



20 March 2020

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

INQUIRY: GENERAL MOTORS HOLDEN OPERATIONS IN AUSTRALIA
SUBMISSION: Australian Automotive Aftermarket Association

We understand the current inquiry has been established by the Senate following the announcement, by General Motors on 17 February 2020, to withdraw the Holden brand and operations from Australia. The Senate Standing Committee on Education and Employment is particularly interested in the following matters:

- a. the impacts of that decision on:
 - i. Holden employees,
 - ii. the Holden dealership network (small and medium sized businesses and family enterprises, and their employees),
 - iii. the Holden research and development facilities, and
 - iv. owners of Holden vehicles (including service and repair);
- b. the role of the Franchise Code and the Government's proposed dealership amendments to the Franchise Code;
- c. Government or other policy settings on manufacturing, research and development, business support and transition, and employee support; and
- d. any related matters.

As the peak industry body representing the Australian automotive aftermarket industry, Our submission is specifically concerned with the following items within the Committee's terms of reference:

- iii. the Holden research and development facilities, and specifically the role that our Auto Innovation Centre can play in continuing to support the Australian Auto R&D investment,
- iv. the impacts of that decision on owners of Holden vehicles (including service and repair) and specifically the issue of Mandatory Data Sharing of Automotive Service and Repair information.

The Australian Automotive Aftermarket Association (AAAA) is the national industry association representing over 2,500 companies nationally that are engaged in the manufacture, distribution and fitment of automotive parts.

Research and Development

We currently operate a state-of-the-art Auto Innovation Centre (AIC) as a not-for-profit, government funded entity. If the existing Holden facility has R&D facilities suitable for industry wide use, we would be grateful for the opportunity to review this equipment and make a strong case for the 'donation' of equipment directly to the AIC. The AIC brings together designers and engineers across the automotive aftermarket to collect vehicle data and improve the capacity of firms to generate quality products in shorter timeframes. Over 70% of our auto producers are exporting product to key markets including the US, the UK, the Middle East and New Zealand. The Australian automotive aftermarket has been growing rapidly, as Australian consumers increasingly seek to personalise, modify and improve their vehicles for off-road, camping, performance or show.

In 2018, the Federal and Victorian Government provided a commitment for grant funding to establish two facilities in Victoria and South Australia, the two states most affected by the closure of the large auto manufacturing plants. In 2019, work began in earnest on the establishment of the AIC with the Victorian facility launching in December 2019. The South Australian facility is expected to launch in 2020.

The AIC mission is to bring together the industry, promote the adoption of new technologies, and provide testing services to demonstrate product compliance to Australian Design Rules. The AIC motto is "Centre of Excellence". We provide an open-door facility; companies can collaborate, facilitate training, and take advantage of new methods of work. If there is any likelihood that we are able to work with Holden to facilitate a transition of equipment into the AIC, we would be willing participants. I am optimistic that in the interests of our industry, we are able to make that happen.

Automotive Service and Repair Data and Information

Within this submission we have detailed the importance of Mandatory data sharing and we provide evidence of market failure leading to the Government's announcement its intention to introduce legislation. Much of what appears in this document is drawn from the most recent inquiry by the Australian Competition and Consumer Commission (ACCC). The ACCC concluded intervention was required to protect competition and consumer interests and recommended the introduction of a mandatory scheme.

Summary of AAAA Submission

- The withdrawal of the Holden brand and R&D activity may result in stranded assets that could be relocated to the Auto Innovation Centre. Doing so would make a considerable contribution to the growth of automotive product innovation and exports.

- The withdrawal of the Holden brand will not have noticeable or marked affect on the owners of Holden vehicles¹. The Australian auto aftermarket will be able to source parts, provide regular service and repair these vehicles. This is a situation that is unique to Holden. Unlike every other brand on Australian roads, Holden ensures repair and service information is available on fair and reasonable commercial terms to the 23,000 independent auto repair workshops in Australia.
- The withdrawal of the Holden brand underscores and amplifies the need to expedite the Government commitment to introduce primary legislation mandating vehicle manufacturers to make repair and service information available to independent repairers, on fair and reasonable terms.
- The withdrawal of any other brand from the Australian market would result in considerable consumer detriment due to the lack of Australian legislation that allows manufacturers to withhold data reducing choice and competition in the auto repair and service industry.

Recommendations

- That this Senate Inquiry notes the Auto Innovation Centre is a government funded, not-for-profit facility designed to support auto innovation and engineering. As a result, we would be well placed to receive Holden R&D equipment and welcome any support or action encouraging Holden to work with us in supporting the ongoing viability of the Australian Automotive industry.
- That the Senate Inquiry notes:
 - General Motors Holden is the only car brand on our Australian roads that adopted a pro-consumer position on aftersales and automotive service and repair; this is in stark contrast to most brands on Australian roads.
- That the Senate standing committee agrees to:
 - Seek advice and clarification of the timeframe for the introduction of the Automotive Repair and Service Mandatory Data sharing legislation.
 - Recommend to government that the drafting of Mandatory Data Sharing in the Automotive industry should be expedited. This legislation will protect consumers, bring Australian competition law into line with the United States of America and the European Union, and ensure that should the Australian market see the withdrawal of other brands, these vehicles can continue to be serviced and repaired.

Further detail on the specific elements of this issue and the history of public policy deliberations is included with this submission.

¹ Appendix A: Some Positive News for Holden Owners, Media Release, Australian Automotive Aftermarket Association. 28 February 2020.

I would like to thank the committee members and the secretariat for the opportunity to provide a submission on what is a critical issue for car owners and for independent repairers. Should you require any additional information on our submission, or any research/statistical analysis, I would be grateful if you would make contact with our Director of Government Relations and Advocacy, Ms Lesley Yates

I look forward to hearing your deliberations and I would be very pleased to appear before the committee should you feel that this would be of value to the Inquiry

Yours Faithfully,

Stuart Charity
Chief Executive Officer
Australian Automotive Aftermarket Association

Background

Australia's car owners are paying \$1 billion a year more than they need to because car makers are refusing to share technical information with independent mechanics, according to the competition watchdog¹.

Since 2009, independent repairers have reported continuing and escalating problems accessing technical information. Only Holden² provides comprehensive and equivalent access to the technical information provided to their authorised dealers and preferred repairer networks. Most car brands provide incomplete, very little or no information at all³.

Independent repairers may be able to obtain technical information from sources other than the car manufacturer in Australia; however, the information is commonly incomplete, not applicable to Australian models, or offers no security of ongoing supply.

If independent repairers don't have access to information, they will increasingly be unable to repair modern vehicles. Simple supply and demand economics will see the price of car repair escalate for every motor vehicle on our roads, and household expenditure on vehicle running costs will increase. When the cost of vehicle maintenance and repair increases, so too does the cost of every single consumable good and professional service.

Issues with access to diagnostic information have an even greater effect on consumers in rural and regional areas; the lack of a dealership footprint and a higher cost in transporting cars back to the dealership is already resulting in significantly greater consumer detriment in regional and rural areas than in metropolitan areas.

This is not a small, industry specific issue - it is comparable to grocery shopping and utilities. There are 18 million vehicles in Australia and every household is affected by car repair costs. In an average three-month period 6.5 million vehicles are serviced and 55% use a non-dealer option.

In 2017, following an 18-month study, the ACCC concluded that effective information sharing would enhance competition and improve consumer outcomes:

“Car manufacturers have an incentive to limit access by independent repairers to technical information to steer service work to authorised dealers and repair work to preferred repairer networks.

This is impacting the ability of independent repairers to effectively and efficiently compete in the aftermarkets for the repair and servicing of new cars.

It is also causing detriment to consumers in the form of increased costs, inconvenience and delays when having their new car repaired or serviced, and thereby reducing the choices available to consumers for the repairing and servicing of new cars.

¹ Car manufacturers costing consumers \$1 billion in yearly mechanical bills due to lack of data sharing, ACCC says. Peter McCutcheon ABC News Melbourne 18 Sept 2019

² Appendix B – Comparison of Holden data and information sharing with major brands in the Australian market.

³ ACCC New Car Retailing Industry, December 14, 2017

The ACCC's view is that consumers benefit from competitive aftermarkets for the repairing and servicing of new cars, and that consumers also benefit from having a choice of providers to repair and service new cars"⁴.

Importantly the ACCC final report into this issue noted existing voluntary methods of information sharing are not effective because most car manufacturers in Australia are not sharing technical information consistent with the aims and principles of the Voluntary Heads of Agreement, signed by all key parties in December 2014.

The ACCC concluded that the net effect of the Voluntary Heads of Agreement, across the industry, in improving access to technical information for new cars had been limited, and that the Heads of Agreement was ineffective in providing access consistent with its stated aims and principles.

International Jurisdictions

Developments in other jurisdictions offer pathways for reforms in Australia. These pathways have been the subject of Treasury deliberations for the past two years.

Regulatory interventions in the USA and the EU have led to the disclosure and commercial sale of the technical information necessary for independent repairers to repair and service cars more often.

Specifically, the EU regulations require independent repairers to have "easy, restriction-free and standardised access" to information and data to repair and service vehicles. The US system is based on a voluntary MOU however, this 'voluntary' scheme is a direct result of the Massachusetts 2012 "Right to Repair" legislation; specifically designed to force vehicle manufacturers to make information available to a consumers repairer of choice, under fair and reasonable commercial terms.

The ACCC noted the EU and the US models are specific to their regulatory environments and geographically distinct markets. However, specific features of these models should be adopted in Australia. These include a process for vetting users who access environmental, safety and security-related information, and for tracing its use, as well as providing access to technical information by intermediaries to develop informational products and diagnostic tools.

Clearly there are a range of international models already in operation to address the market failure evident in Australia's competition landscape. A situation that was clearly articulated by the ACCC⁵:

Independent repairers continue to encounter problems accessing technical information, and at times proprietary diagnostic tools, from car manufacturers. These problems are becoming acute as access to digital files and codes, and diagnostic tools, is required to repair and service new cars. As observed, car manufacturers are generally the owners and only source of most types of technical information. They also have the incentive to steer consumers to authorised dealers and preferred repairer networks, which generate revenues from the sale of aftermarket services, including repairs, servicing and parts. This situation contributes to the outcome that few car manufacturers provide the kind of access required to repair or service new cars that would facilitate effective competition between affiliated entities and independent repairers. Taking into account the many reports of the impacts of this behaviour on independent repairers and consumers, the ACCC's view is that consumers benefit from competitive aftermarkets for the repair and servicing of new cars, and they also benefit from having a choice of providers to repair and service new cars.

⁴ ACCC New Car Retailing Industry Final Report, 14 December 2017, Page 10

⁵ ACCC New Car Retailing Industry Final Report, 14 December 2017, Page 133

While industry has made some attempts to improve the sharing of technical information with independent repairers, the Heads of Agreement has not been an effective instrument through which to do this. The Heads of Agreement has a number of shortcomings which do not address the incentives for car manufacturers to deny or delay access to technical information. The ACCC notes that while a number of car manufacturers have begun supplying technical information to independent repairers during the course of this market study, as the risk of regulatory intervention has increased, the underlying incentives for car manufacturers to deny or delay the supply of technical information remain. Without regulatory intervention there is a risk that car manufacturers will not supply (or for those that currently supply some information — continue to supply) independent repairers with the same technical information needed to repair and service new cars that they provide to their dealer and preferred repairer networks. Further, the Heads of Agreement has not been an appropriate instrument through which to address the sharing of environmental, safety and security-related technical information, nor for establishing a secure process to do so, in circumstances where that information is also made available to dealers or preferred repairer networks. These issues have arisen in overseas jurisdictions and regulatory interventions have made technical information in those jurisdictions more widely available.

Accordingly, the ACCC recommended (Recommendation 4.1) that a mandatory scheme be introduced to facilitate the sharing of technical information by car manufacturers in Australia. The recommendations further articulated that the mandatory scheme should address the shortcomings of the Heads of Agreement and adopt features of regulatory interventions in other jurisdictions, such as a process for the secure and traceable release of environmental, safety and security-related technical information to vetted end users and access for intermediaries. It was also noted that where possible, any regulation should take into account the existing technologies and systems of car manufacturers, as well as the potential for the car manufacturers who are not sharing technical information in Australia to leverage their existing EU or US-based platforms.

Recommendations on access to technical information for new cars

Recommendation 4.1

A mandatory scheme should be introduced for car manufacturers to share technical information with independent repairers, on commercially fair and reasonable terms. The mandatory scheme should provide independent repairers with access to the same technical information which car manufacturers make available to their authorised dealers and preferred repairer networks, including environmental, safety and security-related information (if it is made available to dealers). The mandatory scheme should place an obligation on car manufacturers and other industry participants to achieve the underlying aims and principles of the Heads of Agreement (including those in relation to training and reinforcing existing statutory obligations on independent repairers to ensure repairs and servicing are carried out correctly to car manufacturers' specifications to assure the safety of consumers).

The mandatory scheme should, subject to the type of regulation used, address the following operational matters:

Real time access

Car manufacturers should make available to independent repairers, in real time, the same digital files and codes, such as software updates and reinitialisation codes, made available to dealers to repair or service new cars.

Coverage

Obligations on sharing technical information should apply to all car manufacturers in Australia. Relevant intermediaries should have options to access technical information from car manufacturers on commercially fair and reasonable terms.

Definitions

All relevant terms, conditions and exclusions should be defined in the regulation, for instance, defining diagnostic tools and their relevance to facilitating access to technical information, as well as defining environmental, safety and security-related information.

Dispute resolution

Any dispute resolution processes should be timely and accessible by all relevant stakeholders. Any dispute resolution processes should be subject to compulsory mediation and binding arbitration by an independent external party.

Governance/consultation

Key stakeholders should meet regularly to discuss the rapidly changing nature of repair and service information.

Security-related information and data

Similar to the EU or US models, a process for the secure release of environmental, safety and security-related technical information should be established or authorised under the mandatory scheme. The mandatory scheme should also set out a process for vetting end users accessing environmental, safety and security-related technical information and for tracing the use of that information.

Enforcement

If appropriate, options to enforce the terms of any regulation should be included (e.g. penalties).

ACCC New Car Retailing Industry Final Report, 14 December 2017, Page 12

Since the completion of the ACCC Market Study, the Assistant Treasurer (the Hon Michael Sukkar MP), Treasury, and the industry peak bodies, have deliberated on a number of regulatory options for sharing technical information in Australia. Options for a mandatory scheme included changes to Australia's vehicle standards, the establishment of an Industry Code and finally, stand-alone legislation.

Government Response

In October 2019, the Assistant Treasurer the Hon Michael Sukkar made the following announcement in relation to the government's decision to proceed with a mandatory scheme⁶:

The Coalition Government is committed to progressing the design of a mandatory information sharing scheme for motor vehicle service and repair information. This scheme forms part of our commitment to support appropriate commercial dealing and competition in the new car retail supply chain for the benefit of both small businesses and consumers.

Our scheme will mandate that all service and repair information car manufacturers share with their dealership networks must be available for independent repairers to purchase.

The scheme will be implemented in primary legislation to provide flexibility in its design and robust dispute resolution processes which consultations told us is important to industry.

Concluding Remarks

⁶ Appendix C: The Hon Michael Sukkar MP, Minister for Housing and Assistant Treasurer, Media Release, 29 October 2019: Driving Reform on Car Repairs. Appendix D New Mandatory Data Sharing Law to Transform Automotive Repair Industry, Australian Automotive Aftermarket Association 29 October 2019.

We do appreciate that the formulation of a new Australian Law requires careful deliberation and this takes time. We are working with the other industry bodies in formulating the required industry-led infrastructure to be operational on commencement of the new Law. However, despite all the best intent, consumers and repairers are frustrated. Every day we hear of new examples of the car producers seeking to reduce consumer choice and we sincerely want to see this mandatory scheme in operation in Australia as soon as possible. The withdrawal of Holden should be a warning bell that alerts us to just how vulnerable we are to the global decision making of the foreign owned car companies.

We have a talented and skilled repairs industry and we are, for many Australians, their trusted repairer. What we are seeking here, is an opportunity to do our job and to play the role car owners have asked of us. The international examples prove it is possible to find the balance of providing a significant disincentive for anti-competitive behaviour whilst protecting IP, safety and security. What we need to do now is to get on with the job.

Appendix A



Some Positive News for Holden Owners

28/2/2020

An Aussie icon sadly met its demise last week, but a previous commitment by Holden to share repair and service information will ensure Holden owners can enjoy their pride and joy for many years to come.

The Australian Automotive Aftermarket Association (AAAA) was sad to hear that Holden would be retired as an Australian brand. The implications for more than 600 employees of the iconic brand plus the large network of dealerships and aftermarket suppliers involved with product and service support can't be underestimated.

"Holden is about as 'Aussie' as it gets and holds a special place in the hearts of many who own or have owned a Holden. It is a loss to the country and the automotive industry. There are over 1.6 million Holdens on our roads today and many of these owners will be concerned about the availability of ongoing parts and servicing," said Stuart Charity, CEO of the AAAA.

But despite this loss to the industry, Holden vehicle owners can continue to have their vehicles professionally serviced and repaired, thanks to a previous landmark decision by Holden that has now taken on special significance.

In 2014, the industry body representing the car producers and distributors in Australia signed a voluntary agreement to make dealer level service and repair information available to independent repairers on fair and reasonable terms. There are 68 car brands in the Australian market, but only one car maker complied with this agreement: Holden.

Holden was the only manufacturer that honoured the voluntary agreement by opening up access to repair and service data to independent repairers. As a result, workshops that have a paid subscription can access Holden service and repair information using the Australian Vehicle Identification Number (VIN) and a credit card. This includes full parts lists, fault codes, diagnostic codes, re-flashing, and software updates. Holden stood alone in their decision to open data access with most car importers continuing to geo-block Australian workshops from accessing vehicle related data and service information.

Stuart Charity said "Holden's willingness to share service and repair information to repairers outside their authorised dealer network was a tick of support for the Choice of Repairer campaign in Australia. It also assures Holden owners across the country, and particularly in regional and remote areas, that their local mechanic is able to service and repair Holden vehicles because they have access to the parts, expertise and data to do so".

In October 2019 the Government announced a decision to introduce Primary Legislation for Mandatory Data Sharing for all car companies that supply vehicles into the Australian market. This new law will bring Australia into step with the USA and EU for right to repair in the automotive industry.

“The government’s commitment to primary legislation is a huge win for the industry and for consumers. We are grateful for the government’s unequivocal commitment to open competition and to Minister Michael Sukkar for his leadership on this important issue. The Holden decision proves just how important this new law will be to all Australian car owners” said Stuart Charity.

The industry is expecting this new Law to be introduced in 2020.

- ENDS -

Appendix B

Table 4.1: Aggregated reported comparison of the availability of technical information from car manufacturers' Australian-model websites, by top ten makes (2016)

| Make | Australian technical information sharing website | Proprietary diagnostic tool or pass-through | Technical service bulletins | Reinitialisation codes | Software updates | Vehicle security/ programming information |
|------------|--|---|-----------------------------|---|--------------------|---|
| Toyota | Yes | No | Yes | Yes | No | No |
| Mazda | Yes | Yes | No | Yes ²⁷⁰ | Yes ²⁷¹ | No |
| GM Holden | Yes | Yes | Yes | Yes ²⁷² | Yes | Yes |
| Hyundai | Yes | Yes | No | No, but dealers are also subject to security and authentication processes before gaining access | Yes | No, but dealers are also subject to security and authentication processes before gaining access |
| Mitsubishi | No | No | No | No | No | No |
| Ford | Yes | No | No | No | No | No |
| Nissan | No | No | No | No | No | No |
| Volkswagen | Yes | Yes | Yes | Yes | Yes | No |
| Honda | No | No | No | No | No | No |
| Subaru | No ²⁷³ | No | No | No | No | No |

Sources: AAAA submission 1, February 2017, Appendix 8; Cartech report 3 July 2017; Cartech supplementary report, 12 July 2017; GM Holden submission, November 2016, p. 14; GM Holden submission, November 2017; Hyundai submission, November 2017; KTAS submission, April 2017; Mazda submission, October 2017, p. 1; MTAA submission, April 2017, pp. 5–6; Subaru submission, November 2016, p. 6; Toyota submission, November 2017.

Notes: This table is a simplified representation of a sample of the information provided by different car manufacturers. Some car manufacturers have advised, for instance, that reinitialisation codes are rarely used with their cars. Others have indicated that reinitialisation codes are not used; rather, the car must interface with the car manufacturer's online servers for reinitialisation and programming. Table reflects available information and submissions as at the date of publication.

Source: ACCC New Car Retailing, Final Report, December 2017, Page 104

Appendix C



THE HON MICHAEL SUKKAR MP
Minister for Housing and Assistant Treasurer

MEDIA RELEASE

29 October 2019

DRIVING REFORM ON CAR REPAIRS

The Coalition Government is committed to progressing the design of a mandatory information sharing scheme for motor vehicle service and repair information. This scheme forms part of our commitment to support appropriate commercial dealing and competition in the new car retail supply chain for the benefit of both small businesses and consumers.

Today, a roundtable with the five key industry stakeholders, who are signatories to the current voluntary information sharing agreement, was held to update them on outcomes of consultation held earlier this year and recent decisions taken by the Government.

The Government received a wide range of feedback from across industry which has been extremely valuable in helping shape an effective scheme going forward. A summary of this feedback is available on the Treasury consultation website.

Our scheme will mandate that all service and repair information car manufacturers share with their dealership networks must be available for independent repairers to purchase.

It will also remove grey areas in the current voluntary arrangements by explicitly setting out a list of safety, security and environmental information that must only be released to appropriate businesses as well as clear criteria for access.

The scheme will be implemented in primary legislation to provide flexibility in its design and robust dispute resolution processes which consultations told us is important to industry.

Industry representatives were also asked to consider the potential for an industry-led body to assist Government with administering the scheme and ensure manufacturers, repairers and consumers have a voice in developing the scheme and keeping it effective and relevant. With dispute resolution processes set out in legislation, this body could also be conferred with dispute resolution duties for the scheme.

Industry and consumers will continue to be central to our approach as we proceed with the development of the scheme.

The Government will continue considering feedback from consultations and working to progress the details ahead of drafting legislative provisions and broader public consultation.

Ends

Media contact: Andrew Hudgson

Appendix D



New Mandatory Data Sharing Law to Transform Automotive Repair Industry

29/10/19

In a landmark day for the Australian vehicle service and repair industry, the Australian Government has today announced they will introduce a mandatory data sharing law.

To ensure fair competition for small businesses and consumers a mandatory data sharing law will ensure independent workshops have access to all motor vehicle service and repair information at a fair price. This law will provide a level playing field in the sector and allow consumers to have their vehicle safely repaired by the repairer of their choice.

The announcement is also a huge moment for the Australian Automotive Aftermarket Association (AAAA) who has long championed the Choice of Repairer campaign on behalf of their members and the wider industry.

“This is an incredible result for our members, who came to us with their concerns, put competitive rivalries aside and fought alongside us to have the law changed for their customers, their businesses and the wider industry,” said Stuart Charity, CEO of the Australian Automotive Aftermarket Association.

“It is also an important win for consumers. Our Choice of Repairer campaign has sought to increase community awareness around consumers right to choose their repairer, and their new car warranty and servicing rights.”

“This announcement has been a long road and is the culmination of tireless work by the AAAA team to push for Government action to address this important competition issue. We have personally met with over 75 Federal MP’s, facilitated hundreds of workshop visits by MP’s all around the country and had countless early morning and late-night discussions with Ministers and other industry stakeholders.”

“This has been an industry wide effort and I would like to acknowledge the invaluable role played by automotive industry associations - Motor Trades Association of Australia (MTAA), Australian Automotive Dealer Association (AADA), Victorian Automobile Chamber of Commerce (VACC), Australian Automobile Association (AAA), and the Federal Chamber of Automotive Industries (FCAI).”

“I’d like to personally thank the Assistant Treasurer Hon. Michael Sukkar for his leadership on this issue and commitment to introduce a mandatory data sharing law that will benefit small businesses in the automotive service industry as well as every Australian car owner.”

“We look forward to seeing progress on an exposure draft and we will review every word to ensure that car manufacturers are not able to wriggle though any loopholes that would prevent or restrict consumer choice and ultimately harm competition,” said Stuart.

- ENDS -