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MEMBER OF



Mandatory Motor Vehicle Scheme  
Consumer and Corporations Policy Division  
The Treasury, Langton Crescent, Parkes ACT 2600

15 March 2019

Dear Treasury

The Australian Automobile Association (AAA) welcomes the opportunity to respond to the Treasury's Consultation Paper *Mandatory scheme for the sharing of motor vehicle service and repair information*.

The AAA supports a mandatory scheme that requires vehicle manufacturers to share service and repair information with all vehicle repairers in Australia on commercially fair and reasonable terms. The scheme is necessary to support competition in the service and repair sector and enable consumers to choose the repairer they believe will give them the best possible value.

The ACCC New Car Retailing Industry Market Study released in December 2017 found that generally vehicle manufacturers are not providing independent service and repair operators with the same technical information they provide to their authorised dealerships. The ACCC recommended regulatory intervention because the current situation is impacting on competition and affecting consumers through increased costs and delays in having their vehicle serviced and repaired. The AAA believes that without a mandatory scheme the current situation will continue to deteriorate as vehicles become more sophisticated.

The AAA believes the mandatory scheme must at a minimum:

- Require vehicle manufacturers to make available to independent operators on commercially fair and reasonable terms the same information and tools provided to their authorised dealership networks to diagnose, service and repair a vehicle.
- Clearly define what constitutes security, safety and environmental information.
- Clearly detail what requirements must be satisfied to access security, safety and environmental information.
- Cover all vehicle brands who sell vehicles in Australia.
- Stipulate an effective dispute resolution process that is accessible by all relevant stakeholders.

The Consultation Paper released on 12 February 2019 provides a reasonable starting point for developing detailed provisions. The AAA believes the key issues that need to be resolved include determining what constitutes security related information and how repairers can access that information.

The AAA has responded in detail to the proposed elements of the mandatory scheme in the enclosed document. The AAA looks forward to progressing this matter with you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Bradley', written in a cursive style.

**Michael Bradley**  
Chief Executive

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## **AAA response to Consultation Paper: *Mandatory scheme for the sharing of motor vehicle service and repair information***

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### **Principles and features of a mandatory code**

The AAA supports establishing a mandatory scheme as a mandatory industry code under the Competition and Consumer Act 2010. A mandatory industry code is enforceable by the ACCC and there are a range of remedies available through existing ACCC powers, including injunctions. Given issues pertaining to access to service and repair information are competition related, enforcing the code through the ACCC provides the best opportunity for an effective mandatory scheme.

The AAA believes the primary objectives of the mandatory scheme should be to increase competition and support consumer choice in the light vehicle service and repair sector.

The Consultation Paper proposes that consumer safety should be a key objective of the scheme, in addition to increasing consumer choice. The AAA supports the consideration of consumer safety in the development of the mandatory scheme. The AAA strongly believes all vehicles on the road should be maintained in a safe, reliable and roadworthy condition.

However, the AAA believes the mandatory scheme should be consistent with the obligations of service and repair providers under existing Australian Consumer Law (ACL), which already provides a level of protection to consumers. The ACL requires a service provider to “use an acceptable level of skill or technical knowledge when providing the services; and take all necessary care to avoid loss or damage when providing the service.”<sup>1</sup> If the service fails to meet the provisions, consumers have access to remedies, including claiming compensation for any consequential loss.

In addition, the AAA is not aware of evidence which shows the US or European service and repair schemes have increased consumer risk. In fact, the AAA believes a mandatory scheme that ensures all repairers have the necessary information to service and repair a vehicle can enhance consumer safety.

### **Code scope**

The AAA supports the mandatory scheme applying to passenger and light goods vehicles, as defined in the *Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005*.

The AAA believes other motor vehicle categories could be added to the scheme in the future, if there was a demonstrated need. To date, the only need that has been demonstrated is in the light vehicle sector through the findings of the ACCC New Car Retailing Market Study and previous studies which led to the development of the voluntary heads of agreement.

The AAA does not support the proposal that the mandatory scheme only apply to new vehicles made available for sale after it has come into effect. Service and repair information for existing vehicles should be made available using the principle that if it is available to dealerships or the authorised network it should be available to independent repairers.

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<sup>1</sup> Australian Consumer Law, *Consumer Guarantees: A guide for business and legal practitioners*, p. 24

### **Sharing of diagnostic, repair and servicing information**

The AAA believes in a principles-based approach to defining what information must be available, similar to the US model. The US model stipulates that the manufacturer must make available to independent operators on commercially fair and reasonable terms all diagnostic and service and repair information and scan tools available to the vehicle manufacturers' authorised dealerships, including technical bulletins and other bulletins relating to safety, warranty and recalls.

The AAA also supports data aggregators being able to access the same information.

The definition of dealership or authorised network would need to be appropriately defined to ensure any changes to dealership arrangements do not inadvertently restrict access to information for independent operators.

### **Timing of access to information**

The AAA does not see a reason why there should be any delay in information being made available to independent operators. If a manufacturer is sharing information with an authorised dealership that can be used to diagnose and/or repair a vehicle in circulation, then that information should be available to all vehicle repairers.

### **Restrictions for safety, security and environmental information**

The AAA believes the mandatory scheme must clearly define what constitutes security, safety and environmental information. A definition that is ambiguous could capture large amounts of information and diminish the effectiveness of the mandatory scheme.

The mandatory scheme must also clearly detail what requirements need to be satisfied to access security, safety and environmental information.

The AAA supports additional safeguards for releasing certain information similar to the US model, which requires a criminal background check and state license information where applicable. The AAA is not aware of evidence which shows the US model has increased consumer risk.

The AAA is willing to work with the Government and industry to agree on clear definitions of what constitutes security, safety and environmental information, the circumstances under which certain information may be restricted and the requirements to access such information.

### **Access to information**

The AAA supports the proposed mechanisms and terms of access detailed in the Consultation Paper.

### **Obligations to act in good faith**

The AAA supports a mandatory scheme that includes an obligation for all parties to act in good faith.

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## **Dispute resolution and mediation**

The AAA supports establishing a mechanism to independently resolve disputes. The AAA believes the development of such a mechanism should be modelled on processes outlined in other mandatory codes, such as the Franchising Code of Conduct, the Oil Code of Conduct and the Horticulture Code of Conduct.

## **Enforcement**

The AAA believes penalties should be explicit in the mandatory scheme from commencement but may have a reasonable grace period before they come effective. The AAA does not support the current proposal to introduce penalties only after a review of the scheme, which is scheduled to take place 18 months from commencement. Issues around access to service and repair information and discussion about a potential mandatory scheme have been raised since at least 2011 and it has now been over 12 months since the ACCC recommended regulatory action. It is critical that a mandatory scheme take effect with penalties as soon as possible.

## **Review**

The AAA supports a review of the mandatory code 18 months from commencement.

## **Service and repair information sharing advisory committee**

The AAA believes a service and repair information sharing advisory committee could be a suitable mechanism for industry to provide advice to government on service and repair issues.

The AAA supports the proposed membership and the AAA does not have any objections to the proposed terms of reference.