

Dear Megan Trudgian'

5. Questions for consultation

5.1. Treasury is interested in stakeholders' views on whether the possible elements of a mandatory code of conduct and a Service and Repair Information Sharing Advisory Committee set out in this paper:

a. are appropriate as a starting point for developing and consulting on detailed provisions;

This Treasury discussion paper is not a good starting point for the development of the Code. It does not appear to build on the ACCC findings and it does not leverage the successful American model. It would appear that the emphasis here is on rushing through a Code and leaving the details to the 'Advisory Committee'. This is not a good outcome. Leaving the definitions to an industry advisory panel is unlikely to produce a satisfactory outcome for independent repairers. The Paper makes some good statements of principle and then appears to contradict this with statements allowing the car industry to decide what it shares and with whom, surely this represents the status quo. A Code based on this paper is unlikely to make a difference.

b. would provide significant improvement on the current voluntary scheme; and

See above – a Code that requires industry to agree on what can and what cannot be shared is the same as the voluntary scheme. The ACCC provided criteria on the sharing of data and this is not referenced in the document. The Massachusetts law established what should be shared and this is not mentioned in the Paper.

c. are a suitable alternative to a legislated scheme, which would enable the creation of an industry-funded body to advise on the scheme but would be slower to implement and update.

There should be a Mandatory Code proscribed under the Competition and Consumer Act 2010. That is the best option. This Code must have penalties and enforcement action.

My strong view is this must be a legislated scheme or it will not work

5.2. Treasury is also interested in feedback on the following possible elements of the Code in particular:

a. whether vehicles made available for sale in Australia prior to the Code taking effect should be covered by the scheme, and if so, how; This is a must, we need Data, TSB's and software made available to us for as long as the dealer network have had this data, if the dealers have it available then it is there and can be made available to the Aftermarket.

b. the principled definitions of:

i. information manufacturers must make available under the scheme; and,

All workshop manuals, wiring diagrams, vehicle specifications and data including all software and especially Service Technical Bulletins (STB), OEM tooling. We want dealer level training to be made available to the aftermarket

ii. SSE information;

SSE info needs to also be available to the aftermarket, but I respect the need for some reasonable security to be put in place. I cannot see why Australia cannot set up a similar taskforce such as National Automotive Service Task Force (NASTF) in America were they take on the responsibility to insure that only proper fit persons can access SSE information. But the taskforce only works if the Code states that everything is to be shared – otherwise the car industry has no incentive to come to the table

c. what information should be included in more detailed lists of information included in these definitions (the Appendix below provides alternative starting points previously suggested by stakeholders);

Everything the dealers get that is related to the vehicle: workshop repair manuals, body repair manuals; wiring diagrams; dimensions and tolerances for mechanical parts; initialisation and reset codes for computerised systems; specifications for oils and lubricants; diagrams of wiring looms; voltages for electronic components; and technical service bulletins;

d. the principles guiding access to SSE information;

Everything on the vehicle is related to security, safety and emissions – it does not make any sense to even use this term. The principle should be that we have access unless a specific car company can PROVE that there is a risk in allowing access. The assumption is that the independent repairer gets everything unless the car companies get an exemption from the advisory panel. The car company should be required to state their case – we should not have to beg or borrow this data. Car companies are promoting fear and doubt, which is what they do best.

e. factors to be considered relevant to fair and reasonable prices for information; and

It has to be relevant to what it cost the dealers and competitive to what other countries are selling their data and information to their Aftermarket.

f. the suitability of the dispute resolution and mediation process.

There must be a fair representation of all industry parties to make up a resolution panel with a non-bias chair person who can make the final decision. We need real time dispute resolution – if we have a car on a hoist we can't wait six weeks for a resolution, car companies should be required to run a help line for data access and we should be able to contact them when we need support on their data.

5.3. Treasury would also welcome feedback on the Committee, particularly on the suitability of the suggested membership and terms of reference.

The Committee should not have to determine what data is to be shared – this looks like the voluntary agreement. The committee should approve exemptions not the other way around. The committee is there to make sure that data flows, it's not there to frustrate the system any further.

Other comments:

The requirement to nominate whether 'recommended' parts were used is contrary to the ACCC ruling that the parts should be 'fit for purpose'. This is the wording that the ACCC uses in formal advice to dealers and independent repairers. It is ironic that a competition instrument is recommending restraint of trade – if we don't use the car company branded parts, we must tell consumers that we are using 'non-recommended' parts. Surely this cannot be a serious suggestion. Independent repairers are required by law, to fit quality parts, to provide a consumer guarantee for the parts and labour and we are liable for an consequential damage. Why has Treasury suddenly suggested that parts are an issue when the ACCC has no such concerns. What evidence is there that this instrument is the appropriate tool for guaranteeing parts quality? Doesn't the Australian Consumer Law provide for product safety? This issue was not identified by the ACCC and it looks like the car manufacturers have influenced this particular discussion point.

In summary, the consultation paper is quite confusing. It makes some good general statements that are then contradicted by car company insertions. For example, apparently the car companies will decide if we are qualified to receive the information. Good general principles that are then contradicted by Treasury.

The model for the Code is also a bit of a worry:

We should get everything the dealer gets but a committee will decide what is in and what is out – that is simply never going to work.

The Treasury have ignored the Massachusetts Law which contains all they need to further define the information that is required. The Code should say EVERYTHING is in and some information will require a vetting process for traceability – this is likely to be about the keys).

We would like to see consistency with the ACCC findings and this document as it currently stands makes little or no reference to the ACCC forensic study. I think that you are rushing the process – as our Government wants a Code ready by April.

We want data that is currently shared with dealers for every car on the road – not for model year 2019.

If there are no penalties there will be no compliance.

Parts - There is no evidence of the failure of equivalent parts and it is very confusing to see this suddenly introduced into this Paper. I would like to know where this came from. There is no market failure – we fit good parts because we have to provide a warranty on parts and labour. But all of a sudden – here it is in the Paper, you are no longer using the term ‘genuine’ you have switched to ‘recommended’. Imagine telling customer that you fitted non-recommended parts? Quick way to kill the independent repairer and our aftermarket parts supply chain.

Regards,
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