



Australian Consumer Law Review

Issues Paper Submission

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Australian Automotive Aftermarket Association

The voice of the independent aftermarket in Australia

Australian Automotive Aftermarket Association

The Australian Automotive Aftermarket Association Ltd (AAAA) is the national industry association representing mechanical repairers, manufacturers, distributors, wholesalers, importers and retailers of automotive parts and accessories, tools and equipment in Australia.

The Association has over 2000 member companies in all categories of the Australian automotive aftermarket and includes major national and multi-national corporations as well as a large number of Australian owned small and medium size businesses. AAAA members manufacture, distribute and fit motor vehicle components that either:

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

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Introduction

There are a range of consumer law policy issues that affect Australia's 17 million vehicle owners. 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 current Australian Consumer Law is sufficient to protect vehicle owners' consumer rights.

In our view the current Australian Consumer Law framework, whilst successfully delivering improvements in consumer protection, does not currently adequately protect consumer rights in 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 consistently misunderstood, and access to remedies is insufficient.

In the past 24 months the ACCC has had cause to investigate several matters relating to transparency of commercial transactions in relation to aftersales vehicle service including so called 'capped price' servicing, finance and insurance products. There is evidence within consumer forums and amongst the general community regarding dissatisfaction with warranty information and practices, the definition of 'major fault' (Lemon Laws) and the confusion regarding a consumer's right to vehicle data including electronic log books.

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 evaluate the ACL from the perspective of a new car owner. Is the law sufficient to support the purchase of a new car, to ensure that the transaction is transparent, and that the consumer is protected from faulty or unsafe products? We would advocate that the current laws are not sufficient and are worthy of closer examination. 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.

Consumers are confident when they feel empowered. This includes having confidence that markets are safe and fair, having access to information to make informed purchasing decisions and knowing they have adequate rights, protections and access to remedies in situations where they suffer harm from unfair trading practices or unsafe or defective goods and services. This lowers the barriers and costs for consumers, in both time and resources, in deciding if goods and services will meet their needs, promoting economic efficiency.

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 the independent (non-dealer) aligned auto repair businesses. When consumers are dissatisfied with the aftersales service of the dealership network they seek alternative service providers

Consumers benefit when they can confidently participate in markets where businesses trade fairly. Confident consumers stimulate effective competition, which in turn leads to better services, more choice and lower prices.

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 statutory rights. We have a unique position as a technically astute observer of the new car sales consumer regime and we are concerned for the future of this industry and the long-term trend which 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 enormous contribution that the ACL has made in the advancement of consumer statutory rights, if we view the ACL through the lens of vehicle ownership, these advancements are sadly lacking in fairness, transparency, and access to remedies.

The market place for automotive repair and maintenance does not trade fairly. The current regulatory framework allows anti-competitive behaviour which effectively leads to less competition, less services, less choice and higher prices.

Summary of Key Automotive Consumer Issues

Issue	Description	Section
<p>Section 2.2.3</p> <p>Protecting consumers from unfair contract terms.</p>	<p>Contract law depends on parties being able to negotiate with equal bargaining power, look after their own interests and understand the consequences of their actions.</p> <p>Our experience is that many consumers are not fully aware of the terms and conditions of the sale and the warranty period and not aware that some contract terms <i>reduce</i> their rights to remedy and that many items are <i>excluded</i> from the contract.</p>	<p>Contract terms should be include what rights are being surrendered and which rights simply duplicate statutory consumer rights.</p>
<p>2.3.1</p> <p>False and misleading Representations.</p> <p>Misunderstandings regarding ‘statutory rights’, ‘warranty’ and ‘extended warranties’.</p>	<p>Misleading or confusing information provided to new car buyers regarding warranties and vehicle servicing and parts.</p> <p>Misleading or confusing information on ‘extended warranties’.</p> <p>New car owners are not aware that extended warranties will reduce their option to choose where the vehicle is serviced and maintained and will remove choice in regard to replacement parts.</p> <p>In our industry warranty terms are highly confusing and this confusion leads to consumers purchasing services that they do not need to purchase because they already have the protections of the ACL</p>	<p>AAAA supports mandatory requirements for business to provide written notification to consumers of their statutory rights under the ACL.</p> <p>AAAA supports a cooling off period for ‘extended warranties’ similar to the UK model.</p> <p>It is not clear if ‘extended warranties’ are insurance products or service contracts. These contracts use the term ‘warranty’ but do not necessary provide the protections that a consumer would expect from a ‘warranty’.</p>
<p>2.3.7</p> <p>Protecting Consumers from unsafe products</p>	<p>Consumers are notified of recalls under a voluntary industry code that is not sufficient when consumers change address.</p> <p>Technical Service Bulletins (TSBs) include information on product faults that do not require a safety</p>	<p>AAAA supports improved methods of notifying the entire repair industry of recalls and technical service bulletins to ensure that consumers of new and second hand vehicles have</p>

Issue	Description	Section
	recall but are known manufacturer faults. TSBs are not shared with the consumer or repairers outside the authorised dealership networks.	access to remedies and quality service and repairs.
<p>2.3.4</p> <p>Lemon Laws</p>	<p>There is a considerable lack of clarity on what constitutes a major failure for motor vehicles (Lemon Laws).</p> <p>Absence of an Australian Lemon Law leads to consumer disadvantage in defining the term ‘major failure’. The result can be considerable consumer detriment as car owners are forced to return to the point of sale on many occasions and are unable to achieve a satisfactory outcome over a lengthy and unreasonable period.</p>	<p>AAAA supports increased definition clarity of motor vehicle major failure based on the US model.</p>
<p>Section 4.4</p> <p>Promoting competition through empowering consumers</p>	<p>Supporting consumers’ access to data.</p> <p>Unfair practices restrict a consumer’s ability to patronise a repairer of choice.</p> <p>Electronic Log books and Telematics – increasing trend is for auto manufacturers to deny consumers access to the log book and to data generated by the vehicle.</p> <p>There is a requirement for Australian Consumer Law to clarify who owns the data. Most consumers would assume that as the owner of the vehicle, the data belongs to them.</p>	<p>Repair Data – AAAA supports a Mandatory Industry Code to support consumer’s right to choice of repairer.</p> <p>AAAA supports the principle that the car belongs to the consumer and the data generated by that vehicle also belongs to the consumer and provision should be made to allow the consumer to elect to share the data with the car dealer/manufacturer, or their repairer of choice.</p> <p>Electronic Log Books: AAAA supports the principle that consumers should have control of the electronic log book and should be able to assign permission to update the log book to their repairer of choice.</p>

Consumer Rights, Statutory Implied Conditions and Warranties

<p>Section 2.2.3</p> <p>Protecting consumers from unfair contract terms.</p>	<p>Contract law depends on parties being able to negotiate with equal bargaining power, look after their own interests and understand the consequences of their actions.</p> <p>Our experience is that many consumers are not fully aware of the terms and conditions of the sale and the warranty period and not aware that some contract terms <i>reduce</i> their rights to remedy and that many items are <i>excluded</i> from the contract.</p>	<p>Contract terms should be include what rights are being surrendered and which rights simply duplicate statutory consumer rights.</p>
<p>2.3.1</p> <p>False and misleading Representations.</p> <p>Misunderstandings regarding ‘statutory rights’, ‘warranty’ and ‘extended warranties’.</p>	<p>Misleading or confusing information provided to new car buyers regarding warranties and vehicle servicing and parts.</p> <p>Misleading or confusing information on ‘extended warranties’.</p> <p>New car owners are not aware that extended warranties will reduce their option to choose where the vehicle is serviced and maintained and will remove choice in regard to replacement parts.</p> <p>In our industry warranty terms are highly confusing and this confusion leads to consumers purchasing services that they do not need to purchase because they already have the protections of the ACL</p>	<p>AAAA supports mandatory requirements for business to provide written notification to consumers of their statutory rights under the ACL.</p> <p>AAAA supports a cooling off period for ‘extended warranties’ similar to the UK model.</p> <p>It is not clear if ‘extended warranties’ are insurance products or service contracts. These contracts use the term ‘warranty’ but do not necessary provide the protections that a consumer would expect from a ‘warranty’.</p>

Much of the negative consumer experience with product warranties has been caused by the increased practice of motor vehicle manufacturers & 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 intact¹.

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 warranty rights and they are certainly not aware that express or voluntary manufacturer's warranties are not permitted to override these statutory rights.

Another questionable practice by motor vehicle manufacturers is the use of statements in vehicle hand books that imply that using an alternative repairer to the accredited network of the particular manufacturer may void the vehicle's warranty.

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 are replaced at the manufacturers cost.

However, most of the car 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. Car makers do not make many car parts and they certainly do not make replacement parts. These parts are manufactured by the car makers supply network and delivered to the car dealerships for use in servicing vehicles under warranty.

Much of this misinformation is caused by the car makers, 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. In 2005 The Australian Competition and Consumer Commission issued a statement that the use of independent replacement parts will not void the warranty and the use of the term 'genuine' parts is not necessary. However, there are examples of blatant, misleading warranty information provided to new car owners that leave absolutely no 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 'genuine' parts – a mindset actively encouraged by the car dealers and the vehicle manufacturers. The ACCC

¹ Refer Appendix One: Motor Vehicles, Guarantees, Warranties and the Law, Australian Competition and Consumer Commission, July 2011.

statement² 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. NZ consumers enjoy more protection and support for their rights than Australian consumers. The New Zealand model is more appropriate for systemic abuse of rights by a chain or a community of businesses. Car makers have significant market power and the consumer is a small player in what is a larger commercial activity to improve the margins for the car dealerships and the car makers.

Recommendations

The Australian Automotive Aftermarket Association recommends to that consideration be given to the following:

- The 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 restrictive 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 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. These conditions have the potential to create confusion, make it difficult for the consumer to comply fully with their contractual and warranty obligations and may violate consumer statutory warranty rights.
- AAAA supports a cooling off period for 'extended warranties' similar to the UK.

² Refer Appendix One: Motor Vehicles, Guarantees, Warranties and the Law, Australian Competition and Consumer Commission, July 2011.

Technical Service Bulletins

2.3.7 Protecting Consumers from unsafe products	Consumers are notified of recalls under a voluntary industry code that is not sufficient when consumers change address. Technical Service Bulletins (TSBs) include information on product faults that do not require a safety recall but are known manufacturer faults. TSBs are not shared with the consumer or repairers outside the authorised dealership networks.	AAAA supports improved methods of notifying the entire repair industry of recalls and technical service bulletins to ensure that consumers of new and second hand vehicles have access to remedies and quality service and repairs.
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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 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 which is deemed to be safety related or affects compliance to 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, also known as a silent recall) 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. Information regarding known fault 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.

Recommendation

- The ACL should make provision for the mandatory reporting of all known faults and fixes to the consumer. As soon as the manufacturer is aware of a known fault this information should be conveyed to the consumer or the consumer's repairer. Withholding this information has implications for product safety.

Lemon Laws

<p>2.3.4</p> <p>Lemon Laws</p>	<p>There is a considerable lack of clarity on what constitutes a major failure for motor vehicles (Lemon Laws).</p> <p>Absence of an Australian Lemon Law leads to consumer disadvantage in defining the term 'major failure'. The result can be considerable consumer detriment as car owners are forced to return to the point of sale on many occasions and are unable to achieve a satisfactory outcome over a lengthy and unreasonable period.</p>	<p>AAAA supports increased definition clarity of motor vehicle major failure based on the US model.</p>
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A great deal of public attention has been focussed on this 'Lemon Laws' and a recent Queensland Inquiry examined the issue in response to consumer complaints and social media activity. We do not have any further data to add to this discussion and our experience is, as is often the case with lemons, anecdotal. What is of concern to us is that despite recent heightened public anxiety, government inquiries often fail to find 'widespread evidence' of consumer detriment. This has certainly been the case with other inquiries into the new vehicle purchase marketplace.

How widespread this issue is may continue to be a debatable point. However, what is agreed is that the individual reports of consumers that are required to return their new vehicles to the dealership for numerous repairs over lengthy periods of time incur significant cost to the consumer in financial loss and health outcomes. These stories are often harrowing, are of great concern and, even if these are isolated cases, the reason that they receive so much attention is the fear that it could happen to any consumer.

We are of the view that all new car buyers are now even more concerned about lemons. There is a greater awareness that manufacturers are rushing new models to market and this may incur a higher fault ratio than has previously been the case. The acquisition of a new vehicle is a major purchase and over 75% of the community rely on their vehicles to get to work. The fear of making such a large purchase and not having access to a vehicle due to ongoing mechanical fault and failure is overwhelming for any individual car buyer. There may be a perception that becoming an owner of one of these faulty vehicles may just be 'bad luck' and could be an isolated event. But even if these cases are isolated there is also a fear that the law as it currently stands does not protect the consumer. How widespread are lemons would be an irrelevant piece of data if you are the unlucky owner of a vehicle

that is off the road more often than on the road due to ongoing manufacturing faults. It is of little interest whether this happens often or occasionally – the reality is there is consumer detriment with little access to remedies on what is a major purchase.

It is also relevant to note that consumers are generally reluctant to name their car a ‘lemon’. It takes some time before the consumer experience moves from ‘minor inconvenience’ to ‘major disappointment’ and significant detriment. It would be far more conducive for robust consumer confidence if the definition of ‘major fault’ for a motor vehicle was articulated within the ACL.

Without a clear definition, the consumer is a small player with little power negotiating with the dealership backed by a multi-national car company. Negotiating power is clearly limited when the consumer has already purchased the vehicle and it is unclear at what point the complaint should be escalated. The role of the ACL is to protect the consumer – this is one of the largest consumer purchases beyond the family home and yet the protection appears to be less than that afforded to the purchase of a small household appliance.

Recommendation

AAAA supports modifying the definition of a motor vehicle ‘major failure’ to mirror the US model.

Supporting Consumers' Access to Data

<p>Section 4.4</p> <p>Promoting competition through empowering consumers</p>	<p>Supporting consumers' access to data.</p> <p>Unfair practices restrict a consumer's ability to patronise a repairer of choice.</p> <p>Electronic Log books and Telematics – increasing trend is for auto manufacturers to deny consumers access to the log book and to data generated by the vehicle.</p> <p>There is a requirement for Australian Consumer Law to clarify who owns the data. Most consumers would assume that as the owner of the vehicle, the data belongs to them.</p>	<p>Repair Data – AAAA supports a Mandatory Industry Code to support consumer's right to choice of repairer.</p> <p>AAAA supports the principle that the car belongs to the consumer and the data generated by that vehicle also belongs to the consumer and provision should be made to allow the consumer to elect to share the data with the car dealer/manufacturer, or their repairer of choice.</p> <p>Electronic Log Books: AAAA supports the principle that consumers should have control of the electronic log book and should be able to assign permission to update the log book to their repairer of choice.</p>
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Critical Repair and Service Information

There is evidence of automotive manufacturers' systemic failure to provide critical repair and service information to consumers and their repairer of choice.

In December 2014 a voluntary 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 included:

- 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.

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, albeit that in most cases the information provided is incomplete.

During 2015, AAAA offered its members an online portal to record instances where a lack of access to technical and diagnostic information has had a detrimental impact on their customers or their business. The five key issues identified were:

- Technical Service Bulletins
- Re-Initialisation and Calibration
- On-Board Diagnostics & Software Upgrades
- Oil Specifications
- Digital Service Books

In the major overseas market of North America the provision of repair and service information to consumers and/or repairer is mandated³.

The issue of access to diagnostic and repair data is the subject of ongoing government attention and it is not our intent to re-prosecute the matter in this forum. What is relevant to this discussion, however, is consumers' lack of awareness that the purchase of the vehicle may require the surrender of choice because of the data sharing practices of the manufacturer. It is questionable whether the consumer is aware that numerous software updates for the life of the vehicle will require returning to the point of sale – the dealership. Unlike the purchase of other goods where the software updates are delivered to the consumer, the vehicle market operates quite differently. A consumer could reasonably assume that the purchase of the vehicle includes software updates – not so.

³ Refer Appendix Two: United States Vehicle Manufacturer Requirements

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:

1. To ensure vehicle emissions were well maintained using diagnostic technology to analyse engine management systems, and
2. 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 not only engine management but also 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 which 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 is moving 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. As identified earlier, the independent repairer or consumer has limited access to Technical Service Bulletins (TSB) and, therefore 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.

If the consumer has opted to patronise an independent repairer they must receive the software updates via an unnecessarily complex and expensive route: In order to complete a repair, the independent workshop will take a car to the dealership for this software update with the price for that update ranging from \$30 to \$300 – all of which must be absorbed by

the mechanic or passed on to the consumer. There is no exact value for this software update – no clear market price, but there is a ‘captive’ consumer. Without the software update, items cannot be replaced and the vehicle repair or service cannot be completed.

Oil Specifications

It is not clear whether a consumer is entitled to know what oil specification is required for the vehicle that they own. 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 standard 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.

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.

Digital Service Books

Currently, almost all 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 service history booklet is relied upon by many vehicle owners for proof of warranty compliance and when selling their vehicle second-hand as evidence of proper maintenance having been undertaken throughout the life of the vehicle.

From 1 July 2013, Jaguar Land Rover in Australia ceased providing a booklet with new vehicles and commenced online recording of service history. Service history is available to the consumer over the internet, but the only history that can be recorded in the Online Service History is that undertaken by a dealer.

The consumer, therefore, has two alternatives: to have their vehicle serviced exclusively by a dealer, or accept the consequences of having no, or partial, service history.

There is anecdotal evidence that in instances in which consumers have contacted Jaguar Land Rover dealers in an attempt to have vehicle servicing by independent repairers recorded, they have been advised to keep receipts for vehicle servicing in the glove box or to purchase a generic hard-copy service history booklet.

The extent to which the consumer is fully informed of this situation during vehicle purchase is unknown.

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”⁴.

⁴ Australian Government 2012. *Sharing of repair information in the automotive industry: Final report*, Commonwealth Consumer Affairs Advisory Council, The Treasury, p 24

Whether a requirement that the only service history that can be recorded is that undertaken by the dealer is a breach of Australian Consumer Law needs 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 on-line.

The digital log book 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 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.

Recommendations

AAAA supports a Mandatory Industry Code to support consumer's right to choice of repairer, similar to the United State Vehicle Manufacturers Requirements (Appendix 2)

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.

AAAA supports the principle that consumers should have access to the electronic log book and should be able to assign permission to update the log book to their repairer of choice.

Concluding Remarks

The AAAA values an opportunity to contribute to this Review of the Australian Consumer Law. This is a timely, valuable and worthwhile exercise. As we have demonstrated in this submission, we have strong views about car owners and their ability to participate in a market in which businesses trade fairly, competition is stimulated and consumers benefit from better services, more choices and lower prices.

Whilst every sector could make a case that there are specific commercial issues that are unique to that sector, our view is that the purchase of a motor vehicle is clearly a uniquely important issue. It is an issue of great importance because of the cost relative to other areas of household expenditure, the significant ongoing maintenance costs and the importance of the vehicle to Australian households for participation in the community and the economy. We suggest that the ACL should be measured by looking at consumer rights and protections both at the time of purchase and throughout the entire ownership period of the vehicle. We would respectfully suggest that the current ACL is not sufficiently protecting car owners' rights. In many comparable international jurisdictions, the issue of vehicle ownership requires special provisions to protect this important market.

The three most important issues are transparency, the right to data and to vehicle safety information. The ACL may be sufficient as it currently stands in maintaining a consumer's right to safe products and to remedies for faulty products or other commodities. In respect to new car owners it is not sufficient and Australian consumers deserve better. They deserve full transparency around servicing costs and warranties. They deserve full control over access to the data required to service and maintain their vehicle, and ownership and control of the data that their vehicle generates. The fact that the current laws allow car companies to restrict access to a car owner's electronic log book, software updates, known manufacturing faults and fixes, or the oil blend the vehicle requires is of great concern.

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



Stuart Charity
Executive Director
Australian Automotive Aftermarket Association

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Appendix One

Motor Vehicles, Guarantees, Warranties and the Law: Australian Competition and Consumer Commission - July 2011

It is important for everyone in the motor vehicle industry to understand their rights and obligations whether they sell, service or repair a vehicle. This ensures consumers are well-informed when making purchases and are aware of their rights in the aftermarket.

The ACCC receives many enquiries from consumers and businesses about consumers' rights and obligations when they purchase a new or used motor vehicle or have their vehicle serviced or repaired. These enquiries often relate to voluntary or extended warranties.

Motor vehicles are often sold with a voluntary or extended warranty given by the dealer or manufacturer that outlines what a consumer is entitled to if something goes wrong with the vehicle. For example, a 3 year or 100,000 km warranty. These warranties generally include some requirements that consumers must satisfy to take advantage of the warranty.

Businesses are generally free to set these requirements, but they must not unduly restrict consumer choice when having their vehicle serviced. These warranties also must not mislead consumers about their rights under the Australian Consumer Law.

Voluntary and extended warranties are provided in addition to the consumer rights provided in the Australian Consumer Law. At times, the rights under the Australian Consumer Law exist after any voluntary or extended warranty period has expired.

Under the Australian Consumer Law, all goods sold, leased or hired, and all services performed from 1 January 2011 come with a number of consumer guarantees. These guarantees require that goods must be of acceptable quality, be fit for any disclosed purpose and match the description, sample or demonstration model. Services must be performed with due care and skill, be fit for specified purpose and performed within a reasonable period of time if no timeframe is agreed.

If a consumer guarantee is not met, the consumer has a right to a remedy—repair, replacement, resupply of the services or a refund.

The appropriate remedy will depend on whether the problem with the good or service is major or minor. A major problem is generally one where the failure was so severe that a reasonable consumer would not have purchased the good or service if they had understood the full extent of the problem, the goods differ significantly from any description, sample or demonstration model or the goods are not of acceptable quality because they are unsafe.

If the problem is major, or cannot be fixed in a reasonable time, the consumer is entitled to choose whether they would prefer a refund, a replacement good or to seek compensation

for any drop in value from the price paid. If the problem with the good or service is minor, the supplier or service provider can choose to fix the problem with the goods or services, replace the good or provide a refund.

Many members of the automotive industry have raised concerns about voluntary or extended warranties provided by motor vehicle manufacturers or dealers. In particular, whether a consumer is able to have their vehicle serviced by the independent aftermarket.

The business that provides the voluntary or extended warranty is entitled to insist that any servicing performed on cars they sell is:

- carried out by qualified staff
- according to the manufacturer's specifications
- using genuine or appropriate quality parts where required

in order for the consumer's voluntary or extended warranty to continue.

This means that provided these conditions are met the consumer's warranty will remain intact, regardless of where the customer chooses to get their car serviced.

Qualified staff

The term 'qualified staff' means any person or persons, regardless of whether they are part of an authorised service network, who is capable of performing car servicing.

Manufacturer's specifications

Manufacturers and dealers are entitled to specify how their vehicles should be serviced during the voluntary warranty period.

It is important to remember that if an independent aftermarket agent gives the impression that they will service a vehicle according to the manufacturer's specifications but don't perform the service satisfactorily, then the consumer will have rights and remedies against the independent agent.

Genuine or appropriate quality parts

If a part is not genuine, but is interchangeable with the genuine part—that is, it is of the same or similar quality and fulfils the same purpose as a genuine part—it is likely to be considered an appropriate quality part and if used by an independent aftermarket agent would not void the manufacturer's warranty.

However, if a part fails or does not perform satisfactorily, the consumer will have rights against the agent who fitted the part and/or manufacturer of the replacement part. 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.

Warranties, guarantees and consumer rights are important to all consumers who are in the market to buy a car. Consumers want to buy with confidence knowing that they get what they paid for, and that their warranty will stand should they need to seek repair. Consumers should be informed that they are not tied to dealer networks and can seek a service or repair through an independent agent. It is imperative that dealers, manufacturers and service providers understand their obligations under Australian law, and as such do not mislead consumers about their legal rights.

Appendix Two

United States Vehicle Manufacturer Requirements

(a) Duty To Disclose Information: The manufacturer of a motor vehicle sold, leased, or otherwise introduced into commerce in the United States must provide to the motor vehicle owner and service providers, using reasonable business means and on a non-discriminatory basis, all information to diagnose, service, maintain, or repair the motor vehicle. This information must include--

(1) Information about safety alerts, recalls, service bulletins and the need for adjustments to maintain vehicle efficiency, safety and convenience; and

(2) all information of any kind provided directly, indirectly, or wirelessly to new car dealers or any repair facility to diagnose, service, maintain, repair, activate, certify, or install any motor vehicle equipment (including replacement parts and equipment) in a motor vehicle.

(b) Duty To Make Tools Available- The manufacturer of a motor vehicle sold, leased, or otherwise introduced into commerce in the United States must offer for sale to the motor vehicle owner and to all service providers on a reasonable and non-discriminatory basis, any tool for the diagnosis, service, maintenance, or repair of a motor vehicle, and provide all information that enables aftermarket tool companies to manufacture tools with the same functional characteristics as those tools made available by the manufacturers to authorised dealers.

(c) Replacement Equipment- The manufacturer of a motor vehicle sold, leased, or otherwise introduced into commerce in the United States must offer for sale to motor vehicle owners and to all service providers on reasonable and non-discriminatory terms, all equipment for diagnosis, service, maintenance, or repair of a motor vehicle.

(d) Protection of Trade Secrets-

(1) A manufacturer may not be required to publicly disclose information that, if made public, would divulge methods or processes entitled to protection as trade secrets.

(2) No information may be withheld by a manufacturer on the ground that it is a trade secret if that information is provided (directly or indirectly) to authorised dealers or service providers.



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