

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

2016 - 2017

Division/Agency: Australian Competition and Consumer Commission

Question No: 126

Topic: Motor Vehicle Service - US System

Reference: Hansard page 115 (01 March 2017)

Senator: Bushby, David

Question:

Senator BUSHBY: Are you able to elucidate on what the US system is? I have heard that put to me before as well and it sounded quite an attractive proposition, but what is your understanding of how that works?

Mr Sims: As I understand it, it is a compulsory system where information must be made available through certain portals. Do you have a better idea?

Mr Ridgway: It might be a question we need to take on notice.

Mr Sims: [...] But we are happy to get back to you on notice.

Answer:

This answer describes the systems that regulate the sharing of repair and service information for motor vehicles in the United States of America (US). Repair and service information is, for the purpose of the Question on Notice, defined to include access to repair and service information as well as on-board diagnostic data needed to repair or service a new vehicle.

There are two key elements that operate in the US system which regulate the sharing of repair and service information by motor vehicle manufacturers with motor vehicle owners and independent repair facilities.¹ These are:

- A law that operates in the US State of Massachusetts (since 2012 and updated in 2013) that regulates the sharing of repair and service information.² Following the passing of this Massachusetts law, in 2014 a voluntary Memorandum of Understanding (MoU) was agreed between the Automotive Aftermarket Industry Association (AAIA), Coalition for Auto Repair Equality (CARE), Alliance of Automobile Manufacturers (Alliance) and Association of Global Automakers (Global Automakers) to extend the substantive provisions of the Massachusetts law to all 50 states across the US and to the District of Columbia.
- The National Automotive Service Task Force (NASTF), a not-for-profit organisation representing major stakeholder groups in the motor vehicle industry, was established to facilitate the technical aspects of sharing of repair and service information in the US. NASTF also administers a 'secure release data model' (SDRM) and an associated 'Vehicle Security Professional Registry' (VSP Registry), which is a secure internet-based system that vetted mechanics and locksmiths in the US can use to access security-

¹ Both the Massachusetts law (see below) and the Memorandum of Understanding (see below) define an owner as: 'a person or business who owns or leases a registered motor vehicle' and an independent repair facility as 'a person or business that is not affiliated with a manufacturer or manufacturer's authorized dealer of motor vehicles, which is engaged in the diagnosis, service, maintenance or repair of motor vehicles or motor vehicle engines'.

² An Act Relative to Automotive Repair, Mass Gen Laws, ch 93K (2013). (Mass Gen Laws, ch 93K).

related repair and service information and files directly from manufacturers of motor vehicles. Access to the SDRM is referenced in the Massachusetts law and MOU.

Further information about these two elements is outlined below.

United States Massachusetts Law and voluntary MOU for sharing repair and service information

Background to establishment of Massachusetts Law and the MoU

In 2012 the Massachusetts legislature passed a ‘right to repair’ bill and voters in Massachusetts approved a right to repair law in a state referendum. In 2013 the Massachusetts legislature passed a bill reconciling the earlier legislation and the law approved in the state referendum as they differed slightly.³

In 2014 various national motor vehicle industry stakeholders responded to the Massachusetts law by signing an industry memorandum of understanding (MoU) voluntarily extending the substantive provisions of the state law nationwide.⁴

A history of the ‘right to repair’ campaign undertaken in the US to create the Massachusetts law can be found in a submission by the GPC Group, a US-based automotive aftermarket parts distributor,⁵ to the ACCC’s new car retailing industry market study website (www.accc.gov.au/newcars).

Operation of the Massachusetts law and the MoU

The substantive provisions of the Massachusetts law and the voluntary MoU provide:

- For model year 2002 motor vehicles⁶ and later, manufacturers of motor vehicles⁷ in the US must, on fair and reasonable terms:
 - make available for purchase by owners and independent repair facilities the same diagnostic and repair information, including software updates, in the same form and manner as it makes it available to dealers.⁸
 - make available for purchase by owners and independent repair facilities the same diagnostic repair tools, incorporating the same diagnostic, repair and wireless capabilities, as it makes available to dealers.⁹
 - provide diagnostic repair information to each aftermarket scan tool company for the purpose of building aftermarket diagnostic tools and their service information publications and systems.¹⁰

³ *An Act Relative to Automotive Repair*, H.3757 [House Bill], 188th General Court of the Commonwealth of Massachusetts (2013).

⁴ Including AAIA, CARE, Alliance and Global Automakers. See [Memorandum of Understanding](#), 15 January 2014.

⁵ GPC is a US-based distributor of automotive aftermarket replacement parts with 2,670 centres across the US, Canada, Mexico, Australia and New Zealand. GPC’s Asia Pacific subsidiary serves the Australasian markets and operates several businesses in Australia involved in wholesaling and retailing automotive parts, information and accessories, including through the Repco Group which has 474 stores in Australia and New Zealand.

⁶ [Memorandum of Understanding](#), 15 January 2014, section 1, ‘motor vehicle’ is defined as: *any vehicle that is designed for transporting persons or property on a street or highway and that is certified by the manufacturer under all applicable federal safety and emissions standards and requirements for distribution and sale in the United States, but excluding (i) a motorcycle; (ii) a vehicle with a gross vehicle weight over 14,000 pounds; or (iii) a recreational vehicle or an auto home equipped for habitation.*

⁷ [Memorandum of Understanding](#), 15 January 2014, section 1, ‘manufacturer’ is defined as: *any person or business engaged in the business of manufacturing or assembling new motor vehicles.*

⁸ Mass Gen Laws, ch 93K, section 2(a) and [Memorandum of Understanding](#), 15 January 2014, section 2(a).

⁹ Mass Gen laws, ch 93K, section 2(b) and [Memorandum of Understanding](#), 15 January 2014, section 2(b)(i).

- For model year 2018 motor vehicles and later, manufacturers of motor vehicles in the US must provide access to their on-board diagnostic and repair information system using an off-the-shelf personal computer using non-proprietary vehicle interface hardware.¹¹ This requires the establishment of websites or ‘clouds’ by manufacturers that contain the same information and software dealers have access to as part of their proprietary tools to be, in general, accessible by the independent repair and service sector using an off-the-shelf personal computer and a standardised vehicle interface.¹²
- Manufacturers may exclude diagnostic and repair information necessary to reset an immobiliser system or security-related electronic modules, but must provide the information to owners and independent repair facilities through the SDRM administered by NASTF (or other known, reliable and accepted systems).¹³

The Massachusetts law and MoU do not provide a ‘one-stop-shop’ for access to repair and service information. That is, manufacturers which operate in the US may have a variety of different proprietary tools and computers that need to be used to access both the on-board diagnostics of a motor vehicle and the repair information from the manufacturer’s website. This may mean an independent repair facility requires multiple proprietary tools and computers to access the information they need to repair and service different motor vehicles. As part of the above, each manufacturer operates a website with repair and service information to which an owner or independent repair facility can subscribe for a period, generally between 1 day and 1 year to gain relevant information and data. As noted above and below, for motor vehicles with a model year of 2018 and beyond, the Massachusetts law and MOU will require manufacturers to adhere to the terms outlined above for website or ‘cloud’ access.

A key difference between the Massachusetts law and the voluntary MoU relates to dispute resolution mechanisms. A breach of the Massachusetts law can be remedied by taking action before a court. The voluntary MoU instead provides for a five (5) member dispute resolution panel as the arbiter of disputes under the agreement.

Obligations on manufacturers under the Massachusetts law and MoU from model year 2018

The Massachusetts law and the MoU change, from model year 2018, how manufacturers operating in the US share repair and service information and deal with proprietary tools needed to service and repair motor vehicles.

As outlined above, from model year 2018, manufacturers must, in general, make on-board diagnostic data and repair information accessible using an off-the-shelf personal computer and a standardised vehicle interface. Owners and independent repair facilities will still need to subscribe to different manufacturers’ websites to obtain repair and service information for different brands of motor vehicles, however, they will be able to connect to the motor vehicle’s on-board diagnostics and the manufacturer’s internet server using one off-the-shelf personal computer and one standardised device.

NASTF secure data release model

NASTF is a not-for-profit organisation representing all major stakeholder groups in the US motor vehicle industry established to facilitate the technical aspects of sharing of repair and service information. It administers the SDRM and the associated VSP Registry, a secure

¹⁰ Mass Gen Laws, ch 93K, section 2(c)(3) and [Memorandum of Understanding](#), 15 January 2014, section 2(b)(ii).

¹¹ Mass Gen Laws, ch 93K, section 2(d) and [Memorandum of Understanding](#), 15 January 2014, section 2(c).

¹² Frequently Asked Questions about the Right to Repair National Memorandum of Understanding, provided in a [submission by GPC to the ACCC](#), 16 March 2017.

¹³ Mass Gen Laws, ch 93K, section 2(e) and [Memorandum of Understanding](#), 15 January 2014, section 2(d).

internet-based system that vetted mechanics and locksmiths in the US can use to access security-related repair and service information and files for motor vehicles directly from manufacturers.¹⁴ NASTF has described that the SDRM responds to concerns about “...protecting the integrity of vehicle security systems, the intellectual property of auto manufacturers, the privacy and property of consumers and the insurability of vehicles at affordable rates.”¹⁵

The Massachusetts law and MoU allow manufacturers to exclude diagnostic and repair information necessary to reset an immobiliser system or security-related electronic modules from being shared through the mechanisms detailed in the law and the MoU (i.e. the manufacturer’s website), but it must then be shared through the SDRM (or other known, reliable and accepted system).

¹⁴ Mary Hutchinson, [NASTF Releases Secure Data Release Model \(SDRM\)](#), NASTF, 7 February 2008.

¹⁵ Ibid.