



Mandatory scheme for the sharing of motor vehicle service and repair information

Consultation paper
February 2019

Introduction

The Australian Automotive Aftermarket Association is pleased to provide a formal response to the above Consultation paper.

We appreciate the opportunity to respond to the questions for consultation in addition to a range of other matters that we have previously identified as issues that are key to achieving the intended outcome. At the outset we would wish to express our strong support for a Mandatory Code of conduct under the *Competition and Consumer Act 2010* (CCA).

In the interests of efficiency and brevity, we have decided to frame all of our comments into a table – this allows us to be succinct and to address each issue without a requirement for extensive framing or background material. We are always available should you require additional information on any of these items of importance.

The key issue for the Mandatory Code is clearly the degree to which the information to be shared is defined. Too much definition will carry risks: it implies that if the required information is not on the list, it does not need to be made available to a consumer's repairer of choice on fair and reasonable terms. Alternatively, too little definition and the ACCC has

limited ability to enforce the Code. We are aware that getting this balance right is the challenge for this particular Mandatory Code.

We speak specifically to this matter in the table containing our comments on the consultation questions. However, as a general principle our thoughts are centred on the best way to be effective which is to:

1. Clearly state the principle – that that a mandatory scheme should provide independent repairers with the access to exactly the same vehicle related technical information that car manufacturers make available to their authorised dealers and preferred repairer networks (including all environment, safety and security-related information).
2. Provide a list that is articulated as *examples* of the above information – the Code should be clear that this is an *illustrative* rather than an exhaustive list.
3. No information should be withheld unless the restriction of a specific type of data has received approval from the Minister via a recommendation from the Advisory Committee. This exemption should be assessed against a set of agreed criteria, much of which is outlined in the Massachusetts Law.
 - o For example the Law specifies that information that concerns the commercial relationship between the car manufacturers and their authorised dealership is not subject to disclosure. Similarly any information that concerns intellectual property is not subject to disclosure. However, as noted at the Roundtable meeting, this IP information is also not shared with dealerships.

In our view the Mandatory Code should be designed so that all of the emphasis is placed on the car manufacturers to justify the withholding of certain categories of data and not relying on repairers to justify why the

information is required. The ACCC has already clearly articulated why this information is required by consumers and their repairers of choice.

The US system works because of this simplicity, the simple test is: – *is this information related to the diagnosis, maintenance or repair of the vehicle? Is this information that the car manufacturers share with their authorised dealers?* If the answer is ‘yes’, then logically this information must be available to independent repairers. Having said that, we do understand that including clear examples of what is included in the definition of service and repair information will assist the ACCC in enforcing breaches of the Code.

Technician Safety

It would appear that a new justification for withholding data has arrived in 2019: Over the past nine years we have heard so many reasons to justify the car manufacturers’ practice of withholding service and repair information, we would not have contemplated that any more existed. Not so. Apparently the car manufacturers are now concerned with *the occupational health and safety of technicians*.

A strong imperative for any industry is to ensure the safety of our workers as our first priority. Workplace safety is critical and breaches of workplace safety are subject to criminal charges in many Australian jurisdictions.

Whilst OHS is a clear workplace priority, it is not certainly not a legitimate excuse to withhold data. We would argue to the contrary: An effective Mandatory Code will lead to the safest environment for our technicians.

The current model requires technicians to adopt work arounds in the absence of full disclosure of all repair information – relying on informal or overseas sources of advice and assistance. Asking trained professionals to

work with 80% of the data is not safe. Providing professionals with accurate data and information is safe.

The recent review of the ACL also provided the Australian community with an opportunity to discuss the definition of safe products and, as we know from these guidelines, it is not a definition that is based on the product or service as a stand-alone criteria. Product 'safety' also takes into account the instructions given on the correct use of the product and it takes into account the intended recipients. A carpenter's table-saw is a dangerous item but safety can be increased with clear instructions, correct usage and usage by a professional (the intended recipient). As noted in the ACL guidelines, it is often the case that we confuse 'safety' with 'risk free'. No product or service is risk-free. The safety of service and repair information can be assured with clear instructions and a statement by the user that they are the intended recipients. Using technician safety as a reason to withhold information is unfounded and illogical.

Cooperation

In 2012, the government commissioned the Commonwealth Consumer Affairs Advisory Council (CCAAC) to examine this issue and after a 12 month study, the CCAAC recommended that industry should cooperate on a voluntary code and if this process was not successful, government should intervene and introduce a Mandatory Code. That recommendation was very clear – industry should have a chance to cooperate and if that did not work, there was evidence that this was an issue with the potential to cause significant consumer detriment. Most observers would be forgiven for assuming that the CCAAC recommendation provided a clear incentive for the car manufacturers to initiate, implement and enforce a data sharing regime. It did not.

In December 2014, after many months of protracted negotiation, a Heads of Agreement was signed that sought to change the Australian car servicing competitive landscape using a voluntary agreement. It did not bring about any noteworthy change. The Heads of Agreement was ignored by all by one of the 68 car brands.

In December 2017, the ACCC confirmed what we all knew, this industry was characterised by market failure and a significant commercial imperative is the reason that car manufacturers would never cooperate in a voluntary regime. So the writing was on the wall. A major ACCC Market Study representing 18 months of investigation. Finally, this might have been enough incentive for the car manufacturers to commence action to encourage, monitor, and measure data sharing performance. It was not, no change occurred in 2018 other than several more car manufacturers moving to electronic logbooks, locking out independent repairers from servicing these vehicles due to lack of access to service records and an inability to record that a service was completed. Our point here is that it took the government to commence a process of actually drafting a Code in March 2019 that has now (apparently) prompted the car manufacturers to support fair competition in our industry. Our point here is that car manufacturers' apparent cooperation is not a sentiment that should be factored into the drafting of this Code:

1. Despite a declaration that car manufacturers have now signed on, there will be no real cooperation unless there are penalties.
2. Every loop hole will be examined and exploited; and
3. Any opportunity to delay implementation will be fully exploited.

The Mandatory Code must be robust enough to withstand the car manufacturers' tools and techniques that have thus far resulted in anticompetitive practices that continue unabated even whilst the regulatory spotlight has been on our industry.

Questions for consultation & Additional Items

Treasury	AAAA Response/Feedback
<p>5.1. Treasury is interested in stakeholders' views on whether the possible elements of a mandatory code of conduct and a Service and Repair Information Sharing Advisory Committee set out in this paper:</p> <ul style="list-style-type: none"> a. are appropriate as a starting point for developing and consulting on detailed provisions; b. would provide significant improvement on the current voluntary scheme; and c. are a suitable alternative to a legislated scheme, which would enable the creation of an 	<p>We have previously voiced our concern that the consultation paper appeared to provide justification for car manufacturers to unilaterally withhold data and information based on a very broad definition of security, safety and emissions related information. The frequent use of the terms 'restrict' and 'exclude' led us to believe that only the information that car manufacturers would want to share will be provided under a new Mandatory Code.</p> <p>We were clearly reassured during the Roundtable consultation that this is not the government's intent. Any information that may be justified by the car manufacturers as having SSE concerns would be subject to a test, and would be subject to a qualification hurdle that is appropriate to the level of risk. Thus the 'SSE' terminology is never an excuse to restrict, it is a reason to ask the recipient to have the appropriate qualifications, either as a self-check or as a formal independently managed, vetting process.</p> <p>Our contention is that general information that would previously be articulated in a repair manual should be available to technicians with a self-evaluation form. Recipients should check the box that they are qualified to receive this information and that should they use this information to diagnose or repair a vehicle, they are qualified to do so.</p> <p>Clear definitions, enforcement and a clear scope of which vehicles are included in the scheme will represent a significant improvement on the current voluntary scheme. What must be assumed is that all information that car manufacturers would wish to withhold should be subject to a rigorous assessment. An effective Code must build upon the ACCC findings that there was overwhelming evidence that service and repair information is withheld not for safety or security reasons; information is withheld due to commercial self-interest.</p> <p>We appreciate that a legislated scheme such as the Massachusetts Law would enable the creation of an industry funded body. We also understand that the Mandatory Code is not able to formally establish such a body. However, we are of the view that the industry body could be created to assist the Advisory Committee to fulfil their purpose. For example, the Advisory Committee would be responsible for the provision of advice to the Minister on the design of an appropriate</p>

Treasury	AAAA Response/Feedback
<p>industry-funded body to advise on the scheme but would be slower to implement and update.</p>	<p>secure data release scheme. This may include advice on the efficacy of an industry designed and administered Secure Data Release Model (SDRM). The Advisory Committee could recommend to the Minister that the day to day operation of the SDRM be administered by a separate industry funded body - an Australian National Automotive Service Taskforce (ANASTF). This body does not need to have a role specified in the Mandatory Code. It is the role of the Advisory Committee to inform and recommend to the Minister the best methods of ensuring the protection of data that is legitimately security related. The best method to do this would be for the industry to establish a body and ask the Advisory Committee to recommend to the Minister that the ANASTF and their SDRM is an efficient method of providing the safeguards for any legitimate security concerns.</p>
<p>5.2. Treasury is also interested in feedback on the following possible elements of the Code in particular:</p> <ul style="list-style-type: none"> a. whether vehicles made available for sale in Australia prior to the Code taking effect should be covered by the scheme, and if so, how; b. the principled definitions of: <ul style="list-style-type: none"> i. information manufacturers must make available 	<p>Vehicles from model year 2002 and onward should be included within the scheme. All Passenger Motor Vehicles (PMV) and Light Commercial Vehicles (LCV) should be captured by the Mandatory Code.</p> <p>As outlined by Treasury at the Round table meeting; the repair and service information for all vehicles model year 2002 and onwards, already exists and is routinely shared between car manufacturers and their dealerships. In this sense the Mandatory Code is not requiring new information for vehicles and is not therefore requiring any retrospectivity. The data and the information already exists. What is required is that the car manufacturers cease to restrict access to this readily available information.</p> <p>Model year 2002 is consistent with other international data sharing schemes and is significant as this model year signalled the introduction of on-board computers to monitor and control vehicle systems.</p> <p>We have made some suggestions regarding information that car manufacturers must make available under the scheme. (Appendix A).</p> <p>We understand and accept that a system is required to provide vetting and tracking for secure data release that requires access to information and codes for the vehicle entry and immobiliser system. We remain confused about the justification for environmental information being withheld. Effectively we require information on the emissions parameters and the transparency of this information is clearly important given the Volkswagen global emissions fraud. Why the car manufacturers would seek to withhold information on the normal operating parameters of the vehicle and the information required to ensure that vehicles are repaired to ensure ongoing environmental compliance is a mystery to us.</p>

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	<p>be able to seek redress, remedy or refund. As car manufactures will be offering data and information for sale to independent repairers on fair and reasonable terms they must ensure the accuracy and quality of that information and provide redress when the service is not fit for purpose. We would expect every supplier of goods and services to have a clear path to address complaints and resolve disputes and the car manufacturers should be no different.</p>
<p>5.3. Treasury would also welcome feedback on the Committee, particularly on the suitability of the suggested membership and terms of reference.</p>	<p>It is our view that the membership of the Committee should consist of an Independent Chair (representing the responsible Minister) and representatives from the signatories to the current Heads of Agreement, which are the:</p> <ul style="list-style-type: none"> a. Australian Automobile Association (AAA) representing motoring clubs; b. Australian Automotive Aftermarket Association (AAAA) representing the automotive aftermarket industry; c. Australian Automotive Dealer Association (AADA) representing new car dealers; d. Federal Chamber of Automotive Industries (FCAI) representing car manufacturers; and e. Motor Trades Association of Australia (MTAA) representing the automotive retail, service and repair sector. <p>We are aware that one member has suggested additional participants. Our concern is that we can see a further 15-20 potential participants in this process. This assessment is based on our experience of the ACCC stakeholder consultation forums and the parties that made formal submissions to the ACCC Market Study.</p> <p>Many of these stakeholders have had well over two years of informed interaction on this issue in contrast to the three suggested additions that were put forward by the FCAI and raised by Treasury at the Roundtable on Thursday 7 March 2019. For example, neither ANCAP nor the IAME have had a significant previous involvement in this issue and it is difficult to see how ANCAP would have any interest in this matter. In contrast the IAME has steadfastly refused to participate in this matter in the past but presumably now see the potential for them to become the body that accredits technician access to repair information which represents a conflict of interest.</p> <p>Before we open the process up to organisations that have little or no interest, it would be beneficial to consider the organisations that do have a clear interest. But where would this line stop? The ACCC found no relationship between data sharing and theft of vehicles in other international jurisdictions but even if we were to consider theft a legitimate reason to appoint the National Motor Vehicle Theft Reduction Council, surely the organisations that represent the environment should also have a role?</p>

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	<p>It could be argued that several other organisations should be on this body well before any consideration of the IAME or ANCAP. For example, The Consumer Law Action Centre, The Consumers Federation – these groups are responsible for supporting consumers when warranty claims are rejected: and clearly they too have an interest.</p> <p>As we suggested at the Roundtable, the Insurance Council of Australia has an interest as do the organisations that represent the workforce: including the AMWU, the CMFEU and the ETU.</p> <p>The question therefore, is where do we draw the line? If we open this advisory committee up to organisations that the FCAI have an influence over, we risk the other parties also seeking to stack the Committee with organisations that are supportive of their viewpoint. Keeping the status quo is a legitimate method of maintaining the focus on this Code, learning from the history of the journey and maintaining the focus on the primary objective which is to ensure fair competition and consumer choice.</p> <p>Future expansion of the Committee may well be warranted after the 18 month review of the Code in operation. But we don't know what skills that may be required that are not already around the table and we are yet to agree on a set of criteria for assessing the 20 to 30 other bodies that may wish to be represented on the Advisory Committee.</p>
<h2 data-bbox="203 906 577 959">Other Matters</h2>	
<p>Pass through technology</p>	<p>We mentioned at the Roundtable that the pass through provisions for the US system should be incorporated into the Australian Mandatory Code.</p> <p>It is critical that any mandatory scheme includes mandating pass through technology and a timeline for implementing J2534. The USA agreement and State law requires that all car manufacturers provide data in a form that can be accessed by a universal scan tool that complies with international SAE standard: J2534 for all new vehicles launched in the USA market after 1 January 2018. This is a critical component that will ensure that the Mandatory Code will continue to be effective in fulfilling the principles of the Code as pass through technology rolls out across the Australian vehicle fleet. An inability to access the pass through system on a vehicle will lock a technician out of completing the most basic repair tasks on a vehicle.</p>

Treasury	AAAA Response/Feedback
<p>Third Party Data Providers</p>	<p>With over 60 different brands and over 300 models of passenger and light commercial 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 the role of 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.</p> <p>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 each third party service information provider 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.</p> <p>There are provisions in the Massachusetts Law to support the role of these intermediaries in our industry and these clauses would be appropriate for inclusion in the Australian Mandatory Code.</p>
<p>Telematics</p>	<p>The car manufacturers are now able to monitor and diagnose the vehicle wirelessly.</p> <p>The Voluntary Heads of Agreement noted that telematics was likely to significantly impact upon competition and consumer choice and this issue was flagged for additional industry consideration during the life of the Heads of Agreement.</p> <p>Experience in the US market is that this issue has the potential to undermine the key principles that underpin an Australian Mandatory Code. Vehicle data that is wirelessly transmitted to the car manufacturers and then shared with dealerships will have a significant impact on the future of competition and consumer choice. If consumers do not have access to the data that their vehicle generates, their ability to change providers is restricted.</p> <p>The Mandatory Code must include control over the diagnostic data that is generated by the vehicle and wirelessly transmitted to the car manufacturers. The consumer owns the data generated by their vehicle and the Mandatory Code should specify that it is the consumer that nominates to whom that data is to be conveyed.</p>

Treasury

AAAA Response/Feedback

**Parts:
Same part different box.**

Should the Mandatory Code include reference to parts? Our view is a clear **'no it should not'** because it is unnecessary and it is difficult to see how the Mandatory Code could improve upon the provisions in the Australian Consumer Law.

The ACCC did not find any market failure in regard to the quality and source of parts.

Recent industry research of consumers' perception indicates that higher level of satisfaction are achieved when consumers are asked about their parts preference and when they are provided with options for replacement parts. All evidence therefore, indicates that the market is effectively evolving to meet this consumer preference.

The issue of parts origin is far more complex than a simple binary choice – for example genuine versus non-genuine. Our manufacturers make parts for both original equipment and aftermarket consumption. Full transparency should therefore, inform consumers that they can buy auto components in the car company box or in our box - same product, different package.

The issue of parts as a legitimate inclusion in the Mandatory Code probably arises because it was included in the Voluntary Heads of Agreement. This draft Code will address auto service and repair information and data sharing. It is not about the quality of parts or automotive service all of which are subject to the ACL. This is why remembering the journey of how we arrived here is so important: Because at a particular point of stalemate during the HoA negotiations, when the car manufacturers had stalled the process for so long, we agreed to include the requirement to advise consumers of the brand of parts used in a repair **as a compromise** to get the Heads of Agreement signed.

We were never happy with the inclusion, but at that time, we could not be seen to be the reason the HoA was not signed. We made a compromise, we had to. That is the only reason that parts were included in the HoA, not because they belonged there, but because the power imbalance is so pronounced, the imperative to share data so lacking, that we had to offer up something to get the car manufacturers on board for a mechanism that they ultimately ignored anyway. Now that we have reached this particular stage in the history of this issue – which is the actual drafting and formulation of a Mandatory Code, it is our view that it must be robust, it must be about competition and choice and there is no requirement, no market failure and no need to include references to replacement parts.

Treasury	AAAA Response/Feedback
	<p>However, should the car manufacturers continue with their contention that every consumer should be made aware of the parts that are used (when this is already standard practice for independent repairers) we would insist on FULL transparency. Consumers that have their vehicles serviced at the dealership should be advised when an identical part, made by the same manufacturer, is available at a lower cost. Consumers should be informed that there are IDENTICAL alternatives to car-branded spark plugs, they should have the choice of being able to request spark plugs that are sourced directly from the component manufacturer and not sourced via the car manufacturers.</p>
Penalties and Enforcement	<p>As we articulated at the Roundtable on Thursday 7 March 2019, there must be clear penalties articulated in the Code from the outset. We do respect that there may be a period of time that the car manufacturers will require in order to comply and the Secure Data Release Model will also require a six month development period. We propose that the Code includes the strongest penalties possible and that the car manufacturers are provided with six months before these penalties will be enforced.</p>
Reporting	<p>It is our view that the Advisory Committee should provide an annual compliance report to the Minister.</p> <p>ACCC noted in their Issues Paper (2017) one reason for this clear market failure is that consumers are not aware of restrictions in the options for vehicle servicing at the time of the purchase of the vehicle, resulting in higher cost and often, considerable inconvenience for rural and remote car owners. The Advisory Committee therefore, should provide the Minister with an annual report which, as far as possible, provides feedback on the level of cooperation from each of the car brands that are active in the Australian market. This would provide the community with additional intelligence regarding the service and repair options for their potential new vehicle purchase.</p>

Appendix A

Service and Repair information definition:

- a) all information required for diagnosis, servicing, inspection, periodic monitoring, repair, re-programming or re-initialising of the vehicle; and which the manufacturers provides access to for their franchised / authorised dealers and repairers; including all subsequent amendments and supplements to such information.
- b) The information referred to in (a) must include, **but is not necessarily restricted to:**
 - i. verifiable vehicle identification;
 - ii. service, technical and owner's manuals including recommended manufacturers service schedules;
 - iii. access to electronic log books / data in order to review the vehicle requirements and update the service records;
 - iv. manufacturer technical service bulletins, and service campaigns relating to an identified risk or hazard impacting the performance of the motor vehicle or component that falls outside a recall or warranty defect, warranty repairs or manufacturer obligations to consumer guarantees and statutory warranties;
 - v. collision repair procedures, measurements, and necessary details to affect a body repair to Original Equipment Manufacturer Specifications;
 - vi. security related information (subject to separate access procedures outlined in a Secure Data Release Model) including immobiliser / pin / key / security module codes;
 - vii. component and diagnosis information (such as minimum and maximum theoretical values for measurements);
 - viii. wiring diagrams, layouts and pin data values;
 - ix. diagnostic fault / trouble / security (where applicable and appropriate) codes and testing procedures (including manufacturer specific codes);
 - x. engine performance, body control and other module application software and calibration software including pass-thru programming information;
 - xi. Manufacturer technical education resources needed by technicians or repair facilities through subscriptions; and by education providers through licencing. This does not include specific manufacturer training materials and / or resources, designed and provided specifically to franchise dealer employed technicians.
 - xii. Manufacturer published or provided service / procedure / repair times.
 - xiii. Diagnostic service and repair information necessary to reset an immobiliser system or security related electronic module. The information necessary to reset an immobiliser system or security related electronic module must be obtained by a technician through a secure data release model.

Exclusions

Exclusions mean the areas or specific matters that are permitted to be excluded under this Code:

- a) Manufacturers' direct information hotlines made available for franchised Dealers;
 - b) Information that a manufacturer is prohibited from disclosing under any law including privacy laws or under the terms of any agreement or contract (such as franchise or dealer agreements);
 - c) Matters relating to franchise arrangements, including without limitation any confidential information;
 - d) Any information (including vehicle computer updates) that may result in non-compliance with any relevant safety, emission or any other legislation affecting motor vehicles or manufacturer compliance with applicable Federal, State or Territory laws;
 - e) Intellectual Property of a manufacturer (other than information that is produced specifically for service, repair and maintenance purposes) or any information that might disclose intellectual property, trade secrets or confidential information of a manufacturer.
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AAAA: THE VOICE OF THE INDEPENDENT AFTERMARKET

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

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

1 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.

2 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.

3 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.