



Australian Government
The Treasury



Sharing of repair information in the automotive industry

Issues Paper

July 2011

**Commonwealth Consumer Affairs Advisory Council
(CCAAC)**

**Sharing of repair
information in the
automotive industry:
Issues Paper**

July 2011

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FOREWORD

The Parliamentary Secretary to the Treasurer, the Hon David Bradbury MP, has provided the Commonwealth Consumer Affairs Advisory Council (CCAAC) with terms of reference to report on the sharing of repair information in the automotive industry.

Motor vehicle designs have become increasingly complex, driven by rapid technological change and innovation. Vehicle repairs have become increasingly reliant on technical information and diagnostic systems. Some of this involves repair information that is not shared in an unrestricted manner.

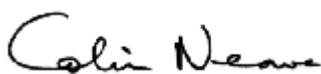
It has been suggested by some industry stakeholders that restricted access to repair information may limit the ability of independent repairers to compete with authorised repairers. CCAAC has been asked to report on whether there is evidence of consumer detriment due to any restrictions experienced by independent repairers in obtaining repair information. In this regard, it has been claimed that current practices may lead to higher prices, reduced choice and potential safety issues if repairs are not properly completed. Determining the degree to which independent repairers experience barriers to full market participation due to difficulties in accessing repair information, will be a key area of investigation for CCAAC.

Access to repair information may also have wider implications for the market for motor vehicles. Manufacturers and importers may devote considerable resources to the development of repair information. By achieving a service 'lock in', vehicle manufacturers and importers may be able to achieve a return on investments in repair information and, possibly, provide lower vehicle prices to consumers through cross-subsidies.

A number of practical considerations would need to be taken into account if vehicle manufacturers and importers were compelled to make repair information available to independent repairers. Information may be used for purposes other than the repair and maintenance of vehicles if the information that must be shared is not well defined. The determination of a fair price would also be difficult as the costs to the provider and the value to the user are unlikely to be the same, and the relevant costs and values would be difficult to ascertain with precision.

The aim of this paper is to seek evidence and views about whether consumer detriment is caused by current practices related to the sharing of repair information and to consider whether the benefits of any proposed change to current arrangements would be likely to outweigh the relevant costs.

CCAAC looks forward to hearing the views of consumer and industry stakeholders on this important issue for industry and Australian consumers.



Colin Neave AM
Chairman, Commonwealth Consumer Affairs Advisory Council

Contents

- FOREWORD IV**
- THE COMMONWEALTH CONSUMER AFFAIRS ADVISORY COUNCIL (CCAAC)..... IV**
 - CCAAC terms of reference iv
 - Membership iv
- REQUEST FOR COMMENTS..... V**
- GLOSSARY VI**
- PART I — BACKGROUND..... 1**
 - Introduction 1
 - The nature of repair information 2
 - Other work related to sharing of repair information 2
- PART II — INDUSTRY IMPACTS..... 4**
 - Access to repair information and independent repairers 4
- PART III — CONSUMER IMPACTS 6**
 - Choice of repairer and market impacts 6
 - Technology and safety 6
- PART IV — BACKGROUND TO INTERNATIONAL APPROACHES 8**
 - USA 8
 - European Union 9
 - Canada 10
- PART V — OTHER ISSUES 11**
 - Intellectual property 11
 - Pricing issues 11
 - Existing Legislation 12

THE COMMONWEALTH CONSUMER AFFAIRS ADVISORY COUNCIL (CCAAC)

CCAAC terms of reference

CCAAC is an expert advisory panel, which provides advice to the Parliamentary Secretary to the Treasurer on consumer policy issues.

CCAAC's terms of reference are to:

- consider issues, reports and papers referred to it by the Minister and report to the Minister on their consumer policy implications, and in doing so take account of the need for well-functioning markets with confident consumers;
- identify emerging issues affecting Australian markets and consumers and draw these to the attention of the Minister; and
- when considering consumer policy issues, take account of their competition and other relevant economic implications.

Membership

The membership of CCAAC consists of:

- Mr Colin Neave AM (Chair);
- Ms Carolyn Bond;
- Professor Stephen Corones;
- Ms Lynda Edwards (from 23 July 2011);
- Ms Deborah Healey;
- Mr Gordon Renouf;
- Dr Rhonda Smith (from 23 July 2011);
- Mr Ray Steinwall; and
- Mr Peter Kell (*ex officio*).

REQUEST FOR COMMENTS

The Commonwealth Consumer Affairs Advisory Council has developed this issues paper, *Sharing of repair information in the automotive industry* to:

- raise issues about the sharing of repair information in the automotive industry in Australia; and
- seek public and stakeholder comments in relation to these issues.

Responses are requested by 5:00pm on Friday, 19 August 2011 and can be submitted to:

CCAAC@treasury.gov.au

or

CCAAC Automotive Repair Industry Review
c/- The Manager
Consumer Policy Framework Unit
Infrastructure, Competition and Consumer Division
Treasury
Langton Crescent
PARKES ACT 2600

Phone: 02 6263 2111

Fax: 02 6263 3964

Confidentiality

It will be assumed that submissions are not confidential and may be made publicly available on the Treasury website (<http://www.treasury.gov.au>). If you would like your submission, or any part of it, to be treated as 'confidential', please indicate this clearly. A request made under the *Freedom of Information Act 1982* for a submission marked confidential to be made available will be determined in accordance with that Act.

GLOSSARY

AAAA	Australian Automotive Aftermarket Association
ACL	Australian Consumer Law, Schedule 2 of the <i>Competition and Consumer Act 2010</i> as applied as a law of the Commonwealth and every State and Territory of Australia
CCAAC	Commonwealth Consumer Affairs Advisory Council
OBD	On Board Diagnostics
authorised repairers	Operators within the automotive industry that are aligned with a major vehicle manufacturer or importer
independent repairers	Operators within the automotive industry that are not aligned with a major vehicle manufacturer or importer

TERMS OF REFERENCE

On 9 March 2011, the 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.**

PART I — BACKGROUND

INTRODUCTION

As in many service industries, the exchange of skills and knowledge provides the foundation of the automotive repair market. Repairers in this market have developed unique skills and have access to knowledge that consumers do not typically possess. Specifically, knowledge may be obtained through experience as well as through access to external sources of information. External sources of information may include training programs or repair information related to vehicle operation and repair diagnostics. The reference provided for the review is largely concerned with the availability of these external sources of information in the automotive repair industry.

For the purposes of this issues paper, ‘repair information’ is information that is reasonably necessary for the repair and maintenance of motor vehicles. There is a range of repair information that would not be considered reasonably necessary under this description. It is likely that stakeholders will have varying views about the information that is reasonably necessary for the repair and maintenance of motor vehicles.

The repair and maintenance of motor vehicles has become increasingly complicated due to the incorporation of on board computers and diagnostic systems in modern vehicle design. On Board Diagnostic (OBD) systems allow a repairer to identify vehicle faults. These systems produce a fault code that corresponds to a unique problem determined by the vehicle’s on-board computer. These fault codes can be read using code scanners that may incorporate proprietary information related to those codes. OBD systems have existed since the 1970s. While they are not new, the degree to which they have been incorporated into vehicle design have made them an important preliminary step in the diagnostic process.

The degree to which information is reasonably necessary for the repair and maintenance of motor vehicles varies significantly depending on the scale and scope of repairs required. Simple and routine repairs are less likely to be affected. Unique repair challenges may require a richer supply of information. As technology advances, the importance of information is likely to increase. Where access to OBD systems is limited, repair and maintenance of motor vehicles becomes a more difficult task given the complexity of modern vehicle design.

A number of concerns related to the availability of repair information have been raised by stakeholders. Many independent repairers have expressed concerns over their ability to compete with authorised repairers. It is claimed that these repairers have superior information access — this being to the competitive detriment of the independent repairers. ‘Right to Repair’ campaigns form part of a global movement arguing for improved information access. These campaigns explore a variety of issues, however emphasise a preference for less restricted access to repair information.

Vehicle manufacturers and importers have an economic incentive to keep repair information private. It may be that this information consists of material that manufacturers or importers have incurred substantial costs to develop, or it may be that vertical integration has allowed vehicle manufacturers or importers to benefit from providing a richer supply of information to authorised repairers. Any regulatory change that forces manufacturers to provide this information would have consequences for these business models. These consequences would need to be taken into account when considering the likely effect of any requirement for information to be shared.

The nature of repair information

Given that manufacturers and importers may have incurred costs developing repair information, care should be taken when determining the scope of what is regarded to be information reasonably necessary for the maintenance and repair of vehicles.

The repair information that is required to repair motor vehicles is not a closed set and includes repair manuals, specifications, wiring diagrams and diagnostic information. Defining the boundaries of this prescription is a practical issue for any efforts to require the sharing of information.

For example, the Australian Automotive Aftermarket Association (AAAA) has argued for improved access to training programs offered to authorised repairers.¹ It might be argued that these programs contain information reasonably necessary for the repair and maintenance of motor vehicles, however these training programs might also contain other information that has been developed by manufacturers or importers.

A regulatory approach taken in the EU defines repair information in terms of its purpose, that is, information that is used for the repair and maintenance of vehicles. The European Union *Regulation EC No 715/2007*², which provides for access to repair and maintenance information, defines ‘vehicle repair and maintenance information’ to mean:

... all information required for diagnosis, servicing, inspection, periodic monitoring, repair, re-programming or re-initialisation of the vehicle and which the manufacturers provide for their authorised dealers and repairers, including all subsequent amendments and supplements to such information. This information includes all information required for fitting parts or equipment to vehicles.

This definition of vehicle repair information and maintenance information replaced an earlier definition in the EC Regulation that attempted to list all of the types of information that must be provided. That approach had limited success as it required constant updates to allow for technological change.

Other work related to sharing of repair information

‘Right to Repair’ campaigns have typically focussed on access to spare parts as well as the supply of information. CCAAC’s terms of reference do not deal with issues related to the supply of spare parts. This issue is largely dealt with under subsection 72(1) of the *Designs Act 2003* (Designs Act). Subsection 72(1) allows the manufacture of replacement parts using a

1 See http://www.aaaa.com.au/cor/files/41083_COR_CAMPAIGN.pdf.

2 See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:171:0001:0016:EN:PDF>.

design registered by another person where it is used to repair a complex product, so as to restore its overall appearance in whole or in part.

Section 72(1) of the Designs Act

72 Certain repairs do not infringe registered design

(1) Despite subsection 71(1), a person does not infringe a registered design if:

- (a) the person uses, or authorises another person to use, a product:
 - (i) in relation to which the design is registered; and
 - (ii) which embodies a design that is identical to, or substantially similar in overall impression to, the registered design; and
- (b) the product is a component part of a complex product; and
- (c) the use or authorisation is for the purpose of the repair of the complex product so as to restore its overall appearance in whole or part.

In 2005, IP Australia conducted a review of the spare parts provision in the Designs Act.³ The review recommended no changes to the provisions as little evidence could be found either in support of or against the provisions. The review recommended that IP Australia should continue to monitor developments related to the provisions.

Consultation questions:

- 1.1 What repair information is required for the repair and maintenance of vehicles?
- 1.2 Is there evidence to suggest that independent repairers do not have access to repair information that is reasonably necessary for the repair and maintenance of vehicles?
- 1.3 If some repair information is not freely available to independent repairers, what evidence is there that this provides authorised repairers with a competitive advantage, and to what extent?
- 1.4 What intellectual property considerations are relevant to this issue? Please provide evidence to support your views.
- 1.5 Does policy on sharing of repair information have implications for the market for insurance of motor vehicles?
- 1.6 Does policy on sharing of repair information have implications for manufacturers' express warranties on motor vehicles?

³ Review of the "spare parts" provision in the designs Act 2003 – December 2005
See <http://www.ipaustralia.gov.au>.

PART II — INDUSTRY IMPACTS

ACCESS TO REPAIR INFORMATION AND INDEPENDENT REPAIRERS

The terms of reference for this review deal with consumer detriment potentially caused by the practice of manufacturers and importers failing to share information with independent repairers of motor vehicles. For consumer detriment to be caused by this practice, at least three conditions must be satisfied. First, access to such information must be restricted in a material way. Secondly, the lack of access to this information must have a detrimental effect on independent repairers. Finally, authorised repairers must exploit this situation by charging consumers higher prices than would result in a market with less restricted access to repair information.

'Right to Repair' campaigns suggest that independent repairers are disadvantaged by a lack of access to repair information. These repairers may have to turn customers away or subcontract to authorised repairers if certain types of repairs require access to repair information that is not available to independent repairers. Deficiencies in the availability of repair information, if they exist, may also have cost implications for independent repairers if repairs can be completed without access to proprietary repair information, but require more time-intensive diagnostic methods.

The cogency of these assertions depend on both the degree to which access to information is restricted and the extent to which a lack of information restricts the ability of independent repairers to service motor vehicles. Market observations indicate that independent repairers continue to operate despite any information advantages that authorised repairers may enjoy. Any disadvantage may be limited to specific repair types or cases. Further evidence would be required to establish a case that lack of access to information is having a significant impact on the market for motor vehicle repairs.

The *Productivity Commission Inquiry Report on Smash Repair and Insurance* reported data from the Australian Bureau of Statistics that car retailing in 1998-99 had an average operating profit margin of 1.3 per cent. Motor cycle dealing had an average operating margin of 4.9 per cent, automotive electrical services had an operating margin of 5.1 per cent and automotive repair and services 'not elsewhere classified' has an operating margin of 5.4 per cent⁴. Updated information on profit margins in vehicle retailing compared to vehicles repairs, if available, would assist CCAAC to better understand the structure of the motor vehicle industry.

The relatively low operating margins for car retailing may lead some weight to arguments that authorised repairs subsidise other car retailing operations. Further evidence of pricing practices within the automotive industry would assist CCAAC to determine whether policies on sharing of repair information result in consumer detriment.

If automotive manufacturers and importers use authorised repairs to subsidise car retailing and sharing of information were mandated, vehicle manufacturers or importers that rely on after sales servicing to subsidise vehicle costs may, depending on the prices charged for access to information, be disadvantaged to the benefit of independent repairers.

4 *Productivity Commission Inquiry Report on Smash Repair and Insurance*, March 2005, Table 2.3, pp. 20.

Alternatively, they might increase the purchase price of vehicles if opportunities to make profits from authorised repairs are restricted.

In theory, if consumers are aware that their ability to use an independent repairer is limited by issues associated with repair information, it would be possible for competitive automotive markets to operate on a 'whole of vehicle lifecycle' cost basis.

If this is the case, consumers would consider the cost of owning and operating a vehicle over its useful life when making a purchase decision. Consumers may be assisted in this regard by publications from motoring organisations that list the overall cost of ownership per week for different motor vehicles.⁵ If consumers have access to information about servicing costs, manufacturers would be expected to compete on the basis of whole of vehicle lifecycle cost.

Manufacturers and importers that offer lower cost repairs would be expected to gain a market advantage over those with higher repair costs as consumers favour the purchase of vehicles that are less expensive to repair. This might extend to manufacturers or importers that offer more open information sharing policies gaining a market advantage over other manufacturers or importers, if repair costs for particular brands of vehicle are lower due to those policies.

The effectiveness of this mechanism as a discipline on manufacturers and importers of motor vehicles is open to question, particularly given research that indicates that consumers often place greater emphasis on short-run costs or benefits over those experienced in the longer term⁶. In other words, manufacturers or importers may not be subject to effective market discipline if they charge both a relatively high initial purchase price for a vehicle and relatively high prices for repairs, as consumers will not pay sufficient attention to the long-run impact of high prices for repairs.

Consultation questions:

- 2.1 Is there evidence to suggest that technological changes related to the repair and maintenance of vehicles are likely to make it more difficult for independent repairers to participate in all aspects of motor vehicle repair in the future?
- 2.2 Is there evidence to suggest that a lack of access to repair information makes it difficult for independent repairers to complete certain repair types?
- 2.3 Is there evidence that manufacturers or importers of motor vehicles cross-subsidise vehicle purchase prices through profits made on authorised repairs or servicing?
- 2.4 Is there evidence to suggest that there are significant differences between vehicle brands or models in terms of repair or servicing costs? Is there evidence that consumers are aware of any significant differences in repair or servicing costs?

5 See, for example <http://www.racv.com.au/wps/wcm/connect/Internet/Primary/my+car/advice+information/vehicle+operating+costs>; and <http://www.mynrma.com.au/motoring/buy-sell/buying-advice/car-operating-costs.htm>.

6 See, for a comprehensive review of the literature on time preference, Frederick, S., Lowenstein, G. and T. O'Donoghue, Time Discounting and Time Preference: A Critical Review, *Journal of Economic Literature*, Vol XL, (June 2002), pp. 351-401.

PART III — CONSUMER IMPACTS

CHOICE OF REPAIRER AND MARKET IMPACTS

Where repair information is not available to independent repairers, choice may be restricted. If a vehicle repair requires repair information that is not available to an independent repairer, consumers would be forced to use an authorised repairer. This would lead to reduced choice as consumers are limited to only those repairers who have access to specialised information. This could lead to reduced competition which may inflate repair prices.

There are likely to be a range of price effects that extend beyond the automotive industry. To the extent that vehicle operating costs are incurred in the production process for other goods and services, those goods and services will reflect any increased costs associated with vehicle servicing. For example, a range of businesses involve the use of motor vehicles including couriers, taxi services, security firms, pathology services, real estate, and fast food delivery. However, these cost effects are likely to be mitigated by the negotiating power of fleet operators in respect of vehicle purchase and repair costs.

Technology and safety

The degree to which restricted access to repair information results in consumer detriment is likely to depend on the difficulties associated with the proper and safe repair of motor vehicles. These difficulties are likely to be amplified by the increasing importance of repair information due to technological changes. The AAAA canvasses these issues in its ‘Choice of Repairer’ campaign:

As vehicles become *more complex in their design* the need for the retail repair and service industry to have a highly skilled and trained workforce is paramount to ensuring that *vehicles are repaired and serviced appropriately and safely*. In addition to a requirement to have a sound knowledge of traditional automotive principles, employees must also have a *high level of competency in the rapidly emerging information technology* aspects of the automotive industry.

AAAA ‘Choice of Repairer’ campaign brochure (emphasis added) 24/05/2009⁷

These issues are important as consumers face a significant information disadvantage. Most consumers are likely to assume that a repair has been completed properly and that their vehicle is safe to drive. The Australian Consumer Law (ACL) provides consumer guarantees that require repairers to ensure the safety and reliability of repairs.⁸ Consumers are unable to identify, in advance, whether repair services have been properly undertaken. There is a risk that repairs crucial to the safety of a vehicle may not be made either due to an inability to identify a problem, or the inadequacy of attempted repairs.

⁷ See http://www.aaaa.com.au/cor/files/41083_COR_CAMPAIGN.pdf.

⁸ Section 54 of the ACL specifies that replacement parts must be of acceptable quality, and section 60 requires that services must be provided with due care and skill.

Whether access to repair information has safety implications is open to debate. Licensing and training requirements for independent repairers is likely ensure that safety is not compromised by lack of access to repair information. Stakeholders may wish to comment specifically on whether safety is a consideration that relates to information disadvantages experienced by independent repairers.

Consultation questions:

- 3.1 Is there evidence that consumers would benefit from independent repairers having improved access to repair information?
- 3.2 In particular, is there evidence to suggest that there is reduced choice or that consumers face higher prices for automotive repairs because independent repairers have restricted access to repair information?
- 3.3 Is there evidence to suggest that there are safety risks associated with withholding repair information from independent repairers?
- 3.4 Does evidence suggest that compulsory sharing of repair information would have adverse impacts on incentives to innovate in the maintenance and servicing of motor vehicles?
- 3.5 Is there evidence to suggest that repair costs for vehicles have flow on effects for production costs in other industries?

PART IV — BACKGROUND TO INTERNATIONAL APPROACHES

'Right to Repair' campaigns have been conducted by associations representing independent vehicle repairers in several nations. These campaigns have, in some instances, led to attempts to introduce regulations on access to repair information. The USA, EU and Canada, have each had regulations brought before their relevant legislative and regulatory institutions.

Support for legislation in the USA dissipated, at least in part, on account of the formation of a voluntary agreement. The EU approach involves regulations obliging vehicle manufacturers and importers to make repair information available to independent repairers. In Canada, a voluntary agreement was reached in response to proposed legislation.⁹

USA

Despite attempts dating back to 2001, the US has not enacted legislation dealing with access to repair information. The policy debate in the US began with the requirement for vehicle manufacturers to make available all repair information related to emissions control systems.¹⁰ This led to the standardisation of OBD systems and a call for greater information dissemination as the technology gained wider use.

In 2001 an attempt to legislate on this issue failed in part due to a voluntary agreement¹¹ made between the Automotive Service Association (ASA) and vehicle manufacturers represented by the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers.¹² This agreement allowed for the wider availability of information on a voluntary rather than regulatory basis. The implementation of this agreement saw a weakening of support for subsequent 'Right to Repair' Bills.

Repair information has been made available via the National Automotive Service Task Force (NASTF) as well as the vehicle manufacturers' technical websites.¹³ NASTF coordinates available information on its website and allows information to be requested where information gaps may exist. Individual manufacturers maintain websites that provide specific repair information for a fee. These fees vary depending on the nature of the information and the access period required.

9 Bill C-273 *An Act to Amend the Competition Act and the Canadian Environmental Protection Act, 1999 (right to repair)*

See <http://www.parl.gc.ca/HousePublications/Publication.aspx?Docid=3633850&file=4>.

10 *Clean Air Act Amendments of 1990*

See <http://thomas.loc.gov/cgi-bin/query/D?c101:6:./temp/~c1016WNAK9:>.

11 See http://lobby.la.psu.edu/107th/093_OBD_Service_Info/Organizational_Statements/AAM/AAM_agreement.htm.

12 H.R. 2735 [107th] *Motor Vehicles Owners' Right to Repair Act of 2001*

See <http://www.govtrack.us/congress/billtext.xpd?bill=h108-2735>.

13 http://www.nastf.org/files/public/NASTF_brochure_final.pdf.

Consultation questions:

- 4.1 What are the barriers to the formation of a similar agreement in Australia?
- 4.2 What are the advantages and disadvantages of a voluntary agreement compared with a regulatory approach?
- 4.3 How effective has the US agreement been in achieving its objectives and what lessons could Australia learn?

EUROPEAN UNION

The European Commission (EC) has introduced a competition law framework¹⁴ that rules on automotive industry issues. The preamble to the EU regulations specify that ‘competitive interaction’ should exist between authorised repair networks as well as independent repairers. It is stated that this depends on the ability for independent repairers to obtain ‘unrestricted access to ... technical information’.¹⁵

The manner in which repair information is made available to independent repairers forms a key element of the European policy. Repair information, as provided to authorised repairers, must be made available to independent repairers in a timely fashion and priced in a way that does not discourage its use (considering the extent to which repairers would use such information). Information must also be available for purchase independent of other products or information, that is, the bundling of information will not necessarily be acceptable in meeting the requirements of the regulations.

In practice, the approach of European manufacturers and importers has been to make information available on websites with a subscription model. For example, Toyota Motors Europe makes information available for a duration of between one hour and one year, for prices of €3 to €2,400, respectively.¹⁶ A subscription covers all vehicles sold by Toyota within Europe for the period of the subscription.

14 This framework includes: the *Vertical Restraints Block Exemption Regulation (EU) No. 330/2010* See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:102:0001:0007:EN:PDF> and the sector specific *Automotive Block Exemption Regulation (EU) No. 461/2010* See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:129:0052:0057:EN:PDF>.

15 *Automotive Block Exemption Regulation (EU) No. 461/2010 Paragraph 13* See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:129:0052:0057:EN:PDF>.

16 See www.toyota-tech.eu.

Consultation questions:

- 4.4 What are the advantages and disadvantages of similar legislation in an Australian context?
- 4.5 What are the local factors that might warrant the alteration — in the meaning and principle — of the EU regulations if they were to be adopted in Australia?
- 4.6 How effective have the EU regulations been in achieving their objectives and what lessons could Australia learn?

CANADA

A voluntary agreement between the National Automotive Trades Association (NATA), the Association of International Automobile Manufacturers of Canada (AIAMC) and the Canadian Vehicle Manufacturers' Association (CVMA) provided improved information access for independent repairers. The agreement formed the Canadian Automotive Service Information Standard (CASIS)¹⁷ and is modelled on the NASTF service information standards agreement in the US. It is apparent that this agreement was designed to limit the need to legislate on the matter.

Consultation questions:

- 4.7 Has the voluntary agreement been effective in achieving its objectives? What lessons could Australia learn?

¹⁷ See http://www.natacanada.ca/pdf/CASIS_EN.pdf.

PART V — OTHER ISSUES

INTELLECTUAL PROPERTY

A recurring theme in the international debate is the impact that regulatory approaches have on intellectual property rights.

In the US, concerns about intellectual property rights appear to be one of the main objections against proposals to legislate on the matter.¹⁸ One argument in favour of voluntary agreements holds that such an approach provides manufacturers with a safety net — such agreements avoid the scope for legislative overreach that may compel manufacturers to provide information beyond that required by independent repairers.

The European Commission considers repair information to include only information that is essential to the repair and maintenance of motor vehicles.¹⁹ Manufacturers are not required to provide intellectual property, trade secrets or any information that exists outside this definition. Despite this, there is no exception for information that serves a ‘dual purpose’.²⁰ For example, manufacturers may not be required to provide information related to component design; however, it may be required to provide assembly designs where this information is essential to the servicing of motor vehicles.

This issue is contentious where the information requirements of independent repairers overlap with the genuine intellectual property concerns of vehicle manufacturers. This may incur additional costs to vehicle manufacturers or potentially discourage innovation as intellectual property protections are weakened.

PRICING ISSUES

Mechanisms would be required to determine prices if any regulatory approach were to be adopted that requires vehicle manufacturers to provide repair information. As a general approach, Australian Governments do not regulate prices in non monopoly markets, given the distortionary effects of such interventions and the administrative costs of doing so. This raises its own challenges related to determining fair prices in a heterogeneous market. The determination of a fair price is also made difficult as the costs to the provider and the value to the user are unlikely to be the same.

Vehicle manufacturers are likely to argue that they should be adequately compensated. This will reduce the attractiveness of repair information where the price exceeds any benefit gained by independent repairers. Failing to compensate vehicle manufacturers appropriately will make them worse off. This would have wider consequences for the automotive market.

Further to this, any fees associated with the pricing of information would be passed on to consumers. Information access fees may be cross subsidised by repair types that do not require proprietary information. This could lead to higher prices, thus offsetting consumer

18 See <http://www.thetruthaboutcars.com/2011/04/right-to-repair-debate-returns-to-congress>.

19 *Automotive Block Exemption Regulation (EU) No. 461/2010 Paragraph 13*
See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:129:0052:0057:EN:PDF>.

20 *Automotive Block Exemption Regulation (EU) No. 715/2007 Paragraph 2, Article 6*
See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:171:0001:0016:EN:PDF>.

gains. On the other hand, it might be argued that transfers of funds between independent repairers and vehicle manufacturers are likely to be a 'zero sum game', with payments by independent repairers being approximately equal to receipts by manufacturers. However, a small loss may occur due to administrative and other transaction costs.

Another consideration in the design of any pricing regime relates to impacts on incentives to innovate. If vehicle manufacturers are required to share repair information at its cost of production, there would be little incentive to develop new techniques that reduce the cost of repairing vehicles.

Consultation questions:

- 5.1 If vehicle manufacturers were compelled to make repair information available, what factors should be considered when determining a fair price?
- 5.2 How should any price disputes be resolved?
- 5.3 Is there any evidence that negative impacts on innovation would flow from a requirement for manufacturers to provide repair information to independent repairers?

EXISTING LEGISLATION

Generic laws dealing with competition and intellectual property rights apply equally to the automotive industry as to any other sector of the economy. In general, these laws do not compel businesses to share information with other businesses and, in the case of intellectual property laws, assist businesses to prevent other persons from using such property without permission.

The Designs Act provides for the registration and protection of unique designs. Section 72 of the Designs Act provides that a design can be used to repair a complex product to restore its appearance, without infringing upon the rights of its owner. This provision may have application to the repair of panel damage to motor vehicles, as repairers are able to use designs to restore vehicles to their original appearance.

Part IV of the *Competition and Consumer Act 2010* (CCA) includes provisions that prohibit the misuse of market power. The CCA is generic law that applies to all sectors of the economy. Provisions of Part IV of the CCA that prohibit the misuse of market power are a long-standing feature of competition law in Australia. In general terms, these provisions provide that a person with a substantial degree of market power must not use that power for the purpose of eliminating or substantially damaging a competitor, preventing entry of a person into a market or deterring or preventing a person from engaging in competitive conduct in a market.

Some repair information may also be covered by copyright under the *Copyright Act 1968* or patents under the *Patents Act 1990*. Each of these Acts include comprehensive generic rules dealing with, amongst other things, requirements for registration, the time for which intellectual property rights are protected, fair dealing, allowable copying and licensing.