
Submission to the
Commonwealth Consumer
Affairs Advisory Council

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



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EXECUTIVE SUMMARY

The Federal Chamber of Automotive Industries (FCAI) contends that the current level of shared information relevant to motor vehicle maintenance and repair is adequate and appropriate. The necessary information required by independent repairers is already available. A wide range of service and repair manuals are provided through a variety of distribution options, including online, and suitable generic diagnostic equipment can be purchased freely.

In particular, the FCAI and its members do not support access to information beyond what is already available and brand specific tools related to security, safety and environmental repairs and servicing. It is essential access to security codes is restricted to the FCAI authorised dealer network to minimise the potential illegal and/or inappropriate application of these codes. Similarly, given the importance of safety to the driver and passengers in motor vehicles, it is critical that safety codes are only made available to authorised dealers to ensure there are no adverse safety implications resulting from inappropriate use of the safety codes, the vehicle remains roadworthy and warranty is not compromised. In relation to environmental codes the FCAI has similar concerns in that tight regulatory conditions may be compromised through inappropriate use of codes. Any increased access will lead to unjustified complex product liability issues for FCAI members and a reduction in consumer benefits at an increased cost.

The independent repair sector is calling for greater access to repair information and tools despite the fact that the information required to repair a motor vehicle and tools are generally available in Australia. In fact, a survey of Motor Trades Association of Queensland members found that those members were not willing to pay an additional modest contribution to their membership fees for direct access to the a database which contains repair information. Providing tools will not repair motor vehicles: independent repairers need to ensure their mechanics/technicians undertake ongoing training and development to ensure that they can repair motor vehicles using the information that is available.

In terms of information provided in the US and European market, the FCAI contends the level of detail provided in the Issues Paper is not sufficient and possibly misleading. A careful examination of the processes in both the US and Europe demonstrate information is already made available in Australia.

The CCAAC review seeks to examine whether the current system of information sharing results in consumer detriment. The industry believes that if a regulatory or legislative framework to share repair information is introduced it will result in increased costs to provide information to the independent repair sector, who would presumably seek to recover those costs in the form of higher prices to consumers. The flow on effect of this would be consumer detriment. The Issues Paper outlines three criteria which must be satisfied in order to show there is consumer detriment arising from the alleged failure to share information. It is the FCAI's view that these conditions are not satisfied as there is no consumer detriment from the current system of sharing of repair information.

The independent repair sector has not advanced any argument that demonstrates a need to provide access to other repair information. It has not provided any sound data or any credible evidence that demonstrates that there is consumer detriment arising from the current sharing of repair information.

By comparison, other industries, such as the pharmaceutical industry, enjoy protection on their investment in intellectual property for defined periods of time before the information and products they develop have to be divulged to competitors or potential competitors. The manufacturers and importers of motor vehicles should not be subject to harsher information sharing provisions than other industries.

Consumers in Australia can choose where to have their vehicle repaired and benefit from a highly competitive repair market, including strong price competition. Where there is no consumer detriment flowing from existing circumstances, it is not appropriate for the Government to intervene in a market to distort the competitive nature of that market to benefit one set of market participants over another, particularly in a way that will have significant flow on effects, for example on re-birthing of motor vehicles or implications in the Australian Consumer Law.

INTRODUCTION

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. This submission is made in response to the consultation questions posed in the Issues Paper released by the CCAAC on 15 July 2011.

The submission made by the Federal Chamber of Automotive Industries (FCAI) is on behalf of its members who include the manufacturers and importers of motor vehicles and motorcycles in Australia.

BACKGROUND ISSUES

Part I of the Issues Paper relates to the operation of the repair industry in Australia. The FCAI has provided the following information in response to the consultation questions.

NATURE OF THE INDUSTRY IN AUSTRALIA

The FCAI is the peak industry organisation representing vehicle manufacturers and importers of passenger vehicles, light commercial vehicles and motor cycles in Australia.

The automotive industry is a major contributor to Australia's lifestyle, economy and community and is Australia's largest manufacturing industry. The industry is wide-ranging – it incorporates importers, manufacturers, component manufacture and distribution, retailers, servicing, logistics and transport, including activity through Australian ports and transport hubs.

The Australian automotive sector exported some \$3.6 billion in vehicles and components in 2010 and annual turnover in the industry exceeds \$160 billion. At present, the industry directly employs around 60,000 people through Australia's three vehicle manufacturers, dozens of importers and thousands of related component manufacturers. Further, the automotive industry employs more than 400,000 people directly and indirectly throughout Australia. Around \$450,000 worth of product is generated per employee, a significant contribution to the Australian economy. The industry paid around \$3 billion in wages and salary in 2008/09 and since 2007 the industry has invested more than \$4.5 billion on research and development.

As the tariff barriers on automotive products have been removed through the negotiation of free trade agreements in the last decade or so, the number of vehicle brands and models in the Australian market has expanded. The average tariff rate is between 3 and 4%, which has come down from over 30% in the 1980s.

There are now over 60 brands in the Australian market, with just over one million new vehicle sales per year. That is a lot of brands to service a market of our size. By way of comparison there are around the same number of brands in Europe but with more than 15

million new vehicle sales and just 32 brands in the US that service more than 17 million new vehicle sales per year.

It has become much easier to afford a new car since the mid-1990s, as earnings growth has exceeded the movements in motor vehicles prices. Motor vehicles are more technologically advanced today than ever before. Whilst the structural changes in the Australian market, in terms of lower tariffs and more brands, has resulted in significant consumer benefits with improved affordability and choice it has also greatly increased the knowledge base required of repairers. The repair industry has had to change to compete in this global market place and cannot slow the rate of adoption of these technologies, or limit consumer choice.

The expansion of new and global brands and models into the market has led to the introduction of advanced security, safety and environmental features in motor vehicles. The introduction of these features is in response to increasingly strict environmental regulations and growing demands from consumers for advanced security and safety features. As an example, the number of 5 star ANCAP rated cars has grown from 0% to over 60% of vehicles tested over the past decade. In 2010, over three quarters of new vehicles sold in Australia were 4 or 5 star rated. A motor vehicle cannot be rated 5 star if it does not incorporate a range of safety features such as electronic stability control. It is critical these features are not compromised.

Vehicle brands face a range of pseudo regulations in the form of safety and environmental star ratings and buyer requirements. They face a range of competitive pressures to continually improve environmental performance and safety standards. For example, around 30-50% of vehicle sales are sold to governments and fleets that frequently require 5 star safety rating and/or 4 star green vehicle guide rating. If a vehicle model falls beneath these standards it is possible fleet managers will no longer include these vehicles in the pool of vehicles for purchase. The standards for both green vehicle guide and ANCAP are both being reviewed, and it will be increasingly difficult for these standards to be achieved.

AVAILABILITY OF INFORMATION

Manufacturers and importers of motor vehicles in Australia use a variety of media to distribute general repair information, from providing access to information via online pay per view systems, or in some cases for free, through to repair manuals in paper format. Through these varied distribution methods, the base level of information required to repair a vehicle is broadly available in Australia.

Some vehicle brands have a significant amount of information publically available. In many cases, it is as simple as contacting the relevant vehicle brand and outlining what information required. The FCAI maintains a page on its website to provide consumers or independent repairers with the relevant contact information for many FCAI members, enabling those inquiring about information to contact the relevant business unit within a manufacturer or importer.

Despite the fact that there is a broad range of repair information available, the independent repair sector is not availing itself of the opportunity to access this information. One

significant imposition in this regard is the failure of independent or aftermarket repairers to individually request the information they seek in the first place. The information reasonably necessary for the repair and maintenance of almost all FCAI members is available to independent repairers upon request. For years, the independent repair sector, through its representative bodies, has written to the FCAI seeking access to repair information. On each occasion, the FCAI has advised the independent repair sector (or its representatives) how the information may be obtained and the manner in which access to information should be requested. Many of the FCAI's members have advised that despite making a variety of repair information available, few are actually contacted by the independent repair sector seeking access to information which is the subject of the Australian Automotive Aftermarket Association (AAAA)'s campaign.

The VACC hosts a database for its members that contains extensive repair information on many brands, makes and models. The VACC is said to provide a service that can resolve inquiries on the first telephone call in 96% of cases. This would imply that the VACC database contains extensive information necessary to repair a motor vehicle in Australia that is available to anyone provided they pay a fee. At the recent *Vehicle Service and Repair Information Conference* held at Freight Week in Melbourne, Ian Field (Executive Director, Motor Trades Association of Queensland) referred to a survey undertaken of MTAQ members as to whether those members would pay an additional \$50 per year in membership fees to obtain direct access to the VACC telephone hotline and information database. The resounding response the MTAQ received from members was that they were not prepared to pay less than \$1 per week extra in membership fees to obtain greater access to repair information.

The implication of such a result is that either MTAQ members consider they already have sufficient access to repair information, or they do not wish to pay for greater access. In either case, such a result does not support the AAAA's contention that the independent repair sector requires greater access to information to repair vehicles.

If independent repairers in other states hold similar views to MTAQ members, and therefore are unwilling to pay such a small amount of money to access additional information, then this example highlights the case that there is information widely available at a reasonably cost, but that independent repairers do not wish to avail themselves of it. It supports the automotive industry's view that there is no case for seeking access to additional information, and that if the information were available for a reasonable fee, that the independent sector would be unlikely to want to pay for it.

The question also arises as to the level of currency of information held by the independent repairers and their willingness to continue to update the repair information they hold. The authorised dealer network, through their dealer agreements, are required to undertake ongoing investment in up-skilling their workforce and ensuring they have current repair information. It is clear from the MTAQ example that even if the industry were required to provide repair information in a different manner in Australia there is no guarantee that the independent repair sector would pay for the information, which would result in a significant sunk cost to industry.

INDUSTRY IMPACTS

There are likely to be significant impacts on the automotive industry if the current system of access to repair information is changed, in particular if the Government were to introduce a regulated framework. The imposition of regulatory requirements would see increased compliance costs to business, which would flow on to consumers in the form of higher prices to cover compliance costs. Further, if manufacturers and importers were required to provide access to tooling to independent repairers, this could not be provided in a common manner as each manufacturer or importer has its own brand specific diagnostic tools. Therefore any independent repairer, who does not specialise in repairing a few brands, would be required to pay significant infrastructure costs to purchase tooling equipment. This would mean the costs they charge to consumers to repair motor vehicles would be significantly more than the prices they currently charge.

In relation to the consultation question concerning cross subsidisation, the industry notes that any cross subsidisation that may occur is more a dealer initiated process rather than the manufacturer making a contribution to the dealer based solely on service performance. In this way, the higher performing sections of the business assist in the overall profitability to the business owner and in some cases support lesser performing business units. This is not any different to many other industries where downstream markets, including retail chains, cross subsidise within a business.

The Issues Paper questions whether there are significant differences in the cost of repair and maintenance of different models. The industry notes that prices to repair vehicles do differ across brands, and across models within brands, recognising that the market consists of vehicles from low cost, mid entry and luxury brands. Differences in maintenance intervals, vehicle specific service items, vehicle features and technology and service consumables utilised are the contributing factors to vehicle brand service costs.

Also, service costs vary between individual businesses (dealers and independent repairers alike) due to differences in overhead costs, labour rates, oil and fluid costs, local environmental costs etc. The variation in service costs is evidence of a range of factors that are incorporated in determining the price offered to consumers, including repair facilities, training costs to ensure mechanics/technicians are continuously updating their skills and the breadth of services that is offered to consumers. An example of the variation in repair fees is at Attachment A, which provides a screen shot of a website showing the ability of consumers to compare repair quotes across a range of repairs online.

In the absence of demonstrated consumer detriment, the industry does not consider that it is necessary to impose mechanisms for providing access to information that is already available. Making tools available will not in itself repair a car: repairers need to invest resources to undertake ongoing training to ensure mechanics/technicians have the necessary skills to use information and tools to repair motor vehicles. All of this means higher costs to the consumer.

WHAT INFORMATION IS REQUIRED TO SERVICE A VEHICLE?

The FCAI is not aware of any evidence to suggest that there is a “lack of access” to repair information, or corresponding difficulty by independent repairers to conduct servicing or repairs. FCAI members do not directly receive many requests for access to repair information from independent repairers.

Given the highly competitive market that exists for the repair of motor vehicles in Australia, the FCAI considers that the provision of information to authorised dealers does not act as a barrier to entry in the market, having regard to the broad range of repair information already available to assist in the repair a motor vehicle. In fact many trade magazines and motor vehicle publications provide very specific details to repair different makes and models of motor vehicles.

Although brand specific tools can assist in the repair of a particular motor vehicle, independent repairers can use generic tools, rather than brand specific tooling to undertake repairs. The industry contends however that despite access to information and tools, an important aspect of using manufacturer service information to repair motor vehicles lies in ongoing training, an area which many independent repairers appear not to invest. Anecdotal evidence provided to the FCAI suggests that independent repairers often have the relevant information and necessary tools to diagnose an issue with a motor vehicle, but it is the skills and knowledge about how to repair the issue that is the problem and that independent repairers turn to the authorised dealer network expecting assistance to fix the problem without necessarily providing all relevant technical information.

In fact, some of the advertising by independent repairers claim that they are able to carry out comprehensive repairs, including log book servicing, at very competitive prices. Such claims imply that the independent repairers already have access to the information that they require to repair vehicles which runs counter to the arguments they have advanced in their ‘choice of repairer’ campaigns, for examples see **Attachment A**.

GENERIC TOOLS

Separate to what is available from the industry, repairers are able to purchase generic on-board diagnostic (OBD) tools which are widely available. Also, many manufacturer OBD tools are widely available. For more information on generic tools, see the article at Attachment B. These tools allow repairers to understand the system/components that require repair, and the area involved, allowing detailed testing of individual components. Advances in generic repair tools allow independent repairers to diagnose repair issues and to conduct basic repairs and maintenance on most current model motor vehicles. The campaign by the independent repair sector seeks access to advanced diagnostic equipment, but this is not supported by any evidence to suggest why such tools are specifically required, or the percentage of repairs that require advanced tools.

By way of example, some authorised dealer networks use standard industry spec OBD codes which can be scanned and read by any current tool available to the independents. From the OBD codes, there are generally a set of brand specific codes which are listed in that brands

repair manuals, which means that provided the independent repairer has purchased the repair manual and has generic tools, they are able to interpret what needs to be repaired. The next range of codes, of which there are a very small subset, relate to security codes. As outlined below, these are generally only available within the authorised dealer network otherwise security of motor vehicles may be compromised.

Diagnosis and repair of complex vehicle electrical systems can be performed with commercially available tools as long as the person conducting the test is aware of the system being tested and the correct application of test equipment. In this regard, ongoing training, as discussed below, is an essential component in the repair of motor vehicles. The tools merely outline where a problem lies in a motor vehicles: it is through ongoing training and enhancing skills that a mechanic/technician knows how to repair motor vehicles. An example of generic equipment that is available is at **Attachment B**.

In addition, some third party suppliers access the information available from manufacturers and collate it in a form that enables a repairer to access information for a range of vehicle brands from one source. An example of the website of one of these providers is at **Attachment C** – Boyce’s Auto Library: <http://www.autolibrary.com.au/index.html>.

ONGOING TRAINING

The independent repair sector, just like the authorised dealer network, is affected by technological advances. Both need to adapt and update skills in order to be able to repair new vehicles. Both must undertake continual training and learning regarding new repair procedures to stay up to date with technological changes related to the repair and maintenance of new vehicles.

In most cases, FCAI members only offer training within their dealer network, as it takes a significant investment to support training. Whilst information and training sessions are delivered for independent repairer staff by various independent providers (often using information provided by manufacturers) the industry believes that only a very small proportion of motor vehicle mechanics in the independent repair rarely undertake training after obtaining their Certificate III, and in the cases where they do, it is generally for specific aspects of servicing, such as being able to conduct road worthy tests.

In addition to providing technical support to authorised dealers, many FCAI members require their authorised dealers to attend brand specific training and demonstrations to ensure that they are able to repair motor vehicles appropriately and safely. It is important to note that when discussing safety in this context, it is considering the perspective of both the customer and the service operator, and the wider safety of the community in ensuring safe motor vehicles are on the road.

As motor vehicles become more technologically advanced in their design, for example to include hybrid models, it is reasonable to assume that independent repairers will be required to significantly increase their knowledge base to ensure that they are capable of competently carrying out repair and servicing of such vehicles.

Providing ongoing training and education is an expected cost of doing business, which all repairers are subject to. It is not reasonable to expect manufacturers to be directly responsible for the ongoing training and education requirements of market participants with which they have no relationship. In some cases, manufacturers have already partnered with TAFEs, in which those manufacturers provide information, tools and equipment for use in courses by TAFE participants, including technical assistance and staff. Despite this, there is not a significant uptake of this training.

It is the responsibility of each independent repairer to provide for the training and education of their employees, including mechanics and technicians. If the independent repair sector considers that training opportunities are inadequate, then it should work with the federal and state/territory governments to ensure there is adequate funding for TAFE courses and training.

IMPLICATIONS OF UNFETTERED ACCESS

In order to demonstrate why certain categories of information are not provided to all repairers, it is necessary to consider some examples of the implications of providing unrestricted access to categories of information. The industry does not support access to specific codes that would facilitate the misuse or misapplication of those codes, or modification of vehicle, in a way that breaches the Australian Design Rules (ADRs).

SECURITY CODES

The inappropriate use of security codes can have significant effects on consumers in terms of other downstream products that are purchased that are associated with a motor vehicle. For example, allowing any person to access security codes, even for a fee, may enable the inappropriate use of access codes to re-keying information for vehicles. Re-keying could facilitate re-birthing activities, which would have flow-on effects in the price consumers pay for insurance and safety issues caused by re-birthing motor vehicles on the road.

Since 2001 there has been a reduction of more than 60 per cent in vehicle theft volumes. The National Motor Vehicle Theft Reduction Council (NMVTRC) believes secure vehicle design to be the major contributing factor to this reduction. An independent, expert assessment of the economic benefits of Australia's reduction in vehicle crime conducted for the NMVTRC in 2008 valued the savings to the community at more than \$800 million.

The vehicle maintenance and repair markets provide opportunities to launder stolen parts and there is anecdotal evidence that in parts of Europe cloned or illicitly acquired/accessed OEM electronic diagnostics equipment has been used to re-program vehicle security systems, including keys. Police require detailed information in identifying and solving vehicle crime and it is important this information is held tightly by the industry in order to assist in fighting this crime.

The NMVTRC is seeking to develop more robust and nationally consistent vehicle inspection arrangements for repairable write-offs and is proposing that key security and safety systems can only be tested and certified by a vehicle manufacturer's dealer or manufacturer

approved agent in exceptional circumstances such as remote areas. The proposed list of systems currently includes ABS, traction control, stability control, SRS and seat belt pretensioners.

SAFETY CODES

Providing access to safety codes has serious implications. For instance, having access to safety codes could enable a repairer to use the calibration data to prevent malfunction lamps illuminating to bypass defective safety equipment, such as airbags and seatbelt pretensioners. In this example, usually the malfunction light will illuminate when there is either a component defect, excessive resistance or an open electrical circuit.

The concern for the industry, and downstream in the market for consumers, is that a repairer does not access the data and simply switch the warning lamp off without rectifying the root cause of the problem. Repairers that would be able to access this level of information without any appropriate authority or obligation to ensure that repairs were being made in an appropriate and safe manner puts consumers, and the wider community, at risk. There are stringent requirements in dealer agreements that enable manufacturers to ensure that high standards of repair are met and information is used in an appropriate manner. By contrast, if information of this nature were available without this level of oversight, the community and road users may be put at risk.

ENVIRONMENTAL CODES

Some manufacturers commonly see issues where independent repairers reverse engineer the powertrain software calibrations and break/reprogram the software algorithms which then mean the vehicle no longer meets the Australian Design Rules, as required by regulation. The industry does not wish to be in a position whereby the information for which they are responsible is put into the hands of others which makes it easier for repairers to make modifications in a way that means that a vehicle is no longer able to pass a roadworthy test and compromises the vehicle warranty coverage. Altering the performance of a vehicle by altering the software calibrations can also cause damage to the vehicle's mechanical systems as the factory software is pre-programmed to operate within the mechanical limits of the vehicle. There are serious and complex product liability issues that would likely flow from this. It is not appropriate that the FCAI's members bear the potential liability where they have no ability to ensure that the information available is used in a manner that was intended by the manufacturers, compared with the framework for quality assurance and compliance checks within the authorised dealer network.

COMPLIANCE CONCERNS

The current voluntary system for the provision of repair information does not impose excessive compliance burdens on either the provider or the recipient of information. The benefit of this is that it keeps costs to business down, resulting in no flow-on price effects to consumers.

If the status quo were to change, it would have wide-reaching implications for the industry. For example, from an industry perspective, the liability attaching to defective repairs may fall back towards the manufacturer. Whilst there is an obvious financial impact arising from such an issue, the unquantifiable (potential) damage to a manufacturer's brand is of key concern. This situation may arise where repairers have obtained access to information which they do not have the training or skills to competently use, or may in fact be incorrect or not current, resulting in flawed repairs. In order to ensure that quality and safety remain paramount and in accordance with a manufacturer's or importers philosophy, authorised dealers are subject to regular audit and compliance reviews. In addition, the authorised dealer network enables manufacturers to receive consumer feedback about service and repair experience, which can ensure that any concerns are addressed by the manufacturer. Without such a framework, the suppliers of motor vehicles in Australia would have no way of ensuring that repairers are meeting the necessary standards required to properly repair a motor vehicle.

The above points are likely to lead to subsequent product liability issues (which will fall to the manufacturer) and ultimately compromise consumer safety. Implementation of industry and brand wide standards and having the ability to hold independent repairers to account for the standard of their work would be necessary to overcome these issues. In doing so, there would be increased manufacturer costs associated with implementing such programs, creating the need for additional resources. These costs will presumably be funded by independent repairers with increases likely to be passed onto the end customer.

A separate issue not previously noted is that of safety recall repairs. It is essential that this category of repairs is carried out by the manufacturers through their dealer network, having regard to the requirements that exist under existing legislation such as the Australian Consumer Law (ACL). There is an obligation on manufacturers to report incidents that relate to product safety concerns. This obligation may be hampered where they are not being made aware of the issues in the first place through independent repairers. The ACL requires that manufacturers be responsible for the repair of recalled products and the only guarantee that this can be done to the standard required is for the manufacturers to ensure the quality of repairs through its dealer network. Brand image and reputation and future sales earnings could be damaged if manufacturers and imports shared product recall issues with independent repairers who do not have a vested interest in the product, or maintaining a long term customer relationship, or in fact the independent repairers do not have the skills necessary to undertake the workmanship.

CONSUMER IMPACT

The Issues Paper states on page 6 that 'where repair information is not available to independent repairers, choice may be restricted'. The industry disputes that repair information is not made available to independent repairers and has noted above the extent to which information is broadly available in Australia. Further, the Issues Paper states on page 4 that 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. The Issues Paper says that '[F]or consumer detriment to be caused by this practice, at least three conditions must be satisfied:

1. Access to such information must be restricted in a material way
2. The lack of access to this information must have a detrimental effect on independent repairers, and
3. Authorised repairers must exploit this situation by charging consumers higher prices than would result in a market with less restricted access to repair information.

The market for the repair of motor vehicles is highly competitive. There are currently seven independent repairers for every one authorised dealer in Australia. Authorised dealers, particularly those in metropolitan areas, must compete with other authorised dealers within their own brand network to repair motor vehicles, in addition to competing with the independent sector. The FCAI submits that there is no consumer detriment arising from the current system of information sharing: the above conditions stipulated in the Issues Paper cannot be substantiated by the independent repair sector.

CHOICE NOT RESTRICTED

Consumers have a wide variety of choice when it comes to selecting a repairer for their motor vehicle, for example consumers can choose from an authorised repairer of their brand, a trusted authorised repairer of another brand or the independent repair sector.

There are a number of websites and other sources of information available to consumers to assist them in researching repair costs prior to seeking repair of a vehicle. For example, consumers are able to undertake an online price comparison of repair costs by using websites such as <http://www.fixedpricecarservice.com.au/>. Examples of this may be found at **Attachment D**.

Many independent repairers advertise that they can perform “manufacturer log book servicing” so one assumes that the independent repairers already have access to all the information required to perform the service in accordance with manufacturer requirements. If not, the FCAI would be concerned about the misleading nature of such advertisements.

There are a number of independent businesses in the repair industry that specialise in repairing a small number, or in fact a single brand. There are also a number of independent businesses who choose to specialise in a particular type of repair, such as engine re-builds and transmissions. These businesses have existed in the industry for years and in some cases decades. Their ability to survive, and thrive, suggests that there is sufficient information available. In some cases, the authorised dealer networks may use these service providers to undertake specialist repairs in circumstances where the dealer network may not have the technical skills within their dealer workshop to undertake the repairs.

As choice is not restricted and consumers are offered various repair options at competitive prices, there is no credible argument that consumers are suffering any detriment as a result of the current availability of repair information to the independent sector.

IMPORTANT SAFETY CONSIDERATIONS

The industry has serious concerns about the possible safety implications of providing access to any repairer without any assurance as to the skill level of those using the information. Most current motor vehicles utilise components and technologies that have similar basic principles which means that repairers trained on a specific vehicle type may be able to apply their knowledge over a number of different vehicle types. There is however a risk for anyone unfamiliar with the basic principles of the systems that they are working with in terms of an inability to repair a vehicle, particularly around safety and environmental repair.

Providing repair information will require the reader to be able to accurately interpret the information and apply it in the intended method, something that is not always possible if the skills of the interpreter are not to the required level. Indeed it was recognised at the recent VACC conference that some independent repairers in the industry did not see a need for ongoing training and development and considered that it would be as simple as reading codes to determine what needed to be fixed. This mentality will result in someone dying on Australian roads. The industry believes that providing unfettered access to repair information puts individual consumers, and the wider community, at risk by providing repairers who do not have the necessary skills to repair vehicles without compulsorily being required to meet any manufacturer, or industry, standard.

If changes to the way in which repair information is made available enabled independent repairers to claim/advertise 'same capabilities as your dealer or as providing genuine service', then the industry considers that there should be a regulatory framework to ensure that the manufacturers' requirements for 'genuine' service, including genuine parts, and comprehensive and ongoing training are adhered. This framework would be important as ultimately it is the manufacturer who will be required to demonstrate that and bear the cost of proving that a failure related to incomplete or non-compliant 'genuine services'. Within the dealer network, manufacturers have the ability to ensure the provision of genuine service through monitoring and auditing dealers and ensuring dealer staff are suitably trained. The industry should not be expected to bear the risk, nor bear the cost of up-skilling and providing ongoing training, of independent service providers when it is not practical, or desirable for the industry to enforce repair quality to manufacturers' required standards.

It is not as simple as the independent repair sector saying that repairers who do not repair a vehicle to standard will bear the responsibility of rectifying any mistakes that are made, as consumers will always expect the manufacturer to resolve faults on their vehicle.

INCREASED COSTS TO CONSUMERS

The FCAI believes that if the Government were to impose a legislative framework for greater sharing of repair information the costs of complying with the framework would be borne by consumers. The industry would also expect that the Government's framework would include provision for ensuring that the independent repair sector would be required to comply with manufacturer standards for repair. This type of framework would be a large administrative and financial burden to administer, and to review the quality of repairs

performed outside the authorised dealer network including having to increase the number of staff in the technical, call centre, compliance and parts departments.

The industry believes that introducing a legislative framework must result in increased costs for independent repairers especially as these repairers should be required to pay for all the costs that an authorised dealer would be subject to including:

- license fees and other monthly and annual charges
- mandatory purchase of genuine tools and equipment (including manufacturer specific diagnostic equipment
- establishment and maintenance of the distribution network to supply genuine parts and accessories, and
- attending technical training sessions.

The increased burden for independent repairers is likely to result in increased prices being charged to the consumer in order to recover costs. This would be detrimental to the consumer.

The industry objects to the implementation of legislation requiring vehicle manufacturers and importers to provide repair information in specific formats that are desirable to the independent sector. Imposing infrastructure costs on individual manufactures and importers is not the role of Government. It is not appropriate for the Government to intervene in a market to correct a perceived failure by some market participants, without any evidence corroborating their claims. There is no proven detriment to consumers and as such the industry does not consider there is any need for the Government to intervene in the market.

INTERNATIONAL APPROACHES

The Issues Paper sets out the frameworks for the provision of repair information in the United States, Canada and Europe. In the FCAI's view the Issues Paper does not accurately describe the frameworks as they exist in practice, in particular failing to note the extensive regulation that exists to ensure the provision of information and the parameters that exist for the use of this information. In the case of the United States, the Issues Paper fails to acknowledge that there are regulatory bodies that are responsible for the enforcement of information sharing. In contrast, the Issues Paper does not address the fact that independent repairers must meet certain manufacturer repair standards in order to obtain access to information, tooling and training.

The FCAI recommends that the CCAAC seek further detailed information from appropriate organisations in the United States and Europe to obtain a more comprehensive understanding of the regimes that exist in those jurisdictions and the impact the conditions that exist in those jurisdictions have on the sharing of repair information. The industry provides the following overviews in this regard.

THE NORTH AMERICAN APPROACH

In the 1990s a legal requirement, regulated by the United States Environmental Protection Agency, provided that all repairers should be given access to information that would enable them to service or repair the 'environmental' aspects of a motor vehicle to ensure that the vehicle complied with environmental regulations. This arrangement exists today, and the EPA is charged with providing a regime to ensure access to information. The information is paid for by repairers and it is the EPA that determines whether a price charged by a manufacturer for its information is fair or not. Manufacturers are free to set whatever price they consider appropriate, and the EPA reviews the charges only where complaints are made.

Over time, certain sectors of the service and repair market sought greater access to repair information, with a significant push by one sector to have legislation passed that would require manufacturers to provide to other market participants detailed information, such as the specifications of spare parts. Put simply, they wanted the relevant details that would enable them to manufacture spare parts for motor vehicles based on the exact specifications the manufacturers themselves use.

While there is still no legislation in place that provides for this, the debate continues. While at the height of the debate during the early 2000s, the repair sector and the manufacturers entered an agreement which enables repairers, including in many instances repairers in any country around the world, to pay to access information from manufacturers. The National Automotive Service Task Force was born out of this agreement.

What does this mean in Australia? Provided you have access to a credit card and the internet, repairers in Australia are able to access some repair information of manufacturers in the US. But not all repair information is available in the United States, as suggested by the Issues Paper.

For example, a whole separate regime governing access to information to re-key vehicles had to be established to ensure that the information is not misused. In short, the US has established a register for approved locksmiths, operated under the ALOA, which conducts background checks and police checks to ensure the locksmith seeking approval has no criminal history or convictions. Once registered, the locksmith is able to apply to access security codes to re-key vehicles for owners as required. Where a request is made to a manufacturer, the manufacturer checks the ALOA register and if approved, will send the relevant details to the locksmith to enable a new key to be cut. While this process occurs, a record of the transaction is sent to the National Insurance Crime Bureau to track transactions and enable vehicles that are reported as stolen, that have recently been re-keyed, to be traced.

In respect of the training that the Issues Paper refers to, the training made available in the US is limited. For example, the independent repair sector is not able to get access to the dealer clinics or the technical hotlines of all manufacturers.

To establish a regulatory system that would enable 'defined' access to material that is already generally available would significantly increase the burden on businesses at all levels in the supply chain and increase compliance costs, or the costs of doing business. The only direction this can lead is increased costs to consumers.

In the absence of a demonstrated need to access information in a form other than what is currently available, the industry questions why the Government would seek to increase the burden on manufactures and importers to supply information in a manner, and at additional cost, where there is no benefit to consumers, but a likely detriment in the form of increased repair costs.

THE EUROPEAN APPROACH

The regulated system of information sharing in the European Union is overseen by the European Commission. The first Block Exemption Regulation (EC 1400/2002) entered in to force in Europe in October 2002. This objective of this Regulation was to ensure greater competition in the automotive sector. The Regulation expired in May 2010 and was replaced by a new Block Exemption Regulation (EC 461/2010) which came in to force on 1 June 2010 and expires on 31 May 2013. EC 461/2010 is essentially a framework that imposes basic competition principles for the provision of repair and maintenance information to independent repairers to the same level as that of the authorised repairers for a cost that is reasonable and proportionate.

The Supplementary Guidelines released by the European Commission note the in-depth market analysis that was undertaken in the form of the Evaluation Report on the operation of Commission Regulation (EC) No 1400/2002 of 28 May 2008 and the Commission Communication on The Future Competition Law Framework applicable to the Motor Vehicle Sector of 22 July 2009.¹ No such in-depth analysis of the market, save for the consumer detriment review being conducted by CCAAC, is being proposed in Australia.

While the framework broadly provides for unrestricted access to information, there are 'conditions' which independent repairs must comply with. For example, independent repairers must be required to carry out repairs to the manufacturers standard. Further, the Block Exemption EC 461/2010 provides that manufacturers may request repairs covered by the warranty, and paid for by the manufacturer, to be carried out within the authorised network.² The Block Exemption does note that there is a difference between technical information and commercial information, which may be kept confidential by the manufacturers. For example, information on the design, production process or the materials used for manufacturing a spare part should not be considered to fall within this category, and may therefore be withheld.

There is an appropriate balance in the European system that means manufacturers have a right to ensure that the repairs that are undertaken by the independent repairers using their

¹ [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010XC0528\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010XC0528(01):EN:NOT)

² <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/619&format=HTML&aged=0&language=EN&uiLanguage=en>

tools and information are of an adequate standard, and that the repairer continues to invest in training.

Recently at the *Vehicle Service and Repair Information Conference* hosted by the VACC, John Mellor, a well-respected automotive industry expert, noted that the campaign for repair information had not yielded the information that the independent sector had sought. Mr Mellor noted that in undertaking research to prepare for the Conference he had spoken with manufacturers in Europe regarding their experiences. Mr Mellor said that very few independent repairers had taken up the offer to access information and tooling because of the requirements to meet manufacturer standards.

OTHER ISSUES

The Issues Paper outlines three additional aspects on which information and views are sought: competition, consumer protection and intellectual property.

COMPETITION LAW

Competitive markets deliver better choices for consumers, a wider range of goods and services, lower prices and encourages innovation and development. In the context of the automotive repair industry, who benefits from such a competitive market? Consumers, as they get a wider choice of repairer and at a very competitive price.

The regulator of competition, the Australian Competition and Consumer Commission, has a mandated role to make markets work i.e. to ensure competition. The object of the legislation governing competition and consumer law in Australia is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection. But this does not mean that it should protect sectors of a market from competitive forces. Intervention is not preferred unless there is a demonstrated market failure.

It is not appropriate for the Government to mandate access to the intellectual property of manufacturers and importers by requiring them to engage in a regulated system to provide repair information. It would not be appropriate for the Government to recommend legislation without undertaking a Regulatory Impact Statement. There has been a legislative framework in place since the 1970s in the form of the *Competition and Consumer Act 2010* (formerly the *Trade Practices Act 1974*).

Businesses, provided they do not breach competition laws, are free to decide what information to share. What other industry sector is required to provide unrestricted access to downstream markets, including access to IP, even for a fee? The independent repair sector is seeking to directly benefit from the significant investment in product development and vehicle systems at no cost to them, without any compensation to those making the initial investment.

What the AAAA is asking for is access to information to benefit its own members, not to benefit consumers. The Information that independent repairers require is already widely

available and as evidenced by the recent survey conducted by the MTAQ, some independent repairers are not prepared to pay very modest sums of money to access this information. It should not be up to the industry to subsidise the investment of other market participants.

CONSUMER PROTECTION LAW

In recent years the Australian Government has amended the consumer laws in Australia to provide a single, Australia wide consumer law, the ACL which is contained in schedule 2 of the *Competition and Consumer Act 2010*. The purpose of the law is to provide a framework to protect the interests of consumers, not to protect competitors from vigorous competition in a market: it should not be up to the industry to subsidise competitors in downstream markets.

The ACL provides comprehensive laws regarding the rights and obligations of consumers and business in the purchase of goods and services, repair of those goods and services and provides a regime for consumers to seek remedies for warranty issues.

One of the consequences of the implementation of the ACL is the streamlined liability attaching to manufacturers and suppliers of products and service to resolve consumer issues. The industry has genuine concerns that within the current system of sharing of repair information, there is no regulatory framework imposing conditions on independent repairs to meet manufacturer repair standards. Under the ACL, this may expose manufacturers and importers to liability issues with respect to repairs that are carried out by independent repairers, where consumers seek to join manufacturers and importers in any consumer claims. The impact of this is that despite the fact that the manufacturer or importer had no part in the repair of the motor vehicle, the ACL imposes obligations on them to rectify consumer issues (as the provider of the product in to the market). If the manufacturers and importers were required to change the manner in which they make repair information available, the ACL would require amendment to ensure that the independent repair sector would be held accountable for product liability issues that they cause in the defective repair of motor vehicle and that the manufacturers and importers were not liable for the defective work of other service providers.

The claims made by the independent repair sector for access to information and tools ignores the fact that it is not simply a matter of handing over information and tools to repair a motor vehicle: repairers need to have the competencies, and undertake ongoing training, to ensure they repair motor vehicles in an appropriate manner to avoid consumer protection and product liability issues.

INTELLECTUAL PROPERTY

With respect to intellectual property issues, the FCAI notes the following. Many motor vehicles sold in the Australian market are manufactured overseas and as such all repair information pertaining to those motor vehicles are independently developed by the overseas manufacturer, which is almost always a separate legal entity to the Australian entity (even if, in some cases, the Australian company may be a subsidiary or a related company of the manufacturer). The development of such information can be very expensive

and requires the deployment of significant intellectual resources. The FCAI believes that the introduction of legislation providing/requiring unfettered access to information to independent repairers may raise extra jurisdiction issues, as, for the reasons already outlined in this submission, overseas manufacturers may be concerned about additional product liability exposure that may come with providing full and unfettered access to all repair information.

Further, the overseas manufacturers may become less willing to provide full disclosure to “all” repair information to their Australian counterparts, for fear that such information may find its way into the hands of untrained or unskilled repairers who may use the information improperly. In this way, such legislation may in fact act as a disincentive for overseas manufacturers to develop and comprehensively disclose all repair information to the Australian market.

By comparison, other industries, such as the pharmaceutical industry, enjoy protection on their investment in intellectual property for defined periods of time before the information and products they develop have to be divulged to competitors or potential competitors. The manufacturers and importers of motor vehicles should not be subject to harsher information sharing provisions than other industries.

CONCLUSION

The FCAI presumes that the key policy objective of introducing legislation requiring full and unfettered access to repair information to the independent repair network would be to promote competition in the motor vehicle service and repair market. If this is correct, the FCAI contends that such legislation is unnecessary as the market for the servicing and repair of motor vehicles is already highly competitive. In particular the FCAI submits that the current levels of access to repair information provided by its members are more than sufficient to ensure that competition remains strong. In fact, many independent repairers advertise that they can perform “manufacturer log book servicing”. Based on this claim, one can reasonably assume that the independent repairers already have access to all the information required to perform the service in accordance with manufacturer requirements. If not, the FCAI would be concerned about the misleading nature of such advertisements.

Manufacturers and importers should not be responsible for any non-authorized repairer’s workmanship and or subsequent repair costs associated with repair or part failures caused by non-franchised repairers or the use of parts other than genuine parts or lubricants purchased from an authorized dealer. The Australian Consumer Law framework ultimately requires that the manufacturer or importer bear the responsibility of any defective product, but to do so in a situation where an independent repairer has the ability to repair a vehicle without meeting any standard to ensure workmanship would be counterintuitive.

As outlined previously, manufacturers and importers supplying motor vehicles in Australia each operate under their own model of providing access to information which is typically mandated by the parent company. It should be noted that in most instances, the parent company controls what information is provided in the Australian market, and may require the Australian subsidiary to make a financial contribution to the parent company for access

to information or alternatively stipulates the manner in which information is to be provided in Australia. Any such financial contribution would be passed on to the independent repairer and ultimately the consumer. This holds true for any financial impact associated with any mandated requirement in respect of repair information sharing whether it concerns service manuals, tools or data and training.

If the CCAAC were to recommend a different regime of access to information, the industry considers, having regard to the issues raised in this submission, it is not appropriate for any organisation, regulatory or otherwise, to determine what price should be charged by any of the manufacturers or importers for access to their repair information.

The independent repair sector has not advanced any argument that demonstrates a need to provide access to other repair information. It has not provided any sound data or any credible evidence that demonstrates that there is consumer detriment arising from the current sharing of repair information.