



Review of the Operation and Effectiveness of the Designs Act 2003

Submission to the
Advisory Council
on Intellectual Property

October 2013



Australian Automotive Aftermarket Association

Serving the automotive parts, accessories, tools & equipment industry in Australia since 1980.

Australian Automotive Aftermarket Association

The Australian Automotive Aftermarket Association (AAAA) represents over 1700 companies nationally that are engaged in the manufacture and distribution of automotive aftermarket parts, accessories, workshop tools and equipment in a sector that turns over \$11 billion per annum, exports \$800 million worth of product and employs over 30 000 Australians.

AAAA members manufacture, distribute and fit motor vehicle components that either:

- Last the life of the vehicle or are replaced irregularly during the life of the vehicle, usually as the result of a crash or a major mechanical failure – e.g. seats, instrument panels, engines, and transmission; or
- Are replaced regularly throughout the life of the vehicle as a result of normal wear and tear – e.g. filters, tyres, wiper blades, spark plugs, bulbs, batteries and brake pads. This category also includes the manufacture and distribution of products used to maintain or enhance the appearance and performance of vehicles, including accessories, safety, comfort, appearance, entertainment and information, functional performance, body components, tools and equipment, mechanical, lubricants, additives and chemicals.

The economic contribution of the automotive aftermarket is significant. The market is growing due to the increase in the motor vehicle stock in Australia. The number of registered vehicles is increasing by an estimated 2.3% annually, and by 2015 there will be approximately 17.1 million cars serviced by aftermarket component producers. Australian motor vehicles will have an average age of 10.7 years in 2015, up from 10.0 years. It is estimated that over a 10-year period the money spent on replacement parts and maintenance will be one and half times the original purchase price of the vehicle.

The Australian automotive aftermarket has earned an enviable reputation internationally as a supplier of world-class innovative automotive products and Australian manufacturers are known for their flexibility and ability to supply high quality product often in niche volumes in a timely and consistent manner.

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Introduction

The Australian Automotive Aftermarket Association (AAAA) supports the objectives of designs law: to strike a balance between prevention of excessive copying and encouragement of investment on the one hand, and not acting as a barrier to innovation or the free flow of ideas on the other. It is our view that, particularly in the areas of interest to our members, the current Act adequately strikes that balance.

The AAAA has a particular interest in the operations of the Act as it affects our members' interests, particularly in relation to the exclusion of 'Right to Repair' and 'Spare Parts' from protection under the Act.

Right to Repair and Spare Parts

The AAAA supports the current regime under the Designs Act relating to Spare Parts and Right to Repair. We note the reference to the 2005 IP Australia review quoted at Appendix 1 of the Issues Paper, which noted that the provision had, at that time, operated only for a short period, but that there was a common view in submissions that the provision had not had a significant effect on industry and consumers, and that no change was required. It is our submission that this is still the case, and that no change is required to the Designs Act in this regard.

Our position on this matter is consistent with a recent Commonwealth Consumer Affairs Advisory Council (CCAAC) report into the sharing of repair information in the automotive industry, published online on 20 December 2012.

The CCAAC final report recognised that limited availability of repair information has the potential to reduce competition within the automotive repair industry, limiting consumer choice. The similarity in approach here is that during the CCAAC Inquiry, vehicle manufacturers argued that limiting the availability of repair data protects their intellectual property. In relation to the current ACIP

inquiry, we believe it is a fact that these anti-competitive forces exist within the automotive repair and maintenance industry, and that removal of the “Right of Repair” and “Spare Parts” exclusions in the Designs Act would only exacerbate those anti-competitive effects.

Market Implications

It is widely acknowledged that there is a worldwide over-supply of new passenger motor vehicles and profit margins are low. This is a highly competitive global industry. In the USA 32 global vehicle manufacturers supply 16 million new cars into the market each year. In Australia, 60 manufacturers supply 1 million new cars a year: it could be argued that Australia has one of the most competitive and diverse markets (relative to its size) in the world. Whilst there are popular models that enjoy a larger customer base, there are also vehicle brands and models with a very small customer base and given the nature of the market, results in small margins per car sold.

The AAAA is not privy to accurate information on the profit margins on vehicle sales and in our view the issue of the potential for cross subsidisation of vehicle sales, spare parts and repairs and service is very complex due to the nature of the arrangements between the vehicle manufacturers, their first tier parts suppliers and the fact that they are separate entities. If we examine the marketing efforts of the vehicle manufacturers we see an increasing emphasis on ‘genuine parts’. These marketing efforts seek to imply that using generic parts will void the warranty. These marketing messages and warranty misinformation continue despite the ACCC’s specific directive that parts should be ‘fit for purpose’ and the use of generic parts will not void the warranty and statements to the contrary are in direct contravention of ACCC rulings.

We make these observations regarding the ‘genuine parts’ message to ensure that there is ongoing government awareness that the shrinking margins for car sales increases the pressure to capture the spare parts market in any way that is possible under the law, and in some cases, engaging in practices that cross

that line. Whilst we do note that there is no intention to change the current arrangements in relation to spare parts, we must strongly make the point that there will be efforts by the vehicle producers to change the current arrangements. Any argument advocating a removal of the current exemption is not motivated by the desire to create open and fair competition. These efforts are motivated by a car industry that has oversupplied the market and seeks a diversified guaranteed income stream. Industry pioneer Henry Ford is reputed to have said he would give the cars away if he could have a monopoly over replacement parts sales.

New car dealers: The majority of new car dealers are independently owned businesses that enter into a franchise agreement with a vehicle manufacturer. In fact many dealer principles hold multiple franchises with different vehicle manufacturers. The dealership based service departments usually structure their operations such that sales, parts & accessories, service and finance & insurance are each specific profit centres. Independent reports indicate that the vehicle-servicing department is far and away the most profitable for the dealers, with up to 70% of gross profit on motor vehicles products/services made through this centre. Dealers tend to refer to their most profitable sector as 'fixed operations', with vehicle servicing and spare parts sales being a consistent source of income through a tougher economic climate. Vehicle servicing and parts is the boom division of dealership operations.

Vehicle manufacturers: While servicing and repairs are conducted through vehicle dealerships, vehicle manufacturers themselves enjoy profits made through the sale of OE (Original Equipment) parts and accessories, which are fitted to vehicles through the repair and service process, but sourced from component manufacturers. The OE parts that typically require replacement are those associated with wear and tear (spark plugs, filters, brake pads, drive belts etc.).

Wear and tear components are replaced at the consumer's cost. It is only if components are found to be faulty that they are required to be replaced at the cost of the manufacturer. Manufacturers benefit from the sale of these replacement parts if they can ensure the dealer conducting the vehicle service repeatedly sources only OE parts via the manufacturer and does not use the interchangeable parts through the independent aftermarket. The commercial arrangements are complex and include supply contracts between the manufacturers and the parts suppliers in which heavily discounted prices are required in return for supply contracts for up to seven years of aftermarket supply. In these commercial arrangements, the first tier parts supplier is required to discount the price of the part for the vehicle build phase in return for a guaranteed income as a 'genuine' replacement part. These replacement parts are then packaged with the vehicle makers logo. For example, a generic spark plug is placed into a small cardboard box with the Ford logo on the package and this apparently affords the buyer with the reassurance that the spark plug is a 'genuine replacement part'. As a wear and tear item the additional cost is borne by the car owner.

If there are variations of these cross subsidy arrangements in place, all of which the consumer is not made aware of when they purchase the vehicle. The consumer does not have an opportunity to accept a higher purchase price in return for lower running costs and the relationship between the manufacturer, the genuine parts suppliers and the dealer is not disclosed or understood by the consumer.

The customer of the car dealership service department is not aware that independent aftermarket parts are available and is not offered the choice of using 'original equipment' or equivalent components.

It is our view that the current Designs Act exemption for spare and replacement parts ensures the competitiveness of the aftermarket industry and encourages diversity and investment in the industry and provides car owners with choice and a cost effective alternative to the car makers "genuine" parts.

We see no valid reason for vehicle manufacturers to be able to register patents on spare parts given the overwhelming majority of replacement parts on a vehicle are designed and manufactured by external suppliers. The exemption for spare part in the Designs Act 2003 assists to balance the current suboptimal competitive arrangements within the Australian automotive aftermarket.

Removing the exemption would lead to a very expensive and uncompetitive aftermarket industry, and would result in significant community disadvantage.

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