

RESPONSE TO CONSUMER AFFAIRS  
AUSTRALIA AND NEW ZEALAND

# AUSTRALIAN CONSUMER LAW REVIEW

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INTERIM REPORT



Australian Automotive Aftermarket Association  
December 2016



**FOR FURTHER INFORMATION**

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# WHO WE ARE

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

## 2,250



## \$1b

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

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

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



## 40k



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

AAAA member companies employ more than 40,000 people

Member companies are located in metropolitan, regional and rural Australia

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

1 Are replaced regularly throughout the life of the vehicle because of normal wear and tear – e.g. oil, filters, tyres, wiper blades, spark plugs, bulbs, batteries and brake pads.

2 Last the life of the vehicle or are replaced irregularly during the life of the vehicle, usually as the result of a crash or a major mechanical failure – e.g. seats, instrument panels, engines, and transmission.

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

# FOREWORD



▲  
**Stuart Charity**  
 Executive Director

## **The AAAA values an opportunity to contribute to the Review of the Australian Consumer Law.**

Underpinning many of the questions within the October 2016 Interim Report is a question regarding 'generic' versus 'industry specific' consumer protection regulations. In our initial response to the Issues Paper we noted that the purchase (and maintenance) of a vehicle is a consumer issue that requires an industry specific consumer protection framework. In our view the current Australian Consumer Law framework, whilst successfully delivering improvements in consumer protection, does not adequately protect consumer rights in respect to vehicle purchase and ownership.

The issues of motor vehicle warranty, recalls and product safety require an industry specific approach in order to ensure that this market operates with clear and transparent information, allows consumers to make informed purchasing decisions, protects consumer rights and provides access to remedies.

We support an industry specific approach 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 our society. The loss of access to a vehicle can affect a consumer's ability to work, to earn and to care for family members. This is a critical tool for participation in the economy and in the community. We can find no other consumer product that has similar impact on an individual's livelihood and quality of life. The car is not just another consumer purchase.

The motor vehicle is also a unique purchase because in order to maintain the warranty, consumers have the ongoing obligation to maintain and service their vehicles regularly, requiring the use of an external third party automotive service provider. If consumers do not purchase vehicle servicing and replacement parts, their access to remedies is significantly reduced. The manufacturers are therefore in a unique position to capture this vehicle servicing market and as a result consumers are often unsure of their rights and confused about whether they have the choice of repairer and of car parts. We would challenge anyone to identify another consumer product with these unique characteristics.

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 lacking in fairness, transparency, and access to remedies.

**Stuart Charity**  
 Executive Director  
 Australian Automotive Aftermarket Association

# CONSUMER GUARANTEES, WARRANTIES AND NEW CARS

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

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

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

## WARRANTY REPAIRS

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

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

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

Our advice to all consumers is to ask the dealership to put their warranty repair response and reason for denial of warranty in writing. In approximately half of the cases that we deal with directly the dealer will subsequently decide

to complete the repair under warranty. In cases where the dealership continues to deny warranty coverage, we encourage consumers to engage an independent automotive signatory engineer to complete a report on the fault and its cause. Unfortunately, engaging an engineer comes at considerable cost to a consumer. However, other dispute options are not readily available and the system has evolved to the point where the onus of proof now lies with the consumer to prove that they are not at fault.

In the past 24 months the AAAA has had cause to request that the ACCC investigate<sup>1</sup> several matters relating to transparency of commercial transactions in relation to aftersales vehicle service including warranty information, so called 'capped price' servicing, and insurance products. There is evidence within consumer forums and amongst the general community regarding dissatisfaction with warranty information and practices, the definition of a 'major fault' and the confusion regarding a consumer's right to vehicle data and online logbooks.

The volume of consumer complaints that we receive from our members' customers regarding their dissatisfaction with a new car purchase would indicate that increased attention and scrutiny is required because there is a significant power imbalance between a consumer and the large global vehicle manufacturers.

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

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

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

industry and the long-term trend that will lead inevitably to a loss of choice, a loss of competition, and consumer harm.

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

### 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.

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

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

# 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.**

The Interim Report assumes that 'Extended Warranties' are sold to the consumer as an 'add on' purchase. In the automotive industry these are often offered free of charge to the consumer. These extended warranties require that the car is serviced at the authorised dealership and that the car company branded parts are exclusively used in the repair and service of the vehicle. In the marketing of these products, the term 'Genuine Parts' is often employed. In our industry the 'extended warranty' is generally used as a method of capturing the car owner's vehicle servicing patronage for an extended period of time because the 'extended warranty' requires the consumer to meet additional obligations that are not present in the original manufacturers' warranty or in the consumers' statutory rights. If the consumer exercises a choice of repairer or a choice of car parts, in many cases, the extended warranty will be void.

Focussing on the sale of these products will not be a comprehensive response to the proliferation of these products, because so called 'extended' warranties, come in many forms; as a fee for service contract, as an insurance product or as a 'free' offer. The issue here is not the discussion about whether they are insurance products or service contracts, the key issue is that **extended warranties are confusing, undermine consumers' knowledge of statutory rights, and in our industry, remove consumers' choice.**

Under a motor vehicle's 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>2</sup>.

The manufacturers' warranty cannot restrict the provisions of the consumer guarantee, which is implied in every consumer sale. There should

be no doubt, however, that car owners **do not know** that they have statutory rights and they are certainly not aware that express or voluntary manufacturer's warranties are not permitted to override these statutory rights. The common use of the term *Dealer's Statutory Warranty* adds further consumer confusion.

Vehicles are regularly serviced during the warranty period – in fact, in order to maintain the warranty, owners are obliged to service their vehicles according to the car manufacturer's specified cycle. During the warranty period, it is expected that faulty items be replaced at the manufacturer's cost. However, most of the servicing costs for a vehicle in the warranty period will relate to 'replacement' parts; components of the vehicles that are designed to be replaced on a regular basis. Consumers do not know this. The price differential between the OEM parts and the aftermarket parts is not widely known, and consumers are not aware that they are paying a premium for parts and that they do have a choice.

The marketing effort is founded in fear and doubt – phrases such as *don't risk your warranty* and *peace of mind* are designed to capture the logbook servicing and replacement parts markets. Carmakers do not make replacement parts. These parts are manufactured by the carmakers' supply network and delivered to the car dealerships for use in servicing vehicles under warranty.



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

Much of this misinformation is perpetuated by the car manufacturers – the market distortion in our industry is that consumers are generally under the impression that they must use ‘genuine’ parts or the warranty will be void. There are examples of misleading warranty information provided to new car owners that leave doubt in the consumer’s mind that they are required to have their vehicle serviced at the same place they purchased their car and use so called ‘genuine’ parts – a mindset actively encouraged by the car dealers and the vehicle manufacturers. The ACCC statement<sup>3</sup> that clarifies and contradicts a commonly held consumer view has not made a difference to consumer behaviour.

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

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

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

Consumers are selecting extended warranty

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

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

**Our members regularly report that there is a difference between the written material provided at the point of sale and the verbal advice from the dealership.** Penalties for

misleading information should be increased. The phrasing of the warranty information could and should be supplemented by a diagram such as the one recently used by the ACCC New Car Retailing Market Study.<sup>4</sup>



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

An extended warranty product, (even a free extended warranty) should clearly state that the consumer guarantee may provide additional rights above and beyond the dealers extended warranty.

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

4. Australian Competition & Consumer Commission on 2016. *New Car Retailing Industry Market Study Issues Paper*. Page 9.



term 'consumer guarantee'. As outlined earlier, much of this material stays just inside the legal parameters but the ambiguity is enough to leave the lasting view that if you go outside the dealership for service, you are likely to void your warranty. Ask any random group of consumers their view on this issue and we are confident that most will be of the view that they must get their new car serviced at the dealership to maintain warranty coverage.

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

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

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

In fact, a review of most new car warranties suggests that consumers are entitled to either less or the same rights they have under the consumer guarantees regime. This applies irrespective of whether the warranty has formed part of the consideration for the purchase.

Extended warranties, lifetime warranties, and seven-year warranties - all appear to share a basic premise that is completely incongruous with the consumer guarantees regime; that is, these warranties provide for repair or

replacement for "defects arising in materials or manufacture". As most manufacturing faults appear in early use of consumer goods, in the earlier stages of the warranty period the purchaser would be entitled to equal or superior remedies to any corrective action afforded in the warranty. Moreover, in circumstances where a major failure occurs with the vehicle, the warranty deprives the consumer of their legislated right to reject the goods and seek a full refund.

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

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

## **DURABILITY**

Without a common agreement on the durability of specific car systems or components, it is difficult for a consumer to rely upon their statutory rights. There does not appear to be an industry standard definition of how long major components on new vehicles should be expected to last.

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

Our experience is that consumers are offered continual repairs until the manufacturer's warranty expires. After the manufacturer's

warranty expires, the consumer either seeks an alternative repairer or sells the vehicle. The written policy material provided to consumers and the online policy statements are ambiguous and do not provide advice on the relationship or intercepts between warranty classes. Our advice is that consumers are then routinely verbally advised of a requirement to have their service completed by the dealer that sold the vehicle. We have recently produced materials to assist our members to have a conversation with their customers about their choice of repairer and new car warranties.

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

## RECOMMENDATIONS

**There is clearly a need for greater regulation of extended warranties and this must extend to 'free' extended warranties.**

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

1. A clear definition of the differences between the consumer guarantee and express warranties/extended warranties to 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. An 'extended' warranty product should not include conditions that are not present within the original manufacturer's warranty.
2. 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.
3. 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.

4. An 'opt in' requirement for 'extended warranties' (this should occur for 'free' extended warranties in addition to fee-for-service warranty contracts). The 'opt in' documentation should include clear information on the conditions and any reduction in consumer choice of repairer or remedies.

# PRODUCT SAFETY

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 manufacturers to repair a defect which is deemed to be safety related or affects compliance to regulations. In the case of recalls, 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 faults should be conveyed directly to the owner of the vehicle and the owner should have the ability to pass that information on to their repairer of choice.

The AAAA has fully articulated its position on sharing of service and repair information for



vehicle safety in its recent submission to the ACCC New Car Retailing Industry market study. For further information, refer to our submission available [here](#).

## RECOMMENDATIONS

1. 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 wider repair industry.
2. AAAA supports modifying the definition of a motor vehicle 'major failure' to mirror the US model.
3. 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)
4. AAAA supports the principle that the car belongs to the consumer and 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.
5. 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.

## 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.



