

# SUBMISSION

## Productivity Commission Issues Paper: Right to Repair



**AUSTRALIAN AUTOMOTIVE  
AFTERMARKET ASSOCIATION**

## About the AAAA

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 mechanical repair and modification services in Australia. The Association represents 2,390 member companies 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 located across metropolitan, regional and rural Australia.

The Automotive aftermarket industry is estimated to contribute \$25 billion to the Australian economy, as at May 2018 our industry employed around 300,000 Australians over more than 50,000 businesses.

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

- Are manufactured and distributed to maintain or enhance the appearance and performance of vehicles, including accessories, safety, comfort, appearance, entertainment and information, functional performance, body components, tools and equipment, mechanical, lubricants, additives and chemicals.
- 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.
- 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.

The independent aftermarket is a significant segment of the automotive industry and in most cases, parts supplied to the consumer through alternative distribution channels to the motor vehicle dealer networks are of an equivalent (or in many cases superior) quality and are fit for the purpose intended. Some 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.

We welcome the Productivity Commission Right to Repair Inquiry. The Issues Paper is wide ranging and appears to pay due consideration to the issues that affect both an individual consumers' cost of ownership and the economy-wide issues of open competition and waste.

As you are aware, in December 2020 the government released the Exposure Draft of The Motor Vehicle Service and Repair Information Sharing Scheme. Our detailed response and recommended amendments to the draft law were due yesterday (31 January 2021). As a result, our submission on this important Issues Paper is certainly less comprehensive than we would normally have provided. Please do not interpret our brief comments on this occasion as a lack of interest in this matter. Indeed, the AAAA has worked for over a decade on Right to Repair in Australia and we see both the Draft Law and this Inquiry as important developments in fostering fair and open competition in the broader repair industry.

We can offer the following comments to address the issues that the Productivity Commission has specifically requested responses:

### **Which Industries?**

We note that the Productivity Commission does cover a broad range of industries and it is likely the focus will need to narrow to fully evaluate the available options on a specific group of products.

As you are already aware, the development of legislation to provide for a Right to Repair in the automotive industry is now well advanced. This right to repair legislation specifically address access to information, software updates, tools and reinitialisation codes. Our

ability to use fit for purpose parts and qualified staff has been a feature of our industry for some time and our capability to repair and service vehicles outside of the authorised or OEM network will soon be greatly enhanced. With this in mind, we are hopeful that the Productivity Commission will be able to focus on other industries that share some similar characteristics with the automotive aftermarket.

Consumer access to affordable vehicle service and repair is a critical part of our economy. Most households continue to rely on the passenger vehicle as the primary method of getting to work and fulfilling care obligations for dependents. It is a unique market in the sense that car ownership requires that consumers maintain their vehicles through regular servicing to meet state roadworthy laws and to continue to qualify for statutory guarantees. Motor vehicle ownership, therefore, includes a consumer obligation to regular servicing in order to comply with the law and to continue to receive warranty coverage. The considerable national household expenditure on vehicle service and repair, is the key reason why policy makers have paid a great deal of attention to ensuring open competition to support households and reduce wastage in our economy. This is a key reason why right to repair has advanced in the automotive sector.

All motor vehicles need regular parts replacement and regular servicing - and therefore the forthcoming legislation will have far reaching economic implications in Australia. It may, therefore, be worthwhile considering other consumer goods that are also characterised by a requirement for regular replacement parts and consumer servicing - this may provide a useful method of prioritising

goods that should be the focus of this inquiry.

Given our experience in the right to repair movement in Australia and through our international partnerships, we would agree with the Productivity Commission that sectors that are characterised by a power imbalance and 'information asymmetry' should also be prioritised. In our industry it is well-understood that:

- Consumers are not aware of their rights to use fit for purpose parts fitted by qualified staff, and that there is no obligation to return to the accredited repairer to maintain warranty rights. Our research is that approximately 40% of new car owners are unsure of their repair and service options.
- Previous studies by the Australian Competition and Consumer Commission indicate that consumers are not aware of repair costs or whole-of-life costs when purchasing a new vehicle. Clear information on repair costs is not available during the vehicle purchase.

### Economic Costs and Implications

In the AAAA's formal response to the ACCC Market Study (New Car Retailing), we presented an independent study of 325 independent repairers who service more than 18,000 cars per week. This study, conducted in October 2016, had the clear aim of determining the direct effects of the withholding of codes, software updates, Technical Service Bulletins, vehicle specific tooling and access to repair information portals by vehicle manufacturers from these predominantly small, family operated businesses and their customers.

The independent study found the direct loss suffered by independent vehicle repairers in time, effort and overall

productivity comes at a staggering cost of more than \$4 billion per annum. The overwhelming majority of this cost is absorbed by independent repairers and is not passed onto consumers, but such severe productivity and profitability losses clearly cannot continue be sustained in an industry that provides trusted quality automotive repairs, service and maintenance to millions of Australian consumers each year.

Our detailed research commissioned for the ACCC study also found that independent repairers were investing significantly in training and equipment to best service customers who have, as per their consumer rights, selected an independent workshop as their repairer of choice. The study found this issue has nothing to do with independent repairers not being able to service and repair more sophisticated modern vehicles. All that was missing in most cases were items as simple as a six-digit code to finish the work, or access to manufacturer information relating to known faults and fixes for specific vehicles. The withholding of this information by vehicle manufacturers continues to mean that independent repairers spend hours troubleshooting issues that with direct access to the manufacturer information, could in many cases be rectified in less than 15 minutes.

### Vertical Integration

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 has a high reliance on profit from parts and servicing (for cars aged up to seven years) and the sale of finance and insurance products 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, you could argue 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 a new car sale. 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. We note that you quote the ACCC finding in the Issues Paper – a finding that agreed with our assessment that cross subsidising the primary purchase with the after sales revenue does not produce good consumer outcomes nor does it lead to the benefits of open competition.

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. Most dealers have a commission arrangement with the manufacturer, and key performance indicators are often tied to the volume of parts sold through the service department. These parts are normally sold at higher margins than the equivalent aftermarket part. The market share of car company-branded parts sold through the non-dealer channels is quite low, so it is clearly in the commercial interest of both the car company and dealership to direct parts and service business through the dealership channel. In fact, the viability of many dealerships now relies upon this

practice. The pressure applied to accredited repairers to up-sell and replace parts, that are not necessarily faulty, may also be a factor. It is a logical conclusion that rebates, and commissions paid as a reward for selling OEM branded parts, could result in more parts sales and higher costs for consumers. Financial incentives must play a part in this business model and whilst these commissions are common knowledge, consumers do not receive full transparency on this practice.

#### 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*.

Despite this very clear statement from the ACCC, a large 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 they

were informed that maintaining their 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 OEM Branded parts, creating doubt and confusion.
- Fear of a warranty claim rejection.

### Choice of Car Parts

Our preference is that government agencies do not use the term 'genuine' in describing OEM branded parts. We appreciate that your reference is in quote marks and we do thank you for that. The term 'genuine' parts implies that non-branded parts are non-genuine, which is incorrect. Aftermarket parts are often produced by the same manufacturer and branded under their own name rather than the OEM brand. In fact, aftermarket parts are exactly what they purport to be and are an accurate and genuine representation of their origin. It is our preference that credible authorities do not perpetuate 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 categories can subsequently be classified as genuine or non-genuine. Our industry produces genuine aftermarket parts.

According to most dictionaries, "genuine" means true and authentic, or in other words, not a fake or counterfeit. Notice there is 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.

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 this is not the case, the consumer has rights for repair, replacement or refund and compensation for any damage or loss.

### 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 intact<sup>1</sup>.

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 many car owners do not know 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 using an alternative repairer to the accredited network of the particular OEM may void the vehicle warranty.

If the consumer is unaware of their rights, or misled about their statutory rights, it is highly unlikely 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' 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, these relationships should be disclosed to the consumer.

Consumers are selecting extended warranty products to protect what is a very large consumer purchase, despite the fact these warranties may not offer any more protection than that available in the

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<sup>1</sup> Refer Appendix One: Motor Vehicles, Guarantees, Warranties and the Law,

Australian Competition and Consumer Commission, July 2011.

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.

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We often receive complaints from independent repairers regarding parts and 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.

In our experience, 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.

3. 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 vehicle's recommended and required engine oil. Identifying the correct engine oil is critical and not using the recommended blend can invalidate the warranty. 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.

### Online Logbooks

Independent repairers are routinely denied access to the online logbook to view service history and to record that the service has occurred. 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 an advertised 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 that 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”<sup>2</sup>. 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 soon 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 chose who receives that data. For many other products in the marketplace, it is assumed that the consumer has the right

to opt out of sharing their usage data with the manufacturer or hardware/software producer.

### Possible Policy Options to Address Barriers to Repair

The range of options identified within the Issues Paper appear sound and a combination of tools is likely to be required in order to produce meaningful outcomes:

**Table 1 Examples of international approaches to a ‘right to repair’**

<i>Policy</i>	<i>International example</i>
<b>Duty to deal</b> – requirements for OEMs <sup>a</sup> to provide independent repairers fair access to parts, tools and/or repair information	Vehicle repair legislation in Massachusetts; EU vehicle repair regulation; EU Ecodesign Directive regulations for appliances
Obligations on manufacturers to <b>produce spare parts</b> for a specific period	EU Ecodesign Directive regulations for appliances
<b>Product design standards</b> for easy product disassembly	EU Ecodesign Directive regulations for appliances
<b>Product information and labelling</b> about reparability and product durability	French law requires manufacturers to report how long they will produce spare parts. France will require firms to display a reparability rating for electrical and electronic products at the point of purchase
<b>Laws prohibiting planned product obsolescence</b>	French law
<b>Extended guarantee</b> periods and longer periods where burden of proof of fault lies with firm	Sweden, Finland and Portugal
<b>Subsidies</b> for repair	Subsidies and tax concessions to households in Sweden, Austria and France

This is not likely to be an exhaustive list, however we do support the range of

<sup>2</sup> Australian Government 2012. *Sharing of repair information in the automotive industry: Final*

*report*, Commonwealth Consumer Affairs Advisory Council, The Treasury, p 24

options in the above table. We particularly support the supply of tools and information, and the option for a change of onus of proof for extended guarantee periods.

In the past automotive repair used to simply be a matter of access to parts, the right tools and an instruction manual. It is important to accept that repair now involves a two-way information exchange: Whilst you are no doubt already aware of this complexity, we would stress that regulatory options to address barriers to repair should also include the element of connectivity that will increasingly be required for the completion of a repair. The re-integration of a new part often requires programming – effectively the independent repairer requires the connectivity to programme the component which is likely to require often physical or wireless access to an OEMs website.

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We thank you for the opportunity to submit, we are happy to be of assistance and welcome any further conversations with the Right to Repair team.

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Yours Sincerely,

Stuart Charity

Chief Executive Officer

Australian Automotive Aftermarket  
Association