

11 March 2019

Attn: Megan Trudgian
Mandatory Motor Vehicle Scheme
Consumer and Corporations Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: repairinfo@treasury.gov.au

Dear Megan

Treasury Consultation - Mandatory scheme for the sharing of motor vehicles service information

We refer to the recently released Treasury Consultation paper on mandatory sharing of motor vehicle and service information (the Consultation Paper).

Thank you for the opportunity to provide feedback on a possible mandatory sharing model.

The Insurance Council of Australia¹ (ICA) is the representative body for the general insurance industry in Australia. Our members provide a range of insurance products including motor vehicle insurance.

ICA member companies authorise in excess of 1.4 million repairs annually. The majority of these repairs are undertaken by independent repairers.

To ensure vehicles are able to be serviced and repaired safely, efficiently, and to the required standard and at a reasonable price, it is essential that technical and diagnostic repair information be available to all repairers and not restricted to repairers operating within authorised manufacturer or dealer networks.

As outlined in the research and findings of the ACCC's New Car Retailing December 2017 Final Report, a mandatory information sharing scheme will provide multiple benefits to consumers

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent approximately 95 percent of total premium income written by private sector general insurers.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

through increased competition in the motor vehicle servicing and repair sector, in terms of pricing and reducing delays in having vehicles serviced and repaired.

Principles and Objectives

In relation to the principles and features of a mandatory scheme for sharing information – the primary objective of the scheme must be, as the title of the consultation suggests, mandating simple, efficient and fair access to repair information to all repairers and mechanics so to ensure a fair and competitive playing field.

The ICA does not consider a new mandatory information sharing scheme need extend beyond this key principle. Other principles and objectives identified in the consultation paper, such as consumer choice of repairer and provision of other information to consumers (as opposed to provision of repair information to mechanics and repairers) are more appropriately dealt with under existing consumer and competition law provisions.

Clear obligations, definitions and penalties

In order for a mandatory information scheme to be effective it is essential that the information that is required to be shared be clearly defined. There must be no ambiguity for manufacturers, mechanics or repairers in regard to what information is required to be shared. Similarly the penalties and enforcement that will apply should a party fail to comply with mandatory sharing obligations should also be unambiguous.

As identified by the ACCC, a lack of clear and unambiguous definitions and obligations was a shortcoming of the 2014 *Agreement on Access to Service and Repair Information for Motor Vehicles* (the Voluntary Heads of Agreement) and one of a number of factors that limited its effectiveness, with definitions open to wide interpretation by signatories. The ACCC found this resulted in most car manufacturers not fully sharing technical information consistently with the aims and principles of the Voluntary Heads of Agreement. These shortcomings must be avoided in a new mandatory sharing scheme.

Similarly, responsibility for drafting definitions and obligations under a new mandatory sharing scheme should not fall to manufacturers or repairers, but to an independent body. These definitions and obligations should be based on the definitions and obligations used in existing successful information sharing schemes overseas.

Clear and unambiguous drafting of definitions, obligations and penalties will also reduce disputes regarding repair information access.

Safety and security information

A new mandatory sharing of information scheme must be designed in a way that ensures access to information is not unnecessarily restricted on the basis of safety and security issues or intellectual property grounds.

As outlined, the type of information subject to mandatory sharing must be clearly defined to ensure they are not open to wide interpretation by stakeholders which will lead to disputes and an ineffective scheme.

Where genuine concerns regarding safety, security and intellectual property exist, a mandatory information sharing scheme should incorporate alternative means by which this information may be shared. A starting point would be to examine existing mandatory information arrangements in other jurisdictions where repair and service information, currently often subject to restricted access in Australia, is securely shared.

For example, in Europe and the United States, successful mandatory sharing schemes and legislation incorporating traceability and vetting of users has been introduced and has operated without incident. There is no reason why similar models would not work successfully in Australia.

Mandatory sharing arrangements that incorporate simple and secure access to information by appropriate vetting (as occurs under the EU *Secure Repair and Maintenance Information (SERMI)* and the United States' secure-data release model) also assists in ensuring greater consumer safety not only by providing repairers with the information they need to service and repair vehicles but also providing the security benefit of knowing which mechanics / repairers are accessing vehicle information and systems.

To ensure immediate effect in terms of providing fair access and to create a level playing field for all mechanics and repairers, new mandatory information sharing arrangements should apply to not just new vehicles but to existing vehicles up to at least 13 years old. This will be in line with the current average age of the Australian passenger vehicle fleet.

Design of a Mandatory Sharing Scheme – existing overseas models should be examined

We note that the Consultation Paper proposes the use of a code of conduct to implement mandatory information sharing scheme. The ICA queries whether the use of a code of conduct is the most effective and efficient means by which a mandatory sharing of repair and service information scheme could be delivered.

As mentioned, existing effective mandatory repair information arrangements already exist overseas. These arrangements utilise a combination of legislation and regulations to ensure information is made available and accessible. The ACCC has found that specific features of these models should be adopted in Australia.

Given the success of these overseas sharing models and this ACCC recommendation, the ICA are of the view that the starting point in developing a sharing scheme in Australia should involve examination of these models and how a similar scheme could be replicated here.

If you have any queries or require any further information please do not hesitate to contact Tom Lunn, Senior Policy Advisor on 02 9253 5122 or tlunn@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
Executive Director & CEO