

26 October 2017

Dear Market Study team

Please find attached additional information requested at a meeting between the ACCC New Car Retailing Market Study Team and MTAA limited.

As discussed the Market Study team requested:

- 1) Copies of any research or other materials that evaluate the effectiveness of:
 - a) the WA and NSW schemes to licence independent repairers, and/or
 - b) the proposed accreditation schemes for independent repairers to access security, safety and environmental system related information.

1. Licensing

MTAA through it Members has had difficulty ascertaining the impact and effectiveness of licensing schemes for mechanical repairers in NSW and WA. There is a lack of evidence of regulatory enforcement activities and where enforcement has been identified, it is a comparatively small number of penalties imposed on licensed and non-licensed businesses / personnel in the industry. In addition, based of the evidence available, the weight of the penalties provided to non-licensed operatives is, in many cases, is also relatively small. Therefore it has been difficult for the MTAA and Members to establish whether a licensing regime is positive or negative for the industry and consumers, particularly in terms of the costs associated with registration, audit and enforcement, or lack thereof, versus consumer assurance and comfort.

Even without a license program for the industry, enforcement / prosecution for matters such as poor workmanship, deceptive conduct and unconscionable behaviour are already addressed through existing legislation including Australian Consumer Law.

There are variations among the MTAA membership of the value of licensing. For example in some jurisdictions where there is no licensing, there are questions whether licensing would provide the outcomes sought in terms of addressing matters surrounding consumer guarantees, warranties, or as a means ensuring consistent consumer practice. For example, feedback and VACC Member experience on government led licensing in Victoria is not overly positive. For example, in two areas where occupational licensing exists in the industry, licensed motor car traders and vehicle recycling, there has been an appallingly low level of satisfaction in the industry when it comes to actions being taken by the relative government departments for unlicensed trading. Where prosecutions have been actioned by licensing authorities, the penalties have often been so limited to the point of being ineffective. It is a view in industry that many unlicensed operators just take penalty fines as part of the cost of doing business. Some licensed operatives view licensing as a disadvantage given the level of red tape and audit requirements that are not met by unlicensed operators.

It is the MTAA's opinion that where regulations, licensing etc. are required against a background of deregulation and making it easier to conduct business without consumer detriment; without strong and effective monitoring, enforcement and penalty structures, then the advantages are often weakened or become negligible.

Notwithstanding the benefits of raising the community profile of the automotive industry, and potential consumer benefits; it is not recommended that licensing be used to overlay or duplicate existing legislation or to create more administration, unless enforcement and prosecution with meaningful penalties to address unlicensed operatives.

An outcome of this nature would lead to further confusion in the community around the actual reasoning behind a licensing regime and may also slow down the normal passage of consumer complaints and their resolution. If the primary reason for the application of a licensing program is to manage the access and flow of technical and personal information related to vehicles and their systems then any license remit should be contained to this issue.

Concerns were also raised with MTAA and Members around the timeliness of any implementation of licensing for mechanics in Australia given legislation would need to be created and applied in each jurisdiction. The difficulty of merging jurisdictions with existing legislation with jurisdictions that would need to start from scratch to reflect some nationally agreed license scheme will be lengthy and take a minimum of 5-10 years to implement, if indeed it was possible at all given political overlays, differing consumer industry / consumer expectations, changing consumer behaviours, and the rapid application of new and emerging technology..

MTAA has sought available data available through its State and Territory Members knowledge bank. The limited data **provided at Attachment 1** reflects some action by the state regulators, it would be difficult to argue that the actual number of warnings and penalties for non-compliance, licensed and non-licensed operatives in NSW and WA is anything but minimal and as evidence of the above commentary.

Accreditation Scheme / process / system

An accreditation scheme / process / mechanism / system as proposed by MTAA and Members (and contained in its original and supplementary submissions), has potential advantages over a licensing regime and particularly where industry have a key role in its design, provision, and review.

One of the primary differences between licensing and accreditation programs is the separation of the regulator in the process and a focus on an industry led system. There is much learning available from existing and emerging accreditation schemes in North America and the UK, where Australia can learn from the implementation of these systems and improve on their modelling.

There are other considerations including the size of market, number of participants, nature of the market etc. These considerations will impact on the type and scope of regulation / enforcement for ensuring access to technical information particularly such information that relates to diagnostics and repair to components, parts, systems that are integral to a vehicles security and / or environmental credentials. It is difficult to fully adopt and implement a scheme from the UK, Europe or the United States in an Australian context when there is no domestic manufacturing of vehicles, where the local market proximity to manufacturers can impact compliance and enforcement and where the sheer volume of businesses in the service and repair of vehicles in other international jurisdictions dwarf the Australian market.

That is not to say it is impossible. It remains the submission of MTAA and Members that full access to all the information necessary to diagnose faults, rectify faults, reset vehicle systems and processes, as well as repairs and service, and accessing technical bulletins and service and repair updates must be assured.

It also remains the MTAA position that such a solution cannot disadvantage or advantage one sector over another in the automotive industry. It is why the MTAA and Members have promoted an accreditation scheme / process / mechanism to achieve the desired outcome.

An accreditation scheme has an advantage over licensing as it provides greater flexibility to address rapid changing industry parameters and can be more readily amended to meet changing industry practice, particularly the application of vehicle technical information, software and security systems.

The Market Study Team has gathered information and evidence during its extensive consultations with all stakeholders to determine the nature and scope of the matter. MTAA reiterates its observations made during the roundtable, and subsequent discussions, that what was once a broad access problem now centres on critical diagnostic, rectification and reset information. The Team also heard that some manufacturers / distributors have made real efforts to improve access, while others less so.

A model accreditation scheme has been provided to the ACCC, via VACC/MTAA and is suggested that a national working group be formed to refine and gain agreement on this system with oversight and involvement of appropriate regulators / departments accountable for the drafting of regulations to enable the solution.

The solution is not easy but in essence revolves around whatever information a manufacturer deems appropriate for its dealer network to have access to, so to should other qualified and professional service and repair providers. The cost to non-dealer providers should be commercial, fair and reasonable and not designed to advantage or disadvantage any discrete group or business. What is done with the information in terms of carrying out repairs and service must be consistent to ensure consumer safety, security and protection. This is why training and equipage / tooling are important considerations.

Market participants and consumers must also be assured that the information being accessed that may relate to security systems, coding, etc., is also secure which can be accommodated by an accreditation scheme.

It is not recommended that such an accreditation scheme is separated or devolved to a third party. It is the strong preference of MTAA and Members that an accreditation scheme / mechanism process or mechanism be managed by a consortium of industry stakeholders, and with the oversight of the Commonwealth Ombudsman or the ACCC with appropriate powers, if not already in existence.

A request is made to ACCC to ensure, and as a priority, that strict timelines are made for the adoption and implementation of systems for the access of repair information to industry. Timelines outside of two years, for the adoption and implementation of licensing or an accreditation system, should not be tolerated given the potential consumer impacts as a nation fleet nearing 20 million continues to modernise and become even more technology sophisticated.



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Please do not hesitate to contact MTAA should you require any additional information or further clarity.

Yours sincerely

Richard Dudley
Chief Executive Officer
MTAA Limited

ATTACHMENT 1

MTAA and VACC have determined that there were five (5) unlicensed businesses prosecuted for trading in NSW and 9 in WA over last 2 years - See spreadsheet below for details In WA records are only complete to August 2016, with records for 2017 not yet available.

In terms Licence fees for WA and NSW, the following information is provided:

Motor vehicle repair business licence fees – WESTERN AUSTRALIA

WA (source: <http://www.commerce.wa.gov.au/consumer-protection/motor-vehicle-industry-licensing-fees-and-forms>)

Repair business licence fee

This schedule of fees is based on the number of staff engaged in repair work by the business. Administration staff, apprentices and trainees are not included when determining the 'Number of repairers'.

Repair business licence fees - new applications

Business size category	Number of repairers * (part-time, full-time, certified, uncertified)	TOTAL FEE for three years (Includes non-refundable application fee)
1	1-2	\$954.25
2	3	\$1119.55
3	4	\$1243.35
4	5 - 7	\$1388.65
5	8 - 10	\$1533.00
6	11 +	\$1677.30

Repair business licence fees - renewal applications

Business size category	Number of repairers * (part-time, full-time, certified, uncertified)	TOTAL FEE for three years (Includes non-refundable application fee.)
1	1-2	\$972.25
2	3	\$1122.55
3	4	\$1266.85
4	5 - 7	\$1414.15
5	8 - 10	\$1561.50
6	11 +	\$1708.80

Motor vehicle repair business licence fees – NEW SOUTH WALES

NSW (source: <https://ablisui.business.gov.au/nsw/Resource/AP4721A.pdf>)

Licence Fees

The licence fee consists of a non-refundable processing fee, a licence fee per place of business and if applicable, a compensation fund contribution per place of business. The amount of the licence fee will also depend on the licence duration applied for eg 1 or 3 years.

The table below may be used to calculate the licence fee payable.

Licence Type	Duration	Number of Places of Business					
		1	2	3	4	5	6
Motor Dealer	1 Year	\$1,496	\$2,773	\$4,050	\$5,327	\$6,604	\$7,881
	3 Years	\$2,431	\$4,643	\$6,855	\$9,067	\$11,279	\$13,491
Motor Dealer – Wholesale Only	1 Year	\$548	\$877	\$1,206	\$1,535	\$1,864	\$2,193
	3 Years	\$1,207	\$2,195	\$3,183	\$4,171	\$5,159	\$6,147
Motor Vehicle Repairer	1 Year	\$722	\$1,225	\$1,728	\$2,231	\$2,734	\$3,237
	3 Years	\$1,030	\$1,841	\$2,652	\$3,463	\$4,274	\$5,085
Motor Vehicle Recycler	1 Year	\$548	\$877	\$1,206	\$1,535	\$1,864	\$2,193
	3 Years	\$1,207	\$2,195	\$3,183	\$4,171	\$5,159	\$6,147

The above fees are valid for the period 1 July 2017 to 30 June 2018.

If you need to calculate the fees for more than 6 places of business or if you need further information on the fees payable including the various fee components, refer to the schedule of fees contained in the *Motor Dealers and Repairers Regulation 2014* available at www.legislation.nsw.gov.au. Alternatively you may call NSW Fair Trading.

