TOYOTA

15 February 2021

Right to Repair
Productivity Commission
4 National Circuit
Barton ACT 2600

Re: Productivity Commission Issues Paper – Right to Repair

Toyota Motor Corporation Australia Limited (**Toyota**) appreciates the opportunity to provide a submission to the Productivity Commission's Right to Repair Issues Paper.

Toyota's operations in Australia

Toyota is a sales and distribution operation, having previously also manufactured vehicles in Australia for 54 years until 3 October 2017. Toyota has retained a significant local presence in Australia beyond the closure of local vehicle manufacturing operations in Altona (Victoria). This local presence includes import and distribution activities, maintenance of a significant research and development (R&D) division, as well as the establishment of a Centre of Excellence at our Altona site which includes our vehicle conversion operations, hydrogen experience centre and vehicle evaluation facility.

Together with our dealer network, Toyota imports, markets, sells and services motor vehicles and related components, parts, and accessories in Australia. Toyota distributes all vehicles via its network of independent franchisees.

In 2020, Toyota was the top selling automotive company in Australia for the 18th consecutive year with a market share of 22.3 per cent. In 2021 and beyond we will continue to build upon our reputation of delivering reliable vehicles and supporting our valued Australian customers through parts, accessories, and technical support.

Introduction

Since 2013 Toyota has voluntarily been providing the technical information required for independent repairers to service and repair vehicles in compliance with the FCAI's Voluntary Code of Practice for Access to Service and Repair Information for Motor Vehicles.

Toyota believes it is unnecessary for this review to have specific focus on the automotive sector, considering this issues paper coincides with the release of Treasury's draft Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2020, which already deals with many of the same issues.

Please see Toyota's response to the inquiry's questions below.

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Information Request 1

What would a 'right to repair' entail in an Australian context? How should it be defined?

Refer to FCAI submission

Information Request 2

a) What types of products and repair markets should the Commission focus on?

Toyota has supported numerous reviews into the right to repair market that have been undertaken. Particularly over the past five years, there have been a significant number of reviews including the 2017 ACCC market study that focused primarily on the automotive sector. Therefore, Toyota does not believe it is necessary for this review to have specific focus on the automotive sector, especially as this issues paper coincides with the release of Treasury's draft Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2020, which already deals with many of the same issues.

b) Are there common characteristics that these products share (such as embedded technology and software or a high/low degree of product durability), and which characteristics would allow policy issues to be considered more broadly?

Toyota believes this question is not applicable to the automotive sector.

c) If there are particular products that the Commission should focus on, what are the unique issues in those product repair markets that support such a focus?

Toyota suggests focus be on areas that have not been under the same level of scrutiny and are not covered by the Treasury's draft Competition and Consumer Amendment Bill.

Information Request 3

a) Do the consumer guarantees under the ACL provide adequate access to repair remedies for defective goods? If not, what changes could be made to improve access to repair remedies? Are there barriers to repairing products purchased using new forms of payment technologies, such as 'buy now pay later'?

In relation to automotive products, the consumer guarantees under the ACL are already sufficient and repair remedies are already very stringent, therefore no additional changes are required. Toyota has rolled out significant training across our dealer network to ensure compliance with the ACL and to ensure all appropriate repair remedies are implemented. Any further changes would require significant time and resources, which would be an additional burden on dealerships around Australia without any evidence of material benefit to the consumer.

b) Is the guarantee of available repair facilities and spare parts effective in providing access to repair services and parts? Or is the opt-out clause being widely used, making the guarantee ineffective?

Toyota has a very extensive dealer network that is comprised of 198 dealers and 279 dealership sites across Australia, making access to repair services and parts widely accessible. Toyota prides itself on working within the 'just in time' principles that ensures parts are appropriately stocked and available as required. Toyota genuine parts can also be sourced and stocked by independent repairers, therefore presenting more choice to consumers while ensuring the quality and safety of parts. In addition to Toyota's offerings, there has been a number of other aftermarket parts made available, however while there is additional choice for the consumer, these aftermarket parts have not been designed, developed and tested by Toyota.

c) Should consumer guarantees seek to balance the broader societal costs of remedy choices (such as the environmental impacts of replacements) with consumer rights, and if so how? For example, should repairs be favoured as a remedy?

Toyota is committed to reducing our impact on the environment and as such, Toyota believes it would make a positive environmental impact if manufacturers were given more opportunity to repair vehicles, rather than replace them under the current ACL.

Toyota's preference is always to repair a vehicle where appropriate, rather than replace it. Toyota vehicles are made up of many thousands of parts, all manufactured and designed to ensure optimum efficiency, performance, durability and safety. Toyota does not believe vehicles should be replaced when they can be restored to their full functionality after repair.

d) Are consumers sufficiently aware of the remedies that are available to them, including the option to repair faulty products, under the ACL's consumer guarantees?

- **If not, would more information and education be a cost-effective measure to assist consumers understand and enforce guarantees? What would be the best way to deliver this information? What other measures would be more effective?**

  It is Toyota's experience that our guests are fully aware of their rights under the ACL. At the time of purchase, guests are provided with a copy of the warranty and service book (or logbook) that informs the purchaser of their rights and consumer guarantees under the ACL. The warranty and service book also outline details regarding the Toyota New Vehicle Warranty, Corrosion Perforation Warranty and Toyota Genuine Accessories Warranty's commencement, expiry, and scope of coverage. This information is also made available at Toyota Australia's website.

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Information Request 4

a) The Commission is seeking information on the nature of repair markets in Australia, including detailed data on the repair markets for specific products, covering:

- **market size — by employment, revenue, number of businesses, profit margins**
- **market composition — such as market share between authorised, independent and DIY repairers.**

Refer to the FCAI's submission.

b) Is there any evidence of a difference in quality, safety or data security between authorised repair networks and independent repairers? Are there ways to address concerns around quality, safety or data security while promoting a vibrant independent repair market?

All Toyota dealers have frequent and comprehensive training to ensure they are in the best position to service and repair Toyota vehicles in a way that maintains the vehicle's quality and safety. Toyota dealers are not trained nor expected to have knowledge of other brands vehicles as this would be impractical given the complexity and specialisation required. The correct skills and qualifications are fundamental in ensuring that vehicles maintain longevity and meet the quality, durability and reliability (QDR) expectations of Toyota vehicles. The introduction of emerging technologies into the market such as connected vehicles, hydrogen fuel cell vehicles and automated vehicles will require a certain level of experience and understanding for technicians and repairers to engage and repair safely. For connected vehicles. Toyota has been working to ensure that data security is preserved by its Dealers. Toyota cannot comment on the operations of independent repairers. However, it is unclear what same standards, training and safeguards are in place for non-affiliated repair entities.

Toyota expects and monitors a high degree of accountability of its dealers and the workforce in terms of managing repairs of vehicles with focus on safety, quality and data. The complexity of vehicle systems such as Toyota Safety Sense (TSS), especially autonomous braking and management of the Data Communication Module (DCM) are critical and complex issues that Toyota believes requires a high degree of training and specialisation and we have reservations of the ability of independent repairers to deliver independently.

c) Are there available examples of the contracts between OEMs and authorised repairers? Do these contracts limit effective competition in repair markets (such as by limiting the number and reach of authorised repairers or requiring authorised repairers to not be authorised by a competing brand)?

- **What is the process to become authorised? Is it open and competitive?**

Toyota dealers are independently owned and operate separately to Toyota Australia. The right to purchase and own a Toyota dealership is broadly available, however Toyota reserves the right to assess whether a potential dealer is appropriate to be a custodian of the brand. While dealers are encouraged to market their products within a specific area, Toyota dealer agreements do not impose geographic constraints on dealers.

The Australian automotive market is already highly competitive with some 69 brands competing for over 1 million new car sales a year. While there is substantial competition in the automotive service industry between authorised Toyota repairers and all other

repairers, there is also high competition within the Toyota dealer network. This is the reality of the Australian automotive market, in which there are many brands and service providers, seeking to service a relatively low volume of vehicles.

The 5-year warranty provided for new vehicles under Toyota Warranty Advantage is not conditional on the vehicle being serviced and maintained by a Toyota Dealership, meaning repairs can be carried out by a competing brand.

Toyota and its dealer network receive significant advice on market competition from external lawyers to ensure that our dealer network does not breach competition requirements.

d) Are there specific examples or other evidence of practices by OEMs or their authorised repairers that create barriers to competition in repair markets?

- **Do other factors also create barriers to competition in repair markets, such as short-sighted consumer behaviours, switching costs, poor information availability or consumer lock-in?**

  Toyota does not believe there are barriers to competition in the repair market between authorised Toyota repairers and other repairers. All service and repair information is contained within a physical or electronic logbook (via Toyotamanuals.com.au) that is available at the request of the consumer. There are no barriers such as switching costs when consumers move from an authorised repairer to another repairer, and guests are not locked into dealers under capped servicing programs.

e) What is the relationship between the intensity of competition in the primary product market and the risk of consumer harm from a lack of competition in repair markets? Can competitive primary markets compensate for non-competitive repair markets?

- **Is an absence of effective competition in the primary market a necessary condition for consumer harm from non-competitive repair markets?**
- **To what extent would measures that enhance competition in the primary market address concerns about a lack of competition in repair markets?**

  The Australian automotive industry is highly a fragmented and competitive market with an estimated 30,000 independent car repairers alone operating throughout Australia (Australian Automotive Aftermarket Association, 2020). As mentioned above the competition is not only between authorised repairers and all other repairers but also within a brand's own dealership network.

f) Are the restrictive trade practices provisions of the CCA (such as the provisions on misuse of market power, exclusive dealing or anti-competitive contracts) sufficient to deal with any anti-competitive behaviours in repair markets?

Yes.

g) What policy changes could be introduced if there is a need to increase competition in repair markets and improve consumer access to, and affordability of, repairs?

- **What are the costs and benefits of any such proposal to the community as a whole? How does it balance the rights of manufacturers and suppliers, with those of consumers and repairers?**

  The automotive repair market does not suffer from lack of competition as demonstrated above and therefore Toyota does not believe it is in need of additional policy changes. The automotive industry is undergoing transformative change with automotive companies undertaking significant research and development into intelligent transport systems (ITS), autonomous vehicles, electric vehicles and hydrogen vehicles. Given the scope of transformation currently occurring, Toyota does not support new policy changes at this time.

  The automotive industry is already one of the most regulated in Australia, evident by the numerous changes made to the Franchise Code in 2020, and the current draft Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill under review by Treasury.

Information Request 5

a) To what extent do current IP laws already facilitate repairs by consumers or independent third parties (e.g., the spare parts defence under the Design Act)?

Toyota believes the current IP laws are sufficient, as repairers are free to repair vehicles without any threat of infringing the vehicle manufacturer's IP rights

b) Are there any aspects of IP laws where consumers' rights with respect to repairs are uncertain?

Toyota believes that it is abundantly clear to consumers in the automotive sector that vehicles can be repaired without infringing IP rights. However, Toyota reserves its right to enforce its remaining IP rights, particularly in respect of counterfeit parts. Globally, and within Australia, Toyota invests heavily in research and development and as such IP laws need to protect this investment and ensure that a vehicle cannot be modified in a way that would breach such IP laws. In fiscal year ending March 31, 2020 Toyota Australia spent over $8 million on R&D and Toyota globally incurred R&D costs of about $1.1 trillion Japanese yen developing new products and services and reserves its right to reclaim these costs, or otherwise risks future technology enhancements and the ability to bring such enhancements to market. Furthermore, counterfeit parts can represent real safety risks to consumers, particularly in the automotive sector where the quality, durability and reliability of a part can affect the safety of a vehicle.

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c) Do current IP protections (e.g., intellectual property rights, technological protection measures, end-user licencing agreements) pose a significant barrier to repair in Australia? If yes, please comment on any or all of the following:

- **the specific IP protections that prevent consumers from sourcing competitive repairs and/or inhibit competition in repair markets**
- **the types of products or repair markets these barriers mainly affect**
- **the prevalence of these barriers**
- **the impacts of these barriers on third party repairers and consumers (e.g., financial cost, poorer quality repairs)**

options for reducing these barriers and their associated benefits, costs and risks (including potential impact on market offerings).

From a safety, security and compliance perspective, there needs to be some boundaries on what information is provided to other parties not associated with Toyota. In particular, there are certain restrictions on repair data that are essential to ensure the safety of the consumer and the wider community. Certain data around critical vehicle systems such as software updates and calibrations are sensitive and highly specific, requiring the appropriate training and skills to ensure that they are installed and calibrated correctly so that they do not result in damage to the driver, the vehicle or others. In some cases, the failure to correctly install software can result in a vehicle being rendered unsafe or unusable resulting in a risk of injury or significant repair expenses.

Again, Toyota reiterates that given the complexity of modern motor vehicles and the continuing transformation underway within the industry, that the risk associated with providing certain repair data is significantly higher than it is for other consumers products. Therefore, any information that could impact safety of the consumer and the wider community must be protected. The Productivity Commission needs to be cautious that any recommendations made in this space do not result in unintended risk and outcomes linked with a rapidly transforming industry e.g., automated vehicles.

d) In what ways might government facilitate legal access to embedded software in consumer and other goods for the purpose of repairs? What are the pros and cons of these approaches?

There would be major safety implications if access to embedded software was shared. Toyota's number one priority is to ensure the ongoing safety and satisfaction of our customers and the wider community; therefore, it would be unacceptable to provide access to embedded software that would allow modification away from the most basic 'factory setting'.

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Information Request 6

a) What evidence is there of planned obsolescence in Australian product markets? Do concerns about planned obsolescence principally relate to premature failure of devices or in them being discarded still working when more attractive products enter the market?

Planned obsolescence is not applicable to Toyota as we design and build our products to last. Toyota branded vehicles comprise the largest proportion of the Australian vehicle parc, and in 2020, Toyota topped the list of passenger vehicles for the 15th consecutive year with 3.0 million registrations. Toyota is known for our commitment to QDR, vehicle quality, durability and reliability, and our customers rely on this commitment when purchasing a Toyota vehicle, and throughout the life of their vehicle. Substantial time and investment go into the design and build of all Toyota vehicles, with the design cycle usually encompassing a five-year period for passenger vehicles. The average age of vehicles in the Australian car parc is 10.5 years, demonstrating the ongoing longevity of such products. Whilst we intend to build vehicles to last, we also have a focus on enhancing the safety outcomes from vehicles which in turn means we are constantly bringing new products to market. These principles also align to government's focus on safety, low emissions and other factors. Furthermore, Toyota requires its Dealerships to repair any Toyota vehicle if requested to do so by a customer, no matter the age of the vehicle. This means that Dealerships cannot refuse to repair a vehicle if the vehicle is 'too old', thereby protecting against obsolescence.

In contrast, vehicle imports under the Road Vehicle Standards Bill's Specialist and Enthusiast Scheme, which is presently uncapped in volume of imports, poses additional market risk as these vehicles are not built or intended to be supplied to the Australian domestic market. As such the ability for Toyota and independent repairers to access the necessary parts and service and repair information is limited, which poses risk of additional obsolescence and does not necessarily provide the same level of vehicle safety and consumer guarantees.

b) How can the Commission distinguish between planned product obsolescence and the natural evolution of products due to technological change and consumer demand?

No comment

c) How does planned obsolescence affect repairers, consumers and the broader community in Australia?

No comment

d) What measures do governments currently use to prevent planned obsolescence or mitigate its effects (in Australia and overseas)? How effective are these measures?

No comment

e) What are the benefits, costs and risks of Australia adopting measures similar to those currently used overseas, such as product design standards and reparability ratings?

No comment

f) Do consumers have access to good information about durability and reparability when making purchases? If not, how could access to information be improved?

Toyota ensures that its customers have access to information about durability and repairability when purchasing a vehicle. In fact, the durability and repairability of Toyota vehicles is one of their major selling points.

Information Request 7

a) What data are available on the amount of e-waste generated in Australia?

- **What data is there on the composition of e-waste in terms of particular materials (such as hazardous materials) by product type?**
- **How does hazardous e-waste compare to hazardous general waste in its prevalence and risks? Is there merit in distinguishing between hazardous e-waste and non-hazardous e-waste? And if so, how could this be done in practice?**

  Toyota introduced a hybrid battery recycling program in 2013 whereby customers are rewarded with a rebate for each battery returned for recycling. Customers who require a replacement battery are also offered a price reduction to incentivise customers to recycle. Almost every component of a hybrid high voltage battery can be recycled.

  Toyota also has an existing exchange program in place with Denso-Ten and Pioneer to recycle the navigation units within Toyota vehicles.

  End of life for both vehicles and its components is a consideration for industry and via the FCAI we will continue to explore opportunities to address recyclability.

b) What estimates are available on the costs of e-waste disposal on the environment, human health and social amenity, in Australia and internationally?

- **How do the impacts differ by disposal type, or by the type of product or hazardous material?**

c) How much of Australia's e-waste is shipped overseas for recycling? Is there evidence of circumstances where this creates problems for recipient countries?

- **Are there barriers to the expansion of domestic recycling facilities or the adoption of new recycling technologies in Australia (such as plasma arc incinerators)?**

  No comment

d) What are Australia's current policy settings for managing the potential environmental and health effects of e-waste (such as landfill bans, the National Television and Computer Recycling Scheme or Mobile Muster)? Are these policy settings broadly right — that is, are they proportional to the impacts of e-waste on the community?

No comment

e) How can a right to repair policy further reduce the net costs of e-waste in Australia, and would such an approach be an effective and efficient means of addressing the costs of e-waste to the community?

No comment

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Information Request 8

a) What policy reforms or suite of policies (if any) are necessary to facilitate a 'right to repair' in Australia?

There is no need to introduce any policy reforms to facilitate the 'right to repair' for the automotive industry. Again, Toyota the Productivity Commission should take into consideration the significant transformation occurring in this sector and the need for government policy to be flexible enough to address both current and future market conditions.

b) Are there any other barriers to repair and/or policy responses that the Commission should consider?

No comment

c) What are the costs and the benefits of the various policy responses that have been proposed to facilitate repair (such as those outlined in table 1)?

No comment

d) Are there other international policy measures or proposals that the Commission should consider as part of this inquiry?

No comment

It should be noted that Toyota welcomes initiatives that enhance the consumer experience and satisfaction in owning a Toyota or Lexus vehicle. However, from a safety and security perspective, there needs to be some boundaries on what information is provided to other parties not associated with Toyota, who may not operate to the standard we would expect of our own dealership operations. That elevated standard is the result of robust Toyota and Lexus technical training programs which allows our networks to specialise in Toyota and Lexus products and have deep and specific knowledge far beyond the generic qualifications required to operate more broadly across the vehicle repair market.

Should you wish to discuss any of the above, please contact me on 0409 548 710 or by email: andrew.willis@toyota.com.au.

Yours faithfully

TOYOTA MOTOR CORPORATION AUSTRALIA LIMITED

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