

Mandatory Motor Vehicles Scheme
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

29 January 2020

Re: Submission on the Competition and Consumer Amendment (Motor Vehicle Service and Repair information Sharing Scheme) Bill 2020

Thank you for the opportunity to make a submission on the *Competition and Consumer Amendment (Motor Vehicle Service and Repair information Sharing Scheme) Bill 2020*.

By compelling motor vehicle manufacturers to share all mechanical repair and service information with the independent auto repair sector on “fair and reasonable commercial terms”, we agree that ‘this Bill represents an important step in ensuring a fairer playing field for Australian consumers in accessing reasonable repair services for their motor vehicles’, however we believe that there should be a number of amendments made to this draft Bill to ensure that this Scheme achieves its intended goal of ensuring ‘a fairer playing field for Australian consumers in accessing reasonable repair services for their motor vehicles’.

We are Intellectual Property Law academics at Griffith University with a strong interest in the International Right to Repair movement. We have a particular research interest in the intersection between Intellectual Property and the international Right to Repair movement. In 2019, we, along with our colleague, examined the Mandatory Repair Scheme for Motor Vehicles 2019 scheme in article, ‘*The Mandatory Repair Scheme for Motor Vehicles 2019: Australia’s First Response to the International Right to Repair Movement*’.¹ We were also guest editors of the special edition of the 2020 *Australian Intellectual Property Journal*: entitled: ‘*Unlocking the Interface between IP and the Right to Repair*’², which includes a series

¹ Available at <http://sites.thomsonreuters.com.au/journals/2020/08/14/australian-business-law-review-update-vol-48-pt-3/>

² <http://sites.thomsonreuters.com.au/journals/2020/12/29/australian-intellectual-property-journal-update-vol-31-pt-2/>

of articles which provide an in-depth analysis of IP laws, as both barriers and enablers of the Right to Repair (from an Australian, US and EU perspective).

We commend the fact that the *Motor Vehicle Service and Repair Information Sharing Scheme Bill* recognises that there is provision for the making of scheme rules to enable the Minister to prescribe technical details about the coverage of the scheme and to *update the scheme as necessary to ensure it keeps pace with technology*. This is particularly important given the increasing use of telemetry, automation and AI within the automotive industry. We are particularly encouraged by the fact that the Minister has the ability to **deal promptly with attempts to frustrate the scheme**.

However, to ensure the aims of the legislation are met, we believe there are a number of matters that should be addressed before this legislation is finalised.

The scope of the Scheme

To begin, we note that the Explanatory Memorandum on p 5 states that

‘Schedule 1 to the Bill amends the CCA to establish a scheme that mandates all service and repair information provided to car dealership networks and manufacturer preferred repairers be made available for independent repairers and RTOs to purchase.’

The Bill in @25 defines “Scheme information” as information in relation to the scheme vehicles *prepared by or for manufacturers of scheme vehicles* for use of training in conducting diagnostic, servicing or repair activities on those vehicles, as supplied to the market. An issue is raised by the words ‘prepared by or for manufacturers of scheme vehicles’ as the term ‘manufacturer’ is not defined by the Scheme. This introduced some uncertainty where information is ‘prepared by or for’ someone other than the manufacturer, but on behalf of the manufacturer, such as a third party or a subsidiary, of a car manufacturer.

The definition of ‘Scheme Information’ then goes on **exclude** a number of important categories of information from operation of the Scheme:

- (a) a trade secret;
- (b) intellectual property, other than IP protected under the *Copyright Act 1968*;
- (c) a source code version of a computer program;

- (d) telemetry;
- (e) global positioning data;
- (f) information supplied, or to be supplied, only to a restricted number of Australian repairers for the purposes of developing solutions to emerging or unexpected faults with a scheme vehicle;
- (g) commercially sensitive information about an agreement between a data provider and another person;
- (h) information relating to an automated driving system of a scheme vehicle.

So clearly not *all service and repair information* provided to car dealership networks and manufacturer preferred repairers will be made available for independent repairers and RTOs to purchase.

In the Explanatory Memorandum at para 1.23, a number of examples are given of ‘scheme information’. One of which is ‘the electronic log book or specific service and repair information about a particular scheme vehicle.’ However, there appears to be no mention at all of an ‘electronic log book’ in the draft Bill nor is there any mention of the means by which a repairer could enter information into an electronic logbook.

The Explanatory Memorandum at para 1.11 also states that data providers have an obligation to “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.” This is reflected in the provisions @45. “Fair market value” is governed by subsection 5 of @45. To ensure there is no ability for data providers to inflate market values unreasonably, it is suggested that some element of reasonableness be introduced into @45 to prevent unreasonably high amounts being set. For example, where the amount payable is unreasonably high, then a reasonable amount should be payable.

There are a number of issues raised by some of the exclusions from the definition of ‘Scheme information’:

- (a) *a trade secret and*
- (b) *intellectual property, other than IP protected under the Copyright Act 1968.*

There appears to be no clear explanation as to why trade secrets are treated separately from the general category of intellectual property. Excluding all information protected by Intellectual

Property law (apart from copyright) from the Scheme could potentially provide grounds for unfounded claims of IP ownership over information/innovations that would be expensive for repairers or the repair industry to test. It is important that any attempts to use the exclusions unreasonably are acted upon promptly as attempts to frustrate the operation of the Scheme.

(d) Telemetry

Given that many new cars already have telemetry now, it is a lost opportunity to introduce a law about mandatory data sharing for motor vehicles in 2021, that excludes ‘telemetry’ from the Scheme. Cars are now embedded with computer software that manages everything from automated features such as self-parking or reverse parking, to unlocking doors, adjusting seats, starting the ignition, cruise control and to elaborate infotainment systems. Cars have been transformed from hardware-driven machines to software-driven electronic devices that handle massive amounts of data related to highly sensitive and technical aspects of equipment. As the Chairman of the Australian Competition and Consumer Commission (ACCC), Rod Sims recently observed, ‘today’s new cars contain in excess of 10 million lines of computer code, more code than is used to operate the avionics and on-board support systems of modern airliners.’³ As Geoffrey Fowler in 2019 wrote in the Washington Post, ‘On a recent drive, a 2017 Chevrolet collected my precise location. It stored my phone’s ID and the people I called. It judged my acceleration and braking style, beaming back reports to its maker General Motors over an always-on Internet connection.’⁴ New cars increasingly transmit diagnostic information to the car maker and some cars now have their own SIM cards to ensure that this data is transmitted. It is predicted that ‘the global revenue pool from car data monetization could be as high as \$750 billion by 2030.’⁵

We note that the recent passage of the Digital Rights Act 2020 in the Massachusetts, US includes telematics.

‘The measure, listed on the [ballot as Question 1](#), amends and broadens a law that gives consumers in Massachusetts the right to repair the vehicles they own. *The measure will*

³ Rod Sims, ‘Driving reform in the automotive market’ (Speech delivered at the Autocar 2018 Conference, International Convention Centre Sydney, 4 May 2018).

⁴ ‘What does your car know about you? We hacked a Chevy to find out.’ (2019) Dec 17, available at <https://www.washingtonpost.com/technology/2019/12/17/what-does-your-car-know-about-you-we-hacked-chevy-find-out/>

⁵ *Monetizing car data: New service business opportunities to create new customer benefits, 2016*, available at <https://www.mckinsey.com/industries/automotive-and-assembly/our-insights/monetizing-car-data#>

*require automakers that sell vehicles with telematics systems in Massachusetts to equip them with a standardized open data platform beginning with model year 2022. This standardized open data platform has to give vehicle owners and independent repair facilities direct access and the ability to retrieve mechanical data and run diagnostics through a mobile-based application.*⁶

When thinking about the aim of the draft legislation ie: to ensure that all service and repair information provided to car dealership networks and manufacturer preferred repairers be made available for independent repairers and RTOs to purchase, it is important to reiterate that the repair and service information sharing is not a one way flow from manufacturer to repairer. Repairers need to be able to *connect the car to the manufacturers' portal* for software updates (for example, often a universal scan tool is used as the interface between the car and the manufacturers' web site). This is more of a software and data exchange rather than a one way data transfer. The Draft Bill makes no overt mention of the fact that repairers will need to access software and data updates.

The draft Bill excludes all of this data from the Mandatory Sharing scheme. There is no clear reason as to why all of the information should be excluded from the Scheme. If the aim is to provide access to all of the information required to diagnose, service and repair a vehicle, then this will exclude all data from new vehicles that use telemetry to transmit data back to the car manufacturer. Diagnostic information about new motor vehicles will be transmitted via telemetry and there appears no reason to exclude it from the operation of the scheme.

As Grinvald and Tur-Sinai states, there are 'negative impacts that the shift away from on-board diagnostics to telematics' will certainly have on independent repair shops' access to diagnostic information. It is for this reason that it is important the this 2021 draft legislation addresses telematics, as it has the potential to impact on the competition in the market for repair services.⁷

(f) *information supplied, or to be supplied, only to a restricted number of Australian repairers for the purposes of developing solutions to emerging or unexpected faults with a scheme vehicle;*

⁶ Korosec, K., Massachusetts voters pass a right-to-repair measure, giving them unprecedented access to their car data. <https://techcrunch.com/2020/11/04/massachusetts-voters-pass-a-right-to-repair-measure-giving-them-unprecedented-access-to-their-car-data/>, 2020. It is also interesting to note that on 10 December 2020, the South African Competition Commission, released their final version of their *Guidelines for Competition in the South-African Automotive-Aftermarkets*, which also provides some points for comparison.

⁷ Leah Chan Grinvald and Ofer Tur-Sinai, 'Smart Cars, Telematics and Repair', 6 March 2020, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3550158

Again, it is not clear why this information is excluded from the Scheme. If the aim is to share all repair and service information with repairers in order for them to repair motor vehicles, why exclude information about *emerging or unexpected faults*?

(h) Automated Driving Systems of a scheme vehicle

The draft Bill in @25 defines an automated driving system, however in practical terms, there is no definition of what is part of the Autonomous ‘system’. For example, sensors are part of the autonomous system and yet minor repairs – such as repairs to tyres, windscreen, bumpers will require *re-calibration of the sensors*. For example, where a windscreen is replaced, the sensors require re-calibration and repairers will need that calibration data, yet this is not clear from the Bill that this information will be made available.

Time Frames

Under the draft Bill, Data Providers are required to provide the information to repairers ‘*within two business days*’. This appears to be an unreasonably long period of time for repairers to wait for the information to be provided. When a car is brought in for repair, customers would not be prepared to wait 2 business days for their repairer to get access to the necessary repair information. Customers would expect to be able to have their car serviced on the same day that it is brought into the workshop. It is possible that where there is a particularly unique information inquiry, that a 2 day period would be reasonable, however for common data enquiries the 2 day period is excessive.

Thank you for the opportunity to make this submission.

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