



29 January 2021

Mandatory Motor Vehicles Scheme
Market Conduct Division
The Treasury
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To: Mandatory Motor Vehicles Scheme Team

EXPOSURE DRAFT
Competition and Consumer Amendment
(Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2020

1. Introduction

1.1 The Motor Trades Association Queensland (MTA – Queensland or the Association) is pleased to respond to your request for feedback and comments on the *Exposure Draft (Mandatory Vehicle Service Repair Information Sharing Scheme) Bill* (the Scheme or the draft Bill).

1.2 The comments presented in this submission are substantially confined to the views and issues from the perspective of MTA Queensland's Members.

1.3 The Bill sets the framework for the broader industry, including Registered Training Organisations (RTOs) to access repair and maintenance information. The Association's MTA Institute (MTAI) is a registered RTO (No 31529) servicing the field of vocational education of automotive traineeships and apprenticeships. The MTAI originated in 1975, when the Association established a dedicated training entity to provide the sector with the skill sets required to meet current and forecast demands. In 1997, as a consequence of the deregulation of the vocational training market, the MTAI became an RTO.

1.4 Over the past 46 years, a co-operative relationship has grown between Queensland's motor vehicle sector and automotive product suppliers and the MTAI enabling the delivery of leading-edge courses to students and providing the automotive value chain and industry with a skilled workforce. This provides a unique capacity to provide industry insight into the workings of the scheme.

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2. Exposure Draft Summary

2.1 The Exposure Draft Explanatory Memorandum provides a summary of the proposed provisions:

2.1.1 The scheme imposes obligations on data providers to:

- publicly offer to supply information used for conducting diagnostic, service or repair activities in relation to certain vehicles to all Australian repairers and RTOs;
- charge no more than the fair market value for the information; and
- supply scheme information within two business days of the repairer having paid the agreed price.

2.1.2 Failure to comply with these obligations can attract a maximum pecuniary penalty of \$10 million for a body corporate.

2.1.3 Data providers also have to:

- restrict access to safety and security information to those who meet specified access criteria and keep records of access;
- protect sensitive personal information collected under the scheme; and
- pay compensation to any third parties that hold copyright in relation to scheme information for the supply of that information.

2.1.4 The scheme also establishes the role of scheme adviser, who facilitates dispute resolution and sharing of information about the scheme.

2.1.5 The scheme provides for the making of scheme rules to enable the Minister to prescribe technical details about the coverage of the scheme, update the scheme as necessary to ensure it keeps pace with technology and deal promptly with attempts to frustrate the scheme. These rules will be a disallowable legislative instrument, which are subject to Parliamentary scrutiny.

3. Draft Bill - objects

3.1 The Association has considered the Exposure Draft and supports in principle the policy objects:

- (a) promote competition between Australian repairers of passenger and light goods motor vehicles and establish a fair playing field by mandating access to diagnostic, repair and servicing information on fair and reasonable commercial terms; and
- (b) enable consumers to have those vehicles repaired by an Australian repairer of their choice who can provide effective and safe services; and
- (c) encourage the provision of accessible and affordable diagnostic, repair and servicing information to Australian repairers, and to registered training organisations (for training purposes); and
- (d) protect safety and security information about those vehicles to ensure the safety and security of consumers, information users and the general public; and
- (e) provide for the resolution of disputes about the terms and servicing information for those vehicles and other matters.

4. Overview

4.1 The draft Bill sets a new business paradigm for the automotive value chain by establishing a scheme that mandates Overseas Equipment Manufacturers (OEMs) under specific criteria to the sharing of motor vehicle service and repair information to Australian repairers and RTOs. The 'pricing' and sharing of diagnostic

and repair information for warranted new and late model vehicles for general servicing or minor repairs and without 'security' or 'safety' implications will be crucial.

4.2 The Association recognises, in complying with the draft Bill, initially the OEM's will have to expand their technical information sharing business models on their data sharing platforms or websites for which there will be an initial cost outlay. Additionally, following the scheme's introduction other regulatory responsibilities will be required. The OEMs contributions to the Scheme is significant and in the longer term will increase competition, and be to the benefit Australia's automotive value chain, economy and consumers.

5. The MTA Queensland's position

5.1 MTA Queensland supports with reservations the draft Bill to enhance competition in Australia's automotive scheduled service and mechanical repair market and in so doing to remedy some of the distortions and rigidities that currently persists and the general inequitable outcomes for consumers.

6 Reservations – Draft Bill

Framework

6.1 The draft Bill establishes the Scheme's framework based on a 'fair playing field' (@1 (a)) which is not defined and is open to interpretation. A 'level playing field' would be preferred to achieve parity across the Scheme's participants.

Access and Pricing

6.2 Access and the price at which the transfer of the Scheme Information is transacted is a crucial consideration. Object (@1(c)) refers to encouraging 'the provision of accessible and affordable diagnostic, repair and servicing information to Australian repairers ...' The draft Bill sets access to the Scheme's Information on 'fair and reasonable commercial terms' (a1(a)), and while this is well utilised and recognised terminology, it is not continued through the Bill. The Scheme Information is required to be offered for supply to participants at a 'price that does not exceed fair market value.' The explanatory notes (1.57 -1.80) detail the substance of 'fair market value' and its application to the Scheme. The determination of 'fair market value' although a commercial term is a value judgment which makes 'Pricing' of Scheme Information a major challenge and a crucial and 'real' issue for the Scheme's participants of accessing 'affordable' information. All manufacturers should publish a schedule of fees, this provides repairers the information required to prepare accurate estimates for customers.

6.2.1 For example, The Data Provider or Original Equipment Manufacturer (OEM) is entitled to charge a commercial price for the transfer of intellectual property. The OEM's franchised car dealers only have to invest in a specific inventory of equipment relevant to the range of vehicle models the OEM intends supplying to Australia's market.

6.2.2 On the other hand, the small/medium enterprise (SME) independent repairer may require a broader access to equipment to service a wider range of vehicles to be successful because they do not have the advantage of market share generated by the original vehicle sale, OEM warranties and marketing packages that may subsidise warranties and scheduled servicing. This balance is a key ingredient of success for the scheme. The cost to SME independent mechanical repair businesses must be reasonable and affordable and yet OEM's and franchisees also will rightfully seek a return from their investment in intellectual property.

6.2.3 'Pricing' will be a crucial issue for the automotive service and mechanical repair businesses in many remote and rural locations which face the challenge of operating in a dispersed or extended market catchment with diseconomies of scale. In many cases rural and remote independent service providers are forced to operate on tighter margins than their metropolitan counterparts. In determining fair and equitable outcomes in respect of automotive scheduled servicing and mechanical repairs in these remote regional areas

the 'fair market value' should take into consideration the economic geography of service providers and the costs of operating in these more challenging business environments.

6.2.4 It is imperative to ensure future tradespeople understand and can apply the technology and information therefore RTO's as registered and approved with Australian Skills Quality Authority (ASQA) or their State equivalent should have Education access free of charge for training purposes only.

Scheme technical Information format

6.3 The Bill details the main obligations for Data Providers to supply the Scheme information to repairers or RTO (Explanatory Notes 1.45 – 1.48). It is noted 1.48 states 'the scheme aims to provide data providers with the flexibility to use their existing systems to provide scheme information to repairers and RTO, helping to reduce compliance cost for data provider and information costs for repairers. It is however necessary to ensure the information is offered in a format that repairers and RTOs' are able to use.' The draft Bill refers to a 'reasonably accessible form.' Preferred would be a standardised format utilised by all data providers instead of using their existing technical information systems. The initial outlay for a standardised format would have long term efficiencies and reduce the need for costly upgrades and time delaying patches to the system.

Scheme Information Supply -timing

6.4 The timeframe for the supply of the technical information is set at 'within two days of the repairer having paid the agreed price' which also allows for 'variability in the time information is available' that accords with the agreed scheme information offer. While the draft Bill sets transparency requirements for the supply of the service or repair information to the repairer, there is the potential for 'the last-minute supply'. This has ramifications for the workshop as it will delay repairs, creating an imperfection in the market. Limited delay should apply for supply of information as the transfer of data is electronic it should be provided as soon as practicable after payment is received. This should not exceed a maximum of one business day.

Commencement

6.5 The scheme's commencement date, appears to be 1 July 2022. Concerns have been raised with the long lead-in time for transactions to commence. While we understand the legislative requirements of the draft Bill and the obligations of OEMs to comply and change/adjust their technical information business models, there is no interim solution and consideration should be given to expedite the process to bring the commencement date forward.

Technical information

6.6 The automotive value chain is facing significant technology disruption through the deployment of new automotive technologies, the advancement and the acceleration of automation and electrification and other emerging fuel sources. Franchised dealers and independent repairers alike will need to invest in a new generation of equipment relevant to the new technologies and undertake a new training syllabus to be able to properly service the vehicles with these technologies. It is important that these technologies that are not specific to 'safety or security' are not designated as 'intellectual property' to impede initial competition. The draft Bill states at 2 (b) that 'the intellectual property of a person, other than intellectual property protected under the Copyright Act 1968' is not included in scheme information.

It is noted in the explanatory notes at 1.103 and 1.104 the details about specific safety and security information will be set out in the scheme rules 'as it will be technical in nature and may need to be updated regularly and quickly to reflect changes in technology.'

6.6.1 Members are of the view that the draft Bill should include access to some telemetry information and not all be excepted (2 (d)) Some telematics access may be required in view of servicing, diagnosing or repair of the vehicle.

6.6.2 With the advent of high-quality online car sales businesses, consumers are increasingly 'shopping around' in search of new or late model vehicles. Industry evidence is that consumers purchase from a non-local or an interstate dealer based on price, which includes transport/registration/stamp duty costs etc. In these circumstances the consumer has the choice of warranty servicing at a dealership with which they have had no business or a local independent repairer. In this instance, the independent repairer will need access to servicing information that is useable and 'enjoy the same functionality as ... affiliated repairers (explanatory notes 1.48).' Whilst access to diagnostic, repair and servicing information is mandated, there remains a question as to whether it includes the 'vehicle programming pass-thru interface' for independent repairers to provide general servicing to new or late model vehicles under warranty? To ensure a 'fair playing field' the Association 'in principle' supports the ability for independent repairers to program vehicles regardless of the current and/or future interfaces.

6.6.3 The draft Bill has a precautionary approach to the access of information for (@35 (2)) (a) the hydrogen system; (b) the high voltage system; (c) the hybrid system; (d) the electric propulsion system; (e) and automated driving systems. While we understand the precautionary approach, independent repairers are already working with some of these alternate fuel sources. Consideration should be given to access of information with appropriate training around emerging technology.

7. Conclusion

The Association will monitor the legislation's process through Australia's parliament and participate in any further consultations.

8. The MTA Queensland background

8.1 The MTA Queensland is the peak organisation in the State representing the specific interests of businesses in the retail, repair and service sector of Queensland's automotive industry located in the State.

8.2 There are some 15,000 automotive value chain businesses employing approximately 88,500 persons generating in excess of \$20 billion annually. It is an industrial association of employers incorporated pursuant to the *Fair Work Act 2009*. The Association represents and promotes issues of relevance to the automotive industries to all levels of Government and within Queensland's economic structure.

8.3 Australia's first automotive hub, the MTA/Q, has been established in specifically designated accommodation at the corporate office. The hub is an eco-system that supports innovation for the automotive industry.

8.4 The Association is the leading automotive training provider in Queensland offering nationally recognised training, covering technical, retail and the aftermarket phases of the motor trades industry through the MTA Institute - a registered training organisation. It is the largest private automotive apprentice trainer in Queensland employing with trainers geographically dispersed from Cairns to the Gold Coast and Toowoomba and Emerald. The MTA Institute last financial year provided accredited courses to in excess of 1,600 apprentices and trainees.

Thank you for your consideration.

Yours sincerely



Ron Camm
MTA Queensland Group Chief Executive Officer