

RESPONSE TO THE AUSTRALIAN
COMPETITION & CONSUMER COMMISSION

NEW CAR RETAILING INDUSTRY

MARKET STUDY
ISSUES PAPER

Australian Automotive Aftermarket Association
November 2016



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FOREWORD

The AAAA values an opportunity to contribute to the Issues Paper for New Car Retailing Industry – a market study by the ACCC. This is a timely, valuable and worthwhile exercise. The market place for automotive repair and maintenance does not trade fairly. The current market conditions foster anti-competitive behaviour, which effectively leads to less competition, fewer service providers, less choice and higher prices.

Every sector could make a case that there are specific commercial issues that are unique to that sector, however our view is that the purchase of a motor vehicle is clearly unique. It is an issue of great importance because of the cost relative to overall household expenditure, the significant ongoing maintenance costs and the importance of the vehicle to Australian households for participation in the community and the economy. The current market is not sufficiently protecting car owners' rights. In many comparable international jurisdictions, the issue of vehicle ownership requires special provisions and we are of the view that similar regulatory reforms are well overdue in the Australian new car retailing market.

The issues raised in the submission are of critical importance to our members. Whilst we have responded to most of the questions contained in the ACCC Issues Paper, the most important issues to our members have three common themes: honesty & transparency, consumer guarantee rights and fair and open competition.

Australia's consumer and competition law regime is generally effective in maintaining a consumer's right to safe products and to remedies for faulty products. However, in respect to new car owners, it is not sufficient and Australian consumers deserve better. They deserve full transparency around servicing costs, choice of repairer and warranties. They deserve full control over access to the data required to service and maintain their vehicle and ownership of the data that their vehicle generates.

In preparation for our submission to this Market Study, AAAA commissioned an independent study covering over 18,000 serviced vehicles. To our knowledge, research of this quality and depth has not previously been undertaken in



▲
Stuart Charity
Executive Director

Australia. As a result, we are now able to provide valuable insights into the size and relative importance of the lack of access to repair and service information for independent repairers. The cost to the Australian community is estimated to be \$4.02 billion per annum.

The fact that the current laws allow car companies to restrict access to a car owner's online logbook, software updates, known manufacturing faults and fixes, or the vehicle's oil blend is quite simply, unconscionable. The revelations regarding the use of non-disclosure agreements for consumers to access remedies under the consumer guarantees regime is equally alarming. The fact that the very same car companies that have opened up access to paid subscriptions for diagnostic and repair information in North America and Europe, and then behave in this manner in the Australian market is unacceptable.

Australia has made enormous strides in the protection of markets and consumers – but in respect to new car ownership, we can do better.

Stuart Charity
Executive Director
Australian Automotive Aftermarket Association

WHO WE ARE

The Australian Automotive Aftermarket Association (AAAA) is the national industry association representing manufacturers, distributors, wholesalers, importers and retailers of automotive parts and accessories, tools and equipment, and providers of vehicle service and repair, and modification services in Australia.

2,250



Member companies represented by the association in all categories of the Australian automotive aftermarket

Members include major national and multi-national corporations as well as a large number of independent small and medium size businesses

\$1b



AAAA member companies export over \$1 billion worth of Australian-manufactured product each year



The parts and maintenance sector is a large and critical component of Australia's \$200 billion automotive industry

40k



AAAA member companies employ more than 40,000 people



Member companies are located in metropolitan, regional and rural Australia

The independent aftermarket is a significant segment of the automotive industry and in most cases, parts supplied to the consumer through distribution channels alternative to the motor vehicle dealer networks are of an equivalent (or in many cases superior) quality, and are fit for the purpose intended. A significant number of AAAA members also produce automotive parts that are used in the original build of the vehicle, and products that are sold by new car dealerships as OEM parts.

The AAAA sits on 25 Standards Australia committees covering a wide range of parts and accessories, tools and equipment and our member representatives are actively involved in the development of product quality standards. The AAAA and our member companies

passionately defend the reputation and integrity of the independent aftermarket and stand by our products and workmanship. We have strong relationships with state and federal regulators and regularly disseminate information to members on relevant legislation and standards to assist them with their compliance obligations.



AUTOMOTIVE REPAIRERS COUNCIL OF AUSTRALIA

In November 2016, in response to demand from the independent automotive repair and service sector, the AAAA launched the Automotive Repairers Council of Australia (ARCA) as a specialist sub-council

of the AAAA joining the Automotive Product Manufacturers and Exporters Council, 4WD Industry Council and Performance Racing and Tuning Council.

ARCA has been established to open doors to increased automotive knowledge and business expertise, protect competition and choice in the market and ensure a strong and unified national voice to government on behalf of Australia's independent service and repair workshops. This new Council will operate across state borders to provide structure and much needed formal links to the rest of the automotive parts and accessories supply chain. The inaugural ARCA committee includes industry leaders drawn from independent workshops and major service and repair chains from all mainland states.

AAAA MEMBERS MANUFACTURE, DISTRIBUTE AND FIT MOTOR VEHICLE COMPONENTS THAT:

<p>1</p> <p>Are replaced regularly throughout the life of the vehicle because of normal wear and tear – e.g. oil, filters, tyres, wiper blades, spark plugs, bulbs, batteries and brake pads.</p>	<p>2</p> <p>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.</p>	<p>3</p> <p>Are manufactured and distributed to service and 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.</p>
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SOME OF OUR MEMBERS AND BRANDS

Bapcor							
GPC Asia Pacific							
							
							
							
							
							

SECTION 1

STRUCTURE AND
OPERATIONS OF THE
NEW CAR RETAILING
INDUSTRY



INTRODUCTION

The description of the structure and operations of the new car retailing industry is accurate as a general description, however a number of automotive repair terms are used incorrectly and the document contains generalisations that will affect the usefulness of the model to ACCC understanding of industry dynamics and market roles.

The term 'aftermarket' does imply that this sector is exclusively providing products and services that occur after the sale of the vehicle. The Market Study describes this as 'Downstream'. This is a reasonable 'general' observation. However, the Market Study is designed to examine this industry in greater depth and a more detailed and accurate understanding is required:

- In the Issues paper, the aftermarket is described as a downstream participant. In reality, the aftermarket producers also provide products for upstream: aftermarket products are sold to car manufacturers and dealerships and this transaction is completed before the vehicle is sold.
- Similarly, many of the manufacturers that supply 'upstream' are also producing 'downstream' products and services that are sold to repairers and consumers and occur after the vehicle is sold.
- The independent service and repair sector is considered to be 'authorised'. Many independent repairers would describe their operations as 'Authorised Repairers', particularly in states and territories that require specific business licencing to operate as an automotive repairer. The term 'authorised' may not be sufficiently accurate in the context in which it is used throughout the document.

1. HOW WELL DOES THE ACCC'S UNDERSTANDING OF THE NEW CAR RETAILING INDUSTRY SUPPLY CHAIN REFLECT MARKET PARTICIPANTS' UNDERSTANDING OF THE SUPPLY CHAIN? WHICH KEY MARKET PARTICIPANTS DOES IT NOT CAPTURE? HOW COULD THE ACCC'S DEFINITIONS BE IMPROVED?

ACCURACY

There is an assumption in the diagram that 'equipment and parts suppliers' are located exclusively in the post-sales service segment.

In the manufacture of vehicles, automotive component producers supply components for the assembly of the vehicle and for after-sales service. Many aftermarket producers also supply to the new car market, to the authorised dealerships and to the independent aftermarket. Similarly, these same parts producers manufacture components for car assembly and are therefore located both 'upstream' and 'downstream'.

Equipment and parts suppliers can, and do, supply direct to new car dealers. Specialist components are sourced from the aftermarket and supplied to the dealership prior to completing the new car sale. Car companies supply aftermarket-sourced parts through their authorised dealers and other non-dealer channels.

Our recommendation is that the supply of parts, and the service and repair of vehicles are in fact better represented as two separate diagrams. It would be difficult indeed to capture the parts supply chain and the repair/after-sales services in one diagram.

MARKET PARTICIPANTS NOT CAPTURED

Parts Distribution

Parts distribution to the automotive trade is delivered by a large economic segment represented by automotive trade distributors and resellers with Repco and Burson Auto Parts the two largest players. It is not feasible or economically viable for independent service and repair operators to hold inventories of parts due to the large range of cars on Australian roads. When consumers present a vehicle for service and repair, the diagnostic phase will commence immediately. The repairer will diagnose the problems and access the service schedule of

the vehicle to assess the required parts and the order will be placed electronically. These parts are delivered, generally within 2-3 hours, to workshops throughout Australia. The supply of replacement parts is a sophisticated and growing market fuelled by the large number of makes and models on Australian roads.

Vehicle Modification

Consumers purchasing a new car will do so with a clear purpose and intent. After the purchase of the vehicle, some consumers may intend to tow a caravan or trailer or to take the vehicle off-road (for example, the consumer's place of residence may not have a sealed road). If a consumer does intend to tow a caravan or boat, the new car will require towbar fitment, either at the dealership or by a specialist fitter outside of the dealership.

Specialist vehicle modifications are an integral part of new car sales process. During a new car purchase transaction the consumer will ensure that this vehicle is either fit for purpose in its current form or alternatively, the car can be modified to ensure that it is fit for the intended purpose. There are large groups of consumers that will modify new cars for family or recreational purposes and most do so through the independent aftermarket. All of these modifications are regulated by federal and state government standards. Vehicle modification market participants are relevant to this study in a number of areas:

1. **Warranties:** There is an industry view that consumers are informed verbally at the dealership that the fitment of an aftermarket towbar or other accessories will void the warranty – we cover this issue in more depth in Section 2 and 4. There are numerous examples of warranty claims that are incorrectly refused due to the fitment of aftermarket accessories. It is important to note that these cases of warranty refusal are most often made for vehicle manufacturing faults that were unrelated to the aftermarket component fitted.
2. **Parts:** Fear of voiding the manufacturer's warranty on the vehicle may prompt consumers to fit the dealership 'preferred' towbar, despite the fact that in many cases, the towbar manufacturer produces bars for both the original equipment manufacturer (OEM) and the aftermarket sector – this could in fact be the same product with different packaging. The dealer warranty refusals are

therefore, less about the fitment of the part, and more about the fact that the parts were not sold and fitted at the dealership. Some extended warranty conditions specifically exclude the fitment of aftermarket parts by the independent sector. There is often a large cost difference between fitting a towbar at the dealership as part of the new car sale process and fitting a towbar in the independent aftermarket after the consumer takes possession of the vehicle.

3. **Availability of repair and service information and data.** Specialist vehicle modification requires access to vehicle diagnostics and information that is routinely withheld by car companies.

Clearly, the vehicle modification sector is an important market participant in the purchase and customisation of a new car. Cars are mass-produced on a global platform and without customisation, they may not provide all of the required options and safety features that a consumer requires ensuring that the car performs the intended function.

The role of vehicle modification in the North American market is more evolved than the Australian domestic market. In the North American context, car companies, the dealerships and the aftermarket work closely together and consumers are generally informed of what aftermarket products are available for their selected car and how to modify or customise the car within the manufacturers' design parameters. In Australia, the trend is for the dealership to seek to provide these components exclusively at the point of sale.

Parts Manufacturers

Equipment and parts suppliers: businesses that sell repair equipment and replacement car parts.

For an accurate representation of the market, the diagram should also refer to the **manufacturing** of car parts. We provide further information on this market characteristic in Section 4. As mentioned elsewhere – the supply of these aftermarket and specialty automotive products can occur both pre and post-sale. The automotive aftermarket manufacturing sector is an important component of the Australian economy (and these products are exported globally) and more importantly, this sector is an integral part of the new car market. An accurate

understanding of the source of parts and the supply chain segments, in which these parts are fitted to the car, will benefit this analysis of the new car market.

Authorised Repairers

In NSW and Western Australia, the business licencing regimes require that automotive repairers have a specific business licence and a registered premises. In these states, and in 'extended warranty' conditions, the term 'authorised repairer' can refer to a business that is a *licensed automotive repair premises with at least one fully qualified mechanic*. The use of the term 'authorised repairer' is therefore, likely to mean different things to different audiences. We suspect that this segment in the definitions page is actually the *Dealership Service Department*, therefore it may be prudent to use this nomenclature as it is an accurate term to represent the terminology that is widely accepted. In the industry these sectors are known as: (1) dealership repair and service or (2) the independent repair and service sector. Over time the vehicle manufacturers have attempted to capture the term 'authorised repairer' in order to promote the perception that the independent repairer is therefore 'unauthorised'. But the advice to consumers that they use an 'authorised repairer' by the insurance sector in particular, is actually a reference to a *registered mechanical repair business employing at least one (1) fully qualified automotive mechanic*¹.

It would be inappropriate to inadvertently endorse the car company marketing campaigns in what is an important ACCC Market Study.

2. WHAT SEARCH COSTS DO CONSUMERS TYPICALLY INCUR WHEN BUYING A NEW CAR? HAVE ONLINE SALES DECREASED THESE COSTS?

3. WHAT ARE THE KEY FACTORS DETERMINING VERTICAL RELATIONSHIPS AND CONTRACTUAL ARRANGEMENTS IN THE CAR INDUSTRY?

The AAAA has chosen not to respond to these questions.

4. WHAT IS THE NATURE OF THE BUSINESS MODEL APPLYING TO NEW CAR DEALERS? TO WHAT EXTENT DOES THE SALE OF NEW CARS, SERVICE AND REPAIRS, FINANCE AND INSURANCE AND USED CAR (PURCHASES) AND SALES EACH UNDERPIN GROSS PROFIT MARGIN OF DEALERS? IS THERE VARIABILITY BETWEEN DEALERS IN THE MARKET?

It has been our view for some time that the competitiveness of the vehicle servicing and parts sector has reduced at the same pace as the change in the dealership business model. This business model is increasingly reliant on profit from parts and servicing (for cars aged up to seven years) to offset a reduced margin from the sale of new cars. This shift in profit from cars to new car servicing should, under normal market circumstances, lead to a high level of competition for the customer's service and repair patronage. Indeed, it could be argued that the use of products such as 'extended warranties' and 'capped price' or 'free service' programs is actually designed to capture a greater share of the regular maintenance market and to improve customer loyalty which could eventually be turned into new car sales. However, we believe that rather than relying on innovative products and superior customer service, the drive to increase car servicing and parts revenue in dealerships has resulted in restrictive trade practices, consumer warranty confusion and add-on products that restrict choice and erode consumer rights well into the future.



1. Allianz Insurance: Assured Extended Warranty Insurance 2016.

MONSTER MARGINS

Spare parts are subject to dramatic mark-ups that help fatten a dealer's or manufacturer's bottom line. Industry research obtained by Drive found that building a \$21,000 hatch from parts bought at retail would cost \$114,081 – more than five times its original cost – while an imported large car would rise from \$56,000 to \$258,064. Insiders provided the true cost of common parts for mainstream manufacturers on condition of anonymity.

An alloy wheel for a popular new vehicle costs car makers \$165 but retails for \$600, with a power window switch for the same brand marked up from about \$91 to \$290.

Those costs don't take into account the mark-up of the manufacturer of the part – car makers outsource the production of most parts to smaller component makers – with some suggesting the component could already have a mark-up of 100 per cent or more by the time it reaches the vehicle manufacturer.

Headlights and taillights that cost the manufacturer \$125 and \$65 were marked up to about \$650 and \$350 respectively.

Switching brands, a set of door locks for a popular car costs manufacturers less than \$55 but are sold to the public for \$840.

Similarly, an airbag actuator that cost the manufacturer \$50 ends up closer to \$450 from the parts supply counter.

That handful of examples suggests local parts have a mark-up of more than 600 per cent, backed up by research from industry analyst autoPOLIS which found the automotive component supply chain can inflate the cost of parts by as much as 700 per cent.

Consumable elements such as oil filters and brake pads often have smaller margins at a dealership level, but customers can save through purchasing parts from third-party suppliers or by shopping around between dealerships.

The increase in profit from new car servicing is not only derived from servicing the vehicle, a significant proportion of profit is also derived from the volume of car company branded spare parts sold. Dealerships can have an incentive arrangement with manufacturers, and key performance indicators that are tied to the volume of parts sold through the service department. These parts are normally sold at much higher margins than the equivalent aftermarket part. There is an industry view that it is clearly in the commercial interest of both the car company and dealership to direct as much parts and service business as they can through the dealership channel. In fact, the viability of many dealerships now relies on it.

It is our view that the increase in household expenditure for new car servicing (as noted in the Issues Paper) is directly related to the increase in customers returning to the dealership for scheduled servicing for longer periods (now up to seven years for some car brands). The pressure applied to dealers to up-sell and replace parts may also be a factor. It is simple economic logic that incentives paid as a reward for selling car manufacturers' branded parts will result in more parts sales and higher costs for consumers. Financial incentives must play a part in this business model and whilst these incentives are common knowledge, we are yet to receive full transparency on this practice.

5. TO WHAT EXTENT DO CONSUMERS SUBSTITUTE BETWEEN BRANDS AND MODELS, PARTICULARLY RESPONDING TO PRICE DIFFERENCES? DO CONSUMERS SHOW LOYALTY TO PARTICULAR BRANDS OF CARS AND DEALERSHIPS, PARTICULARLY FOR THE AFTERCARE OF THEIR NEW CARS AND FOR FUTURE CAR PURCHASES?

We have limited knowledge of customers' loyalty to particular car brands. What we do know however is that the 'free' servicing and other tie-in programs offered by some car brands are a compelling consideration for consumers. What is of concern is the low level of consumer knowledge regarding dealer add-ons and the real cost of car servicing. Many dealerships will offer 'free' or 'capped-price' servicing for a period of between one and three years. The consumer however, is generally unaware that the 'free' service does not include the cost of replacement parts and these services are often not a full scheduled service (they are sometimes referred to as an 'essential' service).

In our experience, consumers are experiencing a great deal of frustration – they are often of the view that they will have their vehicle serviced annually for three years at no cost. The reality is that there is always a cost: oil and filters are changed at every scheduled service and the cost of all parts that are replaced as a result of normal wear and tear are passed to the consumer. It is common to hear stories of car owners receiving an invoice of \$750 for their “free” service. The operating costs of the vehicle is an important factor in the new vehicle purchase decision, and yet consumers are not in a position to compare the relative running costs of different brands because that information is not transparent.

6. WHAT IS THE LEVEL OF COMPETITION BETWEEN PARTICIPANTS IN EACH SECTOR OF THE MARKET? FOR EXAMPLE BETWEEN:

(a) authorised and independent dealers

(b) authorised and independent service and repairer operators

(c) authorised and independent parts distributors.

Information on the number of independent repairers and dealership service departments is available and historically the ratio is approximately one dealership service department to seven independent workshops. However, the number of establishments is not the best indicator of competition: throughput (number of cars serviced) is a clearer representation of market share. Dealership service departments have a higher average number of employees (10-12) compared to independent repairers (4-6) and dealer service departments have higher throughput due to a larger number of repair bays, more mechanics per dealership and importantly a lower level of repair complexity. The throughput of a large dealership service department can be 5-6 times the number of cars serviced in an independent repair workshop.

The available data does reveal a consumer demand pattern in which the vast majority of vehicles aged one to three years are serviced by the dealer that sold the car. The majority market share for independent repairers occurs at approximately 4.5 to 5.5 year old vehicles or cars with 80,000 to 120,000 kilometres on the odometer. We are of the view that this market demand pattern is caused by a deliberate strategy by the car companies to confuse consumers into thinking that they need to return

the car to the dealership for scheduled servicing to maintain warranty coverage.

This distortion has been exacerbated over recent years with the introduction of longer ‘extended’ warranties and ‘free’ and ‘capped price’ service programs, which combined with an almost complete lack of understanding by car buyers of the extensive statutory rights available to them when purchasing a new car, has provided the car industry with a highly effective customer tying tool. The independent aftermarket has never shunned competition, however it is our view that much of the increase in market share by dealerships in recent years has come at the expense of car owners and has driven up the overall cost of car ownership.

The Issues Paper quotes from a Deloitte Study that links the ‘cost of increasingly sophisticated equipment’ and lower margins for independent repairers. The independent repair segment is not reporting lower profit margins due to the cost of equipment required for servicing and repair. We do have access to the IBIS report that is quoted in the Market Study and in our view, the IBIS figures are not consistent with the turnover, profit and revenue results of our members. Due to the confidential nature of this material, we would offer a private briefing between the ACCC and our membership base to discuss these issues in more detail.

Increasing technology is not the sole cause for increases in consumer expenditure – there are trends in the industry that manipulate consumer perception to purchase more expensive car branded parts and the industry is reporting a tendency for the unnecessary replacement of parts. For example, the reliance on sensors can return an error report that a part is faulty. In fact, in many cases, the actual sensor is faulty, requiring a replacement sensor and not a new part. Experienced repairers place a great deal of emphasis on the diagnostic phase to ensure that parts are not being unnecessarily replaced due to poor diagnosis and faulty sensors. Independent operators seek to reduce the cost of the repair and not to inflate the final price due to unnecessary part replacement.

Independent repairers also have an increased level of choice in parts replacement. The ACCC requirement is that the replacement part must be ‘fit for purpose’ and there is a great deal of competition in the market for quality replacement parts, and these savings can be passed on to the consumer. In the independent

sector consumers are offered the best part for the job, and there is transparency in which parts are used and why. There is a more comprehensive explanation of the source of parts in the relevant section of this submission.

It is the labour cost of servicing vehicles that is clearly increasing for the independent sector due to difficulties and delay, particularly in the diagnostic phase. Our recent study² covering over 18,000 serviced vehicles provides evidence that lower profit margins can be attributed to independent repairers not passing on the full labour cost for vehicles that take longer to repair due to repair data and information restrictions. The withholding of repair data results in an average additional 24 hours of labour per week per workshop that is not passed on to the consumer.

When the market is not operating optimally and the expected characteristics of consumer choice are not evident, prices are likely to escalate. It is simple economic logic that where there is lack of transparency and a reduction of consumer choice, prices will go up and service levels will go down.

7. HAS COMPETITION INCREASED IN THE NEW CAR INDUSTRY OVER TIME AND, IF SO, WHAT IS DRIVING THIS CHANGE AND HOW HAVE DEALERS/MANUFACTURERS RESPONDED?

8. WHAT ARE THE MAIN DRIVERS OF THE INCREASE IN NEW CAR SALES? E.G. IMPORT TARIFF REDUCTIONS, COMPETITION FROM USED CARS, LOWER PRICES DUE TO INCREASED COMPETITION.

9. ARE THERE OTHER TRENDS DEVELOPING IN THE NEW CAR RETAILING INDUSTRY IN AUSTRALIA? FOR EXAMPLE, HAS THERE BEEN ANY CONSOLIDATION IN THE DEALERSHIP SEGMENT? WHAT IMPACT MIGHT THESE TRENDS AND CHANGES HAVE ON CONSUMERS?

10. WHAT IS THE LEVEL OF INTRA-BRAND COMPETITION (FOR EXAMPLE COMPETITION BETWEEN RETAILERS OF THE SAME BRANDED PRODUCT)?

The AAAA has chosen not to respond to these questions.

2. TKP Automotive Service and Repair Data Sharing Study (2016)

SECTION 2

CONSUMER
GUARANTEES,
WARRANTIES
AND NEW CARS



CASE STUDY

MIKE SMITH, PROPRIETOR – ULTRA TUNE OSBORNE PARK (1997 TO 2016)

Perth based Mike Smith established his independent automotive repair business at the conclusion of his Australian Military career with the Special Air Service (SAS) regiment.

As a long-term member of several automotive industry associations, Mike has been very active in relation to issues that affect independent repairers, particularly in light of the vast changes that have taken place in automotive technology during his 19-year tenure as proprietor of Ultra Tune, Osborne Park (WA).

Mike recounts several experiences where his customers have been negatively affected by the conduct of new car dealerships. His admirable efforts to do whatever he can to protect his customers are highlighted through two primary examples.

One of Mike's customers approached him about selling his recently deceased father's vehicle, a late model Volkswagen Polo (1.4L Petrol). Upon checking the car and its extremely poor engine performance at a life of just 38,000 kilometres, Mike's diagnostic checking revealed that the engine had cracked pistons which caused heavily reduced engine performance. The Volkswagen Polo was one year outside of its manufacturer warranty period, but Mike provided the customer with his detailed diagnostic report and recommended that the customer take the car back to his Volkswagen dealer to resolve what was clearly in his professional opinion, a direct Volkswagen engine component failure. Mike stressed the point that the pistons used in this engine were clearly not fit for purpose given

how little the engine had been driven and as such, should still be warrantable under Australian consumer protection laws.

After some toing and froing between the Volkswagen dealer, the customer and back to Mike again, with some persistence the Volkswagen dealer eventually agreed to provide the parts free of charge, but not the labour charges to rebuild the engine. At just one year out of warranty and with only 38,000 kilometres travelled, the customer paid a labour bill of approximately \$3,000 to rebuild what was in essence a virtually new engine.

Mike also pointed out that Volkswagen has since changed the specification of the pistons used in their Polo 1.4 Litre Petrol engines to more durable ones, providing credibility to his qualified belief that these pistons were not fit for purpose. Mike's customer was pleased that he was not faced with a far more expensive bill for a complete new engine and all associated parts. Mike remains astounded at the treatment his customer received from the Volkswagen dealer, given the specific circumstances of this case.

Mike's second example involved a female customer aged in her mid 30's who had purchased a Subaru XV sedan some 18 months prior. Noticing engine oil level warnings, she took her car to Mike's Ultra Tune workshop. After topping up the engine oil level, Mike advised the customer to take the car back to the Subaru dealer, as the kind of oil consumption she had experienced was not normal for any car, let alone a relatively new one.

In many cases, vehicles are towed over hundreds of kilometres at high cost to customers



The Subaru dealer informed her that the car was “fine” and that the oil consumption was “perfectly normal”. Upon hearing this, Mike - once again wanting to do the best he could for his customer, did some research of his own to try and ascertain what the issue could be.

It didn't take long for Mike to find the answer. A visit to the United States based National Automotive Service Task Force website (www.nastf.org) uncovered the existence of a Subaru Technical Service Bulletin (TSB) regarding the repair of this specific oil consumption issue on the customer's same make and model of car. This proved beyond doubt that the manufacturer was not only aware of the problem, but had issued a TSB to their dealer repairers exclusively to rectify it.

Mike asked the customer if she wished to purchase the TSB document, (the vast majority of vehicle manufacturer TSB's are not made available for purchase by consumers or independent repairers in Australia), in order to take it back to her Subaru dealership.

It came as no surprise to Mike that on this occasion the customer's car was repaired under its new vehicle warranty by the Subaru dealership. The engine was completely re-built, with different specification oil control rings fitted to the pistons.

According to Mike, the point remains that a customer had to bring the vehicle manufacturer issued TSB obtained from a foreign source by her independent mechanic at cost, in order for her to have her consumer rights and new car warranty rights honoured. He believes that this conduct is unconscionable.

Mike has no doubt that many consumers are faced with warranty issues like this, but don't have their cars checked by an independent

repairer for fear of voiding their manufacturer's warranty. He advises that the practice of customers being verbally warned by dealerships not to use independent repairers is very common, particularly when problems arise.

Being based in Western Australia, Mike also highlighted the plight of prestige vehicle owners (or European commercial vehicle owners) who are based in the central and northern parts of that vast state. Independent mechanical and collision repairers in regional Western Australia who have to replace engine management modules are forced to have these cars towed back to Perth. In some cases over hundreds of kilometres but in many cases over thousands of kilometres at high costs to their customers, just in order for these vehicles' electronic management systems to be re-initialised, which also comes at significant additional cost to the customer. This is purely because the vehicle manufacturers will not sell the information, manufacturer specific tools, training and additional equipment required for independent repairers to be able to perform this function.

Therefore, if you are situated regional Western Australia, you are penalised heavily for electing to purchase a quality prestige passenger or commercial vehicle.

Mike believes that in order for Australia's independent repairers to continue to assist consumers, particularly considering the high percentage of European and other foreign makes and models on our roads, that mandatory data, equipment and tooling availability is absolutely essential. He has no doubt that as long as the unfair playing field exists, it will always be the consumers who pay the ultimate price.

INTRODUCTION

It is important to set the context of this important consumer issue before addressing the specific questions raised in the Issues Paper.

This is a significant market sector of enormous importance to Australian consumers, and the nature of new car purchases in the 21st century requires special consideration of whether the market operates in a manner that protects vehicle owners' consumer rights.

In our view, the market is at best confusing and at worst deliberately misleading, and it is not adequately protecting consumer rights with respect to vehicle purchase and ownership.

There is evidence that this market does not operate with clear and transparent information, does not allow consumers to make informed purchasing decisions, consumer rights are not widely understood, and access to remedies are difficult.

WARRANTY AND CONSUMER GUARANTEE REPAIRS AND REMEDIES

Warranty repairs are completed by the car manufacturer's authorised dealership. Customers that present vehicles for repair to independent workshops that clearly have warrantable defects are advised to take their vehicle to the dealership for the fault to be repaired before returning for a scheduled service.

Recalls of motor vehicles in 2016 are on track to break the all-time record. In the first half of the year there were 156 recalls initiated by car manufacturers, double the number five years ago, affecting 1.6 million vehicles – and these are just the ones we know about (*refer section on Technical Service Bulletins*). As the number of faults on vehicles increases, independent repairers are often asked to support customers in their warranty claim because consumers value the technical expertise offered by their independent mechanic and as a result, we are often engaged to talk directly to dealership service managers on behalf of our customers.

Independent repairers can provide numerous examples of warranty remedies that have been refused due to the vehicle being serviced outside the dealership network and/or where aftermarket parts have been fitted, and we hear of many instances directly from consumers regarding their inability to enforce their statutory rights where a warrantable defect has been identified.

Our advice to all consumers is to ask the dealership to put their warranty repair response and reason for denial of warranty in writing. In approximately half of the cases that we deal with directly the dealer will subsequently decide to complete the repair under warranty. In cases where the dealership continues to deny warranty coverage, we encourage consumers to engage an independent automotive signatory engineer to complete a report on the fault and its cause. Unfortunately, engaging an engineer comes at considerable cost to a consumer. However, other dispute options are not readily available and the system has evolved to the point where the onus of proof now lies with the consumer to prove that they are not at fault.

In the past 24 months the AAAA has had cause to request that the ACCC investigate³ several matters relating to transparency of commercial transactions in relation to aftersales vehicle service including warranty information, so called 'capped price' servicing, and insurance products. There is evidence within consumer forums and amongst the general community regarding dissatisfaction with warranty information and practices, the definition of a 'major fault' and the confusion regarding a consumer's right to vehicle data and online logbooks.

The volume of consumer complaints that we receive from our members' customers regarding their dissatisfaction with a new car purchase would indicate that there is good reason to include this issue in the Market Study. Increased attention and scrutiny is required because there is a significant power imbalance between a consumer and the large global vehicle manufacturers that are reluctant to admit fault due to the commercial implications.

3. AAAA Confidential Submission to the ACCC on New Vehicle Warranties and Vehicle Servicing, April 2008/AAAA In-Confidence Submission to ACCC, 8 October 2014/AAAA Extended Warranty Submission, 11 November 2014.

The high volume of community concern should provide enough evidence that there are sections of our law that are subject to 'creative compliance' rather than compliance with the letter and the spirit of the law.

Our concern arises from systemic failures in aftersales service, because at some point in time these consumers arrive at the door of independent auto repair businesses. When a consumer is dissatisfied with the aftersales service of the dealership network, they seek alternative service providers and as a result, we are in a unique position to understand the consumers' frustration and financial loss due to repeated service failures and poor communication of their consumer guarantee statutory rights. Independent automotive repairers are in a unique position as technically astute observers of the new car sales regime, and we are concerned for the future of this industry and the long-term trend that will lead inevitably to a loss of choice, a loss of competition, and consumer harm.

The consumer law framework must deliver fair treatment of consumers because car ownership is critical to the Australian economy and to our quality of life. The current lack of consumer protection in this industry goes to the heart of whether individuals are able to participate in work, family and the community. Without access to a motor vehicle, our way of life, our ability to earn, and to meet family and community obligations is considerably diminished. Whilst we recognise the improvements to the Australian Consumer Law, if we view this market through the lens of vehicle ownership, these advancements are sadly lacking in fairness, transparency, and access to remedies for vehicle owners.

The market place for automotive repair and maintenance does not trade fairly. The current market conditions foster anti-competitive behaviour, which effectively leads to less competition, fewer service providers, less choice and higher prices.



CHOICE OF REPAIRER

Suggestions that new cars must be serviced at a dealer to maintain the owner's consumer guarantee rights are false.

Consumers can also generally use independent repairers to service their cars during the period of a manufacturer's warranty. A manufacturer's warranty may set out requirements that consumers must comply with. For example, it might require that servicing be carried out:

- by qualified staff,
- according to the manufacturer's specification,
- using appropriate quality parts where required,

Provided an independent repairer services the car in accordance with any such requirements the manufacturer's warranty will remain valid.

Source: Australian Competition & Consumer Commission 2016. *New Car Retailing Industry Market Study Issues Paper*. [Emphasis added]

Despite this very clear statement from the ACCC, the majority of consumers fear that using an independent repairer will void their warranty. The key reasons for the lack of confidence in the ACCC guidance are:

- **Verbal** advice at the time of sale. Customers routinely report that dealers state the warranty requires dealership servicing and fitment of 'genuine' parts.
- The ambiguous wording of warranty statements.
- Logbook wording that requires the repairer undertaking the scheduled service to make a declaration that they are an authorised repairer and have only used genuine parts, creating doubt and confusion when the service is done outside a dealership.
- Fear of a warranty claim rejection:

Your warranty

But while your warranty is protected in law, the effects of non-dealer servicing on out-of-warranty or goodwill assistance is largely ignored. Few people realise that most vehicle manufacturers operate a system of discretionary goodwill assistance that is over and above that provided under the terms of the warranty.

Among the many factors used to determine if goodwill assistance will be offered, and if so to what extent, is the vehicle's service history. In essence, if you don't support the dealer network it's unlikely that the manufacturer will support you any further than is legally required.

Source: RACQ. *Dealer vs non-dealer servicing*. <https://www.racq.com.au/cars-and-driving/cars/owning-and-maintaining-a-car/car-maintenance/dealer-vs-non-dealer-servicing>. Accessed 2 November 2016.

CHOICE OF CAR PARTS

The term 'genuine' parts is incorrectly used and applied in the Issues Paper. This is a common occurrence caused by the practice of perpetuating the car manufacturers' public relations and marketing 'spin'. An accurate classification of automotive parts that is widely accepted in the industry is the use of the terms 'OEM' or 'car-branded' and 'aftermarket' parts, and both of these categories can subsequently be classified as genuine or non-genuine. It is quite possible to have genuine aftermarket parts.

According to most dictionaries, “genuine” means true and authentic, or in other words, not a fake or counterfeit. Notice there’s nothing in that definition about who makes the part.

However, the FCAI (Federal Chamber of Automotive Industries), says “genuine parts are made or selected by the vehicle’s maker and rigorously tested by that maker as an integral component of the vehicle to meet high quality, safety and performance standards.” That is true, but another, more widely used and more accurate term for such parts is OEM (Original Equipment Manufacturer) parts, or sometimes just OE parts.

Then there are a range of companies who produce parts that are not manufacturer approved or supplied, and the usual term for these parts is “aftermarket”. Reputable aftermarket companies absolutely do not want their goods passed off as OEM, and in fact go to great lengths to market their name and products as different to, or better than the OEM equivalent.

There are fake versions of some well-known aftermarket parts too, so you can have genuine aftermarket parts as well as genuine OEM parts. What you definitely want to avoid is counterfeits of any part.

Source: Pepper, R 2016, ‘Are genuine car parts best?’ *Practical Motoring*, 27 May. <https://practicalmotoring.com.au/car-advice/are-genuine-car-parts-best/>. Accessed 2 November 2016.

Independent, non-dealer aligned repair and service workshops will source parts that are fit for purpose. Independent workshops purchase OEM branded parts from dealerships and aftermarket parts are sourced from distributors or directly from manufacturers.

The reality of course is that when a vehicle manufacturer is sourcing a component, that part must be tested and shown as meeting all the manufacturer’s specifications prior to any consideration of commercial factors (e.g. cost, supply continuity, quality accreditation, etc.). After consideration of quality and cost, a successful supplier is chosen. As a result, parts submitted by unsuccessful suppliers may have performed as well or even better than those provided by the chosen supplier, and these usually find their way to the aftermarket. On the other hand, the successful supplier may not only supply parts to the manufacturer, but also through their own supply chain to the aftermarket – the only difference being the packaging. Therefore, which part is ‘genuine’ and which part is ‘best’ is at best very tenuous.

Under Australian Consumer Law, independent workshops are just as accountable as dealer workshops. The ACL requires that all goods and services supplied to consumers are of acceptable quality, and if not the consumer has rights for repair, replacement or refund and compensation for any damage or loss.

The industry average new vehicle warranty is three years, with one manufacturer offering seven years. Toyota and Ford warrant their OEM replacement parts for just 12 months. Hyundai, who offer a five-year vehicle warranty, offer a 12-month warranty on parts whereas Holden offer a two-year warranty. Mazda offer a “whole of life” guarantee for parts fitted by a dealer and two years for all other parts. To honour this warranty, *Mazda will ensure that a dealer will, without cost to you, repair or replace the part, using new or **remanufactured parts**, to correct any defect in that part covered by warranty*⁴ [emphasis added].

As for the independent service and repair sector, Kmart Tyre and Auto Service offer a two-year or 24,000 km guarantee on all parts and Repco Authorised Service offer a one-year or 20,000 km warranty. In the supplier sector, Bosch offer a minimum of one year guarantee and up to three years on specific parts and Dayco offer a two-year or 40,000 km warranty on all products other than timing belts and timing belt kits, which are covered for the first of three years or 100,000 km.

4. *Mazda Australia. Parts and Panels Warranty - Terms and Conditions.* <https://www.mazda.com.au/owners/warranties/parts-and-panels/>. Accessed 7 November 2016.

EXTENDED WARRANTIES

Much of the negative consumer experience with product warranties is caused by the increased practice of new car dealers offering extended warranties at the point of sale. These warranties have restrictive provisions on the choice of repairer and parts used, contain ambiguous language and do not clearly specify the additional benefits in the contract over and above the consumer guarantee.

Under a motor vehicle's implied or statutory warranty, dealers are only entitled to insist that any servicing of cars they sell is carried out by qualified staff, according to the manufacturer's specifications and using appropriate quality parts where required. Provided these conditions are met, regardless of where the car is serviced, the consumer guarantee remains intact⁵.

Express warranties operate in addition to statutory warranties and cannot restrict the provisions of the consumer guarantee, which is implied in every consumer sale. There should be no doubt, however, that car owners **do not know** that they have statutory rights and they are certainly not aware that express or voluntary manufacturer's warranties are not permitted to override these statutory rights. The common use of the term *Dealer's Statutory Warranty* adds further consumer confusion.

Another questionable practice by motor vehicle manufacturers is the use of statements in vehicle handbooks that imply that using an alternative repairer to the accredited network of the particular manufacturer may void the vehicle's warranty. Advice from regulators is that independents are able to undertake logbook servicing and sign the logbook accordingly. However, despite the ACCC guidance on this matter, it does not sit well with any of our members to be signing above the statement that *'this service has been conducted by a xyz authorised dealer service department'*.

Vehicles are regularly serviced during the warranty period – in fact, in order to maintain the warranty, owners are obliged to service their vehicles according to the car manufacturer's specified cycle. During the warranty period, it is expected that faulty items be replaced at the manufacturer's cost. However, most of the servicing costs for a vehicle in the warranty

period will relate to 'replacement' parts; components of the vehicles that are not under warranty and are designed to be replaced on a regular basis. Consumers do not know this. The price differential between the OEM parts and the aftermarket parts is not widely known, and consumers are not aware that they are paying a premium for parts and that they do have a choice. The marketing effort is founded in fear and doubt – phrases such as *do not risk your warranty* and *peace of mind* are designed to capture the logbook servicing and replacement parts markets. Carmakers do not make many car parts and they certainly do not make replacement parts. These parts are manufactured by the carmakers' supply network and delivered to the car dealerships for use in servicing vehicles under warranty.

Much of this misinformation is caused by the car manufacturers – the market distortion in our industry is that consumers are generally under the impression that they must use 'genuine' parts or the warranty will be void. There are examples of misleading warranty information provided to new car owners that leave doubt in the consumer's mind that they are required to have their vehicle serviced at the same place they purchased their car and use so called 'genuine' parts – a mindset actively encouraged by the car dealers and the vehicle manufacturers. The ACCC statement⁶ that clarifies and contradicts a commonly held consumer view has not made a difference to consumer behaviour.

If the consumer is unaware of their rights, or deliberately misled about their statutory rights, it is highly unlikely that they will be able to take action to enforce these rights. There is clearly a requirement for national leadership, consumer law and enforcement regulations to provide a clear definition of the differences between the consumer guarantee and express warranties/extended warranties and ensure consistency and clarity in the terminology used. The term 'warranty' should be subject to restricted use, must be clearly defined and delineated from other service options including insurance and vehicle servicing contracts.

All vehicle warranty documentation and representations should contain clear explanations so that consumers fully understand their entitlements under the various warranties. It is our view that the ACCC statement on the use of automotive parts that are 'fit for purpose'

5. Refer Appendix One: Motor Vehicles, Guarantees, Warranties and the Law, Australian Competition and Consumer Commission, July 2011.

6. Motor Vehicles, Guarantees, Warranties and the Law, Australian Competition and Consumer Commission, July 2011.

should be printed on all warranty material for all vehicles.

All documentation and representations should contain appropriate product disclosure statements. If the extended warranty contracts are to contain conditions that result in commissions or payments to the dealer, these relationships should be disclosed to the consumer. Legislation and enforcement should prevent vehicle manufacturers and car dealers from the practice of including conditions in extended warranties that specify that 'genuine parts' must be used in vehicle servicing. The consumer should be informed when a specific extended warranty reduces the choice of repairer and choice of parts.

Consumers are selecting extended warranty products to protect what is a very large consumer purchase, despite the fact that these warranties may not offer any more protection than that available in the consumer guarantee. Separating the process of purchasing the vehicle from the add-on products such as extended warranties may allow consumers time to reflect on the value of these insurance products. A consideration of an 'opt-in' method may assist consumers to have more time to reflect on the value of the product and on the wisdom of surrendering consumer choice.

QUESTIONS ON CONSUMER GUARANTEES, WARRANTIES AND NEW CARS

7. WHEN PURCHASING A NEW CAR, WHAT INFORMATION IS GIVEN TO CONSUMERS ABOUT THEIR CONSUMER GUARANTEE RIGHTS? WHAT INFORMATION ARE CONSUMERS GIVEN ABOUT THE TERMS AND CONDITIONS OF THE MANUFACTURERS' WARRANTIES OR THE DEALERS' EXTENDED WARRANTIES? WHO PROVIDES THIS INFORMATION? HOW IS THIS COMMUNICATED?

Our members regularly report that there is a difference between the written material provided at the point of sale and the **verbal advice** from the dealership. The diagram on page 9 of the Issues Paper could be a very useful addition to consumer awareness and consideration should be given to mandating the provision of this visual, together with a simple outline of the consumer's statutory rights, to every new car buyer.



An examination of the car manufacturer supplied warranty material is likely to reveal that the wording of most, if not all, will remain just inside the law. Some dealer-offered extended warranty policy statements do not include a clear explanation that the consumer guarantee cannot be reduced by either the manufacturers' warranty or the extended warranty. Regardless of the wording of this documentation, there can be no doubt that the overwhelming majority of consumers believe that they must use the dealer to service and they must use car-branded parts if they want to keep their warranty valid.

Consumers also are clearly unaware that the conditions on some extended warranty products will reduce their choice of repairer and choice of parts.

The huge variety of terminology used in the industry is also of concern: express warranty, dealers' extended warranty, manufacturers' warranty, and manufacturers' extended warranty are just some of the examples. In fact, the term 'dealers' statutory warranty' is frequently used in warranty documentation rather than the correct term 'consumer guarantee'.

We do not have robust consumer research on this matter but we suspect that a useful addition to the methodology for this Market Study would be a survey of new car buyers. This would provide a more effective 'real world' analysis of consumer understanding of their statutory rights than a review of the written materials that dealerships provide to their customers. As outlined earlier, much of this material stays just inside the legal parameters but the ambiguity is enough to leave the lasting view that if you go outside the dealership for service, you are likely to void your warranty. Ask any random group of consumers their view on this issue and we are confident that most will be of the view that they must get their new car serviced at the dealership to maintain warranty coverage.

8. WHAT INFORMATION IS GIVEN TO CONSUMERS ABOUT THE INTERACTION BETWEEN THEIR CONSUMER GUARANTEE RIGHTS, THE MANUFACTURER'S WARRANTY AND, WHERE RELEVANT, THE DEALER HAS EXTENDED WARRANTY? WHO PROVIDES THIS INFORMATION? HOW IS THIS COMMUNICATED?

In the warranty documentation that we have secured and examined, it would appear that most manufacturers include a reference to the consumer guarantee. However, without a side-by-side comparison and without a clear definition, when things go wrong the consumer has little power in their negotiations with the dealership which is backed by a multi-national car company. A car is one of the largest consumer purchases outside the family home and yet the protection appears to be less than that afforded to the purchase of a small household appliance.

In the event of a major failure of a vehicle or a component of a vehicle there is an intersection between the consumer guarantees and rights afforded under a warranty against defects offered by car manufacturers. In spite of the mandatory prescriptive requirements of the ACL, most consumers do not readily understand their rights to remedies. To this end, most consumers are of the belief that their rights of redress for product failures are limited by those set out in the manufacturer's warranty.

In these instances, the consumer is often entitled to a 'better' remedy under the consumer guarantees regime. By way of example, many new car warranties seek to limit the liability of the manufacturers by excluding forms of consequential loss (or related loss or damage). In this regard, the manufacturers' warranty could be warranting considerably less than the consumer is already entitled under the ACL.

In fact, a review of most new car warranties suggests that consumers are entitled to either less or the same rights they have under the consumer guarantees regime. This applies irrespective of whether the warranty has formed part of the consideration for the purchase. In 2013 we raised several examples of general warranty terms and conditions (in a standard new car warranty) which indicated that in circumstances where this overlap occurs, there would appear to be a mechanism for abrogating consumers' rights under the consumer guarantees regime in 'favour' of their remedies under the manufacturers' warranty.

Extended warranties, lifetime warranties, and seven-year warranties – all appear to share a basic premise that is completely incongruous with the consumer guarantees regime; that is, these warranties provide for repair or replacement for "defects arising in materials or manufacture". As most manufacturing faults appear in early use of consumer goods, in the earlier stages of the warranty period the purchaser would be entitled to equal or superior remedies to any corrective action afforded in the warranty. Moreover, in circumstances where a major failure occurs with the vehicle, the warranty deprives the consumer of their legislated right to reject the goods and seek a full refund.

In an area already fraught with consumer confusion, consumers are likely to be left with the impression that they are limited to the remedies available solely in the manufacturers' warranty even when they have a legitimate remedy under a consumer guarantee. The creation of such impressions or the propensity for the materials to create such impressions should be assessed.

One 'seven year' warranty states, "The xxx New Car Warranty does not cover tyres. Tyres are covered by the express warranties of their respective manufacturers or suppliers and any claim for tyres should be directed to the nearest tyre supplier or manufacturer service agent". As this particular warranty indicates that any claim should be directed to the tyre manufacturers, this statement is affecting the consumers' statutory rights under the consumer guarantees regime. In circumstances where a vehicle is purchased with defective tyres, the consumer is entitled to seek redress from the supplier or the manufacturer. That is, they are within their rights to seek the remedy directly from the place of sale and any suggestion to the contrary is likely to have implications under the ACL.

Limiting liability in contract

In previous AAAA submissions to the ACCC, we have explained why we consider that many manufacturers' new car warranties are not compliant with the unfair contracts terms regime. Since the advent of the unfair contracts terms legislation in July 2010, consumers nationally are afforded statutory protection when entering standard form consumer contracts, such as new car warranties. The AAAA considers that many new car warranties are systemically failing to comply with the unfair terms contract regime in

the ACL. A number of warranties contain terms which:

- are not reasonably necessary to protect the legitimate interests of the business;
- cause a significant imbalance between the car manufacturer and the consumer;
- if enforced would cause consumer detriment; and
- are not part of a transparent document.

It is an effective requirement of most warranties that all general servicing be conducted only by warrantor determined 'authorised dealers' using genuine parts. It is not clear to the AAAA how this is reasonably necessary to protect the legitimate interests of the warrantor. This for many consumers clearly creates a significant imbalance between the car manufacturer and the consumer. Enforcing these requirements (particularly in regional and rural areas) would cause the consumer detriment as would rejecting a claim pursuant to the warranty in instances where qualified staff and quality parts have been used in earlier servicing. As indicated the overall impression of the warranty documents lends itself to the inextricable conclusion for most consumers that for a warranty to remain valid, servicing must be conducted by an 'authorised dealer'.

The AAAA is firmly of a view that consumers are not claiming remedies under their established consumer guarantee right. The car manufacturers engaging in this conduct are large and sophisticated organisations who should have compliance programs in place to prevent such practices.

It is also our contention that the suite of extended warranties provide little benefit to consumers, reduce choice and represent a lessening of competition in aftermarket servicing.

9. WHAT ARE CONSUMER PERCEPTIONS OF CONSUMER GUARANTEES, MANUFACTURERS' WARRANTIES AND DEALERS' EXTENDED WARRANTIES? HOW DO THESE INFLUENCE A CONSUMER'S DECISION TO BUY A NEW CAR? HAVE CONSUMERS RELIED ON CONSUMER GUARANTEE RIGHTS TO SEEK A REFUND, REPAIR OR REPLACEMENT FOR A NEW CAR THAT HAD A MAJOR FAULT AND BEEN DENIED? PLEASE PROVIDE EXAMPLES.

10. WHAT ISSUES, IF ANY, HAVE CONSUMERS EXPERIENCED IN HAVING THEIR MANUFACTURER'S WARRANTY OR DEALER HAS EXTENDED WARRANTY CLAIMS ACCEPTED? PLEASE PROVIDE EXAMPLES

As stated in the responses to the previous questions, there is little understanding of the consumer guarantee rights and most consumers rely upon the manufacturer's warranty or the extended warranty. Without a common agreement on the durability of specific car systems or components, it is difficult for a consumer to rely upon their statutory rights. There does not appear to be an industry standard definition of how long major components on new vehicles should be expected to last.

AAAA members are often engaged by consumers for technical advice. Our members will examine a fault and advise a customer that the fault should be covered by the consumer guarantee. In anecdotal information, we are advised that our repairers often make the offer to negotiate with the dealership. Suffice to say that this is a very difficult conversation for a consumer to have with a dealership. The recent wide-ranging *Access to Justice Review* in Victoria recognised this technical knowledge imbalance, and has recommended that the Victorian Government introduce a dispute resolution system that would provide the consumer with engineering expertise to support a consumer guarantee claim⁷. The AAAA would support a similar proposal being implemented on a national basis.

7. Victorian Government 2016, *Access to Justice Review – Report and Recommendations (vol. 1)*, Department of Justice and Regulation, Melbourne, accessed 7 November 2016, <https://myviews.justice.vic.gov.au/application/files/2414/7554/7522/Access_to_Justice_Review_-_Report_and_recommendations_Volume_1.PDF>.



11. ARE THERE EXAMPLES OF CONSUMERS BEING ADVISED THAT RIGHTS TO A REPAIR, REPLACEMENT OR REFUND ARE LIMITED BECAUSE A VEHICLE IS OUTSIDE THE MANUFACTURER'S WARRANTY? IF SO, DOES THIS ARISE WHEN DEALING WITH A DEALER OR A MANUFACTURER? PLEASE PROVIDE DETAILS.

12. ARE THERE EXAMPLES OF CONSUMERS BEING OFFERED ALTERNATIVE REMEDIES, SUCH AS A FREE SERVICE, IN RESPONSE TO A REQUEST THAT A NEW VEHICLE BE REPAIRED, REPLACED OR REFUNDED?

Our experience is that consumers are offered continual repairs until the manufacturer's warranty expires. After the manufacturer's warranty expires, the consumer either seeks an alternative repairer or sells the vehicle.

13. ARE DEALERS CONSTRAINED IN THEIR ABILITY TO PROVIDE REMEDIES TO CONSUMERS BY, FOR EXAMPLE, CONTRACTUAL CLAUSES REQUIRING PRIOR MANUFACTURER'S APPROVAL TO PROVIDE A SPECIFIC REMEDY OR RELIANCE ON MANUFACTURER'S EXPERTISE IN DIAGNOSING ISSUES?

This is anecdotal – but it might be worth examining the labour charge out rate for warranty work. Intelligence received by our industry is that dealers are constrained by the lower charge out rate for warranty work versus the charge out rate for scheduled services (logbook servicing).

14. WHAT TRAINING ARE DEALERS GIVEN IN EXPLAINING CONSUMER GUARANTEES, THE MANUFACTURER'S WARRANTY OR DEALER'S EXTENDED WARRANTY? WHAT INFORMATION IS PROVIDED AT THE POINT OF SALE AND AFTER SALES?

We are not in a position to offer any insights into the level of training provided.

15. WHAT INFORMATION IS GIVEN TO CONSUMERS ABOUT WHEN THEIR MANUFACTURER'S WARRANTY AND/OR DEALER'S EXTENDED WARRANTY COMMENCES AND EXPIRES? WHAT INFORMATION ARE CONSUMERS GIVEN ABOUT HOW THE MANUFACTURER'S WARRANTY AND DEALER'S EXTENDED WARRANTY INTERACT? HOW IS THIS COMMUNICATED?

We are not aware of any consumer information that compares warranties or the interactions between warranties and consumer guarantees.

16. WHAT INFORMATION ARE CONSUMERS GIVEN ABOUT WHO CAN SERVICE THEIR NEW CAR WITHOUT AFFECTING EITHER THE MANUFACTURER'S WARRANTY OR DEALER'S EXTENDED WARRANTY? WHO PROVIDES THIS INFORMATION? HOW IS THIS COMMUNICATED?

The written policy material provided to consumers and the online policy statements are ambiguous and do not provide advice on the relationship or intercepts between warranty classes. Our advice is that consumers are then routinely verbally advised of a requirement to have their service completed by the dealer that sold the vehicle. We have recently produced

materials to assist our members to have a conversation with their customers about their choice of repairer and new car warranties. Our New Car Warranties 'Frequently Asked Questions' document appears at Appendix A.

The combination of ambiguous material and conflicting verbal advice results in consumers that are worried about the loss of warranty rights, and are therefore selecting dealer servicing not as a consumer choice but as a form of insurance against the rejection of warranty claims.

The Market Study methodology should randomly select a sample of new car buyers, which is likely to reveal a very similar pattern of consumers receiving verbal advice that contradicts Australian Consumer Law.

17. WHAT ISSUES HAVE CONSUMERS EXPERIENCED IN HAVING A DEALER'S EXTENDED WARRANTY CLAIM ACCEPTED WHERE THE CAR HAS BEEN PREVIOUSLY REPAIRED WITH USED PARTS? HOW DOES THIS INTERACT WITH THE TERMS AND CONDITIONS OF A CONSUMER'S INSURANCE POLICY?

The use of 'used parts' is unlikely for vehicles that are under three years. Consumers with older vehicles are more likely to be offered the option of second hand or reconditioned components. However, it is difficult for a good case to be made that this is a major issue.

We are optimistic that the ACCC is able to broaden this question to '*What issues have consumers experienced in having an extended warranty claim accepted where the car has been repaired with genuine aftermarket parts rather than the car manufacturers branded parts?*' In our experience, this is the more common event that causes warranty disputes between dealerships and consumers.

There are a number of examples of warranty refusals and these are related to non-car branded replacement parts and modification parts. Once again, how this matter is handled is depends on the nature of the extended warranty.

18. ARE THERE EXAMPLES OF CONSUMERS BEING REQUIRED TO SIGN A CONFIDENTIALITY AGREEMENT IN ORDER TO RESOLVE A COMPLAINT ABOUT A NEW CAR? IF SO, DOES THIS ARISE WHEN DEALING WITH A DEALER OR A MANUFACTURER? PLEASE PROVIDE DETAILS.

We have only anecdotal advice about this practice and given the nature of the non-disclosure agreement, our customers were reluctant to come forward. It is difficult to imagine any circumstance in which there could be a reasonable justification for this practice. Where known faults exist, the safety of all of road users relies upon responsive repair remedies. Keeping a known fault subject to a confidentiality agreement is of significant concern for both consumer rights and for road safety.

SECTION 3

FUEL CONSUMPTION, CO₂ EMISSIONS, NOXIOUS EMISSIONS AND CAR PERFORMANCE

We have limited data on misleading consumer information regarding fuel consumption and emissions. Our experience concerning consumer information on vehicle attributes relates to car performance: Vehicle-towing capacity is the most obvious example. The following case study is typical of the experiences reported by our members in which consumers are often informed of the 'top of the line' towing capacity. Other variants (particularly lower priced) of this model may not share the same towing capacity attributes. This is often not clear at the point of sale.



CASE STUDY

PENNI DONATO ALLIN TOWBARS PTY LTD – ADELAIDE

Allin Towbars is a family business that was established in 1946 in the city of Adelaide.

With a total staff of 20 people, the proud South Australian manufacturer supplies and fits premium quality towbars and related towing equipment such as Electronic Brake Control units, Tow Hitches, Weight Distribution Hitches and all related components required for safe towing, mated exactly to the safe towing capabilities of each vehicle.

As their company has operated successfully for so long, their consumer business is generated mainly from the word of mouth of highly satisfied customers, along with recommendations from the RAA (Royal Automobile Association of South Australia) and independent car dealers. All have placed their trust in this small local company for their vehicle towbar and related equipment along with fitment requirements for more than seven decades.

According to Allin Towbars Managing Director Penni Donato, not being able to access vehicle manufacturer controlled data places their company in an unenviable position. They are spending ever-increasing amounts of time and human resources to ensure that the towbars they supply and the fitments that they make are correctly mated to the safe towing capability of each consumer's vehicle. This comes at considerable cost to the company to provide products and services that consumers rely on Allin Towbars to provide. Consumers actively seek this local company, as is their right of choice, over vehicle manufacturer/ dealer supplied Original Equipment options.

Access to vehicle data is integral due to the use of electronic management systems in modern vehicles that require an interface between the towbar, electronic braking systems and the vehicle's Electronic Control Unit (ECU).



The ultimate measure of the company's commitment to its customers is Allin Towbars' Lifetime Guarantee on their premium quality towbars, which is well in excess of any Original Equipment vehicle manufacturer recommended warranty on towbars and related equipment. The company has no doubt that the towbars they manufacture, along with their professional fitment, can be relied upon far beyond the life of the cars that these products are fitted to.

Mandated access to vehicle data will enable Allin Towbars to continue to provide their well-known and trusted towing products and fitment services without being unfairly disadvantaged. The resources required for a small firm like theirs of being able to provide the services that their customers want and expect is far in excess of those for dealerships who have unhindered access to the vital vehicle data required.

CASE STUDY
 PENNI DONATO
 ALLIN TOWBARS
 PTY LTD – ADELAIDE
 (CONTINUED)

Without equal access to vehicle data on fair and reasonable commercial terms, hundreds of small family businesses like Allin Towbars will struggle to survive.

Penni describes many situations where consumers have informed her and her staff that dealerships have verbally warned them that fitting an aftermarket towbar and related towing equipment will void their manufacturers' warranty. Despite the frequent occurrence of this misleading behaviour, there has not been a single occasion when this has been provided to any customer in writing.

Another concerning point comes from Allin Towbars' own experience and research. The company has encountered many situations where dealerships have quoted a towing capacity for a particular model of vehicle that does not correspond correctly to all of the models in the range. Just one example is the popular Toyota Hi-Lux, where specific models of the range have towing capacities that vary from 2,500kg to 3,500kg.

Consumers are usually only told of the top of the line towing capacity of the model range at the point of sale. This has led to significant consumer disappointment following vehicle purchases. On many occasions Allin Towbars has had to inform consumers that their vehicle cannot safely tow their caravan, trailer or boat due to the weight being in excess of that particular model's capability.

In addition, consumers have also been told by dealers that they need to return to the dealership to have towbars and related electronic components "plug and play programmed" into the vehicle's ECU at significant extra cost to the consumer. Only the dealers have access to the coding required to undertake this programming.

This situation is very concerning to Penni and her family business, particularly as South Australia is a state that is suffering significantly due to the demise of Australian motor vehicle manufacturing.

The future of successful long-term automotive aftermarket manufacturers like Allin Towbars is essential. It ensures that local automotive component manufacturing not only continues but grows, creating more employment and investment opportunities along the way.

Without equal access to vehicle data on fair and reasonable commercial terms, particularly as vehicle technology continues to evolve, hundreds of small family businesses like Allin Towbars will struggle to survive. This will have a devastating impact on consumer choice and competition and will lead to the demise of other small businesses seeking to continue the manufacture of premium quality automotive aftermarket components in Australia.

SECTION 4

**POST-SALE SERVICE
ARRANGEMENTS**



CASE STUDY

MALCOLM LAWRENCE PROPRIETOR – EXPRESSWAY AUTOMOTIVE (SA)

Malcolm Lawrence is the owner of Expressway Automotive, an independent automotive repair workshop located in the Adelaide suburb of Seaford. He established his small business in 1998 on his own and has since grown the business to include four employees.

Malcolm describes the current situation in relation to the non-sharing of vehicle data and vehicle manufacturer specific tooling by most of the vehicle manufacturers as nothing short of a major daily battle for his business.

He wants nothing more than to best service his customers, as he has managed to generate strong goodwill from his loyal customer base over the past 18 years. Malcolm cannot tell his customers that he can only partially service their cars, but he is sometimes forced into this position purely because the vehicle manufacturers won't provide the data and their own specially engineered and vehicle brand programmed tools. Things which are essential to provide complete repair and maintenance work for them.

Expressway Automotive manages to survive by subscribing to a number of United States based automotive data services, enabling Malcolm and his staff to access essential repair and maintenance information for many of his customers' cars. He cites the fact that vehicle manufacturers in the USA are more willing to share information, some, in the case of both Kia and Hyundai even supply it free of charge to independent repairers over there, to ensure that buyers of their vehicles have unhindered access to repair and maintenance work by whomever they trust to provide these services.

To be able to best serve his customers, Malcolm has had to go to the lengths of establishing a US based location and zipcode in order to gain access to vehicle data information, along with subscribing to local independent vehicle data services. All of this comes at a significant cost to the business, costs and services which are not incurred or even required by the vehicle manufacturer dealerships in Australia.

Even with these resources, Malcolm and his team still encounter customer vehicles for which data cannot be accessed in Australia due to manufacturers not making it available to independent repairers. He has had situations where complete repairs have been done, such as the fitment of a new transmission to a late model Holden Cruze, where the manufacturer gladly sold him the parts, but once the job was done, the vehicle then needed to be towed to a manufacturer dealership to be programmed at cost, in order to make the car operate.

As Malcolm stated, while it costs time and resources for his business, it is ultimately his customers who suffer from increased cost and delays, solely because they trust and select him and his dedicated staff to work on their cars.

He makes analogies to this situation that is totally unique to the Australian automotive industry. One of them relates to what happens when a consumer buys a house from a building company. When a consumer buys a house from a building company and it is manufactured for them, that building company does not then stop the owner from using whomever they trust and select to do their electrical, plumbing, furnishing, painting work etc. The house belongs to the owner and the owner selects who they want to do their work to it.

Malcolm translates this scenario to the Australian automotive industry, stating that when a consumer buys a car, the consumer owns the car. But with the manufacturers retaining vehicle data and specific tools that are essential to repairing and maintaining the cars solely to their own dealerships, the consumer has really only bought a licence to drive the car.

Consumers are placed in the situation where they have no choice but return to dealerships for servicing and maintenance as the dealerships have access to all of the vehicle data and vehicle specific tooling. In the vast majority of cases, consumers are also scared into believing that they will void their warranties if they decide not to use the manufacturer dealerships for servicing and maintenance.

Some manufacturers have even gone to the extent of having their service books only available via their own online servers, accessible only by their dealerships. So when a customer brings their car into Expressway Automotive, they cannot even access the service log to check what needs to be done at that point in the car's life cycle. Relating this back to Malcolm's analogy, the owner of the car does not even have any access to their own vehicle's service books, let alone being able to have their own choice in who services and repairs their cars.

Another important issue Malcolm raised relates to not having access to manufacturer Technical Service Bulletins (TSB), except through overseas subscription services. He cited an example of when a customer travelling with his family of six children set off on a caravan holiday. Unfortunately their 2001 model Mitsubishi Pajero 4WD had to be towed hundreds of kilometres to Malcolm's workshop after a rear differential / axle failure.

As Malcolm did not have access to the vehicle data to ascertain what had happened or how to rectify it, he did some research and the fault was determined through Malcolm's own vehicle data subscription channels. He had also discovered that this was a known potential issue with this model vehicle and that Mitsubishi had in fact redesigned the component to correct this fault. Based on the information that Malcolm had independently researched, without access to any manufacturer data, the parts required to complete the repair were arranged with the local Mitsubishi dealer for Malcolm to repair the vehicle.

Once attempting to fit the parts, Malcolm discovered that the car-branded parts supplied did not suit this particular vehicle and the repair could not be completed. Subsequent calls to



the dealer parts department were answered with comments like "You must be fitting them incorrectly" and the like.

Despite these comments, a second lot of parts were supplied to Malcolm which were no different and after more calls to the dealer, the dealer was finally able to access information that this particular model vehicle variant was different, something the dealer claimed to have never come across, despite having done hundreds of these same repairs. This information also came with the news that it would now cost almost \$4,000 to repair the car.

Understandably, the customer became emotional and was shouting over the phone at this news, as this repair cost was simply beyond their means. Shortly afterwards, another Mitsubishi dealer parts representative from a dealership located on the other side of town contacted Malcolm. He advised that he had spoken to the customer and that he was aware that there had been a revised

CASE STUDY

MALCOLM LAWRENCE
 PROPRIETOR –
 EXPRESSWAY AUTOMOTIVE (SA)
 (CONTINUED)

With unhindered access to vehicle data and tooling, Australian independent repairers can tool up to become Korean car specialists, or European car specialists, or concentrate on makes and models to best serve their customer base.

Technical Service Bulletin (TSB) issued by Mitsubishi exclusively to their dealerships almost a year prior.

Armed with this dealer exclusive failure rectification information, the fix was a \$15 circlip kit and the total repair cost was expected to be less than \$350. A copy of the Mitsubishi TSB was emailed to Malcolm under strict instructions not to reveal where it came from. The information regarding the “unheard of” failure that Malcolm’s customer experienced was explicitly detailed on page three of that TSB.

Malcolm completed the repair, but it took several days longer than it should have and caused extraordinary angst for his customer and their family during what should have been a happy holiday period. If the customer had not consulted an independent repairer to deal with this, the dealership repair solution would have cost the customer ten times the amount that it needed to.

Malcolm’s exasperation over the entire situation and his treatment by the original dealership, along with him not being able to access the Mitsubishi TSB in the first instance, saw him write a letter to Senator Nick Xenophon outlining what had taken place. He did this to highlight the importance of making vehicle repair and maintenance data available to independent repairers so other consumers don’t have to go through the same distressing experience as his customer did.

Malcolm also noted how as soon as warranty periods expire, long term customers return to his business, with many telling him that they are so glad to bring their business back and were just waiting for their new vehicle warranty to expire in order to do so.

With unhindered access to vehicle data and tooling, in which Malcolm pointed out that he is happy to pay for, he states that Australian independent repairers can tool up to become Korean car specialists, or European car specialists, or perhaps to concentrate on other makes and models to best serve their specific customer base. This is what has taken place both in the United States and in Europe, providing consumers with true choice for their vehicle maintenance and repair work.

32. WHAT ARE THE DIFFERENCES BETWEEN GENUINE, OEM, PARALLEL IMPORT AND AFTERMARKET PARTS? WHEN AND WHY ARE THESE PARTS USED? WHEN AND WHY ARE SECOND-HAND PARTS USED IN REPAIRING OR SERVICING NEW CARS?

The term 'genuine' can apply to OEM, parallel imports and aftermarket parts and is therefore not a useful delineator. The source of parts can be from the component manufacturer that produced the part for the original build of the vehicle, it can be from other auto component producers that did not supply to the original build, and these parts can be manufactured by an aftermarket producer.

Industry insiders know that car manufacturers do not make many car parts. The evolution of the automotive manufacturing industry has seen car companies move from 'car manufacturing' to 'car assembly' in which the panels for the external shell of the vehicle and some engine components are manufactured in-house while the majority of the final car is assembled using components produced by 'tier one' suppliers.

Our product distribution members supply parts and accessories that are sold through the new car dealership service departments that are sourced from non-OEM producers and sold in car company-branded packaging. Speciality products such as towbars and vehicle frontal protection systems are also sold to the car companies and distributed via the new car dealerships as both car-branded items and parts producer-branded items.



The term 'genuine' can, and does, apply to aftermarket parts.

This diagram may be of some use in discouraging a dualistic view that parts are 'genuine' or 'non-genuine':

PART TYPE	CAR COMPANY DISTRIBUTION	INDEPENDENT AFTERMARKET DISTRIBUTION
<p>Car Company Manufactured Original Parts: These parts are produced by the carmaker for the 'original' car assembly and for replacement parts.</p>	<p>These are normally limited to exterior panels and some engine components. Parts are on-sold to new car dealership service departments by the car company and sold retail to independent repairers and consumers.</p>	<p>The only alternative source of car company manufactured products in Australia is via parallel imports. These are original car company manufactured components that are imported directly from other international markets.</p>
<p>Automotive Component Producer Original Parts: a part that is manufactured under contract by an outsourced supplier and used in the 'original' car assembly and for replacement parts.</p>	<p>Car company-branded products that are not manufactured by car companies. Parts are on-sold to new car dealership service departments by the car company and sold retail to independent repairers and consumers.</p>	<p>The same product is sold and distributed to independent repairers and consumers in the automotive component producer-branded packaging.</p>
<p>Non-OEM Aftermarket Parts: Same component specifications but this product was not supplied for the original car build. These products are sometimes sourced by the car companies as an alternative (or more-cost effective) method or sourcing aftersales parts.</p>	<p>Automotive component producer-branded products that are not manufactured by car companies. Parts can be on-sold to new car dealership service departments by the car company or sourced directly by the dealership.</p>	<p>The same product is sold and distributed to independent repairers and consumers in the automotive component producer-branded packaging.</p>
<p>Speciality Equipment: Speciality accessories, e.g. for the 4WD market.</p>	<p>Aftermarket speciality products sold to car companies, and packaged and on-sold by dealers as car-branded 'genuine accessories'.</p>	<p>The same product is sold and distributed to independent repairers, specialist vehicle modifiers and consumers in the automotive component producer-branded packaging.</p>

High volume, cost effective replacement parts are available in Australia because of the Australian Design Law – Repair Defence (s72) which states that it is not an infringement of a registered design to use, or authorise another person to use, a product that is a component part of a complex product for the purpose of the **repair of the complex product**.

In May 2012, the Advisory Council on Intellectual Property (ACIP) was asked to investigate the effectiveness of the designs system for today's environment; particularly the role of the Act in stimulating innovation, and the impact the designs system has on economic growth. The process was comprehensive and consultative – the Issues Paper was released in 2013, and in April 2015, the final report to government was completed.

The ACIP final report contains the following recommendation:

Issues around design protection for spare parts were discussed in the Options Paper. Unsurprisingly there were mixed views in the submissions to the Options Paper, primarily in the key markets. For example, aftermarket providers agree with no change, and representatives of the vehicle market indicated the repair defence is detrimental to the designs system.

ACIP has not been informed of or found any additional information to be influential in changing its view.

ACIP recommends no change to the Repair Defence.

Source: Australian Government 2015. *Review of the Designs System – Final Report*, Advisory Council on Intellectual Property, accessed 7 November 2016, and <https://www.ipaustralia.gov.au/sites/g/files/net856/f/acip_designs_final_report.pdf>.



Decisions relating to when and why different parts are used depend entirely on the circumstances of each vehicle and who is undertaking the service.

Car company-branded parts and accessories are usually fitted in dealerships although some dealers source aftermarket accessories in the event that the car manufacturer cannot supply the part or the customer requires a more cost effective alternative.

A routine service without any faults, which is undertaken by an independent repairer, will often lead to a recommendation to the consumer to use non-car company-branded parts as a more cost effective alternative. An independent repairer will usually only source car company-branded parts from a dealership service department in cases where low volume cars or highly specialised components are involved.

Very few second hand parts are used by mechanical repairers with the exemption of some reconditioned or remanufactured parts. These are normally limited to high value parts on older vehicles where sourcing the original part is either difficult or cost prohibitive.

We do not have any clear market intelligence regarding the use of second hand parts in the collision repair sector of the industry.

OK, so how do I choose which part to use when?

The safest way for the average consumer to figure out what to do is to find a reputable, trusted mechanic who specialises in your type of vehicle and follow their advice. Generally, such mechanics pick and choose between the OEM, aftermarket and the level of 'newness' depending on what's best at any given time, although dealers will almost always opt for the OEM part.

A good mechanic will ask a series of questions about what you want to do with the car, and then present some options, allowing you to make a decision based on cost, function and speed of repair.

Factors affecting part choice include cost, fitness for the intended use, age of the car, how long you want the car to last for, availability, and owner preference. For example, I recently bought a CV joint for my Ranger. The OEM part cost \$600, the aftermarket \$200. This was in part because of the CV joint had to come with other components I didn't need...kind of sneaky on Ford's part given that CVs are often snapped on 4WDs but it backfired for them when I just bought only the part I needed from the aftermarket.

So by now it should be obvious that it's simplistic and wrong to say that either OEM or aftermarket parts are always better than the other. However, it is true to say that you very much get what you pay for, and that company off eBay who doesn't seem to have a proper website and has forgotten to list their phone number...that would be what is known as a false economy. Don't take risks with car parts, it can be deadly.

How can an aftermarket part possibly be as good as the OEM part?

As the lead engineer on a major car launch, earlier this year told me, "the aftermarket guys can do this sort of stuff [parts] so much quicker than we can, they're far more nimble". And here's a secret – car manufacturers don't manufacture anywhere near all of the car components themselves. They outsource design and manufacture to a vast array of companies who send them components to be assembled into a complete car, and a lot of those companies also design and sell aftermarket equivalents of the same parts they send to the OEMs.

In some cases, the aftermarket company has a better name for quality than the OEM, so manufacturers actually fit those parts and boast about it in their advertising. Examples are Bilstein suspension, Dana axles and Brembo brakes. And another example – when Toyota created the 86 Race Series they didn't fit Toyota gear to their racecars, they fitted aftermarket suspension, wheels and brakes.

OEM parts are often built to a cost. If a car will sell say 500,000 across the globe then saving \$2 on a part is a \$1 million saving, which is why tiny costs are cut. But not many cars sell half a million? Quite a few do, and given the amount of part sharing between models it's more than you'd think. Aftermarket parts on the other hand, don't sell in anywhere near the same volume and have to be better than the OEM, the default choice, for anyone to buy them.

Simply, the good aftermarket companies wouldn't exist if they didn't supply quality gear, and in many cases they work closely with the car manufacturer to produce their products.

Source: Pepper, R 2016, 'Are genuine car parts best?' *Practical Motoring*, 27 May. <https://practicalmotoring.com.au/car-advice/are-genuine-car-parts-best/>. Accessed 2 November 2016.

33. WHAT INFORMATION IS MADE AVAILABLE ABOUT DIFFERENT TYPES OF CAR PARTS TO THE MARKET? WHO MAKES THIS INFORMATION AVAILABLE AND WHEN?

The general information available to consumers regarding car parts is the car company promotion of 'genuine' parts. Knowledge that many of these exact parts are available in different packaging is not widespread. Unlike many dealers in the USA that provide "good, better, best" parts options for consumers, most Australian based dealerships limit their parts offer to only car company-branded items.

We are of the view that the extensive public relations campaign run by the car industry titled 'Genuine is Best' coupled with recent counterfeit parts 'stunts' is clearly a tactic designed to scare consumers into using car company-branded parts. The most objectionable aspect of this campaign is that it is done under the pretence of 'road safety'. If the car manufacturers' intent was that consumers use safe, high quality parts, surely the recommendation that consumers only fit parts that meet applicable Australian Standards would be a more appropriate message.

The AAAA Choice of Repairer Code of Practice and AAAA information brochures (see Appendix 2) recommend that independent repairers discuss the source of parts directly with consumers and that the brand and type of parts fitted or to be fitted are itemised on all quotes and final invoices. In our industry, it is considered best practice to engage in a discussion with consumers on the choice of parts and what their options may be when considering functionality and cost. Independent repairers are required to purchase car company-branded parts directly from dealership service departments and this often results in increased cost (and in some cases, a time delay) for the consumer. This conversation usually occurs directly with the car owner, after the diagnostic stage and before the repair or service is completed.

34. WHAT INFORMATION ARE CONSUMERS GIVEN ABOUT USING DIFFERENT TYPES OF CAR PARTS AND ITS EFFECT ON THEIR MANUFACTURER'S OR DEALER'S EXTENDED WARRANTIES? HOW IS THIS COMMUNICATED?

It is our contention that many consumers are informed verbally when they purchase a new vehicle that servicing the vehicle outside the dealership network and/or the fitment of "non-genuine" parts will risk voiding the manufacturer's warranty coverage on the vehicle. We also believe that there is little or no communication to consumers of their statutory rights in respect to the choice of repairer or parts used. This has led to a significant market distortion which results in the overwhelming majority of 'in-warranty' vehicles being serviced at dealerships using car company-branded parts while the majority of 'out of warranty' vehicles are serviced by independent repairers using aftermarket parts.

We are also of the view that many consumers are not aware that some (not all) extended warranties restrict choice of car parts. Our advice to consumers is to check the conditions on their extended warranty policy documents carefully to ensure that any action performed does not reduce the consumer's access to remedies.

35. WHAT ISSUES, IF ANY, HAVE CONSUMERS AND INDEPENDENT REPAIRERS HAD IN ACCESSING APPROPRIATE PARTS OR TOOLS TO REPAIR OR SERVICE A NEW CAR?

There are many examples of difficulties in parts access. In early 2016, we asked repairers to provide specific examples of difficulties accessing parts or tools. We received a large number of complaints and a number of these across different car brands and model types are extracted here to illustrate what these difficulties are, and the implications for repairers and consumers⁸:

Problems initialising the part, or reintegrating a part that was purchased from the dealership:

VW Caddy

One example. We had to replace the ignition barrel, cylinder & key on a VW Caddy, parts the dealer happily sold me, when it came time to commission the new ignition cylinder with our scan tool, the 4-digit code required was not accessible for me from the dealer. Four phone calls and the promise that the service department will get back to me never eventuated.

Ford Territory Ghia

Steering angle sensor failure. Whole steering column needs to be replaced. Once replaced the steering angle sensor has to be programmed to suit the vehicle. (Not just calibrated) It needs to be programmed first after it's been replaced and then calibrated. We had to return the vehicle to do the dealer to have it programmed. (They also calibrated it) We can calibrate, but cannot program it.

Ford FG Falcon

We had a FG falcon with an air bag issue from the crash shop that our scan tool diagnosed a faulty air bag module. Sourced a new genuine module from local Ford dealer and had to get it programmed by local dealer. Car was mobile so we drove this to the dealer. They said could we leave it with them, they took 2 days and charged us excessively to programme vehicle, client not

happy and we nearly lost contract with crash shop over delays even though we told them it was at dealer being sorted. We can tow truck vehicles in the city, not sure what you would do in the country to get them to a dealer?

Ford Focus | Ford Mondeo | Ford Transit

These vehicles require special tools to replace the timing belts/chains and cannot be purchased locally through the dealer network. We are prepared to purchase the tools as a group – but they specifically stated that we cannot buy these tools. Many of our staff were trained in the Ford network and have a lot of experience in the dealer network. Without the tools, it is impossible to undertake testing or replacement.

Holden Astra TS

We had a client with a TS Astra that had an engine ECU fault requiring a replacement ECU. We purchased a new genuine ECU from our local dealer but it had to be programmed into the vehicle, our local dealer stated they could not programme the ECU for 3 days “too busy” so to get our client back on the road we had to tow truck the vehicle to a dealer in the city, pay a programming fee and tow truck the vehicle back to us. Would have been happy to pay a fee to download and unlock/programme vehicle in house to save inconvenience and possible vehicle damage whilst in tow truck operators' control.

8. Australian Automotive Aftermarket Association, May 2016. *Evidence of critical repair and service information currently withheld from consumers and their repairer of choice.*

Astra 2004 AH

Model breaks down, I have it towed to my local garage (I'm hundreds of kilometres from a dealership) The local technician can source a new computer for me, but is unable to fit it because the computer has to be told/programmed it is being fitted to my particular optioned model (auto climate control, ABS and so on). I then have to have the car towed hundreds of kilometres because Holden in this case has withheld the rights to say that only a dealership has the right to fit a new part. Scan tools can communicate with this new computer, but without being "hooked into Holden's network"; the part cannot be taught the programming

Mercedes A190

We had a 2009 Mercedes A190 towed to the workshop from another repairer. The Steering lock was faulty and would not turn the steering wheel or start. Mercedes once sold you the new Steering lock and Green program key to program the steering lock into the vehicle. As of this year, they will not sell you the steering lock or supply the green program key. They want you to tow the vehicle to a Mercedes workshop and for them to fit and program the part. It will cost a minimum \$500 just to install the part and tow the vehicle before the cost of the part is added. This is costly for the client and time consuming.

Nissan

Bought a diesel particulate filter from a Nissan dealer and after fitting new filter needed to go back to dealer for force burn. One dealer charged \$110.00 another dealer charged \$280.00.

Volvo

A customer brought in their Volvo in that had the ABS light on dash, after some diagnosis it revealed that it needed a new ABS module (Anti-Lock Braking system). We purchased the correct part directly from the manufacturer and installed it for the customer however the manufacturers neglected to let us know that the ABS

module needed to be programmed in and we wasted hours of non-billable time trying to get it to work. Finally, after multiple phone calls and stuffing around we were told it need to be programmed by the dealers only. We had to re-book the customer in and drive her vehicle to the dealer who kept her car for 2 days (as they would fit us in when they could) and cost an additional \$300+ which we could not charge out to our customer and also had to provide the customer with a loan vehicle. The customer was extremely inconvenienced without a car for days and we were out of pocket around \$500.00 for the job as we tried to keep the customer happy by keeping the price as close as possible to our estimate.

Suzuki Vitara 2008

We recently had a 2008 Suzuki Grand Vitara that has an issue with EGR Valve; we purchased the part from local dealership and then was told that after the fact that it needed a connector set, then to have to try to get technical information that was not forthcoming from that dealership. Contacted another dealership through Repco connections and they sent to us information that should have been originally supplied with parts.

The vehicle went to local dealership eventually leaving us with footing the cost for their diagnostic recoding when they could have informed us originally the procedure for this vehicle. This has left us greatly out of pocket as owner paid dealership and not us.

Audi A4 Petrol

A recent example was servicing a 2014 Audi A4 Petrol; we completed the service items as per the service schedule and ticked these items off as being serviced in the service book. These vehicles have a Long Life Service reset that no generic scan tool can reset. The vehicle was returned to Audi to reset the Long Life Service and Audi refused to reset the Long Life Service Reset because they did not do the service. The customer offered to pay to have the Long Life Service reset but the Dealer still refused.

There are many more complaints that have been received from independent repairers regarding parts and similar to the above examples. The rationale for withholding or failure to supply parts are as follows:

1. **To stop the sale of counterfeit parts.** It simply defies logic that refusing to supply an independent repairer with a car-branded part to repair a consumer's vehicle is primarily intended to combat counterfeit parts.
2. **'Security' concerns.** The car companies will attempt to counter many of the above examples by arguing that this is due to 'security' issues. Our experience is that there appears to be an ever widening use of the term 'security' related components and recently a whole range of products appear to have been 'reclassified' as security related. The refusals to provide codes to re-initialise what are manifestly non-security related parts is now commonplace.

We have documented examples in which the car company or dealership has expressly stated that parts are to be withheld due to their classification as a 'security-related' part. In one recent documented case, a Mercedes Benz dealer when quoting the supply of a reconditioned engine control unit (ECU) stated *this is a theft relevant part so it would have to be fitted at the dealership.*

These exact parts are routinely bought, fitted and reinitialised by independent repairers in North America and Europe with no detrimental impact on vehicle security reported. Further information on this topic is available in our response to Question 44.

We have not included the identity of any of these complainants in this submission due to concerns about the likely repercussions for our members. Our industry's ability to fit OEM and car-branded parts generally relies on good relationships with supportive dealers and we cannot risk detriment to repairers that do come forward with evidence of refusal to supply parts. We would be happy to provide this documentation to the ACCC on a commercial-in-confidence basis.

The dealership business model includes incentives for selling parts. As a result, in our industry there are cooperative (often regional) dealerships that do sell the part and the tool/instructions/codes for initialising the part to independent repairers. This cooperative

relationship results in increased parts sales, ongoing relationships with independent repairers in the region, and of course, sound consumer outcomes. We do value cooperative relationships with dealerships.

In some regions however, the opposite occurs. The dealership does not cooperate at all with the local repair base and these repairers are often forced into finding another dealership that may be hundreds of kilometres away. There are also a large number of complaints from independent repairers regarding the dealership service departments that will sell parts without the required tools or initialisation codes. After the independent repairer removes the faulty component and installs the new part, the dealers require that the vehicle is brought to the dealership for initialisation of that part – for a fee, and often delays of a number of days. In many cases, this requires towing the vehicle to the dealership as the vehicle is immobilised. The price paid to integrate the new part in the vehicle's electronic control unit (ECU) is entirely arbitrary and bears no relationship to the actual cost to the dealer. The majority of the complaints that we have received on our portal fall into two categories:

1. Dealership will not sell the part. Dealership advised by the car company that they cannot supply specific parts to independent repairers.
2. Dealership will sell the part but the repair cannot be completed without returning the vehicle to the dealership to complete an aspect of the repair for a price that varies considerably.

We are also aware that in July 2015 Toyota Australia issued a Dealer Bulletin prohibiting the sale of Toyota 'genuine' parts to all 'unauthorised re-sellers'. Unauthorised re-sellers are defined by Toyota as "any individual or entity that sells a new Toyota Genuine Part in Australia but has not been authorised either by Toyota Motor Corporation Australia or its parent company Toyota Motor Corporation Japan". We are unaware of any AAAA members that have successfully qualified as 'authorised re-sellers' of Toyota-branded parts. Therefore, the outcome resulting from this policy is that the sale of Toyota-branded parts to workshops and consumers in Australia is now exclusively funnelled through Toyota authorised dealerships.

36. WHAT TYPES OF PARTS AND TOOLS DO MANUFACTURERS SELL TO CONSUMERS AND INDEPENDENT REPAIRERS? DO THESE DIFFER FROM WHAT IS MADE AVAILABLE TO DEALERS? WHAT EXPLAINS THE DIFFERENCE?

In our experience very few, if any, car companies sell parts or tools directly to consumers or independent repairers. They will almost always sell parts through their dealership network or authorised resellers.

37. WHAT TYPES OF PARTS AND TOOLS DO DEALERS SELL TO CONSUMERS AND INDEPENDENT REPAIRERS? HOW DOES THIS DIFFER FROM WHAT MANUFACTURERS SELL? ARE DEALERS PUT AT A COMPETITIVE DISADVANTAGE FOR SELLING THESE PARTS AND TOOLS?

Dealers sell consumers and independent repairers OEM branded replacement parts and accessories for the vehicles that are sold by the dealership on behalf of the car company. They will also sell replacement parts for discontinued models for a period (ten years is normal industry practice). As we have stated earlier in this submission, car companies will often instruct their dealerships to withhold the sale of special tools, codes and some parts directly to the independent aftermarket. We are also aware of the practice of car companies reducing functionality of scan tools for the aftermarket which is done by applying pressure through the aftermarket scan tool manufacturer (refer case study below).

Toyota

Also since upgrading the software on a few of my aftermarket scan tools, I have lost the level of ability that I use to have with my Toyota platform. It is like I have a very basic level and I can no longer carry out the diagnostic tests and readings that I had before my update. (I actually had this happen to two of my many aftermarket scan tools that I have).

Issues concerning parts and tools have been covered extensively in earlier sections. However, we do want to respond to the question regarding whether dealers are put at a competitive disadvantage by selling parts to independent repairers. We would make the observation here that it is a rather unusual market structure where both independent repairers and dealerships, who compete for vehicle maintenance business, are forced to trade with each other by the car companies. For an independent repairer, there are very few alternative sources of car company-branded parts or tools and increasingly they need to involve a dealership to fully complete repairs that are more complex. For dealerships, they need to sell parts to their independent repairer competitors to meet car company imposed sales targets and are increasingly being asked to be a supplier of repair and service information to independent repairers and consumers.

Oil blends are an interesting case study to illustrate this point. A number of vehicle manuals now contain the statement *'refer to dealer'* in the section that would normally contain the information on the recommended and required engine oil. Identifying the correct engine oil is critical and not using the recommended blend can invalidate the warranty.

Is the dealer now assumed to be the information source for consumers and independent repairers when their (understandable) preference would be that the car is presented to their service department to change the oil? We are not aware of whether the dealers have actually agreed to be an information service for oil blends – because in the past 24 months dealers have consistently refused to divulge the oil blend and will not sell the car company branded oil as they buy it in drums rather than retail packs. This practice is frustrating for car owners and repairers alike as they are caught in a 'refer to dealer' loop, in which the oil blend now appears to be a trade secret.

AAAA member submission to Choice of Repairer incident reporting portal.

The independent vehicle repair sector would prefer not to be begging favours from the dealership network. There does not appear to be a formal or uniform policy regarding dealership cooperation with the independent aftermarket and it is perfectly understandable that dealers see our sector as a direct competitor. In our view the dealership service departments should not be forced to provide tools and parts to their competitors – the supply of these components should be provided by the car companies through their well-established parts distribution channels that are currently in place

38. WHERE A COMMON PLATFORM IS USED BY MANUFACTURERS (E.G. VOLVO S40, FORD FOCUS AND MAZDA 3 ARE BUILT ON A COMMON PLATFORM, WITH DIFFERENT FEATURES/TRIM), DOES THIS MAKE IT EASIER TO ACCESS PARTS AND TOOLS?

While it is true that there are common platforms and components shared across different makes and models of vehicles, this does not necessarily make it easier to access repair and service information and replacement parts on these vehicles.

Circuit diagrams, wiring colours, connector configurations are often different as is the software for each car brand. Software is very commonly used to rectify faults in vehicles e.g. Timing chain wear tolerance, transmission change faults, EGR cooler operations plus audio and of course navigation.

The most common shared components are the transmission and engine, and while theoretically this should make things easier - it does not. Each manufacturer has different technical specifications for repair and service intervals. Even when these large components are the same, the manufacturers always use different part numbers for components. Manufacturers do not provide any information on common platforms that have interchangeable components so it is only through learned experience or via informal networks that a mechanic is aware of the similarities and can widen the search for replacement parts and service information.

39. WHAT IS THE PURPOSE OF A LOGBOOK?

Currently, most vehicle manufacturers provide a service history booklet with new vehicles, which describes the type and timing of each service interval, and allows for a stamped receipt of work completed by the repairer. The logbook contains the specifications for maintenance and replacement of parts for each service interval. Repairers use this service interval information to quote on regular logbook servicing.

The service history booklet (or logbook) is relied upon by many vehicle owners for proof of warranty compliance and as evidence of proper maintenance undertaken throughout the life of the vehicle.

Consumers rely on the logbook when selling their cars as proof that it has been serviced and maintained in accordance with the manufacturer's specifications. An incomplete record of service history is highly likely to have a detrimental impact on the resale value of a car.

40. WHAT ARE THE INDUSTRY TRENDS FOR PROVIDING ONLINE LOGBOOKS RATHER THAN A PAPER COPY?

Paper logbooks? How very quaint. All new Land Rovers built from 1 July 2013 have their full service history online. Pre-delivery inspection, all scheduled services, related service items and body inspections, the lot. **All updated each time you visit an Approved Service Centre.** Need to access your records? Just ask any Land Rover Retailer for an instant print out or online copy or access your Online Service History now.

- Easily identify when your next service is due
- Easily accessible proof of past services, should work be required under warranty
- **One single view of your entire service history, from any Land Rover Retailer**

Source: Land Rover. *Online Service History*. <http://www.landrover.com.au/ownership/service-and-maintenance/online-service-history.html>. Accessed 4 November 2016. [Emphasis added]

As detailed above, most vehicle manufacturers currently provide a paper logbook with new vehicles. However, from 1 July 2013 Jaguar Land Rover in Australia ceased providing a booklet with new vehicles and commenced online recording of service history. While the previous vehicle service history is available to the consumer via an online portal, the only services that can be recorded in the Jaguar and Land Rover Online Service History tools are those undertaken by a dealer.

Mercedes-Benz has also adopted an online logbook called the Digital Service Report. Though it is unclear whether independent repairers may record servicing through this tool in Australia, some of our members have reported that they are unable to update the Digital Service Report. BMW have also moved to online service records.

As consumers become more accustomed to storing information online, we expect that online logbooks will be rolled out more widely. The ACCC should be wary of any move towards online logbooks where independent repairers are prevented from recording vehicle service history; because this provides another effective tool that car companies can utilise to compel car owners to patronise the dealership for all services for the life of the car. This is not fair to the consumer, nor is it conducive to free and open competition.

Similar systems have been introduced in Europe and North America. Toyota in North America have an on-line service history record, but in this case, the owner is able to access the record and update it with any details of DIY or nominated repairer servicing. In Europe, most major manufacturers have moved to a digital service book that can be updated by registered independent repairers. Registration of independent repairers is undertaken via the manufacturers' technical information websites.

41. WHAT LEVEL OF ACCESS DO CONSUMERS OR OTHERS HAVE TO ONLINE LOGBOOKS? WHO CAN UPDATE THE ONLINE LOGBOOKS? WHAT BARRIERS, IF ANY, ARE THERE TO DO SO?

Trend analysis indicates that the vast majority of vehicles over five years of age are repaired and serviced by an independent repairer, and as a result, the 'online-only' Land Rover vehicles are now increasingly maintained and repaired by the independent sector.

There is currently no method of allowing a registered and licenced independent repairer to update the online logbook through Land Rover's Online Service History (OSH) tool. Evidence provided by our members has shown that they are unable to record the completion of a logbook service through the OSH tool, and that dealers refuse to update the OSH on behalf of owners for services undertaken outside the Land Rover dealer network.

In instances in which consumers and their preferred repairer have contacted Jaguar Land Rover dealers in an attempt to have vehicle servicing by independent repairers recorded, these requests have been denied, and they have been advised to keep receipts for vehicle servicing in the glove box or to purchase a generic paper logbook. It is not practical to keep receipts in the glove box and the presence of a small pile of receipts is hardly equivalent to a completed logbook or an online logbook print out.

A generic paper logbook would also appear to be a rather 'quaint' alternative and it could affect the resale value of the vehicle. The real question here is whether the online logbook is a consumer benefit, or a car company/dealer benefit. If the logbook is provided as a consumer benefit and assisted the consumer by modernising the record keeping process, then clearly the consumer should be able to delegate access to the logbook to their repairer of choice. If the logbook is a consumer benefit, then why remove that benefit and insist on receipts in the glove box because the consumer services the vehicle outside of the dealership?

Preventing independent repairers from updating an online logbook following a vehicle service is likely to have a detrimental effect on consumers, should they later seek recourse from the vehicle manufacturer for an issue or fault within warranty period. The consumer, therefore, has two alternatives: to have their vehicle serviced exclusively by a dealer, or accept the consequences of a glove box of receipts or a 'generic' paper logbook. The extent to which the consumer is fully informed of this situation during the purchase of a new car is unknown.

Online logbooks have the potential to offer much more than a formal record of the servicing and maintenance of the vehicle. If these logbooks functioned in the same way as our online health records, it would be possible for a technician to be able to review (and use) the previous repair history information. For example, if the online record reveals that a component has recently been replaced and yet there is a recurring fault code for that component, the corrective action will be different. A qualified mechanic could see from the online service record that, despite repeated replacement of a component, the customer is still reporting the same fault (for example loss of power, vibration or leaking). The mechanic would then seek to find an alternative to this problem, knowing that yet another replacement of the same part is not likely to provide a solution. This would lead to consumer benefit in reduced cost and time wasted. Surely, the customer is entitled to gain the full benefit from what is advertised and promoted as a consumer benefit.

AAAA supports the principle that consumers have ownership over the digital information relating to their vehicle and should be able to assign permission to update the logbook to their repairer of choice. We are of the view that the customer, not the car company, owns the logbook and their independent repairers should have the ability to make entries in online logbooks, by ensuring car owners are provided with the appropriate login information to be shared with their preferred repairer.

In its report *Sharing of Repair Information in the Automotive Industry* in 2012, the Commonwealth Consumer Affairs Advisory Council (CCAAC) stated it "would be concerned if manufacturers were engaging in conduct that effectively 'tied' or 'bundled' the supply of a new car with servicing by a dealership if this impacted on competition in the supply of automotive repair services"⁹. Whether a requirement that only the dealership can record the service history is that undertaken by is a breach of Australian Consumer Law is yet to be fully tested.

The expectation is that in the near future the service history booklet for most, if not all vehicle manufacturers, will be replaced by an electronic version and servicing will be recorded and stored online.

The online logbook is a similar issue to the issue of telematics. There is a global community debate focussing on the emerging issue of who owns the data that is generated from a consumer's vehicle and many are arguing that it is the vehicle owner who should own the data and choose who receives that data. For many other products in the market place, it is assumed that the consumer has the right to opt out of sharing their usage data with the manufacturer or hardware/software producer. The auto industry however, marches to a different tune. Software updates for vehicles are becoming as prevalent as software updates for mobile phones - but unlike a watch or a mobile phone, the vehicle owner must return to the dealership. There is no good reason for this to occur other than the opportunity for the dealership to reconnect with owners and to offer additional unsolicited services.

AAAA supports the principle that the car belongs to the consumer and the data generated by that vehicle also belongs to the consumer and not the manufacturer - provision should be made to ensure that there is clear ownership and choice in data sharing.

9. Australian Government 2012. *Sharing of repair information in the automotive industry: Final report*, Commonwealth Consumer Affairs Advisory Council, The Treasury, p 24

2013 Land Rover Discovery 3.0 Ltr Turbo Diesel

These vehicles do not have a hard copy logbook, rather the service must be logged with Land Rover on their database, when I contacted Land Rover to advise them we have serviced the vehicle (according to the factory recommended service schedule) and to please make a note of it I was told that it cannot be done as it was not serviced at Land Rover and thus there is no way of logging the service, our solution for this is to either purchase or manufacture hard copy logbooks for the customer to keep for services no longer done by the dealer, a sub-par and unnecessary expense adding service. The logbook should be controlled by the car owner and not the dealership – if the owner would like us to register that the service was completed by qualified staff, using fit for purpose parts and according to the specification, then this is what should occur.

AAAA member submission to Choice of Repairer incident reporting portal.



The expectation is that in the near future the service history booklet for most, if not all vehicle manufacturers, will be replaced by an electronic version and servicing will be recorded and stored online.

SECTION 5

ACCESS TO REPAIR
AND SERVICE
INFORMATION
AND DATA FOR
NEW CARS



CASE STUDY

GERRY MARSON MOBILE AUTO DIAGNOSTICS, WETHERILL PARK NSW

Gerry Marson operated his own European vehicle specialised automotive repair workshop for several years, investing in the technology required in order to diagnose and repair the complex electronic functions of these makes and models which are extremely popular in Australia.

Given their high level of engine, transmission and braking / safety systems technology, these vehicles are renowned as the most difficult to diagnose and repair without access to vehicle manufacturer information.

The high demand from the automotive repair trade for Gerry's expertise has seen his business transform to become a full time mobile diagnostic specialist over the past 14 years, assisting independent repairers seeking his expertise and state of the art diagnostic equipment to assist them in repairing and maintaining their customers' vehicles.

Gerry is faced with similar situations many times each day, where independent repairers are at a cross roads in trying to best service their customers without access to the information that is distributed to vehicle manufacturer dealer repair networks. This is data, which is imperative in order to be able to work with and understand the complex electronics systems that operate in the vast majority of new and current model vehicles of on Australian roads today.

Gerry has seen countless situations where many hours of labour have been lost by independent repairers troubleshooting issues, many of which are known by the manufacturer dealer network through the distribution of Technical Service Bulletins (TSB's). These documents outline specific known issues and defects with vehicle components and detail exactly how to rectify or repair these issues.

It is clear to Gerry along with his many independent automotive repairer clients that TSB's are withheld from independent repairers

as one of the tactics employed to mask known problems with their vehicles. By issuing TSB's to their dealer network, they avoid expensive recalls for repairs in which they must rectify at their own cost as a part of their warranty and consumer rights' obligations.

Gerry has also noted a significantly large percentage of his client's customers' cars are now developing serious issues at around the 60,000 to 100,000 kilometre point, or within three to five years of their life cycle. With many vehicle owners, this times in with the end, near the end or after the expiration of their car manufacturer warranties. There is no doubt in Gerry's experience that this works in well with the manufacturer's dealer network by helping them to generate sales of new cars, as a consequence of being faced with a very costly repair to their existing vehicle.

When a car owner is faced with the prospect of having to replace a gearbox on a high end European vehicle for \$15 to \$25 thousand or more, even when it is just out of its warranty period and knowing that independent repairers cannot access the data required to analyse and attempt to rectify the issue at a significantly lower cost, the dealer network knows that consumers will do whatever they can to get rid of the problem - including going into a new car lease or purchase.

In the vast majority of these cases, when the car owner has exhausted every opportunity to repair their car under the manufacturer's warranty - or by independent repairers, they always return to the dealer. The consumer is only aware of the manufacturers' warranty and see this as their

CASE STUDY

GERRY MARSON MOBILE AUTO DIAGNOSTICS, WETHERILL PARK NSW (CONTINUED)

only remedy. Knowing this, the dealer will invite the consumer to trade the car in on a brand new one, informing the consumer verbally that the dealer must repair the vehicle in order not to void the warranty and the cycle starts again.

It is clear to Gerry that the dealer repairers are only interested in the high volume express service business that takes place in the first three to five years of vehicle ownership. With many dealers servicing well over 50 cars per day and with their exclusive access to service and repair data along with Technical Service Bulletins, at an average cost of \$300+ per service, it is clear to see why the manufacturers are so protective of this information.

Once the warranty period has expired or is close to expiring, the dealer objective shifts to replacing their customers' vehicles with new ones on new lease agreements, once serious repair or component replacement issues develop. Gerry tells of several instances where this has taken place among his network of trade clients and their customers.

Gerry also notes the increasing trend of Electronic Service Log Books, where in the case of BMW, vehicle service log books do not exist except via their own specific and dealer only accessible servers. So an independent repairer, or equally importantly, the vehicle owners themselves, cannot access the information required in order to service and maintain the vehicle. Electronic Service Log Books make this impossible and according to Gerry, it is not only BMW who are doing this to block out independent repairers.

Over the course of his career, Gerry has seen many independent automotive repairer businesses close down, many of which had been well-established and trusted local institutions for the motorists of their specific neighbourhoods over decades.

These repairers simply could not compete with the vehicle sales cost absorbed /calculated free scheduled servicing from car dealers (and he asks how can anyone compete with 'free' servicing?), nor could they continue to operate without access to important manufacturer data, as cars from the smallest to the most prestigious require software updates.

Gerry fears that unless legislation similar to that implemented in the European Union and America in relation to manufacturer data sharing is implemented here, there will be no competition in the automotive repair sector and more quality independent repairers will be forced out of the market. He is sure that this is the clear goal of the car manufacturers and their dealer networks.

Gerry and many of his colleagues in the independent automotive repair industry are equipped and trained to ensure that any problem with any vehicle can be repaired independently of the dealer system. Without fair and unrestricted legal access to manufacturer data though, consumers are constantly forced back to the dealers, whether they want this to be the case or otherwise.



INTRODUCTION

We are hopeful that this ACCC Market Study is able to build on all the effort, research and deliberation that has occurred on the issue of access to vehicle repair and service information over the past five years. Specifically, we are optimistic that the fallacious and erroneous arguments that we have encountered over this journey are not dredged up for another round of argument and counter argument. Previous excuses for the refusal to sell access to repair information have included intellectual property concerns, security, and safety. All of these claims have been made and dismissed in the five years that the Federal Government has taken an interest in this market. It would appear that the arguments made by the new car industry regarding the failure/refusal to sell repair and service information are constantly moving and adapting. We are preparing for the most current argument which now appears to be 'all that you need is already available – you just don't know where to look' but in doing so, we are assuming that we do not need to go over old ground and that we are starting this current review from where the voluntary agreement left off.

Core principles that were agreed by all signatories to the Voluntary Agreement include:

- Consumers are able to choose who maintains and / or repairs their motor vehicle.
- The repairer should be able to access all information required for the diagnosis, body repair, servicing, inspection, periodic monitoring and reinitialising of the vehicle, in line with the service and repair information manufacturers provide their authorised dealers and repairers.
- Service and repair information will be made available on commercially fair and reasonable terms.

We are hopeful that we start the conversation here – at the point at which the industry has already agreed in principle that information and data should be shared for consumer benefit. If we agree that all dealer-level repair information **should be made available**, the only questions that remain are:

1. **Is this actually happening in the market today?** Is all the information required to service and maintain vehicles made available on fair and reasonable commercial terms by all brands selling into the Australian market?

2. **If not, what are the most appropriate mechanisms to ensure that this information is made available?**

Previous government inquiries have concluded that it is simple economic logic that there is potential for consumer detriment from a restriction of vehicle repair and service data.

In preparation for this Market Study, we commissioned independent research into 325 independent mechanical repair workshops that service a combined total of 18,081 vehicles per week. With the benefit of these detailed insights into the diagnostic and repair process, **we have now been able to quantify the detriment to repairers and their customers.**

We now have specific information on the additional cost and the additional labour hours that are incurred during the diagnostic, repair and re-initialisation process. **This investigation conducted by an independent market research company is the most insightful and clear evidence we have ever possessed, and reveals the true cost to the Australian community of the withholding of vehicle repair and service information.** These insights provide compelling reasons for why repair information should be shared for the benefit of the car owner including the impact on household expenditure, for safety on our roads and for the Australian economy.

The Commonwealth Consumer Affairs Advisory Council study into this issue in 2012/13 concluded that there were market incentives for the industry to cooperate voluntarily. The experience of the past four years would indicate otherwise and we now have data that reveals that the voluntary process has had no meaningful impact on the availability of repair and service information. It is now difficult to see what market conditions ever pre-existed for the industry to cooperate. The car companies rely on their dealerships to sell their cars and branded spare parts, and the dealerships are heavily dependent upon the profits from parts and servicing to remain viable. This market dynamic provides the direct economic incentive for the new car industry to maximize their market share in dealer vehicle servicing at the expense of the independent repair sector. The market does not have the pre-conditions to resolve this issue voluntarily. There is evidence that the industry does not agree on the very basic point that data and information is available on fair and reasonable terms. Our experience is that not all of the required information is made available

in the market. The representatives of the car industry state that all repair information is readily available. Similarly, we have provided evidence of systemic failure to comply with the Heads of Agreement. The car industry states that they are unaware of any complaints and have no evidence that would contradict their position.

It is to be expected that large and powerful industry interests will continue to advocate that there is no problem here. The argument that these proponents put forward is that the dealership sector has a smaller footprint than the independents, and the fact that cars are still on the road would indicate that the industry is still capable of repairing them. It is a poor argument and it fundamentally requires that policy makers ignore simple economic logic: monopolies create anti-competitive behaviour that reduces quality and innovation, and increases prices.

The fact that “cars are still on the road” does not reveal a great deal, about what the future holds. Disruptive technology is the new market reality and as a result, industries can and do evolve or face closure. We are not fearful of the disruption, of new technologies, the sharing economy, telematics, and autonomous vehicles – we are not fearful of any of the exciting developments in our future. Innovation and preparedness to face future challenges is a precondition for any industry to grow and be sustainable, and the independent repair sector will adapt and change in response to the next wave of automotive technologies. Innovation and competition is welcome and we know that when markets operate efficiently, capital will flow to the most productive and growing segments of our economy.

What is not welcome or acceptable is manifestly anticompetitive practices that starve a sector of work due to the monopolistic control over technology and the unequal power relationships. The independent sector is fragmented and less well organised in comparison to the combined might of the global car manufacturers. We know that we are small, but our faith is that through this market study the umpire – the Australian Competition and Consumer Commission – will see through the sophistry and discover the truth about how this market is currently operating. **A failure to address the systemic competition issues in our industry will see a sharp decline in the numbers of independent workshops in Australia over the next five years and the price of this decline in competition and choice will be paid by every Australian car owner.**

Our plea to the Market Study team is that you speak directly to repairers. The current lead argument from the car industry is that the required repair information is available and dealers cannot (and do not want to) service every car. Our view is that the best way to seek the other side of the story is to **talk to the people who keep us moving, speak directly to the mechanics that service and maintain our vehicles every single day of the week, every week of the year.**

42. WHAT REPAIR AND SERVICE INFORMATION AND DATA EXISTS IN RELATION TO NEW CARS? WHO CONTROLS THIS INFORMATION AND DATA?

Repair and Service Information

Based on research into the data sharing arrangements already in place in Europe and the USA, the following information is considered to be the basic requirement for vehicle service and repair for all current and future models available on the Australian market:

1. Vehicle Identification Information: to enable to accurate identification of a vehicle by its VIN number, model code and/or chassis/body number.
2. Maintenance and Servicing Schedules: including information for re-setting service indicator and access to and updating of on-line or digital service records.
3. Lubricant Specifications: including information for equivalent generic products.
4. Workshop/Repair and Service Manuals.
5. Technical Service Bulletins: including service campaign information, access to vehicle service history, updated parts information, installation and repair instructions and access to software updates where applicable.
6. Electrical Wiring Diagrams: schematic layout of vehicle wiring diagram and components.
7. Parts Catalogues: part numbers and any other information necessary to identify manufacturer branded spare parts fitted to a specific vehicle.
8. Flat Rate Service Times: specific time allowances for routine servicing and repairs.
9. Recall Notices.
10. Body Repair Manuals: body repair information and subsequent service bulletins.

11. Special Service Tools: information on and ability to purchase specific tools, other than generic hand tools, required for repair operations.
12. Training and Technical Service Support: including availability, access and contact information for technical service support.
13. Reprogramming, Re-initialisation and Unlock Codes: access to information to enable completion of repairs associated with component replacement, disconnection and/or repair.
14. On-Board Diagnostics (OBD): access to diagnostic trouble codes including manufacturer specific codes and on-line diagnosis. Access to manufacturer OBD, vehicle repair and maintenance specific data by generic scan tool manufacturers.

Information and Data Access

This information and data is currently shared with dealerships. The principle agreed to by all signatory parties in the Heads of Agreement (December 2014) is that Vehicle manufacturers would provide unrestricted and standardised access to vehicle repair and maintenance information to independent repairers via a website. The information is to be made available at the same time and of the same content provided to authorised dealers/repairers.

Information available from the manufacturer's website should be downloadable, up loadable or printable subject to the manufacturer's copyright restrictions

In accordance with existing regulations, the majority of vehicle manufacturers have websites in US and/or Europe (see diagram below) with standardised platforms to provide information to independent repairers within those markets. For the Australian market, these existing platforms would simply require updating to include information and data relevant to Australian specification and homologated models.

Technical Information Sharing Websites

VEHICLE MANUFACTURER	EUROPE	USA
Audi	erwin.audi.com	erwin.audiusa.com
BMW, Mini	oss.bmw.de	bmwtechinfo.com
Citroen	service.citroen.com	
Chrysler, Jeep, Ram, Eagle		techauthority.com
Ford, Lincoln, Mercury	fordtis.com	motorcraftservice.com
Fiat, Lancia, Alfa-Romeo	technicalinformation.fiat.com	
General Motors*	gme-techinfo.com	gmtechinfo.com
Honda, Acura	techinfo.honda-eu.com	techinfo.honda.com
Hyundai	service.hyundai-motor.com	hmaservice.com
Infiniti		infiniti-techinfo.com
Jaguar	topix.jaguar.jlrext.com	jaguartechinfo.com
Kia	kiatechinfo.com	kiatechinfo.com
Land Rover	topix.landrover.jlrext.com	landrovertechinfo.com
Mazda	mazdaeur.com	mazdaserviceinfo.com
Mercedes-Benz, Smart	service-and-parts.net	startekinfo.com
Mitsubishi	mitsubishitechinfo.eu	mitsubishitechinfo.usa
Nissan		nissan-techinfo.com
Peugeot	public.servicebox.peugeot.com	
Porsche	techinfo2.porsche.com/ techinfo/index.jsp	techinfo2.porsche.com/ techinfo/index.jsp
Renault	infotech.renault.com	
Saab	saabtechinfo.com	saabtechinfo.com
SEAT	erwin.seat.com	
Subaru		techinfo.subaru.com
Suzuki	serviceportal.suzuki.de	suzukipitstopplus.com
Toyota, Lexus, Scion	toyota-tech.eu	techinfo.toyota.com
Volkswagen	erwin.volkswagen.de	erwin.vw.com
Volvo	volvotechinfo.com	volvotechinfo.com

* includes Chevrolet, Cadillac, Buick, Saturn, Pontiac, Oldsmobile

In Europe and North America, vehicle manufacturers charge reasonable and proportionate fees for access to vehicle repair and maintenance information. The price charged should not discourage access and be competitive to those levied in Europe and/or USA.

Technical information in the US and Europe is made available via subscription to the website on an hourly, daily, monthly and yearly basis with fees varying accordingly.

Australia has 68 brands in the market and the method of access varies. There is only one example, that we are aware of, of a car company that provides 'Heads of Agreement compliant access', and that is the provision of comprehensive data and information access on a subscription basis by Holden via their AC Delco site and Australian models have been incorporated into this site. A small number of manufacturers provide Australian access to international Technical Information Sharing Web sites but important sections are missing or not accessible to Australian repairers. In Australia, a number of car manufacturers provide a contact email address. AAAA Members report that attempts to request data from these email addresses are either not answered or are not successful. Some manufacturers have now issued formal statements that inform independent repairers that despite the Heads of Agreement, the company does not intend to make any information available to independent repairers or to consumers, and that this is the formal policy position of the company¹⁰.

In the absence of a US or EU regime, Australian repairers access this data using range of methods and over 50% will have more than one method:

1. Third party data providers - this is the most common approach.
2. Accessing international sites - most sites however have an Australian 'lock out'. These sites will lock out the repairer when an Australian vehicle identification number is entered or when an Australian credit card is entered for payment.
3. Dealerships are often asked to provide simple information such as codes - and they are commonly asked for assistance when the consumer has been referred to an independent repairer by that dealership.

Further information and examples of data access methods are provided later in this section.



10. Copies of this correspondence can be supplied on request and on a commercial-in-confidence basis. These letters are addressed to our members and their details cannot be released.

Jeep Grand Cherokee

I recently purchased a tool that will allow me to program many different vehicles (CarDAQ-M). I had a Jeep Grand Cherokee in the shop last month. It had a fault and the check engine light was on and fault codes for oxygen sensors. I went to the Chrysler website and purchased a subscription for 1 day. I logged in, entered the VIN number, and was excited to find that the VIN was recognised.

That means that this exact vehicle was supported and I was able to search for technical service bulletins, look at service information, wiring diagrams, etc. I found a TSB that addressed the exact problem that this vehicle had. Chrysler had released a new software update (calibration file) to resolve this exact problem with the oxygen sensors.

Great Stuff! With my one day subscription I can download the necessary software that will interface the CarDAQ with the vehicles computer. I search and find the calibration file and see a warning notice on the webpage. The notice warns that once the update is performed that the immobiliser (SKIM) will need to be reprogrammed and a PIN code will be required. Oh, great...

So I get on the phone and speak to the nearest Chrysler dealership service manager and get the typical response 'we cannot give you that information and besides you need a special scan tool to do the programming'. I explained that I had the scan tool and I was willing to purchase the code but that didn't help. No joy.

Very frustrating. I was so close. I had the scan tool, I had the subscription, I had the software and I had the calibration file. But I couldn't go any further because I couldn't get the code.

VW Beetle 2003

Brake bleed procedure if it has air in the system (not just a normal flush) is specific to this model. Had to buy a factory manual from USA to get the instructions on how to perform. Also required a scan tool. A function which our scan tool performed, however, we needed the procedure information to go with it. This car is 12 years old and the local dealership did not want to do the procedure

and did not have the staff qualified to fix this model.

Mercedes Sprinter

Unable to purchase workshop manual or specific wiring info from dealers in Adelaide. Ended up purchasing on line from states. Some of the above concerns we eventually get around but for example, the Mercedes w/ shop manual took 8 days. I know I don't have to tell you that's 8 days of a customer calling (2 times a day) 8 day's a bay is blocked up.

Toyota Data Subscription

We paid for access over a specific time period and basically gave up trying to download some material. Didn't have the right configuration so stuffed around and had no support we gave up

I have been having issues with accessing some of the manuals on the website, particularly the wiring diagrams.

It can be a little annoying when you pay for a subscription and cannot access the information that they advertise as having available.

The information is there, I believe, but the design of the website and the old manual format makes it impossible to access them.

I have spoken to Toyota several times about this and their response is that they are not responsible for the material that is on the website and it is controlled by a third party.

The latest update by email from them yesterday is that we cannot use any computer other than Windows 7 or older 32-bit machine with Internet Explorer 8.0 installed.

Now, I have no idea how they expect us to operate a secure computer system and run a web browser that was released in 2009 on our computers.

This is a ridiculous response in my opinion and indicative of the general attitude towards this half-assed attempt at sharing information.

So, I would recommend that you be careful and do not purchase any more than a one day subscription.

Isuzu Truck

Isuzu uses factory codes that differ from generic OBD2 compliant codes, resulting in diagnostic issues when using aftermarket scan tools. Technical information from Isuzu is not available in Australia and Isuzu's overseas website uses different diagnostic codes.

In the end I now know the code I had P0122 converts to the factory code P02E8 and this code points to the IAF position sensor, once I knew this, my job only took one hour to fix, had I known this at the beginning my job would have been done and dusted in one hour. Instead this job took 6 hours including the time spent in research and accessing the US Isuzu technical web site. Had I had the correct info on this fault code the job would have only taken 1 to 1.5 hrs but without this info it has taken 6 hours.

2009 Isuzu NPR 200

I am sure this is no surprise but Isuzu trucks will not sell me or for that matter, Autodata technical information needed for the repair and diagnostics on a 2009 Isuzu NPR 200 small truck.

I have accessed the US Isuzu paid site and unfortunately, the wiring plug to the engine ECU is different to our Australian model. Autodata, VACC to which I have access through my MTAQ membership all have the same story - Isuzu Australia refuse to sell them technical data.

43. WHAT REPAIR AND SERVICE INFORMATION AND DATA IS SHARED BY MANUFACTURERS? HOW IS IT SHARED? WITH WHOM IS IT SHARED? WHAT CONDITIONS ARE ON SHARING THIS INFORMATION AND DATA?

In December 2014 a voluntary Heads of Agreement on Access to Service and Repair Information for Motor Vehicles was signed on behalf of the car manufacturers (Federal Chamber of Automotive Industries), their authorised dealer networks (Australian Automotive Dealer Association and Australian Motor Industry Federation), consumers (Australian Automobile Association), and the vehicle repairer industry (Australian Automotive Aftermarket Association and AMIF).The underlying principles incorporated into this agreement included¹¹:

- Consumers are able to choose who maintains and / or repairs their motor vehicle.
- The repairer should be able to access all information required for the diagnosis, body repair, servicing, inspection, periodic monitoring and reinitialising of the vehicle, in line with the service and repair information manufacturers provide their authorised dealers and repairers.

- Service and repair information will be made available on commercially fair and reasonable terms.

In May 2016, 17 months after the signing of the Heads of Agreement, AAAA conducted an audit of the information shared by car manufacturers. The following information represents what information was available at that time¹².

Of the 68 vehicle brands represented in Australia, eleven currently provide repair and service information via an online portal linked to the FCAI website. Email addresses are provided to contact the manufacturers regarding technical information for a further four brands.

Of the top 15 brands sold in Australia, which represent almost 90% of vehicles sold in 2015, only six provide technical information via the FCAI portal, and in most cases the information provided is incomplete.

During 2015, AAAA offered members an online portal to record instances where a lack of access to technical and diagnostic information had a detrimental impact on their customers or their business.

11. December 2014. Agreement on access to service and repair information for motor vehicles, pp. 4-5

12. Since the announcement of the ACCC Market Study, Mazda has agreed to share online manuals via a subscription service (3 November 2016).

AAAA members identified technical service bulletins, re-initialisation and calibration information and codes, on-board diagnostics and software upgrades, oil specifications and online logbooks as key issues where a lack of access to technical and diagnostic information had a detrimental impact on their customers and/or their business.

Analysis of these key issues, and the information made available to third-party repairers through online portals linked to the FCAI website in May 2016, revealed that there is evidence of systemic failure to provide critical repair and service information across the majority of car brands selling into the Australian market.

REPAIR INFORMATION ROUTINELY WITHHELD BY CAR COMPANIES

Technical Service Bulletins

Technical service bulletins (TSB) are special notices or alerts issued by vehicle manufacturers to their dealer network. A TSB may be issued if the vehicle manufacturer has seen similar problems with a significant number of its vehicles.

A TSB will typically describe the complaint or problem with the vehicle, the make, models and years covered by the bulletin, and include the specific procedures for diagnosing and repairing the fault. If new parts or updated parts are needed, the bulletin will also list required OEM part numbers. A TSB may also be issued to correct an incorrect entry in the repair manual. TSBs therefore, can describe both a vehicle fault and a repair instruction fault.

Technical service bulletins include information on product faults that do not require a full safety recall but require some form of rectification or action. Unlike the USA and Europe, car manufacturers operating in Australia are not required to disclose TSBs to car owners or independent repairers. Often referred to in the industry as “silent recalls” these bulletins contain information on known faults and fixes on vehicles and we estimate there would be many hundreds of these issued across the various car brands being sold in Australia each year. A TSB may be issued if the vehicle manufacturer has seen similar problems with a significant number of its vehicles. A TSB will typically describe the complaint or problem with the vehicle, the make, models and years covered by the bulletin, and include the specific procedures for diagnosing

and repairing the fault. If new parts or updated parts are needed, the bulletin will also list required replacement part numbers.

If the repair involves ‘re-flashing’ (reprogramming) the vehicle’s electronic control units (ECUs), the bulletin will provide the calibration information and codes. TSBs may also be issued covering revised repair procedures, revisions to the factory service manual (new service specifications, for example), or procedures for using specific kinds of diagnostic and service equipment.

The technical service bulletin may commonly be mistaken as a recall. While both procedures address faults in a vehicle, TSBs and recall campaigns greatly differ. Recall campaigns are voluntarily initiated by a manufacturer to repair a defect that is deemed to be safety-related or affects compliance with regulations. In the case of recall campaigns, consumers are informed by mass media notices and formally advised by letter.

For defects that are not safety or compliance related, a manufacturer may institute a special service campaign (SSC) to inform owners about a specific product or technical issue for which inspection and/or repair is being offered. An SSC is typically a customer satisfaction initiative and inspection/repair is performed at no charge to the owner.

While TSBs are created to assist service professionals, only dealer technicians benefit from this valuable repair information. Independent repairers or consumers do not receive TSBs. In a majority of cases, TSBs are not accessible by independent repairers or consumers and faults will only be corrected if the consumer elects to have their vehicle serviced through the dealer network.

Technical service bulletins can detail a required software upgrade or ‘bug’ fix. Many consumer reported issues are now addressed through these software update and yet for many brands this information is not shared with consumers or independent repairers.

Brands analysed represented the top 15 car brands (by sales) in Australia (FCAI website, May 2016): Audi, Holden, Volkswagen, BMW, Ford, Toyota, Honda, Hyundai, Jeep, Kia, Mazda, Mercedes-Benz, Mitsubishi, Nissan, and Subaru.¹³ The audit revealed that three of these brands were supplying TSBs.

13. Full details of this audit can be supplied on request.

Information regarding known faults should be conveyed directly to the owner of the vehicle and the owner should have the ability to pass that information on to their repairer of choice. This practice is mentioned in warranty and extended warranty promotional material. Using statements such as 'only the dealer' can update the software is a clear warning to consumers that they do not have a choice of repairer and that their logbook servicing must be performed by dealers because the manufacturers only share TSBs and SSCs with their dealerships.

AAAA supports the mandatory notification of the entire repair industry of recalls and technical service bulletins to ensure that owners of new and second-hand vehicles have access to remedies and quality service and repairs.

Re-Initialisation & Calibration

Where an electronic control unit (ECU) loses connection to power (i.e. car battery replaced, re-charged) or an ECU or system component is disconnected or replaced, systems must be re-initialised.

The reason for this is that many ECUs lose any customised settings that may have been set and stored in their memory. For example, an electric sunroof has a motor for operating the roof, and is controlled by an ECU. The ECU in this system stores motor position information relative to the maximum open/closed position of the roof and interacts with a number of related systems, to prevent accidental closing. When the ECU loses power, it has to 're-learn' this information.

Initialisation procedures vary widely, depending on the vehicle model and the system. In some cases, the re-learning is a simple matter of operating the system in a pre-determined sequence. This information is generally available from the workshop manual for the particular make and model and accessible by a consumer or nominated independent repairer. In many instances however, the original settings programmed into the ECU must be downloaded from the vehicle manufacturer (factory settings).

Accessing the software requires a link to the manufacturer and, in some cases, a PIN code. This is a relatively simple process for a dealer, but the independent repairer must access the software via the manufacturers' technical information portal, if available.

Even if available, the independent repairer then may require a PIN code that is usually only

provided to the dealer. At this point, the repairer has little choice but to send the vehicle to the nearest dealer, which in some cases requires long distance towing, to undertake a relatively simple procedure at considerable cost and inconvenience to the consumer and/or repairer.

The next wave of technology for the modern car is the incorporation of collision avoidance features, such as adaptive cruise control and lane change. In many instances these features are – or are soon to be – mandated by regulation.

Advanced driver assistance system (ADAS) electronics use a complex combination of sensors, radar, and cameras working together to either warn the driver of hazards or take control to complete or correct the situation. To function correctly these devices must be precisely positioned in the vehicle and very accurately aimed.

Servicing of these once very simple systems has changed considerably. For example, many manufacturers require that radar and cameras located behind the windscreen be re-calibrated to ensure the ADAS is operating correctly after windscreen replacement. In some instances, manufacturers are even recommending re-calibration of ADAS systems after a wheel alignment. There are also unconfirmed reports from the United States that dealers of a well-known manufacturer will not calibrate ADAS systems unless an OE replacement windscreen is fitted.

This issue will be of particular interest to the body repair industry. The collision impact on vehicle bodies, no matter how small, is likely to have significant consequences on the accuracy of ADAS. The calibration equipment is likely to be specialised and require customised facilities, and may create a new specialist repair industry segment.

Without access to manufacturer technical information, and in some cases, diagnostic and re-programming tools, independent repairers cannot hope to calibrate and/or validate the integrity or accuracy of these systems, putting consumers' – and other road users' – safety at risk.

Brands analysed represented the top 15 car brands (by sales) in Australia (FAI website, May 2016): Audi, Holden, Volkswagen, BMW, Ford, Toyota, Honda, Hyundai, Jeep, Kia, Mazda, Mercedes-Benz, Mitsubishi, Nissan,

and Subaru.¹⁴ The audit revealed that three of these brands were supplying re-initialisation and calibration information/codes.

On-Board Diagnostics & Software Upgrades

With the introduction of on-board-diagnostics (OBD) in the late 1990s, aftermarket automotive service and repair entered a new era of increasingly complex diagnostic and repair technology.

The intent of OBD, mandated for all vehicles, was twofold:

- To ensure vehicle emissions were well maintained using diagnostic technology to analyse engine management systems, and
- To make the diagnosis and repair of vehicles easier, more accurate and more efficient for all repair service providers.

At its most basic level, the on-board-diagnostics system involves hundreds of diagnostic trouble codes (DTCs) involving engine management and diagnostic information associated with most other aspects of vehicle operation—virtually the diagnostic control network of the vehicle.

In many cases, DTCs – especially those associated with engine management systems – are generic, but for other aspects of vehicle operation are manufacturer-specific. All independent repairers will have a scan tool that is connected to the OBD to identify the likely problem via a DTC. The repairer however may then need to access the manufacturer’s technical information to ascertain the suspected trouble area to pinpoint and rectify the problem. Without this access, the diagnosis is incomplete and the problem cannot be rectified.

The downloading of software updates is a regular occurrence for computer and smartphone users. The modern car has moved in the same direction, but an important point of difference is that the consumer must use a third party to undertake the download. For example, in response to customer feedback, a manufacturer may develop an algorithm for smoother transmission shifts. To install it, the customer will need to take the car to the dealer, where the technician will plug the computer into the OBD and upload the new software. This procedure is known in the trade as ‘re-flashing’.

Without access to manufacturers’ technical information, independent repairers are unable to upgrade or re-flash, independent repairers and consumer have limited access to technical service bulletins (TSBs) and not only will they be unaware that an upgrade is available, but will be restricted from accessing the specific calibration code – usually identified within the TSB.

Brands analysed represented the top 15 car brands (by sales) in Australia (FAI website, May 2016): Audi, Holden, Volkswagen, BMW, Ford, Toyota, Honda, Hyundai, Jeep, Kia, Mazda, Mercedes-Benz, Mitsubishi, Nissan, and Subaru.¹⁵ The audit revealed that three of these brands were supplying On-Board Diagnostics and Software Upgrades.

Oil Specifications

In the past, all manufacturers used a generic nomenclature to specify lubrication requirements for their products. This nomenclature included a viscosity (e.g. 30W50) and a service classification established by the American Petroleum Institute (API). These service classifications, ‘S’ for petrol and ‘C’ for diesel engines, are constantly changing and are subject to change as new engine, emissions or government requirements arise.

The accepted standard for European oils is the ACEA classification system, and with the popularity of European cars in the Australian market, is appearing more frequently in Australia. ACEA standards are set by an association of European automobile manufacturers and recognise the differing design and operating conditions between European and US engines.

To add further confusion to the market, oil standards are also set by the International Lubricant Standardisation and Approval Committee (ILSAC) and started appearing in the Australian market in 2001. The test conditions and parameters for each of these standards are very different and therefore it is almost impossible to cross-reference between specification types.

Additionally, many vehicle manufacturers offer their own oil brands or set their own oil specifications. Toyota, BMW, Mercedes Benz, Mazda, Nissan, Hyundai, Mitsubishi and Honda have released their own brand of ‘genuine’ lubrication and/or fluid products formulated for their vehicles.

14. Full details of this audit can be supplied on request.

15. Full details of this audit can be supplied on request.

In some cases, (e.g. Toyota, Mitsubishi) manufacturers recommend using 'genuine' oils and fluids but will accept equivalent products that meet API specifications and identify these in the owner's manual.

Other manufacturers are not so forthcoming and finding equivalent products or approved alternative products is not easy, requiring the consumer to visit a dealer or – at a cost – to visit the manufacturer's technical information website if one is available. In Europe, under consumer law, a manufacturer cannot impose but can recommend the use of its own lubricants or a named lubricant manufacturer, and warranty cannot be withdrawn if the consumer uses a product of matching quality.

Each manufacturer is very diligent in identifying the consumer's responsibility to regularly check engine oil levels. The difficulty for the consumer is that very few, if any, of the oils stocked at service stations will identify which of the various manufacturers' specifications the oil will meet. Given that engine oil is the most serviced item on a vehicle, this is a less than desirable situation.

The reality is that there is a major lack of oil specification information provided by manufacturers, and where it is provided it is difficult for the consumer or nominated repairer to align the information provided to more commonly used nomenclatures (e.g. API, ACEA). In the absence of specific information, the consumer or nominated repairer has little choice other than being guided by oil manufacturer recommendations.

2012 Toyota Prado

This is a 80,000 km logbook service which includes the diff and transfer oils to be replaced. When I look up Valvoline or Castrol for the right oil specification, I am told 'dealer only oil'. When I call up my Toyota dealer I am told they do not sell this oil, they only have it in bulk and the car will need to go to their service department.

I have spent a good part of the day working out what oil to use, and it turns out that it is unlikely the dealer is actually using the correct recommended dealer oil, as I have discovered this particular dealer buys their oil in bulk from Castrol and Castrol do not sell the dealer specified oil for this car. So the plot thickens. I see this as a deception not only to the public but also to the aftermarket repairer, it is also very restrictive on the consumer's choice of repairer.

Audi 2011

We needed to drain and refill engine oil on an Audi 2011 with a CGLB engine. Audi don't give out the fill quantity and there is no dipstick. The owner's manual says take it to Audi.

Oil specifications and requirements to use manufacturer-branded oils by top-15 car brands (by sales) in Australia, examined May 2016.

VEHICLE BRAND	MANUFACTURER OILS	MANUFACTURER SPECIFICATIONS
Ford	NON-BRANDED	GENERIC
Holden	NON-BRANDED	GENERIC
Jeep	NON-BRANDED	GENERIC
Kia	NON-BRANDED	GENERIC
Subaru	NON-BRANDED	GENERIC
Audi	NON-BRANDED	SPECIFIC
Volkswagen	NON-BRANDED	SPECIFIC
*BMW	BRANDED	SPECIFIC
*Honda	BRANDED	SPECIFIC
*Hyundai	BRANDED	SPECIFIC
*Mazda	BRANDED	SPECIFIC
*Mercedes-Benz	BRANDED	SPECIFIC
*Mitsubishi	BRANDED	SPECIFIC
*Nissan	BRANDED	SPECIFIC
*Toyota	BRANDED	SPECIFIC

Notes: *denotes systemic failure to provide oil specifications to consumers and third-party repairers

44. (A) WHAT IS THE EFFECT OF NOT HAVING SOME LEVEL OF ACCESS TO REPAIR AND SERVICE INFORMATION AND DATA?

In October 2016, AAAA commissioned TKP Market Research Consultants to conduct independent market research to:

- Identify if independent workshops experienced restricted access to areas of vital repair and service information,
- Quantify the size and relative importance of the issue,
- Define and quantify the consequences of the problem.

These interviews were by telephone and were between 8 to 10 minutes in duration. 325 non-dealer aligned workshops participated. The participants either pre-registered their interest in participating (solicited) or were selected at random (unsolicited). 49% of the respondents were aligned to a workshop group (i.e. Ultra

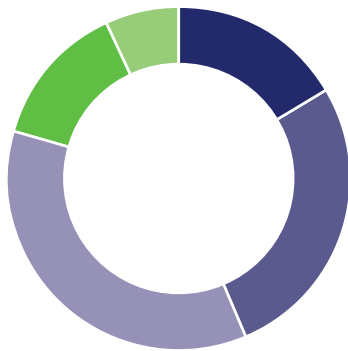
Tune, Kmart Tyre and Auto, Repco Authorised Service) and 51% were independent workshops. Respondents were asked to consider the vehicles that were repaired and serviced in their workshops in the past seven days – this approximates to 18,081 vehicles being serviced and/or repaired by the total sample in the previous seven-day period.

As stated in the introduction, there is now widespread acceptance in our industry that repair and service information should be shared as a pre-requisite to fair competition and consumer choice. The car industry appears to have moved on from the previous excuses for withholding information – for example: IP, security, safety and perhaps a negative value judgement about the sophistication of the independent sector in comparison to dealerships. The most prevalent opposition is now based on an assertion that ‘all is well’ – that the required information is out there because it would appear that vehicles are actually being repaired. The vehicle manufacturers’ representatives deny

receiving complaints and continue to promote the view that they are totally unaware of any issues or problems.

This is an interesting new feature to this debate – a presumption that perhaps the repairer either does not know where to look or doesn’t care enough to find this information. To explore this, the research asked the study participants the direct question: in the past 12 months, how serious an issue has a lack of technical service data been for your business?

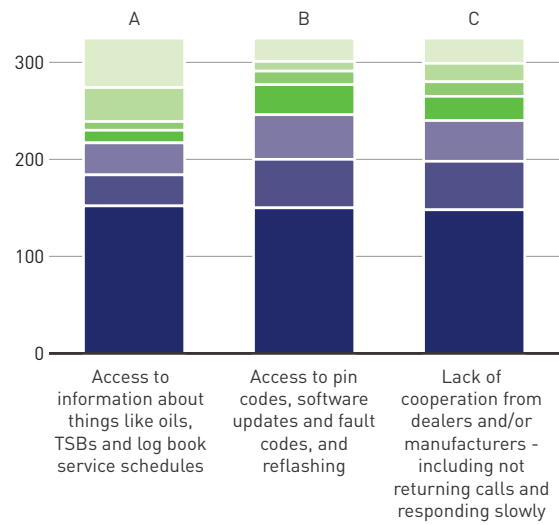
SCALE OF ISSUE IN PAST 12 MONTHS



Critical issue	54	[17%]
Serious	88	[27%]
Moderate	117	[36%]
Minor	44	[14%]
Not an issue	22	[7%]

Questions regarding frequency of the issues were also asked: how frequently do the following issues or problems relating the lack of availability of technical service data occur? Base n=325

FREQUENCY OF ISSUES



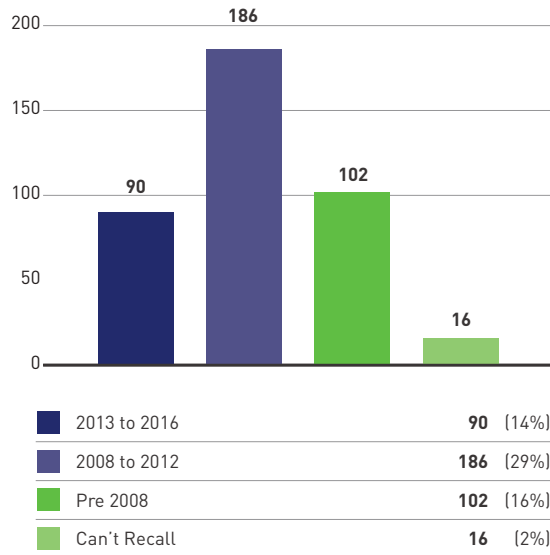
	A	B	C
Once a week or more often	152	150	148
A couple of times a month	32	50	50
About once a month	33	46	42
Every couple of months	13	31	25
Once or twice a year	9	14	15
Rarely	35	10	19
Never	51	24	26

On average the workshops in the sample experienced issues relating to lack of access to technical service data on six vehicles per week, representing 11% of all the vehicles serviced in the seven-day period. Generally, the independent workshops claimed a greater incidence (13%) than the group workshops (9%). In the sample representing 18,081 vehicles serviced per week, this would equate to approximately 1,900 vehicles (11%) that were not able to be repaired, experienced unnecessary delays or an increased cost of service delivery due to lack of access to repair information.

Survey participants were asked to consider the last vehicle that presented difficulties due to lack of repair and service information. In their latest recalled case, mechanics referenced a broad range of makes and models.

The vehicles included 23% that were recent enough to be considered to be under a new car warranty; however, the survey also clearly highlighted that the issues were not restricted to newer cars:

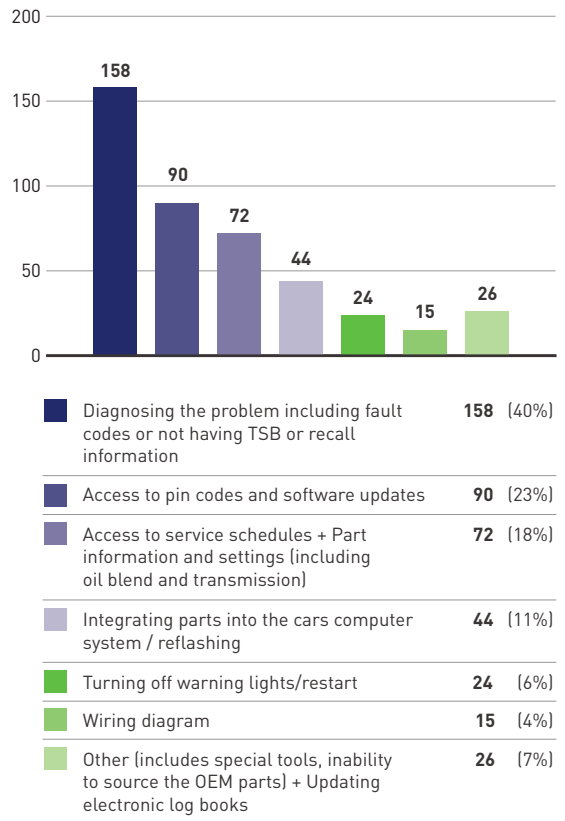
YEAR OF VEHICLE



Note: the lower reported incidence of issues with 2013-2016 vehicles is likely to be a function of the overwhelming majority of these vehicles being serviced at dealerships.

Using the most recent example, participants in the study were asked to recall the specific problem that was caused by the lack of technical service data. The most common problem was diagnosing the fault (40%) followed by access to pin codes and software updates (23%). Larger workshops were more likely to have had issues with access to service schedules.

ISSUE OR PROBLEM



Further commercial-in-confidence information can be provided to the ACCC on the data collected in response to the following questions:

- Thinking about the situation with this vehicle how many additional hours did your spend on it/ did you complete the repair?
- Were there any other costs incurred because you didn't have the manufacturer's data or information?
- Additional hours and costs incurred by independent repairers. Additional consumer costs.

Anti-competitive behaviour and the withholding of information creates barriers to entry. Importantly, it also comes at a cost to the economy.

Using this sample of 325 workshops, over 18,000 vehicles and over 1,900 potential issues in a seven-day period, it is now possible to quantify the consequences and to extrapolate on the average and aggregate costs for consumers and the independent repair sector.

If the additional costs that are directly attributable to the failure to share data and repair information are aggregated, the cost to the Australian community is \$4.02 billion per annum.

44. (B) ON WHAT BASIS MIGHT REPAIR AND SERVICE INFORMATION NOT BE SHARED? WHY?

It is a generally accepted principle that the sharing of repair information should not contravene the intellectual property rights of the car manufacturers. In fact, in every single data sharing agreement around the world, car company IP is specifically excluded from the definition of repair and service information. The risk of IP breaches has been vastly overstated by the car industry. The North American experience indicates that IP is not compromised in a government mandated/ industry managed process. Information required for diagnosis and repair is fundamentally different from the information required to reverse engineer a component. The information our industry seeks to access is exactly the same vehicle related information that the car companies currently share with their dealerships. Nothing more and nothing less.

In relation to vehicle security related information, there is a strong argument in the short term to exclude the sharing of information necessary to reset vehicle entry and immobiliser systems. This security related information should not be made available until Australia develops a secure data release model system (SDRM) as is currently in place in the North American market.

The NASTF-managed SDRM is a data exchange system conceived and designed cooperatively by car manufacturers, the independent repair, insurance and law enforcement communities; it allows the aftermarket to access security sensitive information related to vehicles while protecting the safety and security of consumers and the integrity of vehicle security systems. It is self-funding model. For further information visit: <http://www.nastf.org/i4a/pages/index.cfm?pageid=3532>.

Careful consideration should be taken to ensure that any data sharing regime does not allow car manufacturers to make arbitrary judgements on the potential 'safety, security, or IP' impacts of sharing specific data. The car industry is global and very soon every car sold in Australia will be imported. We can see no justifiable reason why the Australian car industry should be granted exemptions on sharing specific data that they currently share in other markets. As we are talking about the same companies selling the same cars, we believe Australian car owners should be entitled to the same right to choose their preferred repairer and that repairer should have fair access to the tools, information and training required to complete that repair in a safe and efficient manner.

Kia Cerato 2006

Ok the OEM's are blocking us from security codes and pins, but surely the customer has the legal right to this info. I suggest your proposed code should reflect that sensitive information that we the repair cannot access should be made available to our customers on their request and proof of ownership of their car.

Needing to replace a faulty ECU I began with the usual scan tool process of handshaking the ECU to the body control and immobilizer system. I then found a 6 digit pin being required.

I went to the owner's booklet and found the place for the code had been left blank. I then contacted Kia Dealership for assistance on retrieving the code. I was informed that by "law" that they would never hand that over to an independent workshop.

I was then told that the only way they can give that code was to the owner. The owner would then have to show proof of purchase and show identification before this would be allowed. I passed the information over the

owners of the vehicle. They rang the same workshop, the story then changed. They were told that the vehicle would have to come to them, they would enter the code (at a cost to the customer of course) themselves and not let the owner know what the code was.

I suggested that they contact the place of purchase and try a more subtle approach. I told them to say they needed a key replaced and that they required the pin. They were given a Sydney number to call, of which they kindly told the owners, all you need to do is drive to the dealer, prove you're the owner and show ID and that number should be handed over.

Seems like a different set of rules from dealer to dealer. I believe if you purchase the vehicle, then all information of the vehicle is yours as well. Shows that this battle is far from over. This only allows the dealer to have an unfair advantage of equally equipped workshop like ours. We are have to have a criminal check and pay a license fee to access this information, which is rightfully the customers anyway.

45. IS REPAIR AND SERVICE INFORMATION AND DATA PRESENTED IN A STANDARDISED WAY ACROSS MANUFACTURERS? HOW CONSISTENT IS REPAIR AND SERVICE INFORMATION AND DATA IN TERMS OF AVAILABILITY AND HOW IT IS PRESENTED ACROSS BRANDS?

A simple review of the data sharing portal on the FCAI website will provide the answer to this question. Nearly two years on from the signing of the voluntary data sharing agreement only 17 of the 68 car brands operating in Australia have even bothered to put a link up on the FCAI website. In some cases, this link is simply an automated template to a technical@ email address. Where car companies have provided subscription based information portals, the majority of them exclude access to vital information such as technical service bulletins, re-initialisation and calibration information and codes, on-board diagnostics and software upgrades and oil specifications. As for the rest, some car brands are still claiming that repair and service information is their intellectual property.

The frustration is that every one of these companies operates a service and repair portal containing full dealer level information, in a standardised format that can be accessed on a subscription basis by all independent repairers based in North America and Europe. The problem here is that when an Australian repairer enters an Australian specific Vehicle Identification Number (VIN) or credit card, they are locked out of the site. The simple fix to this issue is for car companies to put an Australian pay wall on their international portals and ensure that the technical information relating to models sold in Australia can be accessed by Australian based repairers.

With 68 different brands and over 300 models of vehicles being sold in the Australian market, and many thousands of different makes and models making up the registered vehicle fleet, another important element in the data sharing model is third party data providers and aftermarket scan tool companies. It is simply not economically viable for an all makes, all model repairer to subscribe to every individual car manufacturers

data portal or buy every manufacturer specific scan tool. These service and product suppliers play an important role in collating and disseminating repair and service information and tools to the market in a cost effective manner and in a useable form.

The successful data sharing arrangements in Europe and North America require each car manufacturer to provide diagnostic repair information to each aftermarket scan tool company, and third party service information providers with whom the manufacturer has appropriate licensing, contractual or confidentiality agreements for the sole purpose of building aftermarket diagnostic tools and third party service information publications and systems.

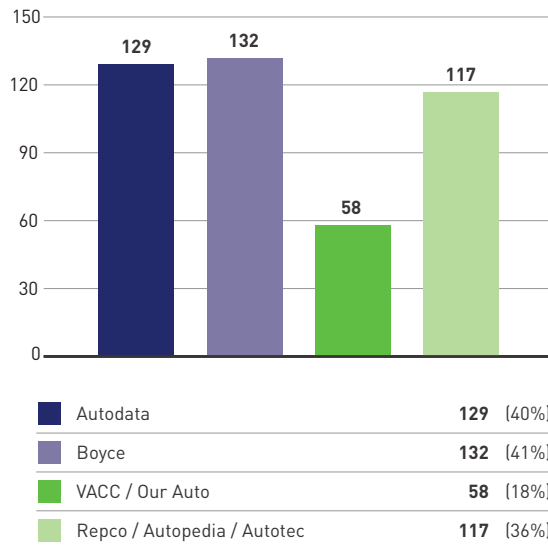
Major third party data providers such as Boyce, Autodata, VACC and Repco would be better placed to explain their business models. We would encourage the ACCC market study team to engage with participants in this sector to gain an understanding of their business model and the importance of this sector to the overall viability of independent repairers. This would also be a valuable method to gain an understanding of the difference in the level of information being shared through this channel in Australia when compared with markets that have an effective data sharing regime in place.

46. HOW IS REPAIR AND SERVICE INFORMATION AND DATA ACCESSED? WHAT CONTROLS ARE THERE ON ACCESSING IT?

As outlined above, independent repairers subscribe to a range of data sources. Data subscriptions can be provided on an hourly, daily, weekly, monthly and annual basis. Daily subscriptions to car company specific portals are usually used by repairers for low volume or specialist enthusiast vehicles. Due to the limited functionality and availability, the Australian-based OEM sites are not currently utilised extensively with the majority of repairers subscribing to one or more third party data service providers.

According to the survey of 325 independent repairers commissioned by AAAA in October 2016¹⁶, the most common subscriptions are:

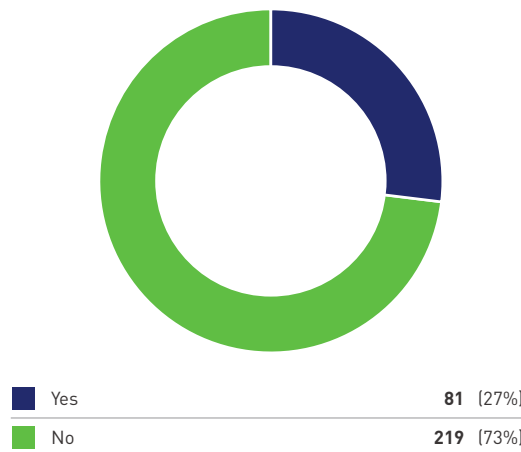
DATA PROVIDERS SUBSCRIBED TO – TOP 4



Only 8% did not subscribe to a data provider and whilst Boyce and Autodata were there most common, there was a broad range of providers utilised. 51% of respondents subscribed to multiple data sources. Multiple subscriptions were more common in larger workshops (66%).

Only 27% of respondents believed that any one provider could provide all of their data needs and this did not vary significantly by workshop size or type.

ABILITY OF ONE DATA SOURCE TO ADDRESS ALL DATA REQUIREMENTS



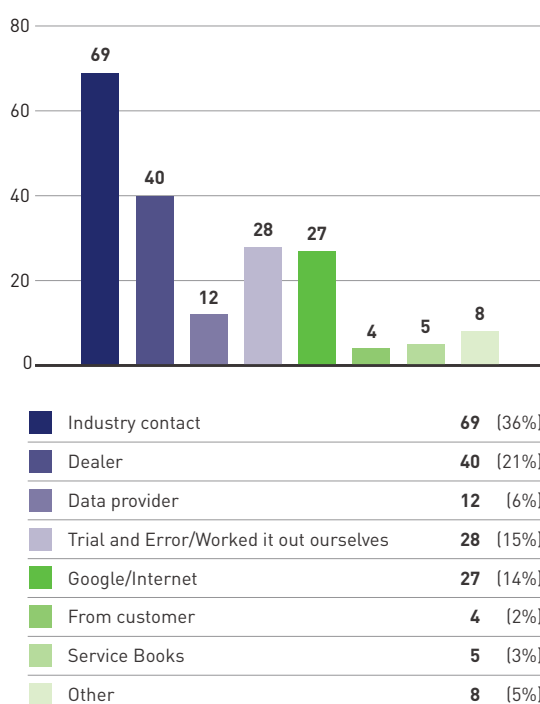
16. TKP Automotive Service and Repair Data Sharing Study (2016)

47. WHAT OTHER METHODS EXIST FOR ACCESSING REPAIR AND SERVICE INFORMATION AND DATA? WHAT ARE THE BENEFITS OR CHALLENGES OF USING SUCH METHODS?

The AAAA membership includes a large proportion of national automotive groups and as a result, industry colleagues and contacts are the largest alternate sources of information. These workshops are structurally networked into other workshops/head office support and are therefore more likely than standalone workshops to utilise an industry contact.

Clearly, the disadvantages of using alternate sources is the time delay and the requirement to verify alternate source information. Dealerships will assist from time to time, but workshops report that this is often based on personal friendships and networks. Often if a particular individual employed by the dealership is not available, the information will not be forthcoming. Google/internet searches are clearly problematic - but many of these are based on professional networking sites (peer to peer discussion forums) that are developed to provide support for technicians.

SOURCE OF INFORMATION



48. WHERE A COMMON PLATFORM IS USED BY MANUFACTURERS (E.G. VOLVO S40, FORD FOCUS AND MAZDA 3 ARE BUILT ON A COMMON PLATFORM, WITH DIFFERENT FEATURES/TRIM), DOES THIS MAKE IT EASIER TO ACCESS REPAIR AND SERVICE INFORMATION AND DATA?

Refer to Question 38

49. WHAT ISSUES HAVE CONSUMERS EXPERIENCED WITH ACCESSING REPAIR AND SERVICE INFORMATION? HOW DO THESE ISSUES IMPACT THEM?

Consumers are always affected when access to repair and service information is denied. These examples have been extracted from our complaints portal:

Mazda 6 Diesel

Must be connected the factory computer via internet and have software updates for the ECM. Must be completed by the dealer - access to software update denied. Consumer requested access to the update to be provided to their repairer - access denied.

Mazda 3 2005

Power steering module failure, needs to be connected to the factory tool via the Internet to get the new module initialised. Repairer installed power steering module according to manufacturer's specifications - final step required dealership involvement and payment of an unnecessary fee which was set at an arbitrary amount because the repairer wanted to get the vehicle returned to the customer.

Jeep

A customer came into Umina with a Jeep and had a intermitted issue with the head light and we requested the electronic diagram from jeep the first person told us they can't provide that information, so we tried another dealer and was told they don't allow this but they would this time, we provided our fax number and contact and we have never received the information so we followed up but were told that guy isn't around and they can't help. So once again we were unable to fix the problem and needed to have the customer return to the dealer.

VW Golf

An example; I was servicing a Volkswagen Golf. When I contacted Volkswagen to advise them we have serviced the vehicle and to please make a note of it and could you clear the service reminder I was told that it cannot be done as it was not serviced at Volkswagen and thus there is no way of logging the service, our solution for this was to purchase quite expensive equipment to clear this service reminder an expense adding service

I think you would agree. The same request came from the customer, to a dealer, and was offered a flat refusal, (no proof of service or cost to clear the reminder was discussed). The customer said, they don't own my car how can they have that power?

2001 Holden Rodeo

A 2001 Holden Rodeo came to our workshop. Vehicle won't start - check engine light on. Carried out diagnostic procedure to determine fault. Reconditioned fuel pump. Fitted new immobilizer and keys

Contacted local Holden Dealership to request support - Which involved Hiring a Tech and Holden's tech2 computer to carry out Interface with ECU. Dealer refused to help us in any way

(Dealer had sold this vehicle 6 weeks earlier with check engine light on and told customer they fixed it). Several phone calls to ask again for help - refused. Contacted Metro Holden 75km away and they were happy to help.

Sent vehicle to Adelaide at my own expense \$350.00 and Metro Technicians carried out the task requested. Vehicle then sent back to us. Local dealer refused to help us and it was suggested by us to tow the vehicle to them for Interface and they also refused this suggestion. We then asked if the customer could bring the vehicle direct to them and they also refused to help them.

Nissan

The Nissan dealer replaced a Module (I think it was an engine module) and this module needed to be programed to the car. Nissan fitted the module and could not communicate with the module and told the customer he had to take his car to an auto electrician because he had a wiring issue.

It did not take Steve very long to discover the problem which happened to be a blown fuse. This is really the very basics and it

shocks me that any repair shop could miss such a basic cause. Anyhow Steve now has communication but he lacks access to Nissan software and therefore cannot initialise the module. When the customer was told his car would have to go back to the dealer, he got upset, because this was the last place he want to take his car due to their incompetency. Besides he had just forked \$350 in a tow fee, he did not want to have pay another \$350 to take it back to the dealer.

Nissan Patrol Diesel

We were recently testing a Nissan Patrol Diesel at our Erina store and needed the manufactures vacuum reading which we requested from the dealer but they wouldn't release the information so we we're unable to complete the work and had to send the customer to the manufacture this impacts the customer and our business.

Toyota

Toyota dealer refused to give repairer a copy of Automatic transmission wiring diagram so repairer sent customer to Toyota Dealer to get fixed. Toyota reconditioned transmission at a cost of \$5000.00 and two weeks later

fault returned. It was a faulty solenoid not found on first overhaul.

BMW 520D 2012 Diesel Auto

BMW manufacturer are not providing their customers or us with the vital information as to where to find a simple engine number. I have been asked for a quote on a 68,000 klms service but I am not able to access the factory recommended service schedule.

Suzuki Vitara

Suzuki Vitara has an issue with the ESP light coming on. The owner has been to several workshops, two Suzuki dealers and an auto sparky. The dealers both came to the same diagnosis.

There was a document released within the dealer network of a known fault within the ABS unit that causes the ABS and ESP to shut down as a result of any small voltage fluctuations. He has been quoted \$3,500.00 for the repair with a revised ABS module. I think that it is criminal that Suzuki have discovered a flaw in the control module and addressed it with an upgraded module but even when it is a design flaw the customer still has to pay for the repair of a known manufacturing fault.

50. WHAT IMPACT HAVE THE HEADS OF AGREEMENT AND/OR VOLUNTARY CODES OF PRACTICE HAD ON ACCESS TO REPAIR AND SERVICE INFORMATION AND DATA? PROVIDE EXAMPLES.

51. WHAT EFFECT HAVE THE HEADS OF AGREEMENT AND/OR VOLUNTARY CODES OF PRACTICE HAD ON COMPETITION IN THE REPAIR AND SERVICE SECTOR? HOW HAS THIS AFFECTED CONSUMERS?

There can be little doubt that the car companies that control repair and service information will argue that the Voluntary Heads of Agreement is working fine and that the AAAA is grandstanding and that we walked away from the table.

It is true that the AAAA policy position is that based on international experience a mandatory code is required to effectively ensure that all vehicle repair data is shared on fair and reasonable terms. However, we did enter into the Voluntary Heads of Agreement in good faith. We developed a code of conduct that was consistent with the Heads of Agreement. We lodged formal notification of systemic breaches of the agreed principles of the agreement with the signatory parties and we attended the one and only meeting that the Steering Committee held. At that meeting we indicated that we would continue to gather evidence of the consequences of lack of information and that we would continue to advocate on behalf of our membership and to pursue additional regulatory avenues to ensure a level playing field. The meeting participants verbally acknowledged our stated position. At no stage have we sabotaged or walked away from the process.

We are on record as stating that the Heads of Agreement failed for a number of reasons:

1. The FCAI released a subsidiary code that did not comply with principles of the Heads of Agreement, and was the same version (with a different date) of a draft agreement that was rejected by most parties 10 months prior to the signing of the final HoA.
2. The HoA compliance was not monitored or measured. The rate at which car manufacturers were opening up data sharing portals was glacially slow and by the 12 month anniversary, one brand out of a total of 68 brands was fully complying in any way with the principles of the HoA.

3. There was no steering committee infrastructure and no agreed dispute resolution mechanism¹⁷ and whilst we were receiving complaints from members, there was no effective way to resolve these disputes. Individual repairers were reluctant to lodge complaints directly because they were aware that the small amount of cooperation currently received would soon disappear when they named specific brands or dealers – in fact for many their livelihood would be threatened by going public with their complaint.
4. There was no mechanism to resolve issues in real time; when a vehicle is in a workshop and up on a hoist, it is not feasible to wait the expected 4-6 weeks to submit a complaint to an FCAI committee and wait for the answer before being able to complete the repair and return the customer's vehicle.
5. There was no government oversight – the Government was not a signatory and as such did not feel any requirement to take an interest by asking for regular reports or audits of the information that was made available for sale by the vehicle manufactures.
6. The fact that some of the information sources are email addresses is likely to be the most accurate illustration of the attitude to information sharing. It is highly unlikely that any workshop can afford to accept a customer's car for service or repair and commence the diagnosis stage by emailing technical@hyundai.com.au and hoping for the best.

The successful data sharing models that are operating in other markets did not arrive from a purely voluntary market forces. The USA has a voluntary agreement but the NASTF framework was clearly agreed upon as a response to the 'Right to Repair' referendum and the subsequent law in Massachusetts. We would argue the same of the Canadian agreement. These agreements may appear to be voluntary in nature but no market has ever successfully delivered a solution without the clear and present threat of a mandatory regime.

¹⁷ On request from the Steering Committee, AAAA provided a formal submission on systemic evidence of non-compliance by the major vehicle brands in the Australian market.

In Australia, it was clear that the HoA was not taken seriously, and a mandatory solution was not seen to be a real threat, and hence there was no incentive to make the HoA actually work for consumers or the industry.

To our knowledge not one car manufacturer has attempted to meet with independent repairers to ascertain the value of the content or the quality of that material. Toyota Australia were invited by the FCAI to participate in the one meeting of the signatories to the Heads of Agreement in March where they claimed that all their repair and service information was available, and yet usage numbers were very low. Our members report that the information available is vastly inferior to this company's international sites and that the server is frustratingly slow. There is no mechanism to provide user feedback on inferior subscription services.

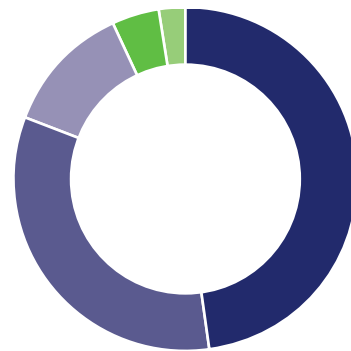
We are aware that the car manufacturers claim that repair information is made available – and much of it is. However, the devil here is in the detail. Rather than asking what is made available, the question should be what is not made available and why? An online repair manual is certainly a useful tool and it saves a great deal of space and time in acquiring the paper based manuals. However while the sharing of online manuals may have been sufficient 10 years ago – repairers need a far higher level of information today and the majority of the sites that have been launched in response to the data sharing agreement fall a long way short of what is required by consumers and their repairers of choice. In addition, we have over 50 car brands that haven't even bothered to do anything to comply with the agreement.

We believe that the most objective demonstration of the efficacy of the HoA was to ask the independent repair sector their perception and front line experience of seeking data, some 22 months after the signing of the HoA. In the study of 325 independent repairers representing the repair and maintenance of over 18,000 cars per week; 59% of the sample were of the view that the issue had increased since the voluntary agreement had been put in place, and 38% were of the view that it had stayed the same. Effectively only 4% of the sample expressed the opinion that the situation had improved since the signing of the Heads of Agreement 2014.

Forecasting the scale of the issue in five years' time, 81% believed it would be a 'critical' or 'serious' issue. 18% of the non-corporate

workshops believed that if the issued continued they would be 'very' or 'definitely likely' to close their business. A third of all workshops believed that they would be 'very' or 'definitely likely' to reduce the number of employees if the issue continues. These opinions did not vary by type of size of business.

SCALE OF ISSUE IN 5 YEARS



Critical issue	156	(48%)
Serious	107	(33%)
Moderate	40	(12%)
Minor	14	(4%)
Not an issue	8	(2%)

52. HOW EFFECTIVE ARE THE CANADIAN, US AND EU APPROACHES? ARE THERE ANY CONCERNS WITH A MANDATORY SYSTEM, SUCH AS IN THE EU AND MASSACHUSETTS, BEING INTRODUCED IN AUSTRALIA? WHAT ARE THE RISKS AND BENEFITS OF SIMILAR REGULATION (VOLUNTARY OR MANDATORY) IN THE AUSTRALIAN CONTEXT?

The European Union has had comprehensive regulations in place since 2002 and in 2010 they were renewed and strengthened with their Block Exemption Regulation (EU No.461/2010) now in place until 2023. This competition framework recognises that access to technical information, tools and training is a prerequisite for effective competition in the automotive aftermarket and requires that all information for the repair and maintenance of vehicles made available to members of the relevant authorised repair network also be made available to independent operators on fair and reasonable commercial terms.

<http://www.figiefa.eu/wp-content/uploads/r2rc-newberframeworkbrochure.pdf>

In the USA, a voluntary code of conduct for data sharing has been in place since 2002 and in 2012 the State of Massachusetts passed a Right to Repair bill to protect car owners. In January 2014 the car industry, new car dealers and automotive aftermarket industry signed a national agreement on vehicle data sharing, which mirrors the provisions included in the Massachusetts bill. The effective operation of this agreement is overseen by the National Automotive Service Taskforce (NASTF) which is a not-for-profit organisation established to facilitate the identification and correction of gaps in the availability and accessibility of automotive service information, service training, diagnostic tools and equipment, and communications for the benefit of automotive service professionals

<http://www.nastf.org/i4a/pages/index.cfm?pageid=1>

Canada has followed the USA lead with the establishment of the Canadian Automotive Service Information Standard (CASIS) agreement, which ensures that all Canadian automotive technicians have access to the service and repair information they require to properly service vehicles. <https://www.aiacanada.com/what-we-do/government-relations/federal-initiatives/accessing-vehicle-service-and-repair-information/>

These overseas arrangements involve the same vehicle producers that supply the Australian market and we believe Australian car owners deserve the same rights as their counterparts in Europe and North America.

Our preferred model is the USA model administered by NASTF because of the ongoing benefits to Australian consumers, the community and the automotive repair industry. The Australian Automotive Task Force would be supported by a Mandatory Industry Code. The model offers what we would consider to be light touch regulation - because the government is not required to operate the system, merely monitor the outcomes and investigate/enforce any breaches of the agreement. Our Competition Law framework allows for mandatory codes to be signed into regulation by the Minister and enforced by the ACCC. **The NASTF model can be industry funded, would promote industry competition and industry best practice.**

The model offers many benefits and given the unsustainable circumstances of the industry at the present time, it is difficult to conceive of any risks greater than the 'do nothing - hope for the best' option. Benefits of an Australian NASTF model would include:

- Compliance costs are likely to be minimal, as all of the required information is already made available by car companies operating under the NASTF framework.
- There is unlikely to be any reduction in profit from any industry participant - the North American model has not resulted in any structural loss of market share in the dealership channel.
- NASTF has not reported any intellectual property breaches or challenges.
- There are lessons that can be learnt from the North American experience and the development and implementation phase can be reduced in time and upfront investment by modelling an Australian version on the NASTF model.
- The Australian version of the NASTF model can be industry funded and additional programs can be added that develop our industry: labour retention and recruitment, training, vehicle security and theft mitigation.
- Investigations and enforcement action can be funded from fees and fines levied from non-complying industry participants.

In summary, this would be an industry managed and funded model, supported by a mandatory code and government monitoring and enforcement.

SECTION 6 OTHER ISSUES



TELEMATICS

Car manufacturers are expected to continue to target telematics and other connected car services as a way to grow the dealership market share of aftermarket sales.

Telematics is the next wave of data capture and the technology is already in place within many of the vehicles on Australian roads. This technology provides on going diagnosis (and prognosis) of the vehicle. When the full capability of telematics is 'switched on', the computer system will alert the current driver that the car is due to be serviced or that a component is failing and should be replaced. The vehicle's notification systems will inform the driver that the dealership is ordering the part(s) and is awaiting the car to be booked in for service. In some scenarios – the dealership will be alerted to voice call the driver to schedule and make that booking. This technology is certainly good news for vehicle safety and provides many consumer benefits. However, in the current anti-competitive market climate this technology advance signals yet another move to vertically integrate and assume customers' vehicle service patronage without actually asking permission.

The consumer should have the ability to direct where their vehicles diagnostic data is sent and to be able to nominate their repairer of choice. Indeed it is very clear that the long running issue of access to repair information is the forerunner to what is about to be a very large community debate.

The ACCC has an opportunity to address these future problems by resolving this issue in favour of consumers' right to choose. This would be effectively putting a peg in the ground now, to state overtly that sound competition requires a mandated instrument that consumers own the data their vehicle produces, and this could bode well for what is about to be a much bigger debate.

Industry analysts are predicting that car manufacturers are heavily subsidising telematics offerings and this could in the future dramatically alter the supply chain. The car industry are also advocating the removal of the OBD port from vehicles altogether and replacing this with a secure communications gateway, controlled exclusively by the car manufacturer (for security reasons - of course). This would remove the ability of any "non-approved" third party from communicating with the vehicle.

At the core of telematics is the control over choice. Some vehicle owners trust that the manufacturer and the dealer are the best stewards to manage the data, but as it stands, they cannot opt out of that fixed arrangement. Manufacturer and dealer networks are giving their customers a clouded idea of what data is being collected and what is done with it.¹⁸

In a 2016 survey, the Auto Care Association concluded that consumers do care once they learn the facts about telematics. Less than half of consumers assume car owners have access to the data that their car produces. Eighty-one percent believe that they should decide who has access, and 7 out of 10 have a problem with the fact that the rightful owner does not have a say. Not only do owners lack control over diagnostic vehicle data, but also they cannot prevent the collection of personal information (e.g., driver behaviour and biometrics) which has nothing to do with safety or preventive maintenance.

18. Aftermarket Technology, Published: 3 November 2016. Telematics Who Owns Your Vehicle's Data? Alan R. Segal.



The quality and price of vehicle maintenance and repair is an essential component of household income and all segments of this industry are effectively under threat when data is restricted and secured on a non-consensual basis. Many independent repairs are of the view that despite how difficult the environment is in the present day, the real threat is the introduction of telematics into a country in which the primary consumer and competition regulators are yet to deem that restricting access to data is fundamentally anti-competitive.

All vehicle owners should have ownership over all data generated by their car, and must be able to direct it to the dealership or independent repair shop of their choosing. Consumers should also have a clear understanding of their rights related to vehicle ownership and be fully informed of the data that is generated by the vehicle and where that data is transmitted and for what purpose.

Market competition can only occur when owners are able to elect (opt-in) and nominate who can maintain and fix their vehicle without the uncertainty that an outside party is covertly tracking their data.

The Voluntary Heads of Agreement (December 2014) included the provision for the commencement of an industry-wide dialogue on telematics. The Agreement specifically stated that the issue of telematics would be addressed by the Steering Committee within the first 12 months of the signing. Unfortunately, this did not occur due to the lack of cooperation on calling and scheduling meetings. This was to be expected. During the negotiation process, it was clear that the drivers for dialogue on telematics were the consumers and the independent repairers and without equal motivation to discuss and address consumer rights, it was always highly unlikely that this issue would be considered or addressed.

VEHICLE DATA AND TELEMATICS: OWNERSHIP AND ACCESS

- m) The Signatory Parties note that the progressive uptake of emerging vehicle telematics technologies are enabling increased transmission and use of data relating to vehicle use, performance and diagnostics.
- n) The Signatory Parties acknowledge that access to and ownership of telematics data from individual vehicles presents a number of emerging issues for consumers; vehicle manufacturers; and motor vehicle repairers and service providers.
- o) The Signatory Parties agree to implement a process to develop protocols relating to vehicle data access and ownership. The Signatory Parties agree that progress should be reported within 12 months of commencement of this Agreement.

Source: FCAI et al., December 2014. Agreement on access to service and repair information for motor vehicles, p. 8.

APPENDIX 1

The background of the page is composed of several large, overlapping geometric shapes. A prominent feature is a diagonal line running from the top-left towards the bottom-right. This line divides the space into two main regions. The upper-left region is a dark blue color, while the lower-right region is a medium blue color. In the lower-left area, there are two overlapping triangular shapes: a larger, darker green triangle and a smaller, lighter green triangle that overlaps its right side. The overall effect is a modern, abstract design with a strong sense of direction and color contrast.

NEW CAR WARRANTIES - FREQUENTLY ASKED QUESTIONS

These FAQ's are provided as an information aid to our customers and to assist in dispelling the myths surrounding new car servicing and manufacturers warranties. The Australian Competition and Consumer Commission (ACCC) also provide guidance on their website.

Question: A Dealer told me I'll void my warranty if you service my car, is that right?

Fact: There is NO requirement to service your car at a manufacturer's dealership to preserve:

- any manufacturer's warranty (that may apply to your vehicle);
- any state or territory based statutory warranty (that may apply to your vehicle); or
- your rights to Consumer Guarantees (formerly known as implied statutory warranties).

Question: What steps will you take to protect my warranty?

Fact: We are qualified to carry out log book servicing and we ensure that work is done according to the manufacturer's specifications, using appropriate quality parts and lubricants where required.

Question: How long should my Consumer Guarantees apply?

Fact: It's a common misconception that your Consumer Guarantees have a specific time limit.

Whilst a manufacturer may choose to put a time limit on their warranty, this cannot replace your Consumer Guarantees. Protection provided under Australian Consumer Law will take into account the purchase price, realistic time expectations of when a failure may occur, any advertising claims and the conditions under which a vehicle should operate. A manufacturer's warranty is in addition to, not in lieu of your Consumer Guarantees.

Question: What if I have a warranty claim – can you fix that?

Fact: Should you have a warrantable defect, it may be a condition of the warranty that any work to replace or repair the defect is carried out at a dealer workshop/s. However, the manufacturer may still choose at their discretion to allow us to do the work on their behalf.

Question: Can you stamp my logbook?

Fact: We can and WE WILL stamp your log book to verify the work has been conducted by fully qualified staff according to manufacturer's specifications, using appropriate quality parts.

Question: Will having my car serviced here preserve my resale value?

Fact: Evidence of a well maintained car will usually augur well for upholding resale value.

Question: What about extended warranty or specific 'service plans'?

Fact: Motor vehicle dealers sometimes offer their own extended warranties on vehicles, which usually kick in after the manufacturer's warranty and may stipulate that the vehicle must be serviced by the actual dealer offering the warranty. They are generally within their right to impose this condition, although we add the caution that such warranties are not always what they seem and we are happy to advise you on the conditions and relative value before you commit to any service plan.



For more information visit www.accc.gov.au

APPENDIX 2

The background of the page is composed of several large, overlapping geometric shapes. A dark blue triangle is in the top-left corner. A medium blue triangle is in the top-right corner. A light green triangle is in the bottom-left corner. A darker green triangle is in the bottom-right corner. The shapes meet at diagonal lines that create a sense of depth and movement.



PROTECTING THE INDEPENDENT WORKSHOP

The Australian Automotive Aftermarket Association (AAAA) believes in free and open competition as the best way to ensure that all car owners have access to affordable, high quality repairs and parts. The AAAA advocates that consumers have a right to factual information and the right to choose their repairer without being unfairly influenced by confusion or misinformation, be that intentional or otherwise.

WHAT ARE GENUINE PARTS?

The term 'genuine' part has been used by vehicle manufacturers as a general reference to parts and accessories that are sold in a manufacturer's branded packaging.

This vernacular is commonly used as a marketing tool by vehicle manufacturers and their dealerships, to give the impression that their branded parts are in some way superior to 'non' genuine spare parts. This can lead to unfounded fear and apprehension for the vehicle owner.

As a workshop owner, it pays to stay in tune with the common language used:

- 1. Original Equipment Manufactured (OEM) Parts**
These are routinely manufactured under contract by outsourced suppliers and distributed through dealerships, who contentiously refer to them as 'genuine' parts.
- 2. OEM Supplier Branded Parts**
It is common for OEM suppliers to also distribute and sell parts under their own brand. These are the same manufacturers as the 'genuine' parts (above) but the supplier uses their own company branding. Same part, same factory, different box!
- 3. Independent Aftermarket Parts**
Replacement parts that are manufactured specifically for use after the car is built. These are usually similar quality and are fit for purpose parts, interchangeable with the same functionality as the OE part but produced by a different manufacturer to the OEM supplier.
- 4. Specialist Parts, Modification & Performance Enhancement**
Parts and accessories that the car companies do not include in the original build and are added after purchase to modify the vehicle for its intended end use (bull bars, suspension lift kits, roof racks, tow bars etc.).



FITTING AFTERMARKET PARTS TO A CUSTOMERS VEHICLE

The Australian Competition and Consumer Commission have confirmed that the correct fitment of appropriate quality parts will not, in itself, void the car manufacturer's warranty obligations.

It doesn't matter what brand is on the box or who manufactured the part, just that it is fit or appropriate for the purpose intended.

If a part is interchangeable with, and of similar quality to the manufacturers branded part, it could be seen as being fit or appropriate for the purpose.

It is important to remember that most car manufacturers do not make parts themselves; they are almost always made by a third party component company and put in a box with the manufacturer brand on it.



REASSURE YOUR CUSTOMER

Should a customer raise a concern with you, or request you fit manufacturer's branded parts, you can confidently advise them that if the parts you fit are of equivalent quality then they should not have any effect on any new car warranty. These parts also come with Consumer Guarantees in the Australian Consumer Law in the very same way that OEM parts do. These parts may also provide a significant price advantage.

Your customer can rest assured that fitment of quality aftermarket parts by a qualified technician preserves their right to any new car warranty offered by the manufacturer.

YOUR OBLIGATIONS AS A WORKSHOP

As indicated above, just as OEM parts do, aftermarket parts also come with consumer guarantees under the Australian Consumer Law. If an aftermarket part was to fail or causes other damage to the vehicle, the vehicle manufacturer will not be liable for any of the damage caused by the failure of that part. It is therefore important to ensure that both you and your parts suppliers have a reliable warranty support and adequate insurance.

BEST PRACTICE

- Always use appropriate quality spare parts and lubricants from reputable suppliers and manufacturers.
- Have your parts supplier confirm their warranty policy and where possible get a written reference of their quality standards.
- Itemise your customer invoices and job cards, quoting the parts and lubricants you have used and include the brand description and item numbers.
- Ensure that your customer is aware if any reclaimed or second hand parts are being used.



