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Response Submission; Mandatory scheme for the sharing of motor vehicle service and repair information.

**1 March 2019**

Mandatory Motor Vehicles Scheme

Consumer and Corporations Policy Division

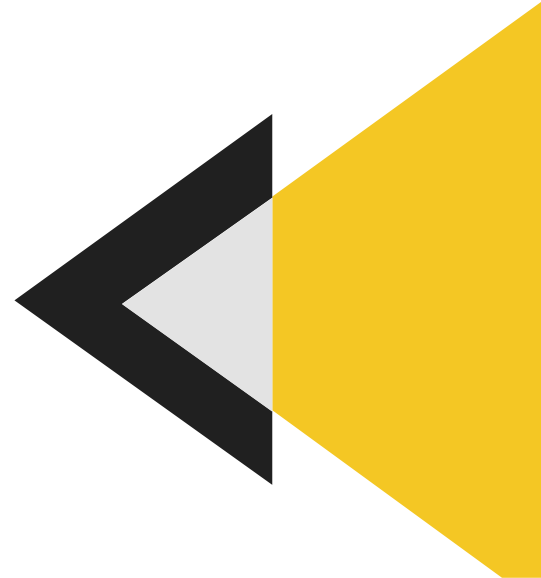
The Treasury

Langton Crescent

Parkes ACT 2600

Dear Treasury,

Response to submission from Anthony Costello Automotive;



Anthony Costello Automotive is a stakeholder of the Automotive Industry as an independent automotive service and repair provider. Anthony Costello Automotive has been operating for 20 years as an aftermarket solution for consumers with European motor cars within the A.C.T and surrounding region. The importance of the implementation of a mandatory scheme (proposed code) for sharing of service and repair information is required to allow independent operators to continue to offer the consumer choice of repairer.

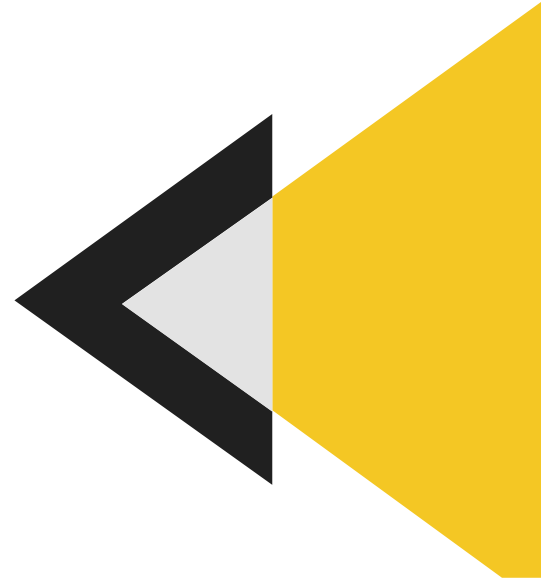
The automotive industry employs approximately 360,000 Australians across nearly 70,000 businesses with 96.5% of those being small / family owned enterprises (MTAA, 2018). The proposed code and committee are a welcomed addition to the aftermarket industry. Throughout the last 20 years the access to information has become more challenging, from buying workshop manuals from the manufacturer, to having to book a car at a dealership, to pay to have a part you purchased from that dealership's parts department coded to a customer's car. I acknowledge that cars have become more complicated and the safety, security and environmental factors need to be considered but I fully support the proposed code into the sharing of the service and repair information with the limitations outlined in the consultative report.

As highlighted in the consultation paper the industry is dynamic, the committee will need to be balanced and represent all invested stakeholders and the implementation of the scheme via Code of Conduct as alternatively to primary



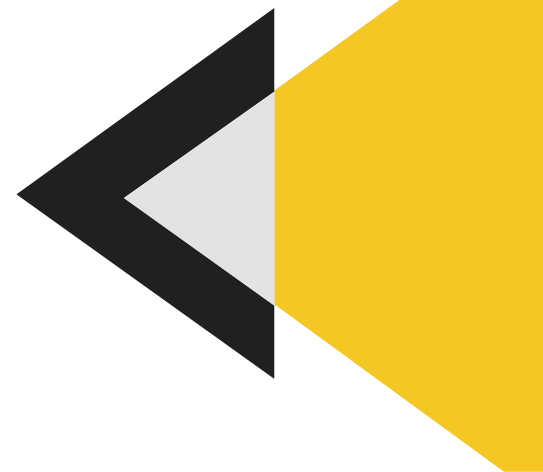
legislation will benefit the industry. The industry is dynamic and the flexibility of the Code is required for the safety of all involved, whilst allowing for the constant evolution of technology within the automotive sector. Take hybrid vehicles and refrigerant licensing for an example; for the safety of the technicians equal access is not appropriate in this circumstance. If a technician doesn't have the qualification and training required to work on air conditioning or electric (hybrid) vehicle systems the potential health risk is extremely high. The importance of assessing the eligibility to access the information will need to form a scrupulous component of the role of the Advisory Committee.

The proposed Code offers no competitive edge to the aftermarket, but rather regulates the competition and sets a level the playing field. The consumer is left with the choice of repairer and the ACCC is only acting in the interest of the consumer for fair competition and competitive pricing. The manufactures are still left with a slight competitive edge as they collect a "fair and reasonable charges for the information" and as the proposal states the "...code would ensure manufactures are fairly compensated for the provision of information and the sale of tools". It is of paramount importance that when the proposed review of the Code is conducted 18 months after commencement, that the committee review the charges. A review of the charges by manufactures would need to examine price fixing within the manufactures industry and that the charges to the end user are quantified by the manufactures.



5.1 -

- A. Given the dynamic nature of the industry and the demand from the aftermarket for access to the information, and the fundamental values that guide the ACCC that give Australia a fair marketplace the proposed elements of the mandatory code offer an appropriate starting point for the code.
  
- B. The current voluntary scheme is outdated and under resourced. Currently there is no incentive or code in place to entice the manufacture to share the repair information, additionally the information on offer is limited and not anywhere near as accessible as proposed in sections 3.13 to 3.15 of the consultation document. The elements outlined in the document provide a similar level of fair competition as on offer in the USA Motor Vehicle Owners' Right to Repair Act now in place in 18 states. The policy levelled the playing field and removed the unfair monopoly for the manufactures in house dealerships. The information should be the property of the owner of the car and give the owner the choice of repairer to share the information. The evolution of the industry will leave thousands of technicians behind as the technology on cars develops at unprecedented rates. The government's failure to intervene and regulate fair competition within the industry will cause further downturn in the independent repairer marketplace (further strengthening the current monopoly) , if action is not taken immediately to

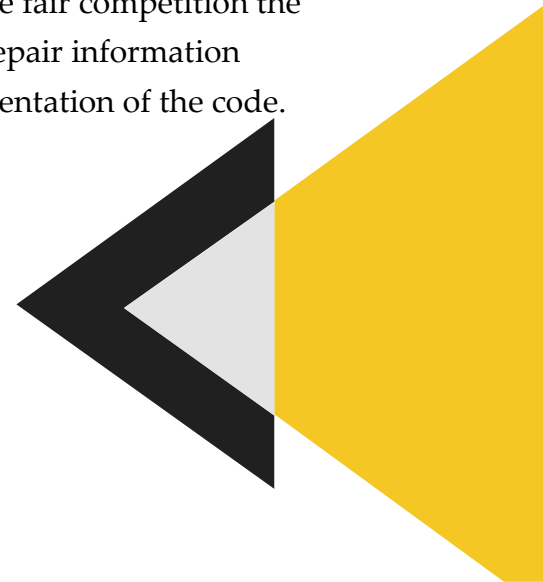


establish the proposed Code of Conduct. Whilst the code is not comprehensive at present the core elements offer a sound foundation to support the automotive aftermarket industry and allow consumers fair competition and price.

- C. The combination of the *Service and Repair Information Sharing Advisory Committee* and the *Code of Conduct* in conjunction provide, a far greater fit to the industry as an alternative to a legislated scheme. The industry is moving and changing at an unprecedented rate and legislation is not adaptable at that rate. The effectiveness of the policy is only as strong as the committee that will be formed. The implementation and the ongoing work of committee is pivotal in the success of the code. The committee should not necessarily be limited to the members outlined in the consultation document (elaborated in response to 5.3).

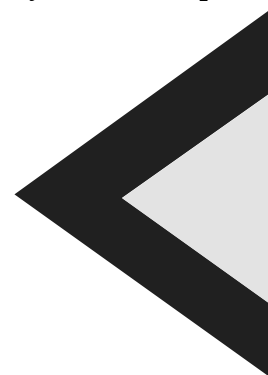
5.2 -

- A. The effectiveness of the Code is based on the freedom of the information and the availability of the data. Sections of the proposal cover waiting times on new car information and the limitations of the information based on SSE information, manufactures will exploit these loopholes and adapt the cars to keep them in the dealership network. To truly promote fair competition the full database of relevant (deemed by the committee) repair information should be made available from day one of the implementation of the code.



Mercedes-Benz, BMW and VAG (Volkswagen / Audi Group) have already established cloud based / web accessed databases full of technical service bulletins, repair manuals, factory timing allowances, wiring diagrams and repair procedures. Currently the only access we have is using services through North America whereby similar a Code is already in action. Failure to release data of cars pre the establishment of the code will make a generation of “dealership locked” cars, whereby the consumer will not have the choice of repairer somebody buying a new car does. Looking at it from a consumer’s point of you, in many circumstances the consumer that seeks the most competition (fair price) will not own a brand new motor car. The Code will need to establish a uniformed system to hold the database of all the relevant information from all the manufactures, this should not be limited to current model cars only. The manufactures would already have all the information dating back decades and this should all be made available for repairers under the code.

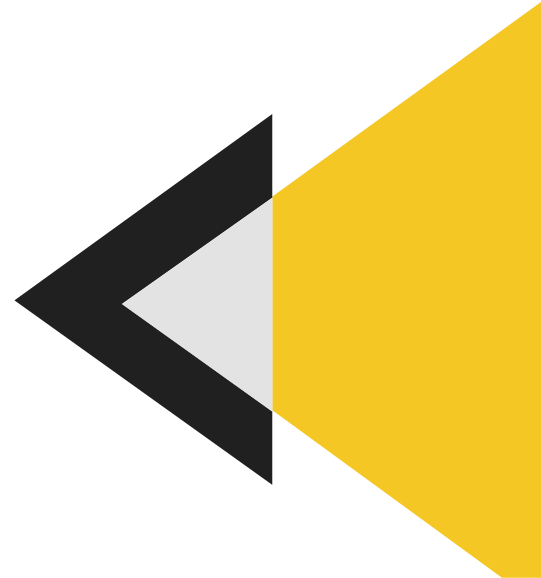
- B. The committee will need to work closely with both dealership service departments, manufactures and aftermarket service and repair businesses to determine the required information. I found that the MTAA in page 13/14 of the consultation paper outline both the information required and the SSE information that should be shared. With the information comes great responsibility the Code and governing Committee will need to closely monitor the use of the information. At present the information of the consumer held by the dealership network (service history, vehicle repair



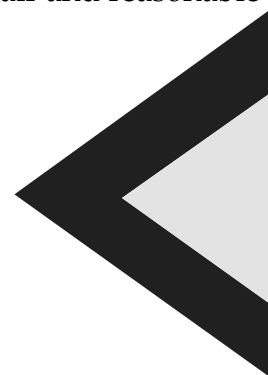
history) is held with integrity, the committee will have to act in a way to govern and protect the accuracy and integrity of the database.

C. The information that must be made available would ideally include, but not limited to;

- Wiring Diagrams
- Parts Diagrams
- Access to electronic log books / data in order to update them
- Repair instructions (body / mechanical)
- Factory time allocations
- Service, Technical and owner's manuals including service schedules
- Technical service bulletins, common repairs and known fixes, recalled parts and defective parts.
- Programming information and procedures
- Vehicle software updates and calibrations
- Vehicle SCN coding.
- Manufactures technical education resources.



D. The suggested restrictions for the safety, security and environmental information aren't entirely outlined as yet, given the report is only a consultation papers. The restriction of this information would need to be clearly outlined before I can pass an opinion on what is restricted and what is not. Given the extend of this Code and the infrastructure required to implement the policy I would suggest allowing all data to be shared and using the Committee to govern that the information is used in good faith. If the information is misused - the mediation processed outlined from section 3.34 can work to remove the access from repairs and service providers exploiting the benefits of the Code. It will be important to evaluate the extent of the restrictions required on SSE information at the 18 month review of the code. The safety risk is evident with or without the Code in place, in fact it is probably better than the technician has factory repair procedures the issue only comes with the transfer of accountability. The code and the committee will need to work in unison to regulate the eligibility of the end user of the information. The access to the information as per the draft code places the decision on the manufactures, whilst it is their resources and their decision to make the committee will need to have an eligibility criteria and an assessment to evaluate the grounds that a manufacture refused the provision of the data. As outlined earlier in the submission the manufactures will need to protect themselves, and the safety of the end user by governing the information and assessing the tools, knowledge and training of the end user. The distribution of the information will need to remain fair and not allow manufactures to exploit loopholes to withhold the information. If a workshop is paying a "fair and reasonable





price for information” the grounds for refusal of information will need to be clearly evident and just not a discretionary decision by the manufactures. Investing time and money into constantly training and educating my own technicians is a big part out of my business, and I can appreciate the need to restrict information from unlicensed and untrained operators. The feedback I would offer on 5.2/D would be that the guidelines for access will need to be the most monitored and scrutinised process in the implementation of the proposed Code.

- E. The pricing of the information to be shared for the *Mandatory scheme for the sharing of motor vehicle service and repair information* will need to be mutually agreed on by all members of the Committee which is why I suggest the restructuring of the committee in section 5.3. I acknowledge the cost of running a real time data base and keeping support staff, servers and domains all functional. The scheme should aim to make this a non for profit service. The manufactures sell cars, parts and own dealerships the information should not be an additional revenue earner. The cost of having the information available would be passed on to the user, but ultimately without exorbitant margins. Currently we use a server hosted by BMW North America and pay approximately \$104.00 AUD per month to have access to online service history, technical service bulletins, recalls, repair times, repair methods and wiring diagrams. This fee is reasonable and justified, I would hope that the members of the committee and the manufactures can calculate a quantifiable charge for access to the



information currently held by the manufactures. The price needs to hold the integrity of the information, it can't be free, and price can be used to set a standard of repairer. If you repairer wants to work on, for example a Mazda they can purchase the repair information and utilise the information to educate themselves and compete in that marketplace.

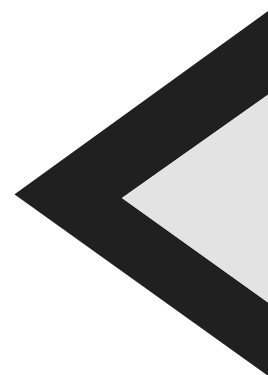
- F. The suggested dispute resolution method of mediation seems to be the most effective method of modern dispute resolution. The potential Code has no prior legislation or precedent to make a ruling on a dispute. Mentioned in the Code is grace periods, testing periods and flexibility - given the idea of sharing of information are new to the industry, using Mediation Advisor similar to tried and tested, concepts from the Franchise and Oil Code of Conduct would be the most logical dispute resolution procedure. Failing mediation the dispute could be taken to the Committee or furthered to the courts. The code would need to be enforceable by the ACCC and complaints of noncompliance would assumably be directed to the ACCC directly.

5.3 Treasury would also welcome feedback on the Committee, particularly on the suitability of the suggested membership and terms of reference.

The concept of the advisory committee is an essential component of the role out and implementation of the Code. The suggested members are a solid foundation of the committee but are not diverse enough. I would highly recommend the committee have members from independent workshops (not just by AAAA). Car



dealers have franchise owners that run and manage service departments (not just via the AADA). I would also recommend that the committee have a representative from the ACCC to assure the original purpose of the Code are met. The committee is the most vital component of the potential Code and the committee should include the operators working under the code, not just the representing authority. The terms of reference would be developed by the government and the committee would be in charge of the implementation, adaptations and progression of the code. The suggestion of annual meetings doesn't cater for the rate of evolution in the automotive industry. The definitions and the eligibility need to be constantly adaptable and bi annual committee meetings would better facilitate the changes. The potential code allows too much room for exploitation of the basic principles from manufactures that don't want to comply. My prediction is that the biggest hurdle for the committee would be manufactures compliance. The previously mentioned diversification from representative bodies (on the committee) to business operators would allow the minister to gain exposure into the day to day operations and the immediate impact of the code. The consensus approach is the most appropriate given the size of the industry and the effect of the potential code within the industry. Given the potential code is exploring uncharted territory the proposed adaptability for the committee to perform other functions agreed by members would add to the value of the Code and the Advisory Committee.



In conclusion I believe the Code has a lot of merit in its current consultation stage. The industry will stagnate and fall into an unfair monopoly, controlled by the lack of shared information resources if the policy is not adopted in years to come. The increasing level of technology in cars is changing the daily role of a motor mechanic. Retraining and adapting to these changes is made near impossible with the lack of information currently available for independent operators. Overall the proposed Code is suitable to the current market and the code allows the flexibility that this dynamic industry requires. The Code covers a sound eligibility standard to be determined in detail by the committee. The Code in its current state sets out to meet the ACCC's fundamental role in the marketplace "Making markets work for consumers, now and in the future."

Thank you for taking the time to read this submission.

Yours Sincerely,

Anthony Costello

