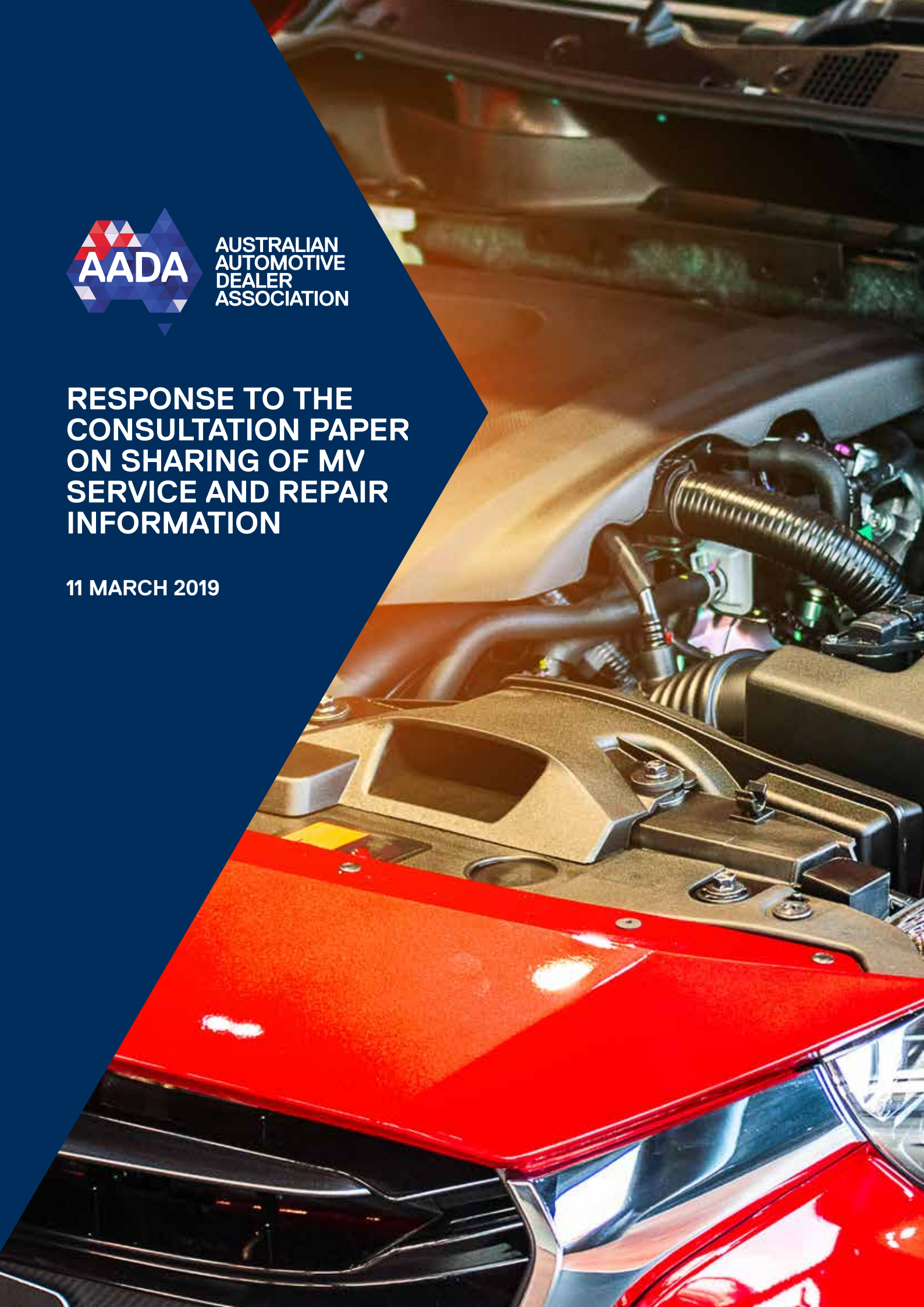




**AUSTRALIAN
AUTOMOTIVE
DEALER
ASSOCIATION**

RESPONSE TO THE CONSULTATION PAPER ON SHARING OF MV SERVICE AND REPAIR INFORMATION

11 MARCH 2019



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FOREWORD

The Australian Automotive Dealer Association (AADA) is pleased to lodge this submission to the Treasury in response to its Consultation Paper on the mandatory scheme for the sharing of motor vehicle service and repair information.

The AADA supports the Treasury proposal for the introduction of a stand-alone and mandatory Code of Conduct for the management and release of the above information. This support is predicated on an understanding that the proposed Code will contain, in their entirety, the Agreed Principles that form the core of the Heads of Agreement signed by all the relevant principals in December 2014.

Further comments on the details of the proposal are included below.



David Blackhall
Chief Executive Officer



BACKGROUND

The AADA is the peak industry advocacy body exclusively representing franchised new car Dealers in Australia. Our members total around 1,500 franchised new car Dealers that operate some 3,500 new vehicle outlets. As integral parts of the automotive industry, we depend on a robust and effective independent repairer network to ensure the safety and security of Australia's almost 20 million strong passenger vehicle fleet.

A key requirement for ensuring that the independent repair sector remains strong is that they have access to the tools, parts and information required to safely maintain and repair the passenger vehicle fleet, and that such access is provided on commercially fair and reasonable terms. But this must be achieved while ensuring that repairs and maintenance that relate directly to the safety and the security of their customers' vehicles are carried out only by properly qualified and vetted operators.

While the AADA supports the overall content of the Consultation Paper, we have specific comments and concerns as outlined below.

RESPONSE TO THE TREASURY CONSULTATION PAPER ON SHARING OF MV SERVICE AND REPAIR INFORMATION

The Standing of a Mandatory Code

The Consultation Paper proposes a system based on a mandatory Code of Conduct administered by the ACCC and supported by an advisory committee of industry representatives. The AADA supports this approach but cautions that our support is predicated on the ACCC being resourced appropriately to manage these additional responsibilities. Furthermore, we would highlight the need for the Chair of the Advisory Committee to be (and be seen to be) fully and unimpeachably independent. The Chair of the Committee should be appointed by the Minister, acting on advice from the ACCC Commissioner.

The AADA remains concerned that the Consultation Paper does not outline any process or mechanism for reporting on the performance of the Code. We believe that transparency and public reporting of dispute and enforcement matters would act as both encouragement to cooperative participants, and a public relations prod to be used against participants who work against the spirit of the Code itself. The AADA recommends the inclusion of a comprehensive annual report as part of the ACCC's reporting obligations to Parliament. Any such report would "name and shame" individuals and organisations that have suffered enforcement action against them.

Inclusions and Exemptions

The AADA considers that the list of exclusions from information to be shared [para 3.7 (c)-(e)] is so broad as to enable almost any request for information to be denied. We recommend that these sub-paragraphs be deleted.

Section 3

Consequences of Preliminary Information

The AADA is gravely concerned at the suggestion contained in para 3.13 that appears to suggest that Manufacturers would be expected to share repair information before a stable, effective and permanent solution for the technical problem is identified.

Our experience is that development of repair procedures to address quality issues is extremely complex and normally ends in new repair methods combined with parts supersessions. This process is only complete when it has time to be field tested and should only ever be released when proven to solve the issue and not have unintended consequences. There should be no early release to any repairers. New car Dealers do not get the bulletins and parts advice until the OEM is satisfied they have fixed the problem and it would seem reasonable that independents be given access at the same time.

Access to SSE Information

The Consultation Paper does not include reference to the High Voltage systems in electric vehicles as part of the definition of SSE information. Consideration should be given to redrafting the SSE information section to “future proof” the definitions to include systems (such as high-voltage electrics) to be found in electric, hybrid and autonomous vehicles.

It is unclear from the Consultation Paper, how vetting would take place for access to SSE information, particularly for States where there is no legislative requirement for licensing. Further, a certification obtained three decades earlier is not evidence that the holder knows and understands the intricacies of modern SSE systems.

Individual or Corporate Certification

The Consultation Paper did not address the question of whether certification for access to SSE information should be considered as a personal or corporate responsibility. Both approaches can be argued for or against and will need further consideration by Treasury before a draft Code is released.

The AADA is of the view that access to SSE information should be based on individual (rather than corporate) certification, and that such certification should require regular re-certification, to be administered by an independent body, and overseen by the ACCC and the Advisory Committee.

Section 3

Background Checks

The AADA understands that consideration is being given to the use of “background checks” as part of the vetting prior to the granting of access to SSE information, as well as related tools and parts. We understand the term “background checks” to mean a police check. We would caution about an uncritical consideration of this approach.

A police check, which would have to include both national and all states police records, could potentially yield a range of offences, only some of them would have implications for the granting of access to SSE information. This appears to be a gross invasion of privacy and raises the question of who makes the decision to grant (or not) access to the information, on what basis, and what path for appeal would exist if the applicant objects to the assessment.

Should an approach featuring background checks be preferred, then it should be focused on demonstrating good character and a history of automotive work. This might include references and other documentary evidence. If a police check is also included, then it should include national and state police reports, and make it clear in advance what type of offences would be deemed as significant. This might be restricted, for example, to honesty offences.

Penalties and Liability

The AADA considers that the Code will only be successfully implemented, if it is backed-up by strong enforcement and penalty provisions from the day it comes into force. We would, however, entertain an approach that included an introductory adjustment period when penalties are flagged, but not allocated.

We note that the suggested penalties confusingly include both personal and corporate liability. It appears to us that this section of the Consultation Paper requires further development to detail and clarify the enforcement regime and how it would sit within the broader judicial system if penalties are to be appealable.

ANSWERS TO QUESTIONS FOR CONSULTATION

1. Are the elements of the Code of Conduct, and the Service and Repair Information Sharing Advisory Committee:

a. An appropriate starting point for developing detailed provisions?

The AADA believes that the provisions as outlined in the Consultation Paper form a suitable basis for the development of detailed provisions.

b. Would provide significant improvements on the current voluntary scheme; and

The AADA accepts that the sharing of service and repair information should be regulated through a mandatory Code. As such the provisions in the Consultation Paper are a significant improvement on the current voluntary scheme.

c. A suitable alternative to a legislated scheme?

The AADA holds the position that a legislated scheme would be the “Gold Standard” because of its ability to create an independent organisation to administer the system. However, we concede that the ACCC, if suitably staffed and resourced, would also be effective in ensuring that the Code of Conduct would be enforced.

2. Possible elements:

a. Principled definitions of

i. information manufacturers must make available under the scheme;

As noted above, the AADA believes that all information, tools and parts required for the maintenance and repairs on passenger motor vehicles should be available on fair, commercial terms, except for that which falls under the category of Safety, Security and Environmental (SSE) information.

ii. SSE information;

The AADA is deeply concerned that the Consultation Paper does not include any guidance on how requests for access to SSE information will be assessed in states that do not have legislated licensing requirements for trades specialists and service and repair businesses. Furthermore, any consideration of SSE information should include High Voltage systems in electric vehicles.

b. What information should be included in more detailed lists?

See above.

Section 4

c. The principles guiding access to SSE information;

The AADA considers that SSE information should only be made available to vetted individuals and businesses and for purposes that they are authorised to carry out. Such restrictions are likely to be difficult to implement in States that do not have legislated licensing systems for individuals and businesses working in the motor vehicle service and repair area. The AADA considers that this is a critical area requiring detailed attention during the development process for this Code of Conduct.

d. Factors to be considered relevant to fair and reasonable prices for information;

The AADA believes that, where possible, the material to be released by vehicle Manufacturers should be released under the same conditions and on the same prices as it is made available to franchised new car Dealers. (Where the material is not already made available to Dealers, it should be priced on a “cost recovery” basis. Pricing decisions should be contestable and, if necessary, negotiated between the parties). Additionally, we consider that if the material is available to third parties at lower prices, then it should also be made available to dealers at that price. This would make the provisions in any contracts restricting the price to Dealers, null and void.

e. The suitability of the dispute resolution and mediation process;

The AADA concurs with the ACCC supervising the dispute resolution process. We also agree to the establishment of a suitably qualified and independent mediator to be selected and funded by the ACCC.

3. The committee suggested membership and Terms of Reference;

The AADA considers the make-up and Terms of Reference of the Committee acceptable but reiterates that the Chair of the Committee must be independent. The Chair should be appointed by the Minister, acting on advice of the ACCC Commissioner.

CONCLUSION

We would be happy to meet with you to discuss our submission.

If you require further information or clarification in respect of any matters raised, please do not hesitate to contact a member of the AADA team.

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