damages in those cases.
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- The MTAA is mindful of, and welcomes, recent enforcement action by the ACCC and of undertakings made by other manufacturers in meeting ACL obligations. This indicates that the powers already available under ACL and enforcement capability of the ACCC can be exercised and produce results for consumers – a point MTAA has made in numerous submissions to the ACL and CCA regulatory reviews.

- While the MTAA and Members have strongly advocated for greater clarity regarding major versus minor failure in the context of the ACL and motor vehicles, the CAANZ proposals represent significant challenges and potential significant economic detriment if implemented without careful consideration of the consequences.
- The solutions and some suggested potential timeframes could pose considerable risks to business, potential detriment to consumers - above and beyond the initial failure - and a significant risk to the national economy.
- **EXAMPLE:**
 - Hypothetically assume:
 - A timeframe is determined for the application of consumer guarantees on a new vehicle.
 - It is determined that *four* minor failures during the determined timeframe equals *one* major failure under Australian Consumer Law and triggers consumer guarantee provisions – irrespective of corrective action undertaken through statutory or voluntary recalls of the affected vehicle.
 - In such circumstance the consumer is entitled to replacement or refund.
 - Now apply these hypothetical determinations to real world situations MTAA is aware of in the current market.
 - There are particular makes and models of vehicles currently available in the Australian market that have already been subject to three or four recalls for minor faults ranging from an headlight switch, a component fault, a gas strut failure, re configuring a computer, and a wiper motor, on many occasions involving a third party supplier. But the overall performance and integrity of the vehicle or its life expectancy are not compromised.
 - One particular model is popular and has sold more than 10,000 units nationwide. Each of the faults in themselves are not major and to an extent to be expected (although obviously not preferred) with highly complex products.
 - Under the above determinations, these thousands of vehicles could be deemed to have had a major fault and expected to be returned to the dealer for either replacement or more likely a refund.
 - Questions:
 - What becomes of potential thousands of vehicles returned for a refund even though they have had only four minor faults that have been rectified? They have effectively been written off. They have effectively been ‘tagged’ a major fault vehicle thereby restricting resale (if any) by the used car market.
 - Who takes the vehicles back?
 - What is the accountability of the dealer; the manufacturer, the distributor?
 - Who resolves the disputes between manufacturer / distributor / dealer / consumer?

- Similarly the MTAA is concerned with the extent of Consumer Guarantee provisions for vexatious claims or where the use of the vehicle has not been in accordance with the vehicles design or capability.
- MTAA agrees with enhanced disclosure in regard to extended warranties and relationship with the ACL. In the development of information and education materials for consumers, significant care will be required to properly explain the rights under consumer guarantees versus consumer guarantees becoming the trigger for vexatious or unsubstantiated claims.
- The CAANZ proposals, including discussion on suggested potential timeframes, could pose considerable risks to business, potential detriment to consumers - above and beyond the initial failure - and a significant risk to the national economy if not implemented with great care and cognisant of potential unintended consequences.

ACCC action 3.1

The ACCC will work with manufacturers and dealers to develop a concise and simple explanation of consumer guarantees and their interaction with warranties, which should, as industry best practice, be provided to consumers at the point of sale of a new car.

ACCC action 3.2

To assist consumers better understand their rights when it comes to new car defects and failures, the ACCC will work with other ACL regulators to publish an updated version of Motor vehicle sales & repairs - an industry guide to the Australian Consumer Law (August 2013) to ensure that this publication addresses the issues identified in this study, including specific guidance on criteria for determining a 'major failure'. Guidance may also be designed for use by businesses, including dealers, regarding their rights and obligations under the ACL.

MTAA Recommendations

1. MTAA supports the development of awareness and education materials to better inform consumers on their rights under consumer guarantees and warranties. The MTAA suggests:
 - a. A comprehensive package of online and printed materials is developed to inform consumers pre-sale. i.e.: available on various government, automotive industry and consumer websites and at point of sale; on Consumer Guarantees, Warranties and rights under ACL.
 - b. In developing the pre-sale materials, that Point-Of-Sale materials also be developed for distribution during purchase investigations and as part of any sale transaction.
 - c. Such materials should not be just for new car retailers, but also for used car retailers, new and used motorcycle retailers, trailers, caravans, and farm and industrial machinery.
2. That a working group consisting of representatives from manufacturers / distributors (potentially through the FCAI); consumers (AAA); automotive trades including retail, service, repair and recycling sectors (MTAA Limited); and Government (ACCC and ASBFEO) be convened to develop materials.
3. Further work is undertaken to determine the parameters of the ACL and Consumer Guarantee provisions applicable to motor vehicle including risk identification and mitigation.

MTAA Recommendations (cont.):

4. A consultation group be formed of interested automotive industry representative organisations to assist in the above process and in the development of generic written materials explaining extended warranties and relationship to consumer guarantees (to be used as a basis for manufacturer / dealer specific extended warranty offerings.

- New car vehicle dealers must not be relied upon as the one-stop-shop for providing consumer information. New Car retailers are very aware of their accountabilities and obligations in providing warranty and consumer guarantee information and provide the same to customers.
- The Interim Report highlights it is manufacturers / distributors that are seemingly disconnected with the relationship between warranties and Australian consumer guarantees requirements and MTAA agrees this must be an area of focus.
- A greater examination of dealership agreements and the treatment of dealers by some manufacturers / distributors is strongly recommended as it is often the dealer that is more often than not left facing considerable unrecoverable costs as a result of manufacturer / distributor imposed requirements on dealing with consumer guarantee / warranty issues (refer MTAA November 2016 submission).
- MTAA agrees with the development of explanatory materials, but does not agree that such materials should be developed by just manufacturers / dealers alone.
- It is suggested MTAA and Members, and the Australian Automobile Association also be involved. Thought should also be given to the inclusion of representation from the Commonwealth Small Business and Family Enterprise Ombudsman on behalf of Small Business Commissioners and State / Territory Fair Trading and Consumer Affairs Departments as well as officers from the ACCC.
- MTAA suggests consideration be given to the additional development / distribution of 'pre-sale' package of information online and in printed form. There is considerable evidence that significant online research is now conducted by consumers prior to purchase, and the availability of information during this research phase of a purchase decision may be beneficial in increasing awareness and understanding of consumer guarantees and their interaction with warranties.
- MTAA Members were heavily involved in the development of the *'Motor vehicle sales & repairs - an industry guide to the Australian Consumer Law (August 2013)*. It is strongly recommended that this document be used as the base for any materials developed to address the interim findings of the market study and MTAA and Members remain available to assist.

MTAA Recommendations

1. *'Motor vehicle sales & repairs - an industry guide to the Australian Consumer Law (August 2013) be revised and used as the source base document to satisfy both proposed actions.*
2. *That MTAA and other relevant bodies such as the AAA and ASBFEO are included in a consultative group to develop the required package of materials.*
3. *Consideration be given to a 'pre-sale' package of information that be made available through information sites such as carsales.com for consumers to access as they research a potential new car purchase.*

ACCC action 3.3

Instances of misleading or deceptive conduct, or misrepresentations, in relation to the use of independent repairers or non-OE spare parts will be targeted through action by the ACCC, including enforcement action where appropriate.

- Again this proposed action supports MTAA contention as expressed in various submissions to various reviews that the enforcement powers of the ACCC are adequate and that the better question is appropriate government funding to allow the ACCC to perform its task.
- MTAA supports the removal of misleading statements from new vehicle documentation. MTAA also asserts that instances of misleading or deceptive conduct by manufacturers are not endemic across the industry.
- MTAA believes it would provide further transparency to the report of the market study if the nature of the 10,000 consumer complaints the ACCC has received over the last two years were provided in greater detail. Specifically what proportion of complaints related to new versus used vehicles? How many upheld? What was the nature of the complaint? How many were satisfactorily resolved?

MTAA Recommendations

1. MTAA recommends a grace period be established to allow the industry to adjust and be informed and educated on the new ACL requirements
2. Suggests the ACCC further detail the nature of complaints received over the past two years.

ACCC action 3.4

Manufacturers' complaints handling systems, policies and practices that do not comply with the consumer guarantee requirements of the ACL will continue to be targeted through action by the ACCC and fair trading agencies, including enforcement action where appropriate. Such action may also address any instances of non-compliance by dealers. The ACCC is particularly concerned about manufacturers and dealers engaging in conduct that may be misleading or unconscionable.

MTAA Response and Recommendations

1. MTAA strongly suggests again the urgent need to examine Dealership Agreements. It will likely be in an areas that have been suggested where the onus will be attempted to be wrongfully shifted onto dealers.
2. MTAA rejects assertions that dealers engage in unconscionable or misleading conduct and a closer examination of dealership agreements will potentially provide clarity.
3. The Interim Report confirms the need to either:
 - Make further changes to the Franchising Code through amendments to provisions to address weaknesses identified in the report and strengthen accountabilities particularly between manufacturers / distributors and dealers; or
 - Take out dealership agreements from the Franchising Code and include in a mandated and prescribed Automotive Code of Conduct that includes the Access to Technical Information requirements.

Only with such action will there be real accountability for manufacturers / distributors, dealerships and other participants in the automotive supply chain.

Chapter 4: Accessing technical information to repair and service new cars

Draft recommendations on access to technical information for new cars

Draft recommendation 4.1

A mandatory scheme should be introduced for car manufacturers to share with independent repairers technical information, 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.

The mandatory scheme should place an obligation on car manufacturers and other industry participants to achieve the aims and principles set out in 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.
- Consideration should be given to including options for relevant intermediaries 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 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 security-related technical information should be established or authorised under the mandatory scheme.

Enforcement

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

MTAA AND MEMBER OBSERVATIONS

- MTAA suggests a prescribed mandated code, under existing provisions of the ACL and powers of the ACCC, be developed inclusive of dispute determination and accredited security accreditation process.
- MTAA believes this is a preferable outcome to, creating enabling legislation by attempting to uplift either US or EU solutions or some other hybrid and adjusting those to fit the Australian context and market.
- MTAA suggests that the interim report requires correction that after-market service and parts is about customer retention and service quality rather than steering and profitability.
- MTAA has long had an issue with steering particularly in the smash repair industry and while understanding steering in itself is not illegal – it is a very fine line when actions related to steering border on misuse of market power, unconscionable conduct or other provisions.
- MTAA finds it interesting that when it has investigated cases in the smash repair industry involving dominant market players in the motor vehicle insurance industry (two players control more than 60% of the motor vehicle insurance market) and this has apparently been ok even despite the questionable tactics and behaviours adopted by insurance companies. Now we have criticism contained in the report targeting a sector that in no way comes close to the demonstrated behaviours in another sector. Seemingly it is ok for one but not another regardless of scale?
- The MTAA also respectfully suggests that the ACCC Interim Report contradicts itself in arguing that consumer protections are not being enforced and there is consumer detriment on one hand but on the other hand implies price gouging by dealerships when insisting on servicing by OEM experts and genuine parts, and the significant imposed and required costs involved.

Real time access:

- MTAA agrees that Appendix E in the interim report provides a suitable base definition of types of technical information required to repair and service new cars.

Coverage:

- MTAA strongly emphasizes the importance of relevant training as a necessary requirement of access to repair information. Furthermore, as part of a balanced arrangement, it is proposed that incomes generated by manufacturers through the provision of OEM related training to a broader market, should be distributed back to the dealers.
- The development of an automotive related code that deals with Dealer / manufacturer relationship also remains a critical issue and is strongly supported by MTAA.
- MTAA suggests further consideration of similar EU approaches that each manufacturer shall provide diagnostic repair information to each aftermarket scan tool company and each third-party service information provider with whom the manufacturer has appropriate licensing, contractual or confidentiality agreements for the sole purpose of building aftermarket diagnostic tools and third party service information publications and systems.

Definitions:

- Manufacturers and their distribution representatives should be invited to provide overarching policy outlining security related information and parts. Discussions and definitions surrounding security-related information should be facilitated through an independent external party to ensure transparency and timely response to this component of a mandated process.

MTAA AND MEMBER OBSERVATIONS (cont.)

Dispute resolution:

- MTAA suggests consideration should be given to a modified US NASTF model for dispute resolution but containing elements of mechanisms found in existing mandated codes.

Governance/consultation:

- MTAA and Members are the only organisation that has coverage of the automotive supply chain and this provides a unique perspective on the needs of each sector of the industry. MTAA would be happy to continue its facilitation and coordination activities in the formation of an Automotive Industry Consultative Forum to address the access to technical information mandated solution and other requirements determined by government as a result of the final report.
- MTAA suggests an independent chair of stature and familiarity with the automotive industry should be considered as an inaugural chair of this group.
- MTAA also suggests the Forum include ACCC senior officers and a rotating position for a representative from ASBFEO.

Security-related information and data

- MTAA suggests that both the EU and US models are too complicated, costly and difficult to translate in Australia because of the significantly smaller number of businesses. If compliance requirements are too large, it may be the final influence for some manufacturers to depart the Australian market.
- MTAA Member VACC's AASAS draft accreditation scheme is suggested as a starting point and could be incorporated into a mandated code.

Enforcement

- Again MTAA suggests that the provisions under Section 51 AE provide of the ACL provide sufficient powers to the ACCC to enforce appropriate elements of a potential mandated code.

- MTAA suggests that the development of a prescribed mandated code under existing provisions of the ACL and powers of the ACCC, inclusive of dispute determination and accredited security accreditation process, is preferable to the uplifting of either US or EU solutions or some other hybrid solution and adjusting those to fit the Australian context and market.
- The amount of legislation and enabling support mechanisms required for the EU solution to be an Australian solution is considered too costly to administer and enforce and potentially providing a sledgehammer to a pea. Similarly, while some elements of the US process may have application in the Australian context, but would also pose challenges.
- A significant challenge will be to deliver a solution that does not impose unnecessary costs and compliance burdens on businesses that can ill afford it.
- MTAA has started work on the development of a draft Code for use as a thought provoker and potential base for discussions and negotiations by industry, government and stakeholders if this approach is considered a viable option. This draft takes the key requirements for a mandated and prescribed Code as outlined in the ACL, including dispute resolution mechanisms and incorporates principals of the Heads of Agreement, and an accreditation process to ensure security of those accessing the information.

- It is not the preference of MTAA and Members to proceed down a legislative path that drafts enabling legislation to address the matter. It is considered such an approach will by its nature create a solution that satisfies no one, will be administratively cumbersome, costly and place an unnecessary compliance burden on small businesses.

MTAA Recommendations

1. An Automotive Consultative Forum be established with an influential independent chair and consisting of Industry Associations, ACCC, and ASBFEO representatives. MTAA offers to facilitate and coordinate and provide the secretariat for the first two years. It is suggested the secretariat would rotate between members. The Forum may morph into another requirement once some recommendations, subject to government consideration and endorsement, are implemented.
2. A prescribed mandated code of conduct is the mechanism for delivery of a scheme to provide access to technical information.
3. MTAA Member VACC's ASAS accreditation program is used as the foundation for the development of a security protocol and process for access to security related information.
4. Definitions of technical information be affirmed as those found in EU or US solutions or in information contained in the report.
5. Consideration is given to the US NASTF model for dispute resolution.
6. Manufacturers or representatives organisation should not be sole determinant of policies, or safety related parts or information that is restricted.
7. Independent external authority should be engaged to assist with such tasks.
8. Dealer agreements are further investigated as a matter of urgency and prior to the finalisation of the market study.
9. Further consideration should be given to either the incorporation of dealer / manufacturer relationship arrangements in an Automotive Code as opposed to Franchising Code as previously mentioned.

Chapter 5: Parts needed to repair and service new cars

Draft recommendations and actions on parts

Draft recommendation 5.1

OE manufacturer-branded parts and accessories should be generally available to independent repairers on commercially fair and reasonable terms.

Car manufacturers should develop policies which clearly outline any parts subject to restricted access on security-related grounds. These policies should be publicly available. The FCAI is well-placed to work with manufacturers to examine whether there is benefit in agreeing a standard definition and detailed classification system for 'security-related' parts to provide certainty to parts customers.

ACCC action 5.1

Refusals by car manufacturers to supply security-related parts for repair and service will be monitored and addressed through action by the ACCC, including enforcement action where appropriate.

- While supporting the proposed recommendation that manufacturers develop policies that outline parts restricted to access due to security grounds, MTAA does not believe manufacturers or their association should be the sole determinant.
- MTAA suggests a mutually acceptable independent third party be involved in the process of determining definitions and parts availability, of what constitutes a security related part, and the development of policies.
- MTAA respectfully suggests that this issue could have been progressed over the past three years of the Heads of Agreement, but wasn't. MTAA understands that differing views found in any representative organisation will restrict the FCAI from achieving a consensus approach or standard definition or classification system. This issue was a critical omission from the Heads of Agreement because agreement could not be reached either between automotive industry representative organisations or within those organisations.
- Security parts need to be defined for clarity and attached to the secure release process and MTAA suggests the following:

▪ New OEM	Purchased through the manufacturer's Australian Dealer network.
▪ New Parallel	OEM parts purchased through alternative sources to the Dealer network, these parts are not covered by any warranty from the Australian manufacturer representative.
▪ Used/Recycled	Primarily purchased through an auto dismantler / recycler.
▪ Reconditioned	Purchased through Dealerships or recognised businesses that reconstruct and refurbish damaged and used parts.
▪ Aftermarket	Parts produced by a manufacturer other than the OEM, also referred to as non-genuine

- MTAA is extremely critical of the ACCC's clearly flawed understanding of insurer's and crash repairers as detailed in Chapter 5. It appears that like other recent reviews there is a misconception about the competition available in the motor vehicle insurance space. Two large insurers account for more than 60% of the automotive repair market while the top 5 account for well over 80% of the market. While there are a plethora of brands, the majority are owned and operated by two dominant players. The levels of vertical integration, reduction in choice reshaping of industry and hidden behaviours are not to be highlighted, but put under a microscope. If anything the smash repair industry is in dire need of an ACCC investigation in its own right.
- For example: a major insurer, and dominant market player in the motor body repair industry, is currently trialing a parts acquisition and distribution process in selected States utilising only its own repair premises or preferred supplier repairers and particular dealerships approached to participate.
- This trial will not necessarily be offered to all dealerships, will not be offered to independent motor body repairers, and is likely to distort local markets by restricting access to parts and competitive prices.
- MTAA supports the development of an equitable, fair and commercially sustainable access framework to ensure access to parts by all market participants, but is opposed to arrangements and vertical integration that while legal have the effect of lessening competition and negatively impact business.
- MTAA and Members highlighted several examples of contradictory consumer detriment in original submissions provided in November 2016. These examples were either not understood by the market study team or were disregarded. The market study team may recall examples of tyre rims, panels, front bumpers and others. These were not provided to bolster arguments for genuine parts on behalf of dealers and manufacturers they were provided to illustrate the contradiction of encouraging price competition and consumer choice, but the inherent detriment consumers will face including potential life threatening safety considerations if the part is not fit for purpose or fitted in accordance with manufacturer specifications.

Chapter 6: Fuel Consumption, Emissions, and the ACL

Draft recommendations on fuel consumption and CO₂ emissions claims

Draft recommendation 6.1

Changes to the fuel consumption label affixed to new cars should be considered to improve the comparative use of the information supplied. Introducing a star-rating system or annual operating costs may minimise the extent to which consumers interpret an 'absolute' fuel consumption/emissions value as equivalent to what they would achieve in real-world driving conditions.

- MTAA supports greater consumer clarity of emissions and values particularly in response to recent manufacturers' actions that significantly damaged reputations and consumer trust worldwide.
- While MTAA understands the market study team being drawn to the European Standard Test, consumers would still need to be alerted that such a test is a comparator and not an absolute value.
- MTAA suggests that there is an opportunity for an accredited nationwide emissions testing regime that could be incorporated into, or in addition to, vehicle compliance checks (where required). MTAA has investigated emissions testing options, particularly in California, and believes there is scope for a regulated testing regime at certain times of the life of a vehicle that would capture real world emissions on vehicles tested.

Chapter 7: Other issues

Draft recommendation on telematics

Draft recommendation 7.1

The ACCC supports the Productivity Commission's recommendations in its final report on Data Availability and Use for a comprehensive right for consumers to access digitally held data about themselves, including to direct data custodians to copy that data to a nominated third party which may address some of the concerns that were raised about the impacts of telematics technology on new car purchasers.

- MTAA supports the findings of the ACCC and the productivity Commission's recommendations.

Conclusion

- MTAA thanks the ACCC for the opportunity to remain engaged with this important process and make further contributions.
- MTAA looks forward to providing any assistance to the market study team including any access it may require to Members of their business constituents.

MTAA National Secretariat
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