

January 21, 2021

Australian Government
Market Conduct Division
The Treasury
Via Email: repairinfo@treasury.gov.au

RE: Draft Motor Vehicle Service Repair Information Sharing Scheme

The Auto Care Association respectfully submits the following comments regarding the Draft Motor Vehicle Service Repair Information Sharing Scheme that was issued by Treasury in December 2020. The Auto Care Association is a trade association located in the United States which represents manufacturers, distributors, retailers and installers of motor vehicle parts. While some of our members have business relationships with the vehicle manufacturers, our association represents the independent aftermarket which competes directly with manufacturers authorized parts and service entities.

Like Australia, U.S. car owners have benefited greatly from the existence of an independent vehicle service industry that provides a competitive option from the manufacturer authorized workshop. In fact, after a new car warranty expires, the vast majority of consumers in the U.S. return their vehicle to an independent workshop for repairs based on price, convenience and trust. However, the growing computerization of vehicles has made it more important than ever that independent technicians have access to the sophisticated repair information, tools and software in order to remain competitive. For this reason, the association has strongly supported “right to repair” legislation in the U.S. that requires vehicle manufacturers to share the same information, tools and software that they provide their new car dealers.

The Auto Care Association would like to commend the Australian Government for the release of the December draft Motor Vehicle Service Repair Information Sharing Scheme. Clearly the strong requirements included in your draft for repair information availability demonstrates a commitment to ensuring that Australian car owners have access to affordable vehicle maintenance and repair.

In that spirit, the Association would like to offer what we hope are constructive suggestions for revisions to the draft scheme that we urge Treasury to consider. These suggestions are based on the experiences we have acquired through the implementation of right to repair requirements in the U.S over many years and from our close working relationship with AAAA which represents the vehicle aftermarket in Australia.

The suggestions center around three main area:

- A. Diagnostic and Repair Tools
- B. Advanced Vehicles
- C. Telemetry

A. Diagnostic and Repair Tools

Today’s vehicles are equipped with an impressive number of computers that control nearly every function and system. For example, a 2001 Chevrolet Suburban had 9 computer modules; a 2015 version of the same model had 70 modules; the 2021 version has 103 modules; and by 2025, the Chevy Suburban is

expected to have 150 modules! Whether it is an authorized service facility or an independent shop, technicians must have access to the technology that can pull data from these computer modules; analyze the data and use that information to perform the necessary repairs. Therefore, right to repair in the U.S. not only focused on gaining access to the repair information, but also the repair and diagnostic tools and software needed to work on late model vehicles.

There are currently two basic types of tools found in today's workshop: proprietary tools, sold by the manufacturers, that can only be used for that manufacturer's vehicles; and third party produced tools that are produced independent of the manufacturer. The third-party tools obtain data stream information from the vehicle manufacturers often under licensing agreements, that permit the third-party producers to include the necessary functionality such that technicians can more fully diagnose and repair their customer's vehicle using these third party tools. Since these tools enable technicians to work on multiple makes and models of vehicles, they are more economical for use by workshops.

The importance of tools to repairing late model vehicles drove provisions in right to repair legislation that was passed in the state of Massachusetts in 2013. That legislation led to a Memorandum of Understanding (MOU) between the aftermarket and the vehicle manufacturers where the manufacturers agreed to abide by the Massachusetts law, nationwide. Under the Massachusetts law and MOU, vehicle manufacturers are required to make the same tools that they provide their authorized shops to independent shops at a fair and reasonable cost. The provision also required that for 2018 model year and later vehicles, manufacturers make their diagnostic and repair software available on a subscription basis from the cloud. The provision further required that workshops could access the diagnostic and repair software using a generic laptop and connecting to the vehicle through a standardized interface that met SAE J2534 standards. The goal of this provision was to reduce tool costs for independent shops while ensuring that they can have access to the latest software for repairing today's highly sophisticated vehicles.

Further, because of the importance to workshops of third-party tools, the law and the MOU includes a provision that requires vehicle manufacturers to work with those companies to make sure that these parties can provide OE capabilities in their tools. Therefore, the following provision is included in the right to repair requirements:

Each manufacturer shall provide diagnostic repair information to each aftermarket scan tool company and each third party service information provider with whom the manufacturer has appropriate licensing, contractual or confidentiality agreements for the sole purpose of building aftermarket diagnostic tools and third party service information publications and systems. Once a manufacturer makes such information available pursuant to this section, the manufacturer will have fully satisfied its obligations under this section and thereafter not be responsible for the content and functionality of aftermarket diagnostic tools or service information systems.

I think that the implementation of this provision has been helpful, but I need to add that some manufacturers have taken advantage of the provision by significantly increasing costs for third parties seeking to license the diagnostic and repair data. If this language is used, I recommend strong enforcement of reasonable cost requirements in order to ensure that manufacturer deal fairly with third party tool providers.

B. Safety and Security Information:

Auto Care wanted to express concern with exemptions in the Scheme for service and repair information related to: “Safety; relating to hydrogen, high voltage, hybrid or electric propulsion systems.” Sales of vehicles with both hybrid and electric propulsion systems have been growing in the U.S, Hybrids alone account for over 4 percent of the new vehicle registrations in the U.S. in 2019.

I want to emphasize that, while servicing vehicles with different propulsion system requires precautions and techniques that are different for gasoline powered vehicle, training for the service of hybrid and electric vehicles is available and independent shops perform work on these vehicles every day in the U.S. In fact, there are workshops that specialize in providing repair services for hybrid vehicles that have done quite well. Limiting repair information to only gasoline propulsion systems will discriminate against the growing number of consumers looking at alternative propulsion systems and could unnecessarily inflict economic harm on independent workshops. We urge you to reconsider this limitation.

C. Telemetry:

The exclusion of telemetry information also could have future implications for competition in Australia. IHS Markit predicts that by next year, 87 percent of the new vehicles sold in the U.S. will have connected technology. Further, at the present time, all data, including repair diagnostic data, that is transmitted by connected vehicles is captured solely by the vehicle manufacturer. While this includes an extensive amount of different driving and location data, it also includes repair and diagnostic data that could be crucial to the ability of independent workshops seeking to provide repairs for these vehicles. Of concern is the fact that many manufacturers are beginning to limit the amount of information available through their on-board diagnostic system, requiring that an independent shop obtain authorization, at a cost, from the manufacturer in order to access the data needed to repair the vehicle. Further, the connected vehicle will, in the not-too-distant future, permit manufacturers to make all of their diagnostic data available only from their cloud, thus putting them in the position of gatekeeper for vehicle data. Should this current scenario continue, the owner of the vehicle and the workshops that perform work for them, will be subject to whatever terms the manufacturer determines in order to obtain diagnostic codes needed to provide repairs.

In November, the State of Massachusetts had a referendum on their 2020 ballot that would provide vehicle owners with control of the repair data generated by these telematic systems. Known as Question 1, the referendum would require manufacturers to equip their vehicles with “an inter-operable, standardized and open access platform across all manufacturers makes and model. Such platform shall be capable of securely communicating all mechanical data emanating directly from the motor vehicle via direct connection to the platform. Such platform shall be directly accessible by the owner of the vehicle through a mobile-based application and upon the authorization of the vehicle owner all mechanical data shall be directly accessible by an independent repair facility or a class 1 dealer licensed pursuant to section 58 of chapter 140 limited to the time to complete the repair or for a period of time agreed to by the vehicle owner for the purposes of maintain diagnosing and repairing the motor vehicle.”

The referendum was approved by Massachusetts voters by a 75 to 25 percent despite the enormous sum (over \$25 million U.S. dollars) spent by the manufacturers to defeat it. The strong vote from Massachusetts citizens points to the clear preference by the public that they want control of the data being generated by their vehicle. It further points to the fact that voters like the fact they currently have choice when it comes to vehicle repair. Seeking to protect their current hold on vehicle data, the manufacturers have turned to the courts in an attempt to halt implementation of the ballot question based on issues of Federal preemption. Notwithstanding whether the state wins this case or not, the importance of this issue to consumers and the threat to competition from the manufacturers current attempts to limit access to wireless data point to the fact that the Treasury should consider addressing telematics in this scheme.

I hope this information is useful. Please feel free to reach out to me should you have any questions or wish to set up a call to further discuss the issues raised in this memo.

Sincerely,

A handwritten signature in black ink that reads "Aaron Lowe". The signature is fluid and cursive, with the first name "Aaron" and last name "Lowe" clearly distinguishable.

Aaron Lowe
Senior Vice President
Government and Regulatory Affairs