



Your car, Your choice.

Australian Automotive Aftermarket Association

Choice of Repairer - Code of Practice

April 2015

Choice of Repairer Code of Practice



This Code of Practice is based on the following agreed principles:

- ▶ That consumers should be able to choose who maintains and/or repairs their motor vehicle.
- ▶ Independent repairers 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 that manufacturers provide to their authorised dealerships.

Heads of Agreement: Access to Service and Repair Information for Motor Vehicles 2014

Australian Automotive Aftermarket Association



AAAA is the national industry association representing over 1,800 manufacturers, distributors, wholesalers, importers, mechanical repair & modification service providers and retailers of automotive parts and accessories, tools and equipment in Australia. AAAA member companies employ more than 40,000 people in a sector that turns over \$11 billion per annum.

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Background

Fair and Open Competition in the Australian Automotive Aftermarket

Modern vehicles have become “computers on wheels”. While technical innovations provide increased safety and comfort and better emissions control, they have made it increasingly challenging to service or repair a vehicle.

With sophisticated electronics now controlling vehicle behaviour, integrated with active and passive safety systems and an increasing emphasis on emission control systems, the necessity for accurate technical and diagnostic information is critical to road safety.

The absence of an adequate regulatory framework in Australia to protect competition in the vehicle repair and service sector has meant that it was not clear that vehicle manufacturers and importers were obliged to make technical and diagnostic information available to repairers outside their authorised dealer networks.

This created a situation where independent aftermarket repairers have relied on the goodwill of the manufacturer to obtain critical information to complete the repair. Not surprisingly, many repairers find that the process to access technical information is difficult and confusing.

After AAAA launched the Choice of Repairer campaign in 2009, the Federal Government commissioned an inquiry and that recommended that the industry develop a voluntary agreement that ensures independent repairers have access to repair information. We now have that agreement.

AAAA successfully argued that without effective access to technical information, multi-brand diagnostic tools and training, rapid advances in vehicle technology will mean that independent repairers may be unable to service modern vehicles in the future.

This would have a catastrophic impact on competition in the industry by creating a monopoly for the vehicle manufacturers and their dealer networks. Independent repairers would be driven out of business and Australian motorists would lose the right to have their vehicle serviced, maintained and repaired in a timely manner, at competitive prices in the workshop of their choice.

In December 2014 the historic right to repair Heads of Agreement between participants in the automotive supply and service industry was signed. The parties to the agreement are the Australian Automobile Association (AAA) Australian Automotive Dealer Association (AADA), Australian Motor Industry Federation (AMIF), Federal Chamber of Automotive Industries (FCAI) and the Australian Automotive Aftermarket Association (AAAA).

The right to repair Agreement outlines a set of agreed principles for the sharing of vehicle repair and service information, a governance structure and dispute resolution process.

At the time of the signing, the Federal Minister for Small Business announced that the consensus between all parties was a significant achievement for the rights of consumers and all automotive

businesses, big and small. In his view this Agreement will support motorists accessing efficient and affordable servicing and repair for the safe and proper maintenance of their vehicles.

The intent of the Agreement is to ensure that consumers are provided with the appropriate information to make informed decisions when it comes to the repair and servicing of their vehicles. It is an objective of the agreement to preserve and increase the level of competition in the marketplace which is ultimately of benefit to all consumers. To this end, AAAA members will also ensure that data sharing is never used for an anti-competitive purpose.

The Federal Chamber of Automotive Industries which represents vehicle manufacturers and importers will soon be issuing their code of conduct to explain to the industry how this service and repair information will be shared. As part of the Heads of Agreement, all signatories are required to develop a Code of Practice or enabling documents to enact the Principles of the Agreement.

The following automotive aftermarket industry code of practice is based on the following six principles:

1. **We will ask for the data and repair information** that we need to service and repair our customers' vehicles;
2. We will **pay a fair price** for this data and information;
3. We will formally **complain when the data is not provided**, is difficult to access or priced unreasonably;
4. We will explain to our customers **the truth about vehicle servicing and warranties**;
5. We will provide **transparent information on the source of the parts** that we use to service and repair vehicles, and;
6. We acknowledge the **importance of ongoing training** to ensure the sector is proficient and efficient.

Introduction

Competition policy and consumer affairs are regulated in Australia by both Commonwealth and State Governments. This document is concerned with Australian Competition Policy and the information has been sourced from the Australian Competition and Consumer Commission and from the recently signed Heads of Agreement on Access to Service and Repair Information for Motor Vehicles (December 2014).

Repairers should check with their state consumer affairs bodies for additional information on state based regulatory and consumer issues.

Section One: Access to Data and Repair Information

Principle One: We will ask for the data and repair information we need to service and repair our customers' vehicles.

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.

There are two main sources of repair information available to automotive repairers (including independent repairers and dealerships) at present:

1. The material developed by motor vehicle manufacturers for their dealerships; and
2. Information compiled by third parties for all repairers.

Motor vehicle manufacturers develop information sources and training that is specific to their vehicle models. At present much of this is restricted to affiliated dealerships.

Whilst not specifically identified in the Heads of Agreement it is envisaged that under the new arrangements, access to vehicle service and repair information will be through the vehicle manufacturer's website. This may take many different forms dependent on the manufacturer. For example some manufacturers will update the information already available on global websites by adding Australian specification and homologated vehicle information, whilst others will have specific Australian sites to meet the needs of the Australian market.

The Australian car market is comprised of 68 different vehicle brands, and as a result is impractical for repairers to buy every special tool and every web based subscription service for each of the 68 brands. For an 'all makes and all models' repairer, subscriptions to third party information providers and the purchase of generic aftermarket scan tools is the only commercially viable and practical option. Third party information providers gather information from a range of sources and make it available to repairers for a fee. Generic aftermarket scan tools cover a large range of makes and models which avoids the need to purchase specific car company branded tools. We will be meeting with and working closely with these data providers and scan tool companies to carefully monitor that information is made available for the Australian market. At this stage our commitment as an industry is to expect that the data will be made available, to continue to request this data for a fair and reasonable price and to make representation when this does not occur.

Information to be Shared

The Data Sharing Heads of Agreement states that independent repairers should be able to access all information required for the diagnosis, body repair, servicing, inspection, periodic monitoring and re-initialising of the vehicle in line with the service and repair information that manufacturers provide to their authorised dealers and repairers.

In return the aftermarket component and repair industries acknowledge the importance of obtaining and using the service and repair information that is provided by vehicle manufacturers, to ensure that repairs are carried in accordance with manufacturer specifications to assure the safety of consumers.

Nothing in the agreement overrides or affects the warranty or recall campaign fulfilment responsibilities of the manufacturer or any other lawful contractual arrangement that exists between consumers and the vehicle manufacturer or motor vehicle dealers. In addition, the provision of service and repair information does not extend to information deemed to be manufacturer's intellectual property or trade secrets or any information which could be used to bypass or affect the vehicle's design standards or regulatory compliance.

This agreement should result in all vehicle manufacturers operating in Australia making available for purchase by independent repairers, the same diagnostic and repair information including software updates, re-initialisation codes, technical service bulletins, and technical repair updates that each manufacturer makes available to their dealers, with the exception of the 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.

Each manufacturer should provide access to such manufacturer's diagnostic and repair information system for purchase by independent repair on fair and reasonable terms.

Section Two: Fair and Reasonable Terms

Principle Two: We will pay a fair price for this data and information.

Service and Repair Information will be made available on commercially fair and reasonable terms.

The Signatory Parties to the Agreement will form a Steering Committee to monitor the operation of the agreement. The phrase '*fair and reasonable terms*' will be tested over the next twelve months. From the AAAA perspective these are the issues that we will take into consideration when interpreting if the price for data and information is 'fair and reasonable':

- ▶ Manufacturers should provide the data and information on the same terms as that provided to the dealership, i.e. the net cost to the dealers should be the benchmark for the price charged to the independent repairers.
- ▶ There should not be any considerable difference in the prices charged by manufacturers for similar information in Australia and overseas.
- ▶ Prices should be affordable for the independent repair industry.

Section Three: Complaints and Dispute Resolution

Principle Three: We will formally complain when the data is not provided, is difficult to access or priced unreasonably.

The operation of the Data Sharing Agreement will be overseen by a steering committee comprising one representative of each of the Signatory Parties (Federal Chamber of Automotive Industries, Australian Automotive Dealer Association, Australian Automobile Association, Australian Automotive Aftermarket Association, and the Australian Motor Industry Federation).

Formal dispute resolution processes will be developed by the Heads of Agreement Steering Committee over the next 12 months. In the meantime, AAAA will gather feedback on the operation of the code and any complaints relating to the provision of repair data in order to monitor how the Agreement is working in practice. If after 12 months, widespread issues of lack of accessibility continue to occur in our industry, we will be advocating that the Government implement a mandatory code of practice to be monitored by the Australian Competition and Consumer Commission.

It is every repairer's responsibility to their customer to record conduct that is inconsistent with the principles of the Heads of Agreement on Access to Service and Repair Information for Motor Vehicles.

The requirement in the short term is:

- ▶ Seek the information you require from the manufacturers internet portal or from your third party data provider.
- ▶ If you believe that a manufacturer has failed to provide you with the information or tool you require under fair and reasonable commercial terms, you should formally notify the manufacturer of your issue and request that this be remedied by them. You should request that the manufacturer provide clear and specific information to you on how and when the issue will be remedied.
- ▶ Document all cases when data is not forthcoming or difficult to find. Document what happened as a result i.e. the length of time and cost added to the servicing your customers vehicle. Ensure that you record all contact with the vehicle manufacturer – what was said and the names of anyone you spoke to and include the date and time of all contact.

- ▶ Log the issue with the AAAA. A web based tool is being developed on our Choice of Repairer web site. This simple tool will request the details of what happened, when and what the consequences were for the customer. This will enable us to gather evidence of any systematic or systemic breaches of the Code that can be brought to the Heads of Agreement Steering Committee for formal dispute resolution and/or mediation.
- ▶ Over time we will be providing a formal report on the operation of the Agreement including all feedback/complaints received.
- ▶ We will provide regular updates and feedback to AAAA members on the complaints process and results.

Section Four: Vehicle Servicing and Warranties

Principle Four: We will explain to our customers the truth about vehicle servicing and warranties.

Consumers are sometimes confused about the differences between the consumer guarantees, warranties against defects and extended warranties. This is especially the case when motor vehicle dealers and manufacturers make broad statements that consumers will "void their warranties" or similar if they go to an independent repairer (for example, a repairer who is not affiliated with the manufacturer or part of the manufacturer's network).

Any suggestion by car manufacturers or dealers that motor vehicles need to be serviced at an authorised dealer to maintain the owner's consumer guarantee rights is not correct.

What the ACCC says:

The Australian Competition and Consumer Commission (ACCC) explains that the consumer's preferred repairer can service a new car without voiding the warranty, although there are some conditions. The following is an extract from the ACCC Consumer Express Newsletter (Issue 1445-9671, April 2005):

New Vehicle Warranty

Where a problem arises with the vehicle that is covered under the warranty, the vehicle should be taken to the dealer for repair. These repairs should be done free of charge under the warranty.

New and Used Vehicle Servicing

In relation to general servicing, motor vehicle dealers are entitled to insist that any servicing performed on cars they sell is carried out by qualified staff, according to the manufacturer's specifications, and using genuine or appropriate quality parts where required. Provided these conditions are met, regardless of where the car is serviced, the warranty will remain intact.

Qualified Staff

Qualified staff is a party or parties, other than an 'authorised dealer', who is capable of performing car servicing.

Manufacturer's Specifications

If an independent agent implies that it can perform general car servicing to manufacturer's specifications and does not perform that function satisfactorily, then the customer has rights and remedies against the agent regardless of whether the agent has factory qualifications or not.

Thus, provided consumers do research and ensure that wherever they take a vehicle for servicing, the staff are qualified and all other provisions above are met, the warranty will be safely intact for the warranty period.

Genuine or appropriate quality parts

The issue here is not who manufactured the part/s, it is whether the part/s are fit or appropriate for the purpose intended. If a part is non-genuine, but is interchangeable with the genuine part, it could be seen as being fit or appropriate for the purpose and would therefore not void the manufacturer's warranty. However, it must also be noted that should the part/s installed fail or not perform satisfactorily, the consumer then has rights against the fitter and/or manufacturer of those replacement parts. If the non-genuine part fails, and causes some other damage to the vehicle, the dealer and vehicle manufacturer will not be liable for damage caused by the failure of that part.

Express Warranties

Generally dealers will be able to place certain conditions on the express warranty given to buyers. A consumer may void their express warranty if, for example, the car is fitted with non-genuine parts. However, the statutory warranties will continue to apply unless the service of the independent mechanic or the fitting of the non-authorized part caused the fault. Dealers are not permitted to limit their obligations, or make any representations to this effect, e.g. that the warranty is void if the vehicle is not serviced by the dealer or its agent.

Our commitment under this independent aftermarket industry code is that:

- ▶ We will provide the consumer with information on consumer's rights under the Australian Consumer Law (ACL).
- ▶ We will comply with the ACL and other state based motor repairer laws and regulations

Section Five: Parts Information

Principle Five: We will provide transparent information on the source of the parts that we use to service and repair vehicles.

The consumer is entitled to full information regarding the maintenance and repair of their motor vehicle produce. Consumers must be made aware, by their nominated repairer of whether the part/s to be used in the mechanical and/ or body repair and/or maintenance of their motor vehicle is: *genuine* (OEM recommended) or *non-genuine* (sourced from an independent manufacture/supplier); fit-for-purpose; compatible with the operating systems of the recipient vehicle; and compliant with all regulatory requirements, including provisions of the Australian Consumer Law.

Our commitment under this code is to ensure full transparency and to assist our customers in fitting the most appropriate parts for their vehicle.

The term 'genuine parts' is a marketing tool by the car makers. Generally the vehicle manufacturers do not make replacement parts. These parts are usually manufactured by third party component suppliers with a car company brand on the box. The terms 'genuine' and 'non genuine' are not particularly transparent and do not provide good information to the consumer on the source of these parts.

There are four sources of automotive parts:

1. **Original Equipment Manufactured (OEM) Parts** – these are usually manufactured by the car makers' parts suppliers. In addition to providing parts for the manufacture of the vehicle, these suppliers enter into an agreement to supply additional parts that are distributed by the car companies through their dealer networks as 'genuine' parts.
2. **OEM supplier branded parts** – these are the same manufacturers as the 'genuine' parts (above) but the supplier uses their own company branding. Same part, same manufacturer, different box.
3. **Independent Aftermarket Parts** –replacement parts that are manufactured specifically for use after the car is built. They are quality, fit for purpose, interchangeable parts with the same functionality as the Original Equipment part but produced by a different manufacturer to the OEM supplier (above).
4. **Specialist Parts & Modification and 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.).

The issue here is not who manufactured the part/s, it is whether the part/s are fit or appropriate for the purpose intended. If a part is interchangeable with the manufacturer branded part, it is deemed as being fit or appropriate for the purpose and would therefore not void the manufacturer's warranty. Also just as OEM parts do, these parts also come with Consumer Guarantees under the Australian Consumer Law. It should however be noted that if the part/s installed fail or do not perform satisfactorily, the consumer then has rights against the fitter and/or manufacturer of those replacement parts. If the independent aftermarket part fails, and causes other damage to the vehicle, the dealer and vehicle manufacturer will not be liable for damage caused by the failure of that part.

It is good practice to inform the customer of the source of the part. It is also good practice to inform the customer that most independent parts are of equivalent quality and generally cheaper than the vehicle manufacturers branded and packaged parts. Use of these equivalent parts will not affect the warranty if these parts are fit-for-purpose and fitted by qualified staff.

To assist independent repairers to inform customers of the source of parts we recommend the itemising of quotes and invoices to list the brand and type of parts fitted or to be fitted.

Section Six: Repairer Training

Principle Six: We will acknowledge the importance of ongoing training to ensure the sector is proficient and efficient.

There is a recognition that while dissemination of service and repair information is critical, the industry also acknowledges the importance of ongoing repairer training to ensure that the sector is proficient and efficient.

There are a range of independent training providers delivering training and education in vehicle systems, modules and new technologies. We encourage and support the independent repair industry to access training opportunities to maintain proficiency and to keep skills and expertise up to date and consistent with the vehicle technologies in modern vehicles.

Additional Information

Australian Automotive Aftermarket Association

<http://www.aaa.com.au/>

Australian Automotive Aftermarket Association – Choice of Repairer

<http://www.aaa.com.au/cor/>

Consumer Guarantees on services

<https://www.accc.gov.au/consumers/consumer-rights-guarantees/consumer-guarantees>

Australian Competition and Consumer Commission - Warranties

<https://www.accc.gov.au/consumers/consumer-rights-guarantees/warranties>