



Australian Government
The Treasury



Sharing of repair information in the automotive industry

Final Report

27 November 2012

Sharing of repair information in the automotive industry

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Australian Government
Commonwealth Consumer
Affairs Advisory Council

Mr Colin Neave AM
Chair of CCAAC

27 November 2012

Dear Assistant Treasurer

On 9 March 2011, you requested that the Commonwealth Consumer Affairs Advisory Council (CCAAC) undertake a review of the sharing of repair information in the automotive industry.

The findings of this report draw on extensive research and consultations, including through release of an Issues Paper, written submissions from stakeholders and targeted consultations.

Motor vehicle designs have become increasingly complex, driven by rapid technological change and innovation. As a result, automotive repairers have become increasingly reliant on technical information and diagnostic systems. Not all information relevant to automotive repair is shared in an unrestricted manner. Some stakeholders have suggested that this may limit the ability of independent repairers to compete with dealerships. This report considers whether there is consumer detriment as a result of the accessibility of repair information and how this issue can be addressed to protect and enhance the wellbeing of consumers.

The report has found that the need to access specialised repair information has the potential to become a barrier to entry in the market for repairs. While it is not currently preventing competition in this market, policy-makers should closely monitor the ease with which vehicle repairers can access such information and be prepared to act if necessary.

I offer my thanks to, and acknowledge the expertise and commitment of, the CCAAC Subgroup in compiling this report. The Subgroup was led by myself and included contributions from Ms Deborah Healey, Mr Ray Steinwall and Professor Stephen Corones. I also thank those who provided submissions.

I am pleased to enclose a copy of CCAAC's final report.

Yours sincerely

A handwritten signature in cursive script that reads 'Colin Neave'.

Colin Neave AM
Chairman, Commonwealth Consumer Affairs Advisory Council.

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EXECUTIVE SUMMARY

The competitiveness of the automotive repair industry is of significant importance to Australian consumers. Motor vehicle ownership in Australia is at more than one vehicle for every two people, and vehicle servicing and repair is a key aspect of vehicle ownership.

The independent automotive repair sector has raised concerns that vehicle manufacturers are increasingly preventing access to repair information at reasonable cost, and that this is threatening their ability to offer repair services.

Repair information can include dimensions and tolerances for mechanical parts, initialisation and reset codes for computerised systems, specifications for oils and lubricants, diagrams of wiring looms and voltages for electronic components. Access to this information is becoming increasingly important to the repair of motor vehicles due to the prevalence of electronic systems in vehicles.

CCAAC has examined these issues using the Organisation for Economic Cooperation and Development's *Consumer Policy Toolkit* framework for examining consumer issues, and found that the market for repairs is competitive. There does not appear to be any evidence of systemic consumer detriment at present. However, the accessibility of repair information has the potential to become a barrier to entry in this market going forward.

CCAAC notes that there is appetite within the automotive industry to develop an industry-led outcome to improve access to repair information for independent repairers. CCAAC encourages the industry to expedite current processes to develop an outcome within a reasonable period of time that ensures there is an avenue for independent repairers to reasonably access repair information. The viability of the independent repair sector is in the interests of consumers, repairers and manufacturers.

As part of this process, CCAAC encourages the industry to seek guidance from the Australian Competition and Consumer Commission, consult widely across the industry and involve an independent third party in the development of an industry-led outcome. A review of the adequacy of an industry-led outcome should be conducted within 18 months of implementation.

In the absence of an effective, industry-led outcome in a reasonable period of time, there may be a case for government intervention. CCAAC is of the view that the accessibility of repair information could become a barrier to competition in the automotive repair industry.

FINDINGS AND RECOMMENDATIONS

Chapter 2

Findings

- A wide range of automotive repair services are available to consumers, including dealerships and independent repairers.
- The majority of consumers can and do exercise their ability to choose whether to repair or service their vehicle through a dealership or an independent repairer.
- Dealerships and independent repairers provide substitutable services. Factors contributing to consumer choice include:
 - price of the service (CCAAC has found that independent repairers, on the whole, appear to charge lower prices for repairs than dealerships); and
 - quality of the service (CCAAC has found that dealerships often advertise their services as being of a superior quality to independent repairers).
- CCAAC has found limited and conflicting evidence of the difficulties associated with accessing specialised repair information at present. While a number of concerns were raised about whether independent repairers could access repair information, it was not clear whether these concerns related to the cost and timeliness of access, or access per se.
 - Features of the broader market for automotive repairs, such as the prevalence of independent repairers and the low level of concentration, indicate that there are no barriers associated with accessing independent repairers.
 - However, the accessibility of repair information at a reasonable cost and in a timely manner has the potential to become a barrier to entry in the market for supply of automotive repair services. In addition, it may be impacting on independent repairers' ability to offer certain repair services (for example, to repair newer vehicle models).
- Relatively simple steps could address some key problems identified in this review, for example, allowing Australian repairers to access websites that provide repair information for independent repairers overseas.

Chapter 3

Findings

- The continued ability of independent repairers to offer repair services is important to ensure an appropriate level of supply of repair services for consumers.
- At present, there appears to be a relatively low level of detriment associated with the level of accessibility of repair information. Importantly, there does not appear to be any systemic evidence of consumer detriment at present.
 - However, the level and nature of consumer detriment could change if the accessibility of repair information at a reasonable cost and in a timely manner

becomes a barrier to entry in the market for supply of automotive repair services.

- Consumers in regional and rural areas may experience more significant consumer detriment than consumers in metropolitan areas if independent repairers are unable to access specialised repair information at reasonable cost and in a timely fashion.

Chapter 4

Findings

- A range of laws already provide a level of protection to consumers in the context of independent repairer's ability to continue to offer repair services in Australia.
 - Generic laws applying to competition and consumer protection provide a level of protection against anti-competitive conduct, or conduct which could impact adversely on consumers.
 - Vehicles must meet certain design standards, including after they are made available for sale in Australia, and the Government also funds training programmes for repairers, to ensure that they have an appropriate level of skill.
- It appears that some consumers may hold the (inaccurate) belief that they must have their vehicle repaired by a dealership or risk voiding their manufacturer's warranty.
- There are clear incentives for the automotive industry to develop effective methods to improve independent repairer's ability to access repair information to ensure that they continue to remain viable.
 - The Canadian Automotive Service Information Standard, the industry-led arrangement for sharing repair information in Canada, appears to have provided net benefits to the automotive industry in Canada and could serve as a model for the Australian automotive industry.

Recommendations

- CCAAC recommends that consumer agencies continue to educate consumers that they are not required to have their vehicle repaired by an 'authorised' repairer to ensure continuation of their manufacturer's warranty.
- CCAAC urges the automotive industry to expedite current processes to develop, within a reasonable period of time, an outcome (such as a voluntary industry code of conduct) that ensures there is a process for independent repairers to access repair information. We would expect there to be significant progress towards such an outcome over the next 12 months.
 - CCAAC would expect an industry outcome to address the accessibility of repair information to rural and regional repairers as one of the first priority areas, given the greater potential for consumer detriment in such areas. We also encourage industry to reach an early outcome on issues which it may be possible to resolve relatively simply (for example, making overseas websites available to Australian repairers).
 - CCAAC also encourages the industry to seek guidance from the Australian Competition and Consumer Commission, consult widely across the industry and involve an independent third-party in leading development of an industry code.
- CCAAC recommends that the Government canvass regulatory options to ensure reasonable access to repair information, if industry is unable to arrive at an effective

industry outcome, and access to repair information becomes a barrier to competition in the market for repairs.

- A review of the adequacy of any industry-led outcome should be conducted within 18 months of implementation.

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GLOSSARY

AAA	Australian Automobile Association
AAAA	Australian Automotive Aftermarket Association
AADA	Australian Automobile Dealers Association
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
AMIF	Australian Motor Industry Federation
ASA	Auto Skills Australia
CAF	COAG Legislative and Governance Forum on Consumer Affairs
CASIS	Canadian Automotive Service Information Standard
CCA	<i>Competition and Consumer Act 2010 (Cth)</i>
CCAAC	Commonwealth Consumer Affairs Advisory Council
COAG	Council of Australian Governments
Dealerships	Repairers affiliated with a manufacturer's dealership network
FCAI	Federal Chamber of Automotive Industries
Independents	Repairers not affiliated with a manufacturer's dealership network
OECD	Organisation for Economic Cooperation and Development
RACQ	Royal Automobile Club of Queensland
Toolkit	The OECD's <i>Consumer Policy Toolkit</i>
VACC	Victorian Automobile Chamber of Commerce

1 INTRODUCTION

CONTEXT OF THE REVIEW

On 9 March 2011, the then Parliamentary Secretary to the Treasurer, the Hon David Bradbury MP, provided the Commonwealth Consumer Affairs Advisory Council (CCAAC) with terms of reference¹ to report on the sharing of repair information in the automotive industry. Under the terms of reference, CCAAC examined whether there is any evidence of detriment to consumers and the market for automotive repairs as a result of the accessibility of repair information. Existing regulations that are applicable to this matter as well as approaches in partner economies to this issue were also examined.

PURPOSE

Under the terms of reference, CCAAC was required to examine the sharing of repair information in the context of its impact on consumers. On 15 July 2011, CCAAC released an Issues Paper, *Sharing of repair information in the automotive industry: Issues Paper*,² which explored and posed questions about the adequacy of current information sharing practices and the policy responses of some of Australia's partner economies. Interested parties were invited to comment on the paper and written submissions closed on 23 September 2011. In response to the Issues Paper, CCAAC received 42 publicly available submissions. CCAAC also conducted additional targeted consultations.³ A range of stakeholders contributed to the process, including dealerships, manufacturers, insurers, and motoring organisations.⁴

STRUCTURE OF THE REPORT

This report explores issues about the sharing of repair information in the automotive industry using the structure provided by the Organisation for Economic Cooperation and Development's (OECD) *Consumer Policy Toolkit* (the Toolkit). The Toolkit provides a structure to assist policy-makers to evaluate consumer problems and determine whether there is a case for government action. The Toolkit uses a six-step approach, highlighted in Figure 1.

Following this structure, Chapter 2 provides an overview of the issue, including background to the repair sector. Chapter 3 examines the level of consumer detriment through, for example, considering the impact of the accessibility of repair information and other factors on the ability of independent repairers to provide repair and maintenance services. It also explores the impacts on consumers, including cost and consumer choice. Chapter 4 explores policy options that are available to remedy any consumer detriment and considers approaches to this issue in partner economies.

1 See Appendix A.

2 The Issues Paper can be found at <http://ccaac.gov.au/>

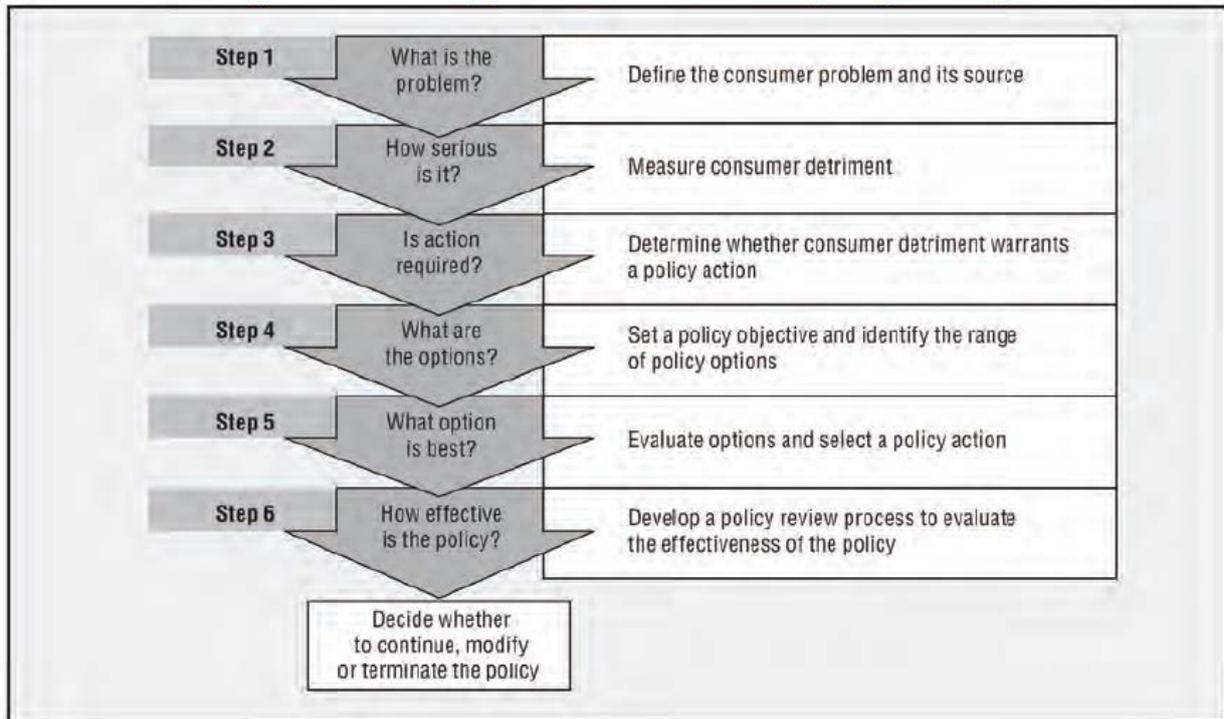
3 The consultation process is outlined at Appendix C.

4 A list of submissions is at Appendix B.

OECD Consumer Policy Toolkit

The Toolkit is a key project of the OECD Committee on Consumer Policy. It provides a framework through which consumer problems can be assessed and where policy options can be evaluated (see Figure 1). CCAAC will analyse the issues relating to the sharing of repair information in the automotive repair industry by applying the frameworks outlined within the Toolkit. CCAAC would also encourage policy-makers to consider the Toolkit when reviewing the findings of this report.

Figure 1: OECD's Consumer Policy Toolkit⁵



⁵ OECD, *Consumer Policy Toolkit* (2010) 11.

2 THE SUPPLY OF AUTOMOTIVE REPAIR SERVICES TO CONSUMERS

This chapter applies the first step of the Toolkit, which requires policy-makers to define the consumer problem and its source. Broadly, the consumer issue is whether repair information is reasonably accessible to independent repairers who are not affiliated with a motor vehicle manufacturer's dealership network. There would be concerns if the level of availability of such information impacted on a consumer's ability to access automotive maintenance and repair services at competitive prices.

TYPES OF AUTOMOTIVE REPAIR SERVICES

Two categories of automotive repair services are considered in this report: servicing and mechanical repairs.

Motor vehicles require regular servicing to ensure the continued efficient operation of mechanical components. This could involve periodically changing the engine oil, changing engine and air filters, lubricating vehicle components and checking vehicle systems to ensure that they remain within the manufacturer's specified tolerances. The information required for routine servicing is typically included in the owner's manual provided to consumers when purchasing new vehicles.

Mechanical repairs are required when a component of a vehicle no longer performs the function it was designed to perform. Some vehicle components, such as tyres, batteries and brake pads have a finite useful life that can be measured (for example, in observed tyre tread or brake pad levels) or approximated (for example, they may have an expected lifespan in year or kilometre terms). Other components may fail at times that are difficult to predict with accuracy, including due to poor use or failure to maintain the components appropriately. Repair or replacement of these components can become necessary with limited or no warning.

To repair or service a vehicle, repairers need very particular information, for example about dimensions and tolerances for mechanical parts, initialisation and reset codes for a vehicle's computerised systems, specifications for oils and lubricants, diagrams of wiring looms and voltages for electronic components. The increasing prevalence of computerised systems in motor vehicles is a particularly important issue, as multiple and interconnected systems are increasingly being used to monitor and manage the operation of engine, braking, ventilation, stability control and other systems. As the Australian Motor Industry Federation (AMIF) notes, 'where there may [once] have been two or three electronic control units ... governing the operations of a motor vehicle, today there may be as many as 30 to 40 units'.⁶

6 Submission to CCAAC, 22 September 2011, Submission No 12, 4 (AMIF).

SUPPLIERS OF AUTOMOTIVE REPAIR SERVICES TO CONSUMERS

A wide range of automotive repair services are currently available to consumers. These can be broadly grouped into two categories:

- repairers affiliated with a motor vehicle manufacturer's dealership network ('dealerships'); and
- repairer networks (for example, large franchises such as Kmart Tyre and Auto Service and Ultratune) and smaller independent operators that are not affiliated with a motor vehicle manufacturer's dealership network ('independents').

There are thousands of dealerships offering repair services in Australia. They typically perform the dual services of car sales and car repairs. They are said to primarily focus on 'warranty-type' repair services.⁷

According to the Australian Automotive Dealers Association (AADA), '[m]otor vehicle dealerships are typically family-owned, franchised, small businesses and have a relationship with their suppliers that is unique when compared to more generic retail operations'.⁸ Their business model incorporates sales of new and used vehicles as well as the so-called 'fixed operations': parts sales and automotive servicing.⁹

The independent repair sector includes repairers who specialise in a particular marque, or make, of motor vehicle, or in a particular automotive repair service, as well as generalist repairers. In its submission, AMIF highlights the difference between independent repairers who are specialists and those that offer more general services. Specialist repairers invest in special tools and training and 'may also have quasi-formal relationships with that vehicle marque's manufacturers/suppliers or ... third party information providers', and, as a result, are likely to have better access to repair information.¹⁰

The Victoria Automobile Chamber of Commerce's (VACC) submission also notes the difference between independent repairers who are general repairers and those that specialise in particular forms of repair.¹¹ They consider that the common misconception that independent repairers are general motor mechanics does not do justice to the vast range of businesses comprising the automotive industry. 'These businesses include ... air-conditioning specialists, automatic transmission specialists, automotive electricians, body repairers, commercial vehicle repairers, engine re-conditioners, glass and tinting specialists, locksmiths, mechanical repairers, motorcycle repairers, motor trimmers, professional automotive services, radiator specialists, under-vehicle repairers, and tyre chains that complete mechanical repairs'.¹²

7 Aries Nuguid, 'Automotive Maintenance and Servicing in Australia' (Industry Report G5329, IBISWorld, 2012) 12.

8 Submission to CCAAC, 22 September 2011, Submission No 10, 5 (AADA).

9 Danny Rezek, 'Deloitte Motor Industry Services Australian Industry Overview' (Deloitte Touche Tohmatsu Ltd, 2012) 39.

10 AMIF, above n 6, 9.

11 Submission to CCAAC, 23 September 2011, Submission No 9, 13 (VACC).

12 Ibid.

In terms of the composition of the repair sector, the Federal Chamber of Automotive Industries (FCAI) notes that there are seven independent repairers for every dealership that provides automotive repair services.¹³ Similarly, the VACC estimates that 88 per cent of Australia’s automotive repair businesses are independent.¹⁴

None of the market participants in this industry appears to have a significant market share. The largest repairer, the independent Kmart Tyre & Auto Service, is estimated to have a market share of 3.4 per cent.¹⁵

SUBSTITUTABILITY OF SERVICES OFFERED BY DEALERSHIPS AND INDEPENDENT REPAIRERS

Submissions to CCAAC indicated that purchasers of new vehicles will typically take a new vehicle to a dealership for servicing in the short-term and switch to an independent repairer after a period of time. The Australian Automotive Aftermarket Association (AAAA) noted that consumers will generally switch to independent repairers when the express warranty for their vehicle has expired – typically after three years.¹⁶ AMIF and AADA provided estimates of the use, by consumers, of the repair services of dealerships and independent repairers. This data is presented in Table 1 and correlates with AAAA’s views.

Table 1: dealership service retention (average, top 30 per cent of dealerships)¹⁷

Year after purchase	Metro	Rural
Handover/ follow-up service	100 per cent	100 per cent
First year	90 per cent	93 per cent
Second year	78 per cent	85 per cent
Third year	65 per cent	76 per cent
Fourth year	48 per cent	59 per cent
Fifth	40 per cent	52 per cent

AMIF concludes from the fact that consumers are able to switch from a dealership to an independent repairer that their ability to choose their repairer is not being impacted and that in fact, consumers are exercising their right to choose their repairer, particularly after the new car warranty period expires.¹⁸ CCAAC agrees that to a large extent there appears to be competition in the supply of repair services between independent repairers and dealerships.

Independent repairers and dealerships appear to differentiate their services on the basis of price and quality. Independent repairers generally offer repairs at a lower price than dealerships. A recent survey commissioned by the NRMA indicates that dealerships charge between \$90 and \$110 more for a service than independent repairers.¹⁹ Similarly, IBISWorld

13 Submission to CCAAC, 23 September 2011, Submission No 14, 14 (FCAI).
 14 VACC, above n 11, 4.
 15 Nuguid, above n 7, 22.
 16 Submission to CCAAC, 23 September 2011, Submission No 2, 25-26 (AAAA).
 17 AMIF, above n 6, 8; AADA, above n 8, 7.
 18 AMIF above n 6, 2.
 19 NRMA media, ‘Car Servicing: It Pays To Shop Around’ (Press Release, 7 June 2010) <http://www.mynrma.com.au/about/media/pr-2010-car-servicing-it-pays-to-shop-around.htm>.

reports that '[s]maller and chain operators typically charge between \$100 and \$200 for a full service, while service centres of dealerships can charge up to \$1,000'.²⁰

AADA and FCAI argue in their submissions that the price difference between independents and dealerships can be explained by differences in the quality of service provided and the levels of investment.²¹ The FCAI points out that many FCAI members require their franchised dealerships to attend brand-specific training and demonstrations. The Australian Honda Dealer Council also noted that the price Honda dealerships charge consumers reflects the costs of maintaining their facilities, staff training and tools to the manufacturer's standards.²² Honda dealerships must have fifty-one special tools, which costs \$27,280. It would be expected that the investment by dealerships is a cost of doing business that is passed on to consumers, both in higher prices and better service quality.

SOURCES OF INFORMATION FOR REPAIRERS

There are two main sources of repair information available to automotive repairers (including independent repairers and dealerships):

- the material developed by motor vehicle manufacturers for their dealerships; and
- information compiled by third parties for all repairers.

Motor vehicle manufacturers develop information sources and training that is specific to their vehicle models. Access to this information appears, in most cases, to be restricted to affiliated dealerships. The AADA indicated in their submission that manufacturers control this information and they almost always provide strict guidelines to dealerships in relation to sharing it outside of the dealership network.²³ Furthermore, some information, for example theft prevention information, is not provided to dealerships.²⁴

In its submission, VACC analysed manufacturers' practices regarding making repair information available to the broader industry.²⁵ Their analysis revealed widely divergent practices by different marques. Some marques do not make repair information available at all, while others make it available for relatively small fees. Many limit access to online databases of repair information to North American and European businesses, where there are requirements or arrangements in place to facilitate access to repair information. In these cases, it seems that the relatively simple step of allowing Australian repairers to have access to these websites, for the same fee, would largely address the problems identified in this review.

VACC noted in its submission²⁶ that:

Investigations undertaken by the VACC into the level of information available from manufacturers (the Automotive Service Information Matrix) has highlighted the

²⁰ Nuguid, above n 7, 13.

²¹ See eg FCAI, above n 13, 16; AADA, above n 8, 6-7.

²² Submission to CCAAC, 21 September 2011, Submission No 4, (Australian Honda Dealer Council).

²³ AADA, above n 8, 2 and 6.

²⁴ Ibid 14.

²⁵ VACC, above n 11, 63-86.

²⁶ Ibid 14.

limited availability of vehicle repair information for Australian independent repairers. For vehicles sold between 2008 and 2010, for example, information is not available for 17 per cent of the passenger vehicles sold, 44 per cent of the SUV vehicles sold, and 13 per cent of the light commercial vehicle segment.

There was also evidence that independent repairers can sometimes obtain information from dealerships on an ad-hoc basis. These arrangements are contingent on the nature of informal, interpersonal relationships they have with other participants in the industry. For example, the AADA notes in its submission that dealerships often assist independent repairers informally despite the formal restraints imposed on them by manufacturers under dealership agreements.²⁷

However, independent repairers appear to access repair information primarily from third party information providers. These businesses gather information from a number of sources and make it available to all (or a group of) repairers for a fee. Third party information sources include Repco Autotech Encyclopaedia, Repco Auto Service Quote, Boyces Auto Library, Autodata, Lube & Tune Guide, Auto Service Manager and VACC Times Guide.

One independent repairer noted that over recent years, 'there has been limited information available and a greater reliance on sourcing data and technical information from aftermarket sources such as Autodata, Boyce, [and] Bosch'.²⁸ This repairer goes on to say that while 'collective database information' is generally available, it is 'slow to be released from the manufacturers'. At present, such information is not released until 'years after the model has been produced'.²⁹

Third party information providers such as Autodata Australia, which typically rely on global agreements with manufacturers to develop repair information, also note that they have had difficulty reaching such agreements in Australia.³⁰ They suggest that some manufacturers have refused to supply information or will not agree to republication of repair information for the Australian market.

On the other hand, industry groups for motor vehicle manufacturers pointed out that the 'base level of information required to repair a vehicle is broadly available' from a range of sources.³¹ The FCAI suggests that the fact that there are seven independent repairers to every dealership indicates that there is a sufficient level of access to repair information. They consider that the problem lies instead with the level of investment in training for independent repairers.³²

Overall, the evidence about the accessibility of repair information is somewhat conflicting. Some repairers argue that it is difficult to access such information. Others suggest that the concerns relate to timing and cost of release. On balance, CCAAC considers that the accessibility of repair information is not yet a barrier to entry to the market.³³ However,

27 AADA, above n 8, 13-14.

28 Submission to CCAAC, 23 September 2011, Submission No 42 (Apps Automotive) 1.

29 Ibid 3.

30 Submission to CCAAC, 19 September 2011, Submission No 13 (Autodata Australia) 1.

31 FCAI, above n 18, 3 and 6; AMIF, above n 6, 10.

32 FCAI, above n 18, 3, 9, 14.

33 See eg, AAAA, above n 16, 27.

CCAAC considers that if independent repairers are unable to access repair information, this has the potential to become a barrier to competition in this market.

FINDINGS

- A wide range of automotive repair services are available to consumers, including dealerships and independent repairers.
- The majority of consumers can and do exercise their ability to choose whether to repair or service their vehicle through a dealership or an independent repairer.
- Dealerships and independent repairers provide substitutable services. Factors contributing to consumer choice include:
 - price of the service (CCAAC has found that independent repairers, on the whole, appear to charge lower prices for repairs than dealerships); and
 - quality of the service (CCAAC has found that dealerships often advertise their services as being of a superior quality to independent repairers).
- CCAAC has found limited and conflicting evidence of the difficulties associated with accessing specialised repair information at present. While a number of concerns were raised about whether independent repairers could access repair information, it was not clear whether these concerns related to the cost and timeliness of access, or access per se.
 - Features of the broader market for automotive repairs, such as the prevalence of independent repairers and the low level of concentration, indicate that there are no barriers associated with accessing independent repairers.
 - However, the accessibility of repair information at a reasonable cost and in a timely manner has the potential to become a barrier to entry in the market for supply of automotive repair services. In addition, it may be impacting on independent repairers' ability to offer certain repair services (for example, to repair newer vehicle models).
- Relatively simple steps could address some key problems identified in this review, for example, allowing Australian repairers to access websites that provide repair information for independent repairers overseas.

3 CONSUMER DETRIMENT

This chapter applies the second and third steps of the *Toolkit*, which requires policy-makers to determine the level of consumer detriment and whether there is a case for regulatory intervention. The OECD notes that consumer detriment can take a variety of forms based on either 'market conditions which limit choice and/or result in inflated prices for a product (structural detriment) and detriment arising from the negative outcomes that individual consumers experience once a purchase has been made, relative to some benchmark'.³⁴

In Chapter 2, CCAAC found that on balance, it does not appear that the accessibility of repair information is currently a barrier to entry to the market for automotive repairs. However, the ability of independent repairers to access repair information held by motor vehicle manufacturers has the potential to become a barrier to entry. This chapter explores the nature and level of any detriment associated with the accessibility of repair information.

Given the prevalence of independent repairers in Australia (six out of every seven repairers is independent of dealership networks) their continued viability appears to be important to consumers having continued access to repair services. CCAAC has also found that independent repairers generally offer lower cost servicing and repairs. Consumers' ability to access repair services at low prices is an important aspect of their ability to choose between different automotive repair services.

Given that there is more than one motor vehicle in Australia for every two people,³⁵ and that automotive servicing and repair is an important aspect of motor vehicle ownership, the availability and cost of servicing and repairing vehicles have the potential to have a significant impact on consumers.

Consumers may also experience consumer detriment in a number of other ways if repair information is withheld from independent repairers. For example, if independent repairers are unable to perform certain repair tasks, they would need to take it to a dealership for repair, increasing the time and cost of repair for consumers. The quality of repairs may also be impacted by the availability of repair information.

CONSUMER COMPLAINTS IN AUSTRALIA

CCAAC understands that the Australian Competition and Consumer Commission (ACCC) has been approached by participants in the automotive repair industry (including consumers and repairers) since 2009 raising concerns about whether motor vehicle manufacturers are restricting access to repair information.

The ACCC has also been approached regarding clauses in warranties or representations by manufacturers in relation to who can carry out servicing on new vehicles, and the use of 'genuine parts' in automotive repairs. In Australia, consumers can have their vehicles

³⁴ OECD, above n 5, 52.

³⁵ There were almost 17 million registered motor vehicles in Australia, including almost 13 million passenger vehicles, at the time of the last motor vehicle survey in January 2011: Australian Bureau of Statistics, *Motor Vehicle Census*, ABS Catalogue No 9309.0 (2012) 3.

serviced at an independent repairer without jeopardising their rights to have a supplier of the motor vehicle remedy manufacturing faults if they arise within a reasonable time of purchase.

From 1 January 2011 to 30 June 2012 the ACCC received 11 contacts that related specifically to these issues. The complaints are outlined in Table 2 below. This compares with, over the 2011-12 financial year, almost 150,000 total consumer contacts received by the ACCC under the *Competition and Consumer Act 2010* (Cth) (CCA). In the 2010-11 financial year, the ACCC received 117,158 consumer contacts in total.

The concerns raised with the ACCC include that independent repairers cannot reset certain warning lights indicating that a motor vehicle needs to be serviced. Issues such as this appear to not have been made known to some consumers at the point of sale of motor vehicles. Other concerns raised with the ACCC related to whether warranty-based servicing and repair work could only be carried out by authorised dealerships.

The ACCC reviewed the complaints lodged with them and concluded that there were no breaches of the CCA.

OTHER EVIDENCE OF CONSUMER DETRIMENT

CCAAC has received several submissions outlining examples where a lack of access to repair information has caused consumer detriment.

Examples of repairs that cannot be performed without access to information relate mainly to resetting electronic control units or dashboard lights indicating that the motor vehicle requires servicing. VACC provided examples where simple repairs such as replacement of brake linings or air bags required access to the electronic control unit to reset anti-lock braking or supplementary restraint systems.³⁶

VACC's submission also cited a survey conducted in October 2010 that was sent to 4,720 automotive repairers and resulted in 775 responses.³⁷ Of the respondents, 56 per cent indicated that there is some diagnostic repair information that they cannot obtain. Further, 49 per cent indicated that there were some instances where they could not attempt a repair at all due to a lack of access to information, and 61 per cent indicated that they had had difficulties repairing some motor vehicles due to a lack of access to information. Of the 44 per cent that were able to obtain some information this was not necessarily from manufacturers, but from other sources including the VACC technical library, colleagues, dealerships and the internet.

Ultra Tune (SA) Pty Ltd submitted that their franchisees are increasingly complaining about needing to take motor vehicles back to dealerships to have their on-board computer reinitialised to recognise repair work (i.e. a new or repaired part).³⁸ While this 're-programming' is not difficult, they submitted that only dealerships have the necessary codes to carry out this work. They considered that this creates unnecessary costs and inconvenience for consumers.

³⁶ VACC, above n 11, 5-6.

³⁷ Ibid 14, Appendix A.

³⁸ Submission to CCAAC, 30 September 2011, Submission No 19, 3 (Ultra Tune (SA) Pty Ltd).

Table 2: complaints received by the ACCC

Date	Complainant	Nature of complaint
12 January 2011	Consumer	Needed to take motor vehicle to dealership as independent could not reset the Diesel Particulate Filter light (at the 20,000 km service). Dealership advised that independents do not have the code to reset the light. Owner's manual does not disclose that independent repairers cannot reset the light – it only says to service the motor vehicle with an 'expert repairer'.
16 February 2011	Consumer	Needed to take motor vehicle to dealership to reset Diesel Particulate Filter light (at the 20,000 km service). They consider this restricts their ability to choose their repairer and restrains competition.
24 March 2011	Repairer	A motor vehicle manufacturer was not providing enough information to repair one of their models.
14 April 2011	Consumer	Needed to take motor vehicle to dealership after independent did 20,000 km service, to reset Diesel Particulate Filter light. They consider this restricts their ability to choose their repairer and restrains competition.
3 May 2011	Consumer	Needed to take motor vehicle to dealership as independent could not reset dashboard light after changing engine oil (happens every 15,000 kms). They consider this is unfair as they were not aware of it and it is not mentioned in the warranty information.
20 June 2011	Consumer	Switched from dealership (as it was located far away and charged high labour costs) to a local independent but is unhappy with cost for parts as the independent cannot access the parts at dealership rates.
23 November 2011	Consumer	Told the warranty was void as the motor vehicle had been serviced by an independent. A condition of the warranty was that it had to be serviced by an authorised repairer.
28 November 2011	Repairer	Local dealerships are running an advertising campaign that owners must 'take your car to the dealership in order to maintain your new car warranty', which they feel is false.
27 January 2012	Consumer	Dealership advised that repairs need to be by a dealership to not breach the terms and conditions of a motor vehicle's warranty.
27 January 2012	Repairer	Seeking to clarify that having a motor vehicle serviced by a non-authorised dealership will not void an express warranty.
13 February 2012	Repairer	Repaired a motor vehicle using non-authorised parts, leading to voiding of client's warranty, and wants to know their rights.

Consumer detriment and regional and rural areas

A number of submissions noted that consumers in rural areas could be particularly impacted by any difficulties that independent repairers have with accessing repair information. For example, VACC submitted that if local independent repairers are not able to repair or service motor vehicles (for example, due to their inability to access repair information), regional consumers 'will be faced with the choice of either (a) travelling back to the place of purchase, or (b) having their choice of vehicle limited to the vehicles sold by their closest new vehicle

dealer'.³⁹ AAAA likewise noted that 'the depth and breadth of the independent repair network' is important to ensuring that consumers in regional and rural areas can access cost effective repair services.⁴⁰ They noted that:⁴¹

there are over 60 different brands being sold today ... [but] ... [e]ven major regional centres such as Albury-Wodonga do not have 60 dealerships. If the vehicle manufacturers do not share their data with 'all-makes' repairers, some consumers will [have to] travel over 4 hours for a routine service or pay for vehicle transportation to move a vehicle to the next capital city or rural centre.

Other submissions on this issue were received from Autodata Australia, which publishes technical information for aftermarket workshops, and AMIF. Autodata Australia noted that the inconvenience for rural and regional consumers could be greater if independent repairers are unable to repair or service their motor vehicles as 'the distance required to travel to a dealership compared to a local independent workshop can be profound, especially in remote areas'.⁴² AMIF similarly noted that broad-based or generalist independent repairers are still essential, particularly in rural and regional areas.⁴³

FINDINGS

- The continued ability of independent repairers to offer repair services is important to ensure an appropriate level of supply of repair services for consumers.
- At present, there appears to be a relatively low level of detriment associated with the level of accessibility of repair information. Importantly, there does not appear to be any systemic evidence of consumer detriment at present.
 - However, the level and nature of consumer detriment could change if the accessibility of repair information at a reasonable cost and in a timely manner becomes a barrier to entry in the market for supply of automotive repair services.
- Consumers in regional and rural areas may experience more significant consumer detriment than consumers in metropolitan areas if independent repairers are unable to access specialised repair information at reasonable cost and in a timely fashion.

39 VACC, above n 11, 5.

40 AAAA, above n 16, 7.

41 Ibid 24.

42 Autodata Australia, above n 30, 1.

43 AMIF, above n 6, 2.

4 OPTIONS TO IMPROVE ACCESS TO REPAIR INFORMATION

This chapter applies steps 4, 5 and 6 of the *Toolkit*. These steps require policy-makers to set a policy objective, identify the range of available policy options, evaluate and select the most appropriate option, and develop a review process to evaluate it.

CCAAC has found that while there is a relatively low level of consumer detriment associated with independent repairer's ability to access repair information, this has the potential to become more systemic. This is because the accessibility of repair information at a reasonable cost and in a timely manner has the potential to become a barrier to entry in the market for supply of automotive repair services.

In this chapter, CCAAC explores ways to help improve access to repair information to prevent it from becoming a more significant issue for consumers. CCAAC considers options for self-regulation and other options, including approaches taken by partner economies such as Canada, the United States and in Europe. A number of existing frameworks of relevance also apply to this industry.

EXISTING REGULATORY FRAMEWORKS AND ACCESS TO REPAIR INFORMATION

The Competition and Consumer Act 2010 (Cth)

A number of submissions raised competition-based concerns in the context of access to repair information. For example, the Royal Automobile Club of Queensland (RACQ) submitted that 'manufacturers restrict the supply of this information to varying degrees and generally limit its availability to their dealer network ... [and] this ... potentially pose[s] a barrier to competition'.⁴⁴ Ultra Tune (SA) and AAAA went further. Ultra Tune (SA) claimed '[m]anufacturers ... are in our opinion, deliberately holding back their technical information from competitors'.⁴⁵ AAAA claimed that the 'vibrant competition [in this market] is being threatened by OEM's [original equipment manufacturers'] use of technology to monopolise vehicle service markets'.

Part IV of the CCA prohibits anti-competitive conduct in all sectors of the economy, including the automotive industry. Further background on the requirements under Part IV of the CCA is provided in Box 2 below. In Europe, similar requirements prohibiting anti-competitive conduct have been relied on to improve access to repair information for independent repairers. Box 1 provides background to the application of the competitions framework in Europe to this issue.

44 Submission to CCAAC, 19 September 2011, Submission No 7, 2 (RACQ).

45 Ultra Tune (SA), above n 38, 5.

Box 1: competition-based regulation in Europe

Article 101(1) of the *Treaty on the Functioning of the European Union* prohibits all practices and agreements between undertakings (that is, all entities participating in an economic activity)⁴⁶ that could impact on intra-Community trade, and which either *de jure* or *de facto* prevent, restrict or distort competition.⁴⁷ Article 101(3) allows the European Commission to exempt such practices in certain circumstances.

Vertical agreements for the purchase, sale or resale of motor vehicles or their parts and the repair and maintenance of such vehicles have been exempted under Article 101(3).⁴⁸ However, this exemption does not apply where a manufacturer refuses to supply repair information, special tools and training that is necessary to repair or maintain such vehicles in a 'non-discriminatory, prompt and proportionate way, and ... in a usable form'.⁴⁹ In part, this has been justified by the fact that independent repairer's 'ability to compete depends on unrestricted access to essential inputs such as ... technical information'.⁵⁰

The CCA also includes the Australian Consumer Law (ACL), which is the principal consumer protection law in Australia. An important part of this is the consumer guarantees framework. In 2009, CCAAC published a review of implied conditions and warranties in the then *Trade Practices Act 1974* (Cth). In the report, CCAAC considered that the ACL should continue to prohibit making false or misleading representations concerning the existence, exclusion or effect of a consumer guarantee under the ACL, as well as prohibiting such conduct in relation to requirements to pay for a contractual right that is wholly or partly equivalent to a consumer guarantee.⁵¹

This means that consumers can have their motor vehicles serviced at an independent repairer without jeopardising their right to have a supplier of the motor vehicle remedy manufacturing faults that arise within a reasonable time of the purchase. As AAAA's submission states, statutory consumer guarantees are not affected if servicing or repairs are performed by an independent repairer, as long as it is performed competently.⁵²

Despite this, dealerships retain a significant proportion of servicing immediately following sale of a motor vehicle. Table 1 (see page 14) shows estimates that more than 90 per cent of servicing is performed by dealerships in the first year of a car's life, more than 75 per cent in the second year and 65 per cent in the third year.

Submissions to CCAAC have identified certain representations on car manufacturer's websites regarding servicing of motor vehicles by their dealership networks. The Australian Automobile Association (AAA), in its submission, provided a screen-grab of Suzuki's

46 Damian Chalmers, Gareth Davies and Giorgio Monti, *European Union Law* (2nd ed, 2010) 964.

47 See generally, *ibid* 985-992.

48 *Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector* [2002] OJ L 203/30.

49 *Ibid* Article 4(2).

50 *Ibid* preamble paras 26-7.

51 CCAAC, *Consumer Rights: Reforming statutory implied conditions and warranties*, Final Report (2009) Finding 7.6. This is implemented through subsections 29(1)(m) and (n) of the ACL.

52 AAAA above n 16, 17.

website, which, after recommending that consumers take their motor vehicles to Suzuki repairers, states:⁵³

Your car is not only maintained by authorised technicians that have undergone the latest factory training from Suzuki, but also diagnosed by the Suzuki Diagnostics Tool, the most sophisticated diagnostics system for Suzuki vehicles, used only by authorised Suzuki Dealerships.

The AAA also provided a screen-grab of text on Lexus' website, which notes:⁵⁴

Only Lexus Dealer Service Centres have the diagnostic equipment capable of fully reading the Lexus engine management computers, and our technicians are always kept up-to-date with the latest advances in Lexus technology.

Another screen-grab was provided of Mitsubishi's website, which notes:⁵⁵

Only Mitsubishi Authorised Service Centres have online access to the latest technical and product information direct from Mitsubishi. This guarantees the latest service and repair procedures are used, saving you time and money and ensuring your vehicle is maintained just as the maker intended.

CCAAC is not concerned about manufacturers encouraging consumers to repair and service their motor vehicles within their dealership network. A profit-maximising firm would be expected to behave this way and many consumers are likely to value the service provided by dealerships. However, CCAAC would be concerned if manufacturers were engaging in conduct that effectively 'tied' or 'bundled' the supply of a new car with servicing by a dealership if this impacted on competition in the supply of automotive repair services. Box 2 below provides background to the prohibition against certain anti-competitive arrangements under the CCA.

Another key detriment said to be caused by restrictions on the availability of repair information is the safety of motor vehicles. The AAA, for example, observed in their submission to CCAAC that '[r]estrictions in the availability of technical information can affect the maintenance of vehicle safety systems'.⁵⁶

However, the ACL includes certain statutory consumer guarantees to ensure that consumers get what they pay for. Services such as repair or maintenance work supplied in trade or commerce are required to be:⁵⁷

- rendered with due care and skill;
- fit for any disclosed or implied purposes; and
- supplied within a reasonable time if the time for supply is not otherwise fixed.

53 Submission to CCAAC, 23 September 2011, Submission No 1 (AAA) 15 (emphasis added).

54 Ibid 12 (emphasis added).

55 Ibid 14 (emphasis added).

56 Ibid 5.

57 CCA Schedule 2 Part 3-2 Subdivision 1B.

A repairer who is unable to meet these consumer guarantees will be in breach of the ACL. This provides a level of protection to consumers against the supply of poor quality repair services irrespective of the level of accessibility of repair information.

Box 2: Existing prohibitions on anti-competitive arrangements in the *Competition and Consumer Act 2010* (Cth)

Section 45 of the CCA prohibits contracts, arrangements or understandings which have the purpose, effect or likely effect of substantially lessening competition. It also prohibits such contracts, arrangements or understandings from containing exclusionary provisions (defined in section 4D – such as primary boycotts, where two competitors agree to restrict supply to or acquisitions from a third party).

Section 46 of the CCA prohibits the misuse of market power. Firms are prohibited from taking advantage of substantial market power for the purpose of substantially damaging or eliminating a competitor, preventing entry into a market or deterring competitive conduct.

In addition, section 47 of the CCA prohibits vertical restraints referred to as ‘exclusive dealing’. Vertical restraints involve dealings between firms operating at different stages of the production process. Vertical restraints can be entered into for a variety of purposes, many of which will not be anti-competitive but are in fact designed to promote the competitiveness of the firm.

The two broad types of exclusive dealing provided for in subsections 47(2)-(9) are full line forcing and third line forcing:

- Full line forcing involves a supplier refusing to supply goods or a service unless a purchaser agrees not to:
 - buy goods of a particular kind or description from a competitor;
 - resupply goods of a particular kind or description acquired from a competitor; or
 - re-supply goods of a particular kind acquired from the company to a particular place or classes of places;

and it has the purpose, effect, or likely effect of substantially lessening competition (section 47(10)).

- Third line forcing is a specific form of exclusive dealing which involves supplying goods or services on condition that the purchaser buys goods or services from a particular third party, or refusing to supply because the purchaser will not agree to that condition. Third line forcing is a ‘per se’ breach of the CCA – a substantial lessening of competition is not required to prove a breach.

Regulation of motor vehicle emissions

A process is underway to facilitate implementation of Euro 5 and Euro 6 emissions standards in Australia. On 11 June 2011, the Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, announced that Euro 5 emissions standards will commence

in Australia for new model vehicles from 1 November 2013 and for existing models from 1 November 2016.⁵⁸ Euro 6 emissions standards will commence for new model vehicles from 1 July 2017 and for existing models from 1 July 2018.

Under these requirements, the national vehicle standards (known as Australian Design Rules) which new motor vehicles must meet before they are first supplied to the market, under the *Motor Vehicle Standards Act 1989* (Cth), will be made stricter. Under this Act, all new road vehicles must comply with the Australian Design Rules before they can be offered to the Australian market for use in transport. The Australian Design Rules are performance-based standards for vehicle safety, emissions and anti-theft.

Once a motor vehicle is approved under the *Motor Vehicle Standards Act 1989* (Cth) and supplied to the Australian market, responsibility for regulation passes to the states and territories, who regulate in-service requirements such as registration, road-worthiness and vehicle modifications. They generally require that a motor vehicle continue to comply with the relevant Australian Design Rules that applied at its date of manufacture or later, with some exceptions to account for special-use vehicles and wear and tear.

In partner economies, emissions-based regulations have been a key avenue to increasing access to particular types of repair information. Box 3 provides further background to the use of emissions regulations in the United States and Europe in this respect.

The framework for training automotive repairers

Auto Skills Australia (ASA) is responsible for developing and maintaining nationally endorsed automotive training qualifications in Australia. ASA is a wholly-owned subsidiary of Manufacturing Skills Australia Industry Skills Council, and undertakes the national training advisory role for the Automotive Industry.

Specifically, ASA develops and maintains two Training Packages, AUM12 Automotive Manufacturing and AUR05 Automotive Industry Retail, Service and Repair. It is funded by the Australian Government Department of Industry, Innovation, Science, Research and Tertiary Education to actively support the development, implementation and continuous improvement of high quality training and workforce development products.

Training packages provide nationally endorsed industry standards against which training can be developed and flexibly delivered to meet particular local, individual, industry and enterprise requirements. Registered Training Organisations are responsible for delivering qualifications. Industry Skills Councils such as ASA do not deliver qualifications.

⁵⁸ The Hon Anthony Albanese MP, 'New pollution standards for vehicles' (Press Release, 11 June 2011) <http://anthonyalbanese.com.au/new-pollution-standards-for-vehicles-2>.

Box 3: emissions-based regulation in Europe and the United States

In the United States, regulatory requirements to share repair information are primarily located in emissions regulations. The *Clean Air Act* 42 USC §7521-m (2008) requires the Environmental Protection Agency to regulate to require manufacturers to install on-board diagnostic systems to monitor the performance of emissions-related vehicle components.⁵⁹ It also requires the Agency to issue regulations requiring manufacturers to provide all repairers and the Agency with the information to make emissions-related diagnoses and repairs.⁶⁰ Further to this, the *Control of air pollution from motor vehicles and new motor vehicle engines rule* 40 CFR Part 86 has further requirements in relation to access to repair information and special tools.

Security information must also be made available to repairers under the United States regulations.⁶¹ From 2008, security systems have been required to be able to be re-initialised by generic aftermarket tools.⁶² One way that security information is available to repairers is through the Secure Data Release Model, which provides access to this information through an online portal to vetted individuals (including repairers and locksmiths).⁶³

In Europe, Regulations 715/2007⁶⁴ and 595/2009⁶⁵ require that motor vehicles must comply with Euro 5 and 6 emissions standards for passenger vehicles (and Euro V and VI for heavy-duty vehicles) at the point of vehicle approval or registration. As part of this, the Regulations require manufacturers to provide access to repair information and training material online in a non-discriminatory, readily accessible and prompt manner.⁶⁶ Manufacturers are entitled to charge a 'reasonable and proportionate fee' for access to this information on the basis of varying subscription lengths.⁶⁷ Regulation 692/2008, which implements Regulation 715/2007, provides further specific details of these requirements.⁶⁸

59 (m)(1).

60 (m)(5).

61 Environmental Protection Agency, *Summary and Analysis of Comments: Service Information Availability* (2003) 47 <http://www.epa.gov/otaq/regs/im/vehserv/r03007.pdf>.

62 *Control of air pollution from motor vehicles and new motor vehicle engines rule* 40 CFR Part 86.

63 National Automotive Service Task Force, *What is the Secure Data Release Model – SDRM?*

http://www.aloa.org/NASTFSDRMDocs/What_is_the_Secure_Data_Release_Modelv1.0.pdf at 3 March 2012.

64 *Regulation (EC) No 715/2007 of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information* [2007] OJ L 171/1.

65 *Regulation (EC) No 595/2009 of 18 June 2009 on type approval of motor vehicles and engines with respect to emissions from heavy-duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and replacing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC* [2009] OJ L 188/1.

66 Article 6(1) of Regulations 715/2007 and 595/2009.

67 Article 7 of Regulation 715/2007.

68 *Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information* [2008] OJ L 199/1.

ADDITIONAL OPTIONS TO IMPROVE ACCESS TO REPAIR INFORMATION

Industry self-regulation

In CCAAC's consultations with the automotive industry, key industry participants have expressed appetite to develop an industry-led outcome to improve access to repair information for independent repairers.

There are clear incentives for the automotive industry to develop effective methods to ensure that independent repairers are not prevented from reasonably accessing repair information. The viability of the independent repair sector is in the interests of both consumers and the broader automotive industry. Independent repairers make up a significant proportion of repairers in Australia. Their continued ability to offer repair services is important to ensuring consumers continue to have access to repair services, and to manufacturers, to ensure their consumers can access such services. As AADA noted in its submission, '[t]here is no capacity in the Australian Dealer network to cater for the entire Australian 16 million plus motor vehicle fleet and, in the view of AADA, nor will there be for the foreseeable future'.⁶⁹

The benefits of effective self-regulation also usually exceed that of government intervention, for example because:⁷⁰

- industry is usually better placed to tailor codes of practice to business conditions;
- self-regulation will often impose lower compliance costs on business;
- self-regulation is more flexible, as these frameworks can be amended by industry participants as required; and
- self-regulation does not impose costs on government in implementation, compliance, monitoring and enforcement.

Australian consumer agencies can provide guidance to industry participants to help them develop effective codes of conduct, including in relation to how a code could be developed, administered, monitored and evaluated. The ACCC has developed *Guidelines for developing effective voluntary industry codes of conduct*, based on its experience in using codes of conduct to regulate market behaviour. In its guidance, the ACCC notes that codes of conduct tend to be more effective where they are widely supported within an industry, they are administered by a body made up of all key stakeholders and there are effective and independent complaints handling processes.⁷¹

The Canadian Automotive Service Information Standard (CASIS) is a useful example of an appropriate industry initiative in this industry. CASIS is a voluntary code governing sharing of repair information in Canada. Further information on CASIS is provided in Box 4.

⁶⁹ AADA, above n 8, 3.

⁷⁰ Treasury, *Prescribed Industry Codes of Conduct: Policy guidelines on prescribing industry codes of conduct under Part IVB of the Competition and Consumer Act 2010 (Cth)* 2.

⁷¹ Australian Competition and Consumer Commission, *Guidelines for developing effective voluntary codes of conduct* (2011).

Box 4: Canadian Automotive Service Information Standard

CASIS was agreed between the National Automotive Trades Association (which represents independent repairers), the Canadian Vehicle Manufacturer's Association (which represents North American manufacturers) and the Association of International Automotive Manufacturers of Canada (which represents other manufacturers). It was developed at the request of the Canadian government as an alternative to regulation.

Under CASIS, manufacturers undertook to provide service information to all repairers on a timely basis and in a similar manner and extent as with dealerships. Service information provided under CASIS is available online with a choice of subscription lengths at commercial prices set by manufacturers. Certain things are excluded from the agreement (for example, security information was left to be resolved at a later date as the infrastructure to facilitate a secure supply of this information was not available in Canada).

Under CASIS, manufacturers also undertook to provide information about special tools, establish a process to respond to information requests from independent repairers and provide training information. A task force was established with equal representation among manufacturers and independent repairers to oversee implementation of CASIS.

The National Automotive Trades Association announced in 2010 that all Canadian manufacturers were CASIS-compliant.⁷² They considered that 'CASIS creates a level playing field ... [and] ... legislation is not necessary to ensure that all manufacturers offer the requested information'.⁷³

The level of progress towards an effective industry outcome in Australia has been limited to date. This appears to be partly due to the fact that there are a number of organisations, industry bodies and manufacturers involved in this process, with their own internal processes to manage. Many industry participants are also located offshore.

CCAAC urges the automotive industry to expedite current processes to arrive at an industry-led outcome in relation to this matter. In particular, the automotive industry should consider seeking guidance from the ACCC to assist them to develop an effective outcome in relation to this issue. Such an outcome would balance the proprietary rights of manufacturers with ensuring consumers continue to have access to appropriate automotive repair services. In addition, CCAAC considers that the process to develop an industry proposal to this issue should be led by an independent third-party.

CCAAC considers that the industry should develop, within a reasonable period of time, an outcome that ensures there is a process for independent repairers to access repair information. This would ensure such repairers are not prevented from reasonably accessing repair information, and would ensure that this does not become a more important consumer concern over time.

72 National Automotive Trades Association, 'Canadian Automotive Service Information Standard (CASIS) Implemented on Schedule' (Press Release, 3 May 2010) http://www.natacanada.ca/pdf/NATA_press_release_2010_05_03.pdf.

73 National Automotive Trades Association, *Canadian Automotive Service Information Standard – Background and Key Information* (2010) http://www.natacanada.ca/pdf/CASIS_backgrounder_EN.pdf at 3 March 2012.

Regulatory options

Regulatory options are available to help improve access for independent repairers to repair information held by manufacturers. CCAAC considers that these options should be canvassed if industry is unable to arrive at an effective industry-led outcome and access to repair information becomes a barrier to competition in the market for repairs. As part of this, CCAAC recommends that the Government review the effectiveness of industry initiatives in response to this issue within 18 months of implementation.

One example of a recent regulatory response to this issue is the measure in the Commonwealth of Massachusetts in the United States (Box 5 provides further background).

Box 5: Right to Repair legislation in Massachusetts

The Massachusetts Right to Repair Coalition, which advocates in favour of greater sharing of repair information, reported on 7 August 2012 that right to repair legislation had been signed into law by the Governor of Massachusetts.⁷⁴ An initiative petition for a law on right to repair was ratified by plebiscite at the State Ballot on 6 November 2012. The Right to Repair Coalition reported that the proposed law was passed by a majority of voters.⁷⁵ Such petitions take effect thirty days after they are agreed to at an election.⁷⁶

The measure⁷⁷ provides that manufacturers must generally provide owners or their designated independent repairer in Massachusetts with access to the same repair information and tools as dealerships, through an hourly, daily, monthly or yearly subscription. The terms of access are to be 'non-discriminatory' and based on a 'fair market value'. The information is to be presented in a format consistent with the requirements under emissions regulations. Security information is to be made available through the Secure Data Release Model.

An example of a tool that is available to the Government in the event that industry cannot effectively resolve this issue is mandating an industry code under Part IVB of the CCA. Part IVB of the CCA provides for the prescription of mandatory or voluntary industry codes. Industry codes regulate the conduct of industry participants towards other industry participants and consumers. Section 51AE of the CCA allows the Assistant Treasurer to prescribe industry codes.

Part IVB industry codes are a co-regulatory tool. They are considered appropriate where self-regulation has not been effective but a legislative solution is not considered appropriate. The prescription of an industry code of conduct allows the Government to provide a clear set

74 Right to Repair Coalition, 'Mass. Governor Patrick Signs Nation's First Right to Repair Law' (Press Release, 7 August 2012) <http://massrighttorepair.com/2012/08/governor-patrick-signs-right-to-repair-bill-massachusetts-first-state-to-have-a-right-to-repair-law/>.

75 Right to Repair Coalition, 'Question 1 Passes with 2,332,438 Yes Votes in Historic Victory for Car Owners!' (Press Release, 18 October 2012) <http://massrighttorepair.com/2012/10/ma-righttorepair-committee-urges-voters-to-vote-yes/>.

76 William Francis Galvin, *Initiative Petition for a Law* (2012) State Ballot Question Petitions <http://www.sec.state.ma.us/ele/eleguide/guidelaw.htm> at 20 November 2012.

77 William Francis Galvin, *2012 Statewide Ballot Questions* (2012) Ballot Question Information http://www.sec.state.ma.us/ele/ele12/ballot_questions_12/quest_1.htm at 20 November 2012.

of rules to define the best practice for conduct of industry participants. Four industry codes have been prescribed under the CCA to date, in relation to:

- franchising (*Franchising Code of Conduct* – introduced in 1998);
- horticulture producers and wholesalers (*Horticulture Code of Conduct* – introduced in 2006);
- wholesale oil supply (*Oil Code* – introduced in 2006); and
- unit pricing for supermarket products (*Retail Grocery Industry Unit Pricing Code* – introduced in 2009).

Guidelines have been published setting out the factors that are considered when determining whether it is appropriate to prescribe an industry code under the CCA.⁷⁸ These factors include, for example, whether there is existing regulation covering the matter proposed to be addressed through an industry code; whether self-regulation has been attempted and failed; and whether the market is incapable of addressing the problem without regulatory intervention.

Section 51AD of the CCA provides that a person must not contravene an applicable industry code in trade or commerce. An ‘applicable industry code’ is defined as, in relation to a corporation that is a participant in an industry, the prescribed provisions of any mandatory industry code relating to the industry and the prescribed provisions of any voluntary industry code that binds the corporation. Prescribed industry codes are enforceable by the ACCC or by private action under the CCA and a wide range of remedies are available for breaches of industry codes, including injunctions and damages.

FINDINGS

- A range of laws already provide a level of protection to consumers in the context of independent repairers’ ability to continue to offer repair services in Australia.
 - Generic laws applying to competition and consumer protection provide a level of protection against anti-competitive conduct, or conduct which could impact adversely on consumers.
 - Motor vehicles must meet certain design standards, including after they are made available for sale in Australia, and the Government also funds training programmes for repairers, to ensure that they have an appropriate level of skill.
- It appears that some consumers may hold the (inaccurate) belief that they must have their motor vehicle repaired by a dealership or risk voiding their manufacturer’s warranty.
- There are clear incentives for the automotive industry to develop effective methods to improve independent repairer’s ability to access repair information to ensure that they continue to remain viable.

⁷⁸ Treasury, above n 70.

- The Canadian Automotive Service Information Standard, the industry-led arrangement for sharing repair information in Canada, appears to have provided net benefits to the automotive industry in Canada and could serve as a model for the Australian automotive industry.

RECOMMENDATIONS

- CCAAC recommends that consumer agencies continue to educate consumers that they are not required to have their motor vehicle repaired by an 'authorised' repairer to ensure continuation of their manufacturer's warranty.
- CCAAC urges the automotive industry to expedite current processes to develop, within a reasonable period of time, an outcome (such as a voluntary industry code of conduct) that ensures there is a process for independent repairers to access repair information. We would expect there to be significant progress towards such an outcome over the next 12 months.
 - CCAAC would expect an industry outcome to address the accessibility of repair information to rural and regional repairers as one of the first priority areas, given the greater potential for consumer detriment in such areas. We also encourage industry to reach an early outcome on issues which it may be possible to resolve relatively simply (for example, making overseas websites available to Australian repairers).
 - CCAAC also encourages the industry to seek guidance from the Australian Competition and Consumer Commission, consult widely across the industry and involve an independent third-party in leading development of an industry code.
- CCAAC recommends that the Government canvass regulatory options to ensure reasonable access to repair information if industry is unable to arrive at an effective industry outcome and access to repair information becomes a barrier to competition in the market for repairs.
 - A review of the adequacy of any industry-led outcome should be conducted within 18 months of implementation.

5 CONCLUSIONS

CCAAC considers that the ability of independent repairers to offer repair services in Australia is of significant importance to Australian consumers. The vast majority of repairers in Australia (six out of every seven) are independent of dealership networks. Given that there is more than one motor vehicle in Australia for every two people, and that automotive servicing and repair is an important aspect of motor vehicle ownership, the availability (and competitiveness) of repair services is likely to have a significant impact on consumers.

CCAAC received several submissions on behalf of independent repairers providing examples where a lack of access to repair information has caused some consumer detriment. The ACCC has also been approached by some consumers and businesses complaining about access to repair information. There is a particular concern about the ability of rural and regional consumers to access repair services, as there are fewer options for automotive repair in these areas.

CCAAC has found on balance that the evidence about the accessibility of repair information is somewhat conflicting. Some repairers argue that it is difficult to access such information, while others suggest that the concerns relate to timing and cost of release. Currently, a wide range of automotive repair services are available to consumers. However, CCAAC considers that the accessibility of repair information at a reasonable cost and in a timely manner has the potential to become a barrier to entry in the market for supply of automotive repair services over time.

Given this, CCAAC urges the industry to collaborate to develop an appropriate solution to prevent this from becoming a barrier in the future. An effective industry-led solution would involve all key stakeholders, be led by an independent facilitator and incorporate effective complaints handling and review processes. CCAAC encourages the industry to develop such an outcome within a reasonable time. In particular, CCAAC notes that the continued viability of the independent repair sector is in the interests of the broader automotive industry as dealerships do not have capacity to repair all motor vehicles owned in Australia.

If no industry-led outcome is achieved in a reasonable period of time, or if such an outcome is found to be ineffective to address independent repairer's concerns with access to repair information, CCAAC considers that there may be a case for government intervention. Government intervention could involve, for example, prescribing an industry code under Part IVB of the CCA.

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APPENDIX A: TERMS OF REFERENCE

On 9 March 2011, the then Parliamentary Secretary to the Treasurer, the Hon David Bradbury MP, requested that CCAAC report on:

- whether there is evidence of consumer detriment due to the practice of manufacturers and importers failing to share information with independent repairers of motor vehicles;
- evidence of the impact of lack of access to proprietary repair information on independent repairers and the market for motor vehicle repairs;
- the nature and effectiveness of international approaches to the sharing of repair information for motor vehicles; and
- the views of stakeholders, including consumer groups, motor vehicle manufacturers and importers, independent repairers, motoring organisations and peak motor vehicle industry bodies.

Membership

- Mr Colin Neave AM (Chair)
- Ms Carolyn Bond
- Professor Stephen Corones
- Ms Lynda Edwards
- Ms Deborah Healey
- Mr Peter Kell
- Mr Gordon Renouf
- Ms Rhonda Smith
- Mr Ray Steinwall

APPENDIX B: LIST OF SUBMISSIONS

In accordance with the terms of reference, this report has been informed by the views of stakeholders in the automotive industry.

An Issues Paper titled *Sharing of repair information in the automotive industry: Issues Paper* was released for public comment on 15 July 2011. Submissions closed on 23 September 2011 and submissions were received from a range of stakeholders. A total of 49 public submissions were received, seven of which were confidential. Non-confidential submissions are available on the Treasury's website at www.treasury.gov.au.

The 42 publicly available submissions received by CCAAC in response to the Issues Paper are outlined below:

Australian Automobile Association	Great Wall Motors Australia
Australian Automotive Aftermarket Association	GM Holden
Auto Parts Group	Audi Australia
Australian Honda Dealer Council	Hyundai Motor Company Australia
i-CAR Australia	Subaru Australia
Insurance Council of Australia	Mazda Australia
RACQ Vehicle Technologies Department	Jaguar Land Rover Australia
Suncorp Group Limited	Toyota Motor Corporation Australia
Victorian Automobile Chamber of Commerce	Honda Australia Motorcycle and Power Equipment
Australian Automobile Dealers Association	Suzuki Australia
Holden Dealers Council	Kia Motors Australia
Australian Motor Industry Federation	Mitsubishi Motors Australia
Autodata Australia	Ford Motor Company of Australia
Federal Chamber of Automotive Industries	Hyosung Motors Australia
Howard Instruments	Triumph Australia
McKenzies Mobile Mechanics	Kawasaki Motors
NRMA Insurance	Harley-Davidson Australia

Southeast Motor Company	Yamaha Motor Australia
Ultra Tune (South Australia)	Nissan Motor Company Australia
Porsche Cars Australia	Piaggio Australia
Volkswagen Australia	Apps Automotive

APPENDIX C: CONSULTATION PROCESS

A series of targeted consultations were undertaken based on the submissions received by CCAAC in response to the Issues Paper released on 15 July 2011. CCAAC conducted targeted consultations with stakeholders on 10 November 2011 and on 13 and 16 December 2011. A further roundtable discussion was held on 2 February 2012. The participants at the consultations are outlined below.

Consultations on 10 November 2011 and 13 and 16 December 2011

Stuart Charity	Australian Automotive Aftermarket Association
Andrew McKellar	Australian Automobile Association
Craig Newland	Australian Automobile Association
Colin Duckworth	Australian Automobile Dealers Association
Stefanee Lovett	Federal Chamber of Automotive Industries
Michael Karageorgiou	Ford
Jenny Linsten	Ford
Peter Neal	Hyundai
Anthony Boddy	Insurance Australia Group Ltd
Robert McDonald	Insurance Australia Group Ltd
Fiona Cameron	Insurance Council of Australia
Bob Hanley	Nissan
Cecilia Warren	NRMA Insurance
Phil Marks	QBE Insurance
Paul Muccitelli	Victorian Automobile Chamber of Commerce
Bernard Murray	Victorian Automobile Chamber of Commerce
David Purchase	Victorian Automobile Chamber of Commerce
Brian Savage	Victorian Automobile Chamber of Commerce

Consultations on 2 February 2012

Stuart Charity	Australian Automotive Aftermarket Association
Craig Newland	Australian Automobile Association
Richard Dudley	Australian Motor Industry Federation
Peter Henry	Auto One Australia Pty Ltd
Cary Laverty	Exego (RepcO) Group
Phil Allan	Federal Chamber of Automotive Industries
Stefanee Lovett	Federal Chamber of Automotive Industries
Gunther Jurkschat	Victorian Automobile Chamber of Commerce
Bernard Murray	Victorian Automobile Chamber of Commerce