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Right to Repair Inquiry
Productivity Commission
4 National Circuit
Barton ACT 2600,
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Dear Commissioners and Right to Repair Secretariat

The Motor Trades Association of Australia Limited (MTAA) thanks the Productivity Commission (PC) for the Draft Report on Right to Repair (R2R) and the opportunity to provide a submission.

The timing of the inquiry is vital given the global focus on recycling, re-use, repair, and the potential to rethink consumer consumption behaviours in terms of influence on broader climate change and emissions reduction strategies.

The implications of R2R for the higher cost, increasingly complex, and arguably potentially longer-lasting automotive and associated products are critical considerations in the structural change and/or adjustment currently underway in most automotive industries. Driven by technology change, alternative propulsion systems, the intersection of mobility and information communications technology, and the role, ownership, and access to data, MTAA believes R2R will increase consumers' focus on personal contributions to environmental outcomes. It will also have added impetus with the transition of Australia's fleet from the internal combustion engine to electric vehicles.

This belief strengthened with the 2021 delivery of an R2R investigation by the United States Federal Trade Commission, the current review of the European Motor Vehicle Block Exemption Regulation (provision of service and repair information), most recently the recognition of R2R in an Executive Order of the United States President, and the PC's investigations.

MTAA is a unique peak not-for-profit automotive sector organisation with the State and Territory Motor Trades Associations and Automotive Chambers of Commerce as Members. MTAA Member organisations serve thousands of automotive businesses constituents representing the entire automotive supply chain providing unparalleled capacity to consider and address policy and regulation impacting the sector. This submission draws on materials and input provided by State and Territory Associations and their automotive businesses. This submission complements any separate submissions by MTAA Members.

Please contact Mr Richard Dudley, CEO MTAA, if the PC team requires further information or clarity regarding this submission at richard.dudley@mtaa.com.au or 0412146828.

Yours Sincerely,

Richard Dudley
Chief Executive Officer
Motor Trades Association of Australia Limited



1. Executive Summary

- The Motor Trades Association of Australia Limited (MTAA) confines its responses in this submission to observations, potential impacts, and implications of the Productivity Commission's (PC) Draft Right to Repair (R2R) Report on automotive industries.
- The need to facilitate a broad R2R regime in Australia is warranted and best illustrated by the actions taken to address accessing motor vehicle service and repair information. The government intervention reflected in the development of Law followed more than ten years of investigations. As primarily noted in the PC's draft report, any government intervention/facilitation must be carefully considered.
- The PC investigations to date have successfully unpacked many of these considerations and others. For example, the linkage between R2R, consumer consumption behaviours and relationships to climate change, including reducing or removing waste and emissions reduction.
- MTAA broadly agrees with the PC broad definition that R2R *'is the ability of consumers to have their products repaired at a competitive price using a repairer of their choice'*.
- Unfortunately, MTAA can highlight hundreds of cases where behaviours and actions by dominant market participants frustrate and constrain consumers and small businesses in exercising choice to provide alternative repair services. In some cases, consumer choice comes at a premium price and is still actively discouraged if not prevented altogether.
- And, after a decade-plus of ongoing representations, actions, and advocacy, in achieving government intervention on the specific issue of accessing motor vehicle and service and repair information, MTAA can also attest to the PC observation that: *'Realising this aspiration in a practical way involves a range of policies, including consumer and competition law, intellectual property protections, product design and labelling standards, and environmental and resource management.*
- While recognising likely synergies and efficiencies in facilitating improved R2R between sectors, industries, and products, MTAA cautions against a 'one size fits all' approach as reflected in some draft report recommendations.
- MTAA has often reminded policymakers that a motor vehicle can never compare to a single computer, phone, refrigerator, or other appliance, yet this is precisely the outcome with some interpretations of Australian Consumer (ACL) and the Competition and Consumer Act (CCA). Treating motor vehicles as the same or similar as white goods will cause unintended consequences and potential consumer and small business detriment.



- MTAA believes the draft report captures the scope, size, and complexities of the repair market and the opportunities for this area to grow as consumer focus increases on waste reduction/removal, skills maintenance, jobs and other factors.
- MTAA and Members have a long history of considered, pragmatic and facilitatory advocacy and representation on R2R related to automotive. MTAA and Members are the only automotive peak associations to include all automotive supply chain participants providing a unique perspective on competing interests, matters peculiar to specific industries and the whole of sector considerations and opportunities.
- The Federation's journey on R2R in the automotive sector started well before the Commonwealth Consumer Advisory Council (CCAC) investigations in 2011, through reviews of Australian Consumer Law, to the Australian Competition and Consumer Commission's 2017 New Car Retailing Market Study, and resulting Government investigations.
- MTAA and Members' strong view is that careful consideration is given to the many, often competing, R2R matters. It is likely that while characteristics will be similar across industries and products, each will have nuances peculiar to only those consumer products. MTAA experience is that high-value complex products such as motor vehicles deserve individual considerations. For automotive products, these considerations should continue to include:
 - How is repair information provided, and to who (repair professional, consumer, or both)?
 - What protections and choices for information providers, consumers, repairers?
 - How is compliance monitored and enforced? Are the penalties substantial enough to dissuade poor behaviours by large, multinational, and dominant market participants?
 - How is the information to be used?
 - Who repairs (professional trained individual/company accountability/consumer)?
 - The standard and warranty of the repair and implications/interdependence with original product manufacturer warranties and Australian Consumer Law protections and guarantees.
- These matters have been central to the development of motor vehicle service and repair information solutions which may provide insight into a broader approach to R2R for other classes of products.



2. Detailed Considerations

Section 1 – The Australian Repair Sector

DRAFT FINDING 2.1 THE AUSTRALIAN REPAIR SECTOR

- MTAA notes and generally supports the Commission's findings regarding the Australian repair industries, consumer behaviour drivers, market size and growth, and other attributes.
- MTAA notes some proposed recommendations appear to be whole-of-economy actions/solutions. MTAA cautions on the unintended consequences the 'one size fits all' approach can cause. MTAA's experience is that such treatments do not necessarily work as intended with high-value, complex products that attract higher emotional, financial, and practical consumer attachment.

Section 2 – Existing Consumer rights under Consumer Law

DRAFT FINDING 3.1 SCOPE TO IMPROVE THE APPLICATION OF CONSUMER GUARANTEES

- MTAA, Members and their automotive business constituents suggest consumers are aware of consumer protections and guarantees. Significant confusion remains on differences between protections, guarantees and warranties. To MTAA, what appears to be less clear, and despite the efforts of regulators, governments, industry associations, consumer groups, and others, is how these protections work, how they are accessed, and where to go for advice and assistance. MTAA applauds the PC investigations on recognising this in the draft report.
- An area under-represented and often overlooked are where power imbalances exist in markets, notably where vertical and horizontal integration of the supply chain by dominant product manufacturers/service providers can cause detriment to more minor participants and consumers. How vertical and horizontal integration is used to thwart R2R competition.
- Ongoing consumer awareness and education, including guidance materials, are essential, and MTAA and Members have assisted in this regard in numerous policy areas. MTAA and Members support ongoing, consistent, and continuous advice and materials to increase awareness, inform, and educate consumers and small businesses where appropriate.



- However, the development of solutions and supporting materials must balance the mutual obligations of product manufacturers, repair providers, and consumers. Consumers must continuously be informed of their mutual responsibility to properly inform themselves on their rights, protections, risks, mitigations and other obligations.

DRAFT RECOMMENDATION 3.1 GUIDANCE ON REASONABLE DURABILITY OF PRODUCTS

- While understanding the intent of the recommendation to improve consumer awareness and expectation on product durability, MTAA does not support the recommendation in its current form. Of concern are durability definitions and guidelines if applied to high-value complex products such as motor vehicles.
- MTAA's view is that no matter the intent, care exercised, and inputs provided (including specifications, qualifications, and exceptions), it is difficult to accurately predict or surmise motor vehicle durability.
- The average age of the Australian National fleet, derived from data sources and reported annually, could be regarded as a sufficient 'guide' for the average age of a vehicle, but not necessarily the lifespan of the vehicle. However, generalisations are considered problematic. MTAA Member small business constituents already endure lengthy and costly determinations where vital considerations such as vehicle age, the actual type of use, repair history including the type and use of parts, etc., are not given the level of consideration they deserve.
- Arguably, motor vehicle durability is also potentially undergoing substantial change.
- Typically, modern vehicles can include over 30,000 mechanical and electrical components, including over 100 Electronic Control Units (ECUs) and 300 million lines of code controlling motor vehicle systems and sub-systems. Each component lifespan will vary and require rectification, repair or replacement depending on multiple factors. For example, connected to wiper assemblies, rain-sensing windscreen technology interacts with multiple vehicle functions, including brakes, steering, and other safety systems. Yet, these units' failure or multiple failures, which do not render the vehicle product as a whole to fail, has caused significant disputation and litigation from consumers, wrongly claiming the entire vehicle product to be faulty.
- Modern vehicles, particularly next-generation electric vehicles, can be updated over the internet with software downloads. In some cases, these updates can completely alter the dynamics and capability of the base vehicle without any need for new components or parts.



- MTAA suggests these developments and the fast rate of technology adoption will pressure any definition of durability. One prominent electric vehicle manufacturer has already publicly claimed software upgrades are essentially a new model version of the same car.
- Therefore, it could be argued the durability of the 'base' vehicle extends because of software upgrades. It is also unclear any impact battery exhaustion, and replacement will have on the vehicle's durability. Perhaps the vehicle will have another lengthy valid period of life available, but the prohibitive cost of battery replacement may impact consumer choice to maintain or replace.
- New vehicle and farm machinery manufacturers invest billions in research and development over long lead times to provide consumers with the latest technology and Advanced Driving Assistance Systems (ADAS) to increase safety, security, efficiency and driving experience. Manufacturers model, test and retest this investment, including delivering supporting repair methodologies, tools and materials to train and support the product or component.
- MTAA is concerned that irrespective of the intent of durability guidance, it is likely that because of the high cost of motor vehicle products, such materials could have the unintended consequence of undermining existing consumer protections and guarantees available under Australian Consumer Law (ACL). MTAA respectfully suggests a real potential for such materials to be relied on to support consumer complaints or litigation.
- MTAA respectfully suggests any guidance material for new or near new motor vehicle durability must therefore adequately consider all the complexities, the interdependence of systems and sub-systems, the role of systems and their maintenance as part of the lifespan of the overall product, owners individual use, and other factors.

Second-hand vehicles

- The matters mentioned above are also considerations for second-hand vehicles. Especially at the moment because the used vehicle market is currently vibrant due to COVID supply chain delays for some new vehicle stock. Specific used vehicles are being reported sold at or above new car equivalent prices. With some specific models, the vehicle has been sold several times over a short time.
- However, there may be increased scope to include used vehicles in carefully crafted durability guidance.



- The inclusion of used vehicles will have impacts of:
 - Reminding consumers of mutual obligation to properly investigate a used vehicle before purchase, check any remaining manufacturer warranties and the extent of statutory warranties, recalls, etc.
 - It will likely also inform consumers of differences between new and used and variations of use, such as age, available history (where used, how many owners, accident repairs, service history, systems or parts replaced, accessories added (including aftermarket) etc.).
 - The durability of systems, components and parts of a used vehicle will likely differ from the vehicle as a whole as some may have been repaired or replaced while others may not.

- Some MTAA members, including VACC, have provided the PC details of examples where the durability of older used vehicles and parts, such as gearboxes, that have failed, have been central to flourishing consumer claims in some jurisdictions that have been successful. MTAA suggests if improved definitions of 'major' versus 'minor' failures were available, these cases would unlikely have been considered.

- MTAA has previously highlighted in submissions documented cases. Such as a case where a second-hand dealer was required to repay tens of thousands of dollars in a judgment over the failure of a part in a 10-year-old vehicle that had circumnavigated Australia and was found to have towed a trailer over manufacturer specifications. This judgement ignored history, use, age and a range of factors. It relied specifically on definitions of 'major' failure that MTAA has long argued is not sufficiently defined.

- In another case, a dealer undertook extraordinary investigations to get to the bottom of a repeat failure in a near-new vehicle. The dealer met obligations under consumer guarantees and manufacturer warranties, replaced the gearbox several times and associated works. After several attempts at rectification, it was only after manufacturer analysis of engine and systems that it was identified these faults happened on certain days of the month over several months. It was proven the consumer was taking the vehicle to a local racing track for 'track days' and 'racing' the vehicle. The use was utterly outside of manufacturer specifications, as detailed as an exclusion in warranty conditions etc. But not before considerable costs and resource impacts to the dealer and manufacturer. Again MTAA suggests better definitions of major and minor failure will assist.



DRAFT RECOMMENDATION 3.2 POWERS FOR REGULATORS TO ENFORCE GUARANTEES

- MTAA supports a consistent, coordinated, efficient and effective dispute resolution process, as identical as practicable, across the Commonwealth for consumers and small businesses.
- MTAA supports strong enforcement capability and meaningful penalties to encourage compliance. MTAA also strongly backs regulators receiving adequate resources to provide effective monitoring, investigation, and enforcement capacity. It is MTAA's view that regulators do not receive sufficient resources, particularly for monitoring and investigation.
- While recognising jurisdiction sovereignty and constitutional constraints, MTAA suggests opportunity exists for streamlining and harmonising national consumer and small business complaints handling and dispute resolution processes under a harmonised and consistent umbrella. MTAA suggests a three-tiered approach including:
 1. Self-resolution
 2. Mediation
 3. Voluntary or mandated (jurisdiction only) determination
- MTAA has previously suggested creating an 'automotive ombudsman' role within the Commonwealth Small Business and Family Enterprise Ombudsman's office. While acknowledging the Ombudsman is a statutory appointment and Commonwealth jurisdiction constraints, the intent is for a senior manager position to coordinate, facilitate, and link complaint handling and dispute resolution mechanisms across the Commonwealth and, where appropriate, handle the specific appointment of mediators and arbitrators. With enhanced automotive franchising, motor vehicle service and repair information scheme and other complaint handling and dispute resolution requirements, it appears a centralised resource is a step toward streamlining.
- **MTAA supports PC recommendations that State and Territory Governments introduce alternative dispute resolution mechanisms to resolve complaints about consumer guarantees better, noting early comments in this submission.**
- **MTAA recommends further work to streamline and harmonise complaint handling and dispute resolution processes between the Commonwealth, States and Territories and appropriate departments, agencies and service providers.**



DRAFT RECOMMENDATION 3.3 ENABLING A SUPER COMPLAINTS PROCESS

- **MTAA does not support the concept or creation of a 'super complaints' process by designated groups as presented.**
- There appear to be some synergies between MTAA's suggestion for an improved, integrated, and harmonised complaint handling and dispute resolution process for consumers and small business use and the intent of a 'super complaints' process.

However, MTAA has significant reservations regarding the 'super complaints' process described in the draft report, including the role of appointed 'Consumer Groups' and how such groups will harness evidentiary requirements for high-value complex products such as motor vehicles.

- For example, what expertise, capacity, and capabilities would an authorised consumer group need to lodge a meaningful 'super-complaint' on an actual or perceived systemic issue with a particular model motor vehicle?
- The 'Super Complaints' proposal as presented, and if the intention is for motor vehicles to be included, is an example where a 'one-size-fits-all' approach may be detrimental to the desired outcome. MTAA also suggests that creating such a mechanism may undermine a core function of the ACCC, which already has secured outcomes regarding breaches by some automotive sector participants.
- ACCC actions include:
 - Undertaking by Ford Motor Company of Australia Limited, section 87B of the Competition and Consumer Act (CCA).
 - Undertaking by Toyota Motor Corporation Australia Limited, section 87B of the Competition and Consumer Act 2010 (CCA).
 - Undertaking by Volkswagen Group Australia, section 87B of the Competition and Consumer Act 2010 (CCA).
 - Undertaking by Hyundai Motor Company Australia Pty Ltd, section 87B of the Competition and Consumer Act 2010 (CCA).
 - Undertaking by GM Holden Ltd, section 87B of the Competition and Consumer Act 2010 (CCA).
- **MTAA recommends automotive is excluded from the proposed super complaints system and existing ACCC enforcement powers continue.**
- **MTAA suggests if the recommendation is only for high volume fast-moving consumer goods, including smartphones, computers, white goods etc., there may be merit in such an initiative.**



ADDITIONAL INFORMATION In RESPONSE TO REQUEST 3.1 REPAIR FACILITIES, SPARE PARTS AND SOFTWARE UPDATES

- According to McKinsey and Company's May 2021 Report *'Making every Part Count'* in 2030:
 - The global car park will be 15% larger than 2020 and will generally have a higher age profile reflecting a partial transition from internal combustion engine (ICE) powered vehicles to battery electric.
 - Electric Vehicles share likely to be between 18 and 26%.
 - 60% of the 2030 global car park will have level 3 automated driving systems, with 14% at level 4 (second-highest level of autonomy).
 - The component spend per battery electric vehicle will be 40% less than for internal combustion engine vehicles but will be offset by the addition of new services
- McKinsey and Company's 2019 Report *'Automotive Software and Electronics 2030'* suggests over the next decade, autonomous systems, connected, electric and shared vehicle trends will drive unprecedented change in the automotive industry.
 - This report says these trends will result in different user behaviours and mobility preferences reflected in future motor vehicle products.
 - Electronic Control Units (ECUs) will progressively be replaced in motor vehicles with Domain Control Units (DCUs), particularly for infotainment, driver assistance, and autonomous driving programs.
- McKinsey's Centre for Future Mobility report *'Ready for inspection – the Automotive Aftermarket in 2030'* also concludes there will be significant changes with the entry of new players, digitisation of channels and the consuming importance of data.
 - As of 2020, modern motor vehicles can contain 300 million lines of code, up from 100 million lines less than ten years ago.
 - By 2030 cars will automatically recommend locations for service. According to the report, 58% of consumers in the United States, Germany, Brazil, and China would obey a suggestion made by the car infotainment and vehicle systems to take the vehicle to the suggested service location.
- These trends and forecasts are essential considerations in the R2R framework for automotive. Increasingly data will be central, and consumer focus is likely to turn increasingly to individual data ownership and choice of who can access it.



- MTAA and Members recently released an environmental scan of the Australian Automotive Industry called '*Automotive Directions 2020*'. It is the only examination of the current state of the entire automotive supply chain, including direct input from over 1000 automotive businesses.
- The report harnesses data including 40,220 automotive repair facilities across Australia, including Original Equipment Manufacturer (OEM) franchised and independent service and repair providers. There is also 4,285 automotive vehicle parts and tyre retailers registered who support OEM and aftermarket parts.
- There is no evidence suggesting consumers face difficulty accessing automotive repair services in Australia to satisfy consumer guarantees. Usually, vehicle repairs covered by a manufacturer's warranty return to the manufacturer's franchised or authorised network for rectification. Consumer guarantees also cover repairs by independent repairers.
- MTAA suggests implementing the motor vehicle service and repair information scheme (Scheme) to resolve market constraints and strengthen consumer choice.
- The PC is aware of the objectives of the motor vehicle service and repair information sharing legislation, Scheme design, and scheme rules currently being developed to guide operations.
- The ability to investigate, quantify and qualify, zero in on specific examples, map providers and participants, and many other characteristics of R2R in automotive potentially provides a guide to threshold matters across broader R2R considerations. For example, while the legislation deals specifically with the barrier of accessing critical information, investigations have by need has to examine the repair market.
- While not in proximity to other parts of the economy where robust R2R services exist or could exist if barriers were mitigated or removed, MTAA suggests that the pathways for automotive motor vehicle service and repair information provide the potential for broader R2R application.
- MTAA suggests that lessons learned, pathways to solutions, and agreed positions on automotive information access criteria, qualifications, training, security, safety requirements, etc., may guide application in other repair industries.
- In terms of access to parts etc., MTAA supports materials provided to the PC by Member VACC and suggests there are also cases in other industries such as collision repair.



- MTAA is already aware of cases where collision repair businesses must meet demands placed on them by insurance companies to source and fit parts from preferred suppliers or parts dictated by the insurance company – in some examples provided to MTAA, parts that are not even fit for purpose. In one case, a collision repairer was instructed by an insurance company representative to fit an identical-looking headlamp assembly, but the parallel part did not incorporate a range of additional components interfaced with other vehicle systems (such as drivers for steering the headlight lens around corners as it is linked to steering sensors).
- MTAA member, the Victorian Automotive Chamber of Commerce, has provided confidential material relating to manufacturer imposed restrictions on the supply of some parts in a separate submission. MTAA draws the PC to these materials.

Section 3 – Competition in Repair Markets

DRAFT FINDING 4.2 LIMITS ON THIRD-PARTY ACCESS TO REPAIR SUPPLIES AND INFORMATION REQUEST 4.1 CONSUMER HARM FROM LIMITS ON ACCESS TO REPAIR SUPPLIES

- While MTAA understands how the PC can conclude that there are no systemic competition problems in the repair market, MTAA respectfully suggests evidence of matters that stifle, constrain or constrict competition are not readily or easily identifiable.
- For example:
 - MTAA advocated for more than a decade on significant power imbalances in the franchised new-car retailing market. The manifestation of these power imbalances is often entwined in some car manufacturers' day-to-day behaviours with their franchisee dealers. Behaviours and actions only materialise when targets and KPIs are not met, market share slips, or dealers push back against unrealistic demands or decisions to terminate relationships on less than fair and equitable terms. Evidence is tough to obtain when there is an overarching fear of retribution by those impacted and the potential to lose the business (including the family home and wealth and wellbeing, almost always inextricably linked to the business).
 - Through two reviews of the Franchising Code of Conduct and reviews of the ACL and CCA, some begrudging acceptance that new car retail franchising is not the same as other franchised businesses and might be worthy of further investigation.



An in-depth market study by the ACCC in 2017 was instrumental in identifying and confirming critical power imbalances impacting the market.

A subsequent Parliamentary Inquiry into Fairness in Franchising, where desperate dealers presented for the first time before the Australian Parliament and put a face to the detriment caused by some manufacturers resulting policy and regulatory changes.

- o Similarly, the advocacy for fair, equitable, and meaningful access to motor vehicle service and repair information was just as daunting and consuming.

MTAA agreed with the Commonwealth Consumer Affairs Advisory Committee (CCAAC) in 2011 that the industry addresses the issue with a voluntary industry-led agreement before further government intervention. In the time it took to cement the agreement and enter operation, it became clear it was a wasted exercise. Critical information was not being provided. Obfuscation was the order of the day, with words of security, integrity, safety used as excuses to deny legitimate and professional repairers' diagnostic fault and fault reset codes - information desperately required to complete a service or repair.

Again, it took the deep dive of the 2017 ACCC report into the new car market to recommend government intervention through a mandated solution and a further two years of painstaking investigations to identify that solution.

- o The final example pertains to the car insurance and collision repair market. The control and influence of car insurance companies on the collision repair supply chain have grown with the consolidation of brands since the PC investigations in 2003/04.
- o MTAA suggests that R2R is fought at almost every level by powerful and often dominant market participants across some automotive industries.
- A critical observation regarding the agricultural machinery R2R debate is the role of a professional qualified and or experience repairer versus a consumer simply wanting the information. For example, in the United States, the debate centres on any farmer, anywhere, should have the ability to service, repair, and even modify agricultural machinery – irrespective of their repair qualifications or experience.

There is a discernible difference between this R2R view and Australia's as expressed in the scheme to access motor vehicle service and repair information. Only qualified technicians can access information to service and repair motor vehicles. MTAA believes this well-considered approach guides the PC in determining an appropriate strategy for broader R2R frameworks in Australia.



- MTAA suggests that unless primary producers can demonstrate qualifications or appropriate skills and/or experience in servicing and repairing increasingly complex farm machinery, then such services should be performed by authorised repairers, be they franchised or independent.
- The motor vehicle service and repair information access scheme should be, in time, extend to include all farm and industrial machinery and other forms of transport as required.

Extended Warranties by Manufacturers

- The Australian new car retailing market is undergoing significant change. Some manufacturers vacated the Australian market while others consolidate their dealer networks or change sales, distribution, service, and repair business models. These changes are altering the landscape of new car retailing and changing access to dedicated manufacturer dealer networks in some circumstances, particularly in regional and rural Australia. It is similar to earlier restructures of agriculture machinery and motorcycle retailing.
- It is the view of MTAA that further changes to the retail new car market are likely, placing additional pressure on market participants and consumers. This consolidation and restructuring are both a competition opportunity but also a risk in substantially reducing competition. MTAA would argue that with a national fleet of more than 20 million passenger vehicles and the nation's continuing reliance on road transport, no manufacturer can rely solely on its dealer networks or dedicated service agents to service and repair the national fleet.
- MTAA suggests some regional and rural consumers are already facing detriment from accessing qualified professional service and repair services because the dealer for their vehicle has vacated the local geographic market due to manufacturer/distributor restructuring. Some owners living in regional areas are already driving hundreds of km's to the nearest service agents, either in larger regional cities or outer metropolitan areas. Some suggest this is acceptable given the long intervals of 12 months or more between service requirements of modern motor vehicles, but this is of little comfort if there unscheduled problems.
- MTAA and Members generally support any car manufacturer or their distributors/importers, providing improved warranty coverage or length of warranty coverage for Australian consumers. However, this support is conditional that any action to improve warranty coverage or length of warranty coverage is in accordance with Australian Consumer Law (ACL), the Competition and Consumer Act (CCA), and there is no potential detriment to consumers or other market participants including dealers, and independent service and repair service providers.



- In 2020 Mitsubishi Motors Australia Limited (MMAL) offered a 10-year warranty on its vehicles and lodged an exclusive dealing notification with the ACCC to ensure it did not breach the ACL.
- At first glance, an offer of a 10-year guarantee appears to be of significant consumer benefit, and MTAA notes the announcement (and accompanying media campaign) generated considerable and generally positive exposure. It has arguably created a point of difference in the volatile and highly competitive Australian new car market.
- The MMAL offer of a 10-year warranty is the longest available for any brand, with the nearest competitor offering a manufacture backed warranty period of seven years and unlimited kilometres.
- Given the average age of the Australian passenger vehicle fleet is currently 10.6 years, the MMAL offer arguably provides warranty protection for almost the entire anticipated practical life of a vehicle. (MTAA is not suggesting 10.6 years is the lifespan of a vehicle, just that MMAL is almost covering the average age of an Australian passenger vehicle).
- MTAA notes that the ACCC has accepted at least four previous notifications of 'similar conduct'. MTAA respectfully suggests these previous notifications are quantifiably different from the MMAL notification as they each contain subtle variances such as links to existing 'Loyalty Programs' or 'Roadside assistance' programs [Subaru (Aust) Pty Ltd (N41001) and GM Holden Ltd (N41012)]. MTAA also notes that most of these notifications are more than a decade old and submitted before significant structural adjustment and change to the new car retailing market, including significant consolidation and concentration since their original acceptance of these prior notifications.
- MTAA's concerns centre on apparent inconsistency with consumer protections and competition provisions in the Act, previous ACCC findings and actions in the new vehicle retail market resulting from a comprehensive market study, and potential consequential impacts on other market participants that are not readily apparent within the notified conduct. Specifically:
 1. A lack of transparency on the terms and conditions of the 10-year offer, which in the view of MTAA, can give rise to consumer confusion and unintended consequences.



2. A lack of transparency and clarity on the terms and conditions for Mitsubishi Dealers on the processes and requirements to ensure fair, reasonable, and equitable reimbursement and/or compensation for warranty service repairs undertaken on behalf of the manufacturer over a more extended period (particularly the second five-year period where counterclaims on vehicle use and whether such use is in accordance with manufacturer specifications are likely – i.e. normal 'wear and tear').
 3. The intent of the MMAL exclusive dealing notification restricts consumer choice by making a condition that owners who purchase a Mitsubishi vehicle covered by the offer must only use MMAL dealers or service agents from the outset of purchase. MTAA respectfully suggests such a condition may cause consumer confusion and potential conflict concerning:
 - Consumer protection and guarantees in the ACL.
 - Competition provisions in the CCA.
 - Additional specific jurisdiction legislation and regulations governing product warranties and consumer protections.
 - Many of the ACCC's findings and recommendations contained in the 2017 'ACCC New Car Market Study'.
- MTAA respectfully suggested in its submission to the ACCC that the ACCC should not confine considerations to just the impact of the notification on Mitsubishi's 7.8% share of the Australian market, but the real potential for other car manufacturers and their representatives to make similar exclusive dealing notifications which may undermine the intent of the legislation and competition matters it seeks to address.
 - Further information on MTAA and Member concerns can be found in its submission to the MMAL notification on the ACCC website.

Right to choose

- Critical to R2R is consumer choice and the ability to exercise choice. In car insurance and collision repair industries, consumer choice is often muted if not extinguished altogether. This outcome is irrespective of whether the consumer paid for the privilege of choice of repairer.
- Very little has changed since the Productivity Commission Inquiry into the smash repair industry in 2004/05. While a voluntary code of conduct has been introduced, it is ineffectual due to a lack of penalties and enforcement.



- Funny Time and Funny Money (FTFM), which the PC recommended be discontinued immediately in 2004, is still rife.
- Many policyholders like having the freedom to choose a smash repairer because of reputation, location to work or home or because of existing relationships.
- However, as MTAA has submitted to the ACCC and jurisdictional inquiries, car insurers inappropriately 'steer' policyholders to the insurers' preferred smash repairers (even where the policyholder has expressed a preference to the contrary). These are smash repairers that car insurers either own (either wholly or in part) or who are subject to a repair authority (typically with onerous terms under and where cost is often calculated on FTFM).
- Increasingly MTAA and Members are receiving reports from small business repairers and consumers that, to steer policyholders toward their preferred smash repairers, car insurers will apply pressure, harass or coerce and/or mislead or deceive policyholders into believing that their preferred smash repairer is too expensive, too slow or otherwise not a good or competent smash repairer. When this fails, the car insurer may cash settle the claim leaving the consumer to pursue the repair with their repairer of choice.
- In a 2003 report, the ACCC expressed concerns that policyholders could be given a false or misleading or deceptive impression by some comments made about non-preferred repairers. The ACCC reminded insurers and their representatives of not engaging in misleading or deceptive conduct and the obligation to provide customers with the most accurate and honest advice and information when offering advice and directions relating to the repair of their vehicle:

'Insurers must ensure that their staff do not engage in misleading and deceptive conduct by way of representations made to the consumer about rights under their policy or conditions imposed by the policy, either when taking out or reviewing a policy, or in the event of a claim'.

- The Productivity Commission recorded its finding that:

'[Car] Insurers should not attempt to dissuade consumers from exercising their available choice options by misleading, inaccurate or unjustified comments about the quality or timeliness of repair of non-preferred repairers.'



- Other strategies employed by car insurers to make it difficult for policyholders to use their chosen smash repairer include requiring the policyholder to engage a loss assessor or obtain several quotes for repair and/or processing the policyholder's claim more slowly than the car insurer would otherwise process the claim. The MTAA has recently raised these serious consumer repairer choice issues with the ACCC for further investigation.

DRAFT FINDING 4.3 COMPETITION PROVISIONS ARE AVAILABLE TO ADDRESS REPAIR ISSUES

- MTAA agrees that the ACL and CCA provide sufficient protections. MTAA also acknowledges some protection, guarantees and other provisions not yet been tested, such as an effects test which MTAA vigorously advocated. However, MTAA respectfully suggests more work still needs to be done before any additional guidance materials on issues such as durability, as raised in the draft R2R report, are considered.
- As previously referred, MTAA has called for ongoing improvement to applicable consumer guarantees. MTAA believes the more complex and high value the product, the more complex the matters are that require consideration and the greater need for clarity through definitions and terms.
- MTAA and Members submissions to reviews of Australian Consumer Law (ACL) (Harper and Hilmer) and subsequent investigations into consumer guarantees (Treasury) highlighted matters associated with high-value complex products, including motor vehicles.
- While there are advantages in having one generic Australian Consumer Law applicable across all goods and services in the economy, there are exceptions. In the case of motor vehicles and parts, there are issues concerning product lifespan, durability, liability warranty inclusions and exclusions, that warrant greater specificity and delineation within the legal framework of the ACL.
- MTAA believes many automotive retail, service and repair businesses can endure an unfair burden under the ACL at or near the end of the supply chain. This burden can materialise due to manufacturer obfuscation of accountability, 'shifting' accountability to retail networks or approved repair providers/partners.
- Central to many of these cases is a considerable level of misunderstanding among consumers and automotive businesses concerning the provisions in the ACL regarding motor vehicle sales and repairs and consumer protections.



- Some of this lack of clarity includes:
 - What constitutes a 'minor failure' and a 'major failure' under section 259 of the ACL?
 - A proper definition of 'reasonable time' for conducting vehicle repairs.
 - Expectations relating to 'fit for purpose', 'acceptable quality', as well as expected product lifespan.
 - Misunderstandings concerning the time length of consumer guarantees for specific types of vehicles.
 - Apparent lack of understanding and confusion by consumers regarding statutory warranties as applicable under the Motor Car Traders Act (NSW) or similar jurisdictional legislation and their rights under the ACL.
 - Disputes surrounding the liability and responsibilities associated with product failures between vehicle manufacturers, retail networks, and the ACL application.
 - MTAA disagrees that Courts are necessarily the most appropriate means of providing this clarity. Most consumers and small businesses do not have the resources to resolve through the courts.
- Subjectivity and interpretation are enhanced when consumer perceptions of product value, utility value, and motor vehicle products 'should be able to do' versus the manufacturer specifications of what the product is designed and can do, and individual financial matters are included. MTAA respectfully suggests these matters require additional work as part of any actions to facilitate a broad R2R framework.

INFORMATION REQUEST 4.2 A POSITIVE OBLIGATION TO PROVIDE ACCESS TO REPAIR SUPPLIES

Australian Context

- MTAA suggests an example of designing and implementing a positive obligation on manufacturers to provide access to repair information and supplies is the process taken to ensure access to motor vehicle service and repair information as a part of R2R for automotive over the past decade.



- Problems experienced by independent garages in accessing the necessary information to complete repairs increased with the use of electronics and computerisation in motor vehicles systems, increased cooperation/ownership of automotive brands, and the start of consolidation of dealership networks.
- By 2010 problem reports had escalated to the point where it attracted the Commonwealth Consumer Affairs Advisory Committee (CCAAC), who launched an investigation in 2011.
- The Committee found barriers existed and expressed concerns regarding the growing number of cases where lack of reasonable access to service and repair information impacted competition and consumer choice. The CCAAC recommended the automotive industry be allowed an opportunity to address the findings through the development and implementation of a voluntary agreement.
- With oversight of the Commonwealth Government and then Minister for Small Business, five peak automotive organisations developed a voluntary agreement and the first attempt at providing online access to motor vehicle service and repair information. The development process was arduous with many matters, including the treatment of safety, security, and environmental information proving too challenging to resolve totally. Some manufacturers responded better than others, some did not attempt at all, and others provided some information. By 2014/15, the voluntary agreement failed - arguably before the ink had dried.
- Simultaneously, access to service and repair information issues manifested and became more pronounced with weekly and then daily reports raised by independent repairers. Notably, consistent themes emerged, including lack of access to diagnostic fault code information and reset codes to complete the repair.
- By 2017, and with the failure of the voluntary agreement, the ACCC determined to include service and repair information access and R2R as issues for examination in a new car retailing market study. The study confirmed the significance and impact of the issue and recommended the government investigate a mandated solution.
- Another two years of in-depth investigations by a dedicated Treasury Department team, including many areas examined by the PC, has realised a mandatory scheme for providing motor vehicle service and repair information through a dedicated scheme and solid enforcement and penalties for breach. MTA and Members have been heavily involved in consultations.



- MTAA understands that up to 9 portfolios and Ministers were involved in the consultation given the complexity of policy and regulatory matters and the intersection of the proposed solution with many other international and domestic market, policy and trade considerations. Part of these processes were the extensive examinations of similar solutions in Europe and the United States.

United States Context

- The **National Automotive Service Task Force (NASTF)** was established in June 2000 to identify, communicate and resolve gaps in the availability and accessibility of automotive service information. It was an initiative of various automotive and automotive engineering organisations recognising the increasing difficulties experienced by consumers and businesses to source reliable manufacturer information and where information was not available, the risk this posed to consumer safety. In addition, this information also included service training, diagnostic tools, and equipment.
- NASTF from the outset included representatives from OEMs, aftermarket and service and repair organisations. Arguably the role of NASTF and the services it provides strengthened with the passing of R2R legislation in the Commonwealth of Massachusetts in November 2012, a revised law in 2013, and a Memorandum of Understanding between automotive stakeholders in January 2014.
- Consideration of a form of **motor vehicle right to repair legislation** has been advocated in various states in the USA since 2001. In the late 1990s in Europe and the United States, issues emerged regarding access to automotive service and repair information. However, it was not until November 2012 that 86% of voters in the Commonwealth of Massachusetts in the United States supported legislation that required Original Equipment Manufacturers to “provide access to their diagnostic and repair information system through a non-proprietary vehicle interface” commencing with the 2015 model year.
- The passage of the Law created inconsistencies between existing Law and the ability of OEMs to meet such strict timeframes given the lead times involved in the design and production of new vehicle models. In November 2013, Massachusetts legislators repealed that 2012 law and replaced it with a compromise that gave OEMs until the model year 2018 to make necessary technical changes enabling access to service and repair information.
- In January 2014, the United States Automotive Aftermarket Industry Association, Coalition for Auto Repair Equality; Alliance of Automobile Manufacturers; and the Association for Global Automakers; signed a Memorandum of Understanding (MoU). Central to the 2014 MoU is agreement on a standardised interface and to make diagnostic information available in all 50 states.



Without the MoU, aftermarket and repair organisations would likely have sought the same legislation in all United States. This may have posed difficulties because of the potential for individual and subtle changes between each State legislature.

- With the impact of information communications technology and the importance of consumer and vehicle data, further amendments to the Massachusetts automotive R2R law are being sought to deal with the data issue.
- The amendment requires motor vehicle manufacturers selling vehicles with telematics systems in Massachusetts to equip them with a standardised open data platform beginning with the model year 2022. The objective of this amendment provides vehicle owners and independent repair facilities access to retrieve electronic and diagnostic information required to repair a vehicle efficiently and safely.
- The legislation was passed in late 2020 with 75% voter approval. Shortly after, an alliance of car manufacturers filed a lawsuit against the legislation suggesting it violated other Federal laws and raised significant cybersecurity and privacy concerns.
- The case commenced on June 21 with the legislation on hold until the matter is resolved.
- More recently, President Biden signed an Executive Order to promote competition in the United States economy, including specific reference to R2R. The Executive Order encourages the US Federal Trade Commission (FTC) to limit manufacturers from restricting people's ability to use independent repair shops and issue rules against anti-competitive restrictions on using independent repair shops.

European experience

- MTAA assumes the PC is familiar with European Block Exemption Regulations relating to R2R, particularly the automotive industry – Motor Vehicle Block Exemption Regulation (MVBER).
- The MVBER is currently under review. The review has prompted calls by the European aftermarket and repair associations for data issues to be part of any reforms to the regulations, similar to the United States.
- An evaluation report of the MVBER as part of the review process released in May 2021 found that motor vehicle markets have not significantly changed since the previous review in 2010. However, the report recognised intense pressures in the automotive industry.



- The evaluation report also highlights:
 - Authorised repairers enjoy considerable local market power, and that intra-brand competition within the authorised networks appears to be limited by strict and detailed quality criteria
 - The report also states that independent repairers will only exert solid competitive pressure if they have access to spare parts, tools, training, technical information and vehicle generated data.
 - The market is less flexible for motor vehicle spare parts due to contractual arrangements between original equipment suppliers and vehicle manufacturers, which ultimately reduces the choice available to consumers.
- The review process by the EU Commission is now underway on whether to renew, revise or let the MVBER lapse on 31 May 2023.
- MTAA believes that the draft legislation is a world-leading policy that will address and enable Australian consumers to exercise their rights of choice in servicing and repairing the nation's 20 million-strong fleet. Simultaneously it will provide Australian automotive small businesses with the ability to compete and offer a range of automotive services without the level of impediment, and a potential detriment experienced because they could not access all necessary information.

DRAFT RECOMMENDATION 4.1 EVALUATE MOTOR VEHICLE INFORMATION-SHARING SCHEME

- MTAA welcomes the PC recommendation for an evaluation of the new automotive service and repair information scheme. Of course, MTAA will continue to provide input to the Minister, government, and stakeholders on the scheme's operations and opportunities for improvements and additions or solutions to implementation or other issues identified.

Section 4 - Manufacturer warranties and their influence on repair

DRAFT FINDING 4.1 VOIDING WARRANTIES FROM INDEPENDENT REPAIR AND DRAFT RECOMMENDATION 4.2 ADDITIONAL MANDATORY WARRANTY TEXT AND INFORMATION REQUEST 4.3 A PROHIBITION ON WARRANTY VOID TERMS

- MTAA refers to previous comments regarding consumer awareness of their rights to repair. There are no objections to including prominent text to clarify consumer entitlements.



- MTAA broadly supports the inclusion of increased definitions and terms which clarify consumer choice and fair and equitable competition.
- For high-value complex motor vehicle products, the onus is the careful and direct use of language, removing ambiguity, and recognising that a motor vehicle is different from other consumer products.
- While the intent of the *Magnuson Moss Warranty Act* is understood and broadly supported, MTAA respectfully suggests significant work would need to be undertaken beyond the scope of the R2R inquiry for any changes that emulate Act provisions relating to motor vehicles.
- Today's motor vehicles, agricultural machinery and motorcycles bear little to no resemblance to 1975 models. The environment, behaviours and actions in the United States that necessitated the *Magnuson Moss Warranty Act*, as far as MTAA can ascertain, has never been substantially reviewed.
- While the intent to protect consumers from widespread misuse of warranties and enhance competition by removing the threat of reprisal and easing access to remedies remains, MTAA respectfully suggests that today's products and environments are entirely different. Differences need to be fully unpacked and understood in considering the way changes are formed, tested and included in the ACL and CCA. This must consider as far as practicable any unintended consequences and the separation of high-value complex products versus lower-cost products. The inclusion of any recommendations that prohibit manufacturer warranties from containing terms that require consumers to use authorised repair services or parts to keep their warranty coverage should be considered with extreme care regarding motor vehicles, agricultural machinery and motorcycles.
- While MTAA acknowledges there may be merit in such an approach, particularly for products up to a specific cost, including white goods, consumer electronics etc., additional detailed work is required for high-value complex motor vehicle products.
- MTAA cannot provide any input to the cost/benefit of the suggested recommendation.

Section 5 Intellectual property protections and repair

DRAFT FINDING 5.1 INTELLECTUAL PROPERTY-RELATED BARRIERS TO REPAIR, DRAFT FINDING 5.2 OPTIONS TO IMPROVE ACCESS TO REPAIR INFORMATION AND INFORMATION REQUEST 5.1 IMPROVING ACCESS TO REPAIR INFORMATION

- MTAA has no issue with finding 5.1.
- MTAA has reservations regarding finding 5.2.



- MTAA refers to its submissions to the ACCC New Car Market Study (2016/17) and investigations by the Treasury Department into a mandated scheme for the provision of Motor Vehicle Service and Repair Information.
- With the heavy involvement and contributions to the solution for motor vehicle service and repair information, MTAA does not believe it can provide any further guidance on what other actions might benefit the broader application of R2R.
- The issue of intellectual property is complicated and sometimes seemingly impossible. MTAA has consistently agreed that manufacturers must obtain a return on substantial investment. The investment can be billions of dollars over many years. The same applies to component and technology suppliers who may have individual arrangements with specific car manufacturers before making the technology more widely available. The technology may be unique or specific to a product (a particular high-spec model vehicle). However, the issue is balancing the right to get a return on this investment versus the right for consumers to choose and have confidence in their repairer who can properly access information and parts.
- MTAA cannot provide a cost-benefit analysis of proposed changes to the copyright laws and accompanying contractual arrangements.
- MTAA refers the PC to Member submissions, including the Victorian Automotive Chamber of Commerce submissions.

Section 6 - Product obsolescence and e-waste

DRAFT FINDING 6.1 PREMATURE OBSOLESCENCE IN AUSTRALIA

- MTAA has no issue with the draft finding as presented and concurs with PC observations of little evidence of manufacturers intentionally reducing product lifespan. MTAA agrees there is no need or benefit in additional policies, standards, or expanded consumer protection laws to prevent premature product obsolescence.
- In automotive, any deliberate reduction in lifespan is the antithesis of vehicle safety, security, and heavy emphasis on scheduled maintenance, adherence to recalls, and manufacturer specifications and requirements.
- However, MTAA suggests a discernible difference exists between actions designed to deliberately reduce product lifespan versus behaviours or actions designed to protect market dominance, constrain competition, or dictate who repairs, services or maintains a product to ensure it meets lifespan attributes.



- It is conceivable that intentional acts can protect elements of the service, repair, parts supply, or other elements in an R2R environment by dominant market participants. MTAA believes decade long investigations into the provision (or not) of critical service and repair information in automotive and the proof that there were deliberate denials to certain information confirmed the need for government intervention and that actions can constrain a market.
- MTAA also points to the market power of car insurance companies and their vertical and horizontal control of the motor vehicle insurance and collision repair industries as a further example. The power insurance companies possess to dictate terms and conditions, including repair methods, parts to be used, preferred suppliers, and a range of other elements in the repair process, is well documented and subject to numerous inquiries and investigations. MTAA refers the PC to three recent jurisdiction inquiries into smash repair by the Parliaments of NSW South Wales, Western Australia and South Australia for additional information.
- It is also conceivable that premature motor vehicle obsolescence could become a potential issue as an unintended consequence of poor policy decisions to transition the national fleet rather than any deliberate act by a manufacturer.
- MTAA is concerned a piecemeal approach to transitioning the national fleet of 20 million vehicles from internal combustion engines to electric powertrains may in itself cause premature product obsolescence. There appears to be a rush by jurisdictions to provide incentives, subsidies, and other government intervention in the new car market to encourage electric vehicle uptake.
- MTAA maintains the transition to electric vehicles should be part of an overarching national plan that includes at a minimum:
 - Alignment to charging infrastructure rollout.
 - Harmonised and consistent national policy approaches to road user taxation reform and other incentives and charges.
 - The development and implementation of an End-Of-Life vehicle policy for accredited, harmonised and consistent decommissioning, dismantling and recycling of vehicles.
 - National recognition, policy and regulatory gateways for autonomous mobility systems (avoid a situation where travelling between Sydney and Melbourne means not utilising all automated driving systems because of differing rules).
 - Specific protections to deal with consumer data, data ownership, and access to data captured by motor vehicles and associated/affiliated technologies.



INFORMATION REQUEST 6.1 PRODUCT LABELLING SCHEME

- MTAA is familiar with product lifespan labelling requirements recently introduced in France and moves to expand such requirements across the European Union.
- MTAA is also familiar with consumer studies into the benefits of labelling, including a 2016 European Economic and Social Committee (**EESC**) study into the influence of lifespan labelling on consumers, which found:
 - Sales increase for products labelled as long-lasting
 - Preference by consumers for products that demonstrated product longevity.
 - Consumer's preparedness to pay more for products with guaranteed long life and repairability.
- Therefore, the Federation understands the intent of the draft report recommendation, particularly for whitegoods, electronics etc. However, MTAA does not believe such labelling is necessary for high-value complex products such as motor vehicles.
- Motor vehicles are already subject to compliance, identification, fuel and energy consumption labelling as required under the Road Vehicles Standards Act and Australian Design Rules.
- Consumers also spend significant time researching the purchase of a motor vehicle. Google and other online studies reveal significant trends by consumers in researching motor vehicles, including price, model, technology, safety features, warranty, and service/repair inclusions and exclusions. This is in addition to extensive product manuals and guides that come with each car sold and access to online customer resources. MTAA believes that for these reasons, lifespan labelling is not required for motor vehicles.

DRAFT FINDING 7.1 E-WASTE IS A SMALL BUT GROWING WASTE STREAM

- MTAA generally agrees with the finding that e-waste is a growing waste stream and that emerging products, including batteries, will contribute to a likely increase. As the first generation of electric vehicles reaches more than a decade in age, automotive contributions to e-waste will likely grow. MTAA suggests a need for robust forecasts of total e-waste sources and contributors to plan and identify solutions to emerging issues.



- While recognising that in-depth investigation of e-waste and waste sources may generally be outside the R2R inquiry ToR, MTAA strongly suggests that contributors such as motor vehicles and automotive industries need more investigation.
- To this end, MTAA suggests the PC may wish to flag the importance of additional measures/actions to address the identification and source contribution of waste and e-waste.
- MTAA believes any investigation and measures must include a legislated motor vehicle End of Life Vehicle (ELV) scheme. MTAA, as promised during its appearance at the Canberra Hearing, provides the following headline information regarding analysis work and the Federation's ongoing call for an Australian ELV program. **The**

Nature of vehicle waste

- Every vehicle model contains a different mix of materials, but the overall construct of vehicles is consistent.
- Vehicle weights vary by model. While the national mix of vehicles means that the average weight of Australian vehicles will differ from that in overseas markets, the automotive industry is now so global that differences are diminishing. According to 2016/17 data from the International Council on Clean Transportation, the average weight of new cars in the EU was 1,385kg in 2015, with a national range from 1,302 to 1,567kg and a slight decline on ten years earlier.
- Most sources suggest cars comprise approximately 70 per cent metal. Most of this is iron, but vehicles increasingly contain other metals, including aluminium, copper, zinc, platinum, palladium, etc.
- Much of the remaining material is plastic of various types. These plastics contain additives that affect the ability to recycle the material, including toxic flame retardants and heavy metals. Rubber in tyres and within the vehicle's body also represents a significant part of the waste profile.

Need for an End of Vehicle Life Policy

- Australia's efforts to adopt a circular economy to mitigate, minimise or eliminate waste fails to address an appropriate scheme for the proper disposal of End-of-Life Vehicles (ELV). Australia is one of the few OECD countries without a legislated and regulated framework to deal specifically with ELVs.
- Over 750,000 vehicles each year reach the end of their economic life, creating more than one million tonnes of waste (*Automotive Directions 2021- hard copy supplied at Canberra hearing*).



- The Commonwealth and the States and Territories effectively manage the regulatory framework for vehicles entering Australia and road use requirements. However, once a vehicle ceases to be registered, government oversight ceases. Notably, the vehicle owner has no obligations regarding how it is disposed of other than to comply with laws concerning the general handling of waste materials.
- Many businesses in Australia process ELVs, and each jurisdiction applies a regulatory framework to such operations. While some businesses operate exclusively as vehicle dismantlers and recyclers, others do this as part of a broader scrap processing business. Businesses and individuals can operate illegally for extended periods despite law enforcement efforts.
- Changing economics and fluctuating prices for scrap materials affect the viability of parts recyclers. This creates a disincentive for recyclers to invest in best practice treatment facilities. In addition, the lack of any obligation on owners to recycle vehicles significantly depresses volumes available, further reducing the incentive for recyclers to invest. There are also ongoing debates and issues regarding using new or parallel new parts versus used recycled parts.
- At present, while the best automotive recycling businesses recover parts from ELVs for re-use and then recycle the remainder of the vehicle, considerable material still goes to landfill.
- Such operations as described do not handle all vehicles. Vehicles processed outside better practice operators, or dumped, contribute to soil and groundwater pollution and pose increased waste problems for Local, State, and Territory Governments and the Commonwealth.
- Some regulatory change occurs (as explained in the next section), but it is not nationally harmonised or consistent. MTAA and Members are working to address this for motor vehicle dismantling and recycling. The material composition of vehicles has increasing proportions of valuable materials (mainly metals other than steel and aluminium) and plastics which should either be recovered or disposed of appropriately.
- In addition, a failure to adequately plan for the transition of the existing 20 million-strong national vehicle fleet from the internal combustion engine (ICE) to electric could result in an auto waste explosion. Planning must include the R2R of existing vehicles to maximise recycling and potential re-use in a staged transition that accounts for all environmental considerations and stated advantages of transitioning to electric platforms.



- MTA and Members have invested heavily into examining ELV, current dismantling and recycling practices, decommissioning processes, international ELV policy/regulation/ programs and best practices and developed a solution that impacts e-waste opportunities as a component of R2R.
 - Once a vehicle is registered or re-registered for use on Australian roads, a legal person (a natural person or a business) will always be responsible for the vehicle until the Certificate of Destruction (CoD) is issued at the end of the vehicles' life.
 - The CoD is provided by a nationally accredited automotive dismantler/recycler to a national harmonised environmental compliant standard and decommissioning process.
 - Linkages are established between auto recycler facilities and recycling businesses to identify opportunities for recycling and re-use.
 - Potential to incentivise consumers to participate in the program.
- MTA sponsored international ELV research and examined particular nations with vital and, in some cases, longstanding ELV programs.

International ELV analysis

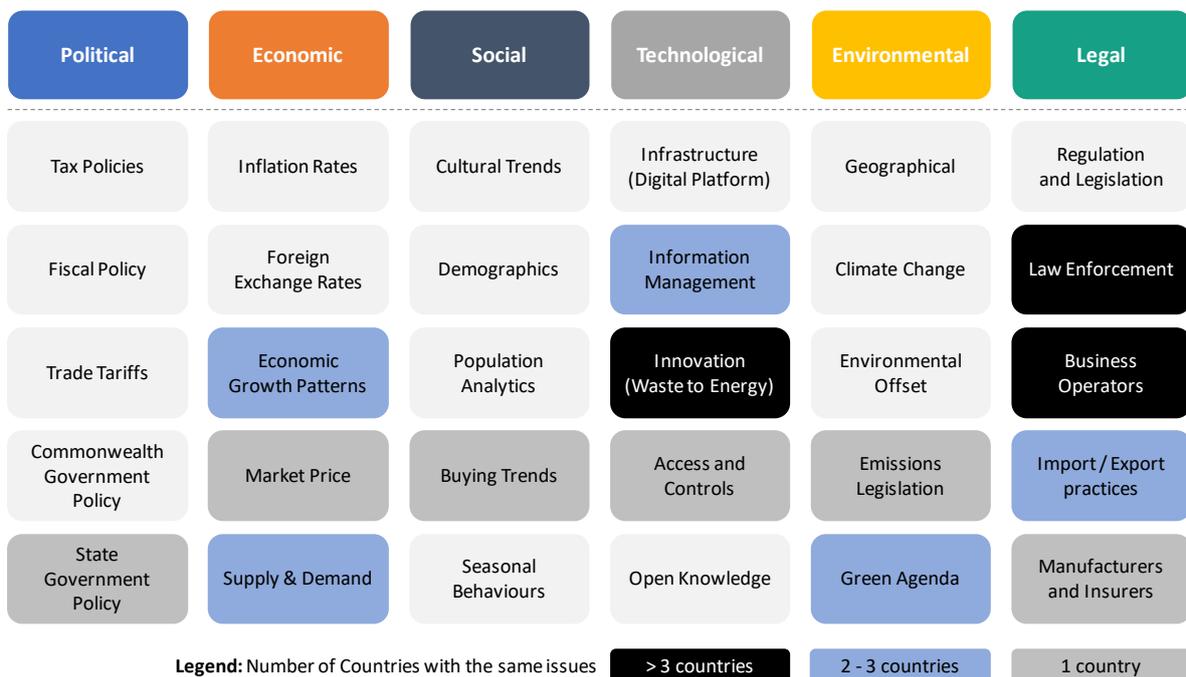
| |  Population |  Legislation |  Program |  Funded by |  # of Vehicles |  Emissions |
|---|--|---|---|--|---|---|
|  | 66,181,585 (UN, 2017) | EU ELV Directive (2000/53/EC) | Certified Take Back and Recycling (GOV.UK, 2017) | Recycling cost by Manufacturer (GOV.UK, 2017) | 31,700,000 (Statista, 2017) | 7.96 tonnes (CDIAC, 2017) |
|  | 82,114,224 (UN, 2017) | EU ELV Directive (2000/53/EC) | Certified Take Back and Recycling (Zoboli et al., 2000) | Recycling cost by manufacturer (Zoboli et al., 2000) | 61,500,000 (Bekker, 2016) | 9.06 tonnes (CDIAC, 2017) |
|  | 5,305,383 (UN, 2017) | EU ELV Directive (2000/53/EC) | Certified Take Back Provision (Zoboli et al., 2000) | Manufacturers built in Retail Cost (Zoboli et al., 2000) | 3,900,000 (Statistics Norway, 2017) | 11.71 tonnes (CDIAC, 2017) |
|  | 127,484,450 (UN, 2017) | Law for the Recycling of ELV (Togawa, 2004) | Automobile Recycling Law (Togawa, 2004) | Last Owner of Vehicle (Zhao & Chen, 2017) | 68,900,000 (Statistics Japan, 2017) | 9.25 tonnes (CDIAC, 2017) |
|  | 50,982,212 (UN, 2017) | WEEE & ELV Act (Korean Law, 2010) | Certified Take Back and Recycling (MM, 2008) | Recycling cost by manufacturer (Korean Law, 2010) | 20,982,212 (Lee, 2016) | 11.78 tonnes (CDIAC, 2017) |
|  | 24,450,561 (UN, 2017) |  |  | Dismantler (APRAA, 2014) | 18,400,000 (McNamara, 2009) | 16.75 tonnes (CDIAC, 2017) |

Figure 1: Country Snapshot Comparison.



- MTAA research highlighted that despite ELV programs and policies, the complexity of dismantling and recycling a motor vehicle remains an area of concern, particularly for Japan and South Korea. Other findings include:
 - Only 25% of the Accredited Treatment Facilities (ATF's) report their recycling rates in the United Kingdom.
 - Japan has a limited management system for distinguishing between ELV and used motor vehicles.
 - Norway, United Kingdom, and Germany are looking at innovation, specifically for recycling materials from hybrid and electric vehicles.
 - Law enforcement in the United Kingdom, Germany, Norway and Japan continues to be the primary area of concern with illegal business operators, theft and intentional exportation of old vehicles, causing supply and demand challenges for the legitimate business operators.

- The MTAA international research delivered a PESTLE component map to highlight which country issues were identified most often:



- In terms of automotive waste in the European Union, MTAA research revealed that the European Union ELV Directive 2000/53/EC has been instrumental in adopting an ELV Policy. The following figures provide an increased breakdown of automotive waste in European Countries.

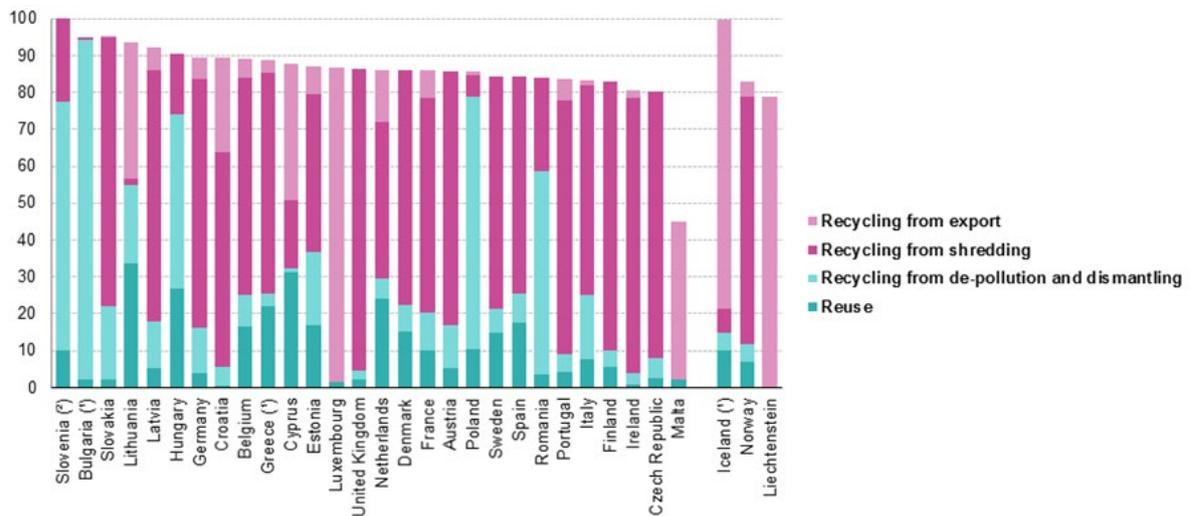


Figure 2: Re-use and recycling rates in per cent of total vehicle weight (W1), 2014 (%)

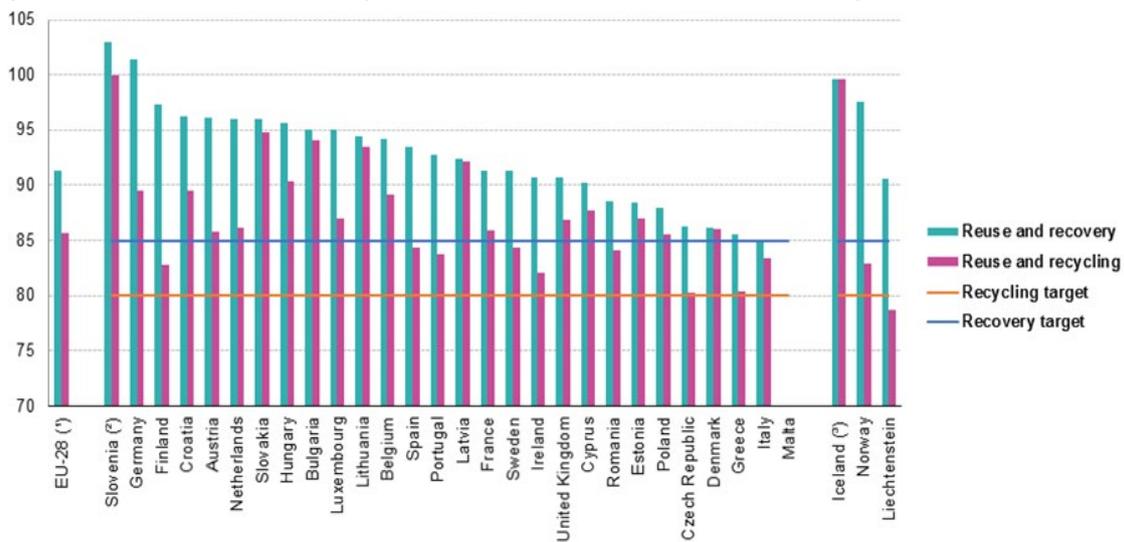


Figure 3: Recovery and recycling rate for ELV's, 2014 (%)





Figure 4: World View Snapshot on ELV Policy Implementation (Cruz-Rivera and Ertel, 2009; Eurostat, 2016; Nieuwenhuis, Vergragt and Wells, 2006; OECD, 2014; Sakai, S. et al., 2014).

- MTAA recommends sources of e-waste contributions needs additional work, and potential solutions for recycling and re-use are part of future environmental initiatives.
- The Government should immediately investigate the introduction of legislation and supporting regulation to provide an End-Of-Life Vehicle Scheme including harmonised national decommissioning recycling, re-use requirements, accreditation of reception facilities for ELVs, issuance of certificates of destruction and monitoring tracking and enforcement of all automotive waste produced by the scheme.

DRAFT RECOMMENDATION 7.1 IMPROVING THE MANAGEMENT OF E-WASTE

- MTAA has no issue with the recommendation that the National Television and Computer Recycling Scheme (NCRS) be amended to allow e-waste products that have been repaired or re-used by co-regulatory bodies to be counted towards annual scheme targets.



DRAFT RECOMMENDATION 7.2 USE OF GPS TRACKERS TO MONITOR E-WASTE EXPORTS

- MTAA and Members suggest that the tracking of e-waste be a component of a much broader strategy for monitoring and enforcement. MTAA investigations of auto waste found difficulty in accurately identifying the contribution of some elements to landfills, including plastics, flock etc., and agrees with the use of GPS trackers for most, if not all, components of auto waste as well as other e-waste.
- A new *Environment Protection Act* came into effect in Victoria on 1 July 2021, including a General Environmental Duty (GED). The GED requires businesses and individuals conducting activities that pose a risk to human health and the environment to understand risks and take reasonable steps to mitigate or eliminate them. The GED is criminally enforceable. The new *EP Act* includes additional powers of surveillance and increased penalties. MTAA recommends that the PC team consider the context of this Act concerning the use of GPS trackers and broader waste strategies as part of R2R.
- MTAA member VACC and their Auto parts and recycling members worked closely with the Victorian EPA to develop auto recyclers guidelines. These guidelines assist auto recyclers with consistent and harmonised environment protection and operation standards and comply with the new *EP Act*.
- MTAA recommends that the PC team consider the context of this Act and the Auto Recycler Guidelines (<https://www.epa.vic.gov.au/about-epa/publications/1810-1>) concerning the use of GPS trackers and broader waste strategies as part of broader R2R implementation.

End of submission

