

RESPONSE TO THE
AUSTRALIAN COMPETITION & CONSUMER COMMISSION

HEADS OF AGREEMENT ON ACCESS TO SERVICE AND REPAIR INFORMATION FOR MOTOR VEHICLES AND ASSOCIATED VOLUNTARY CODES OF PRACTICE



Australian Automotive Aftermarket Association
February 2017



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



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

\$1b

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



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

40k

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.

BACKGROUND

The landmark Heads of Agreement on Access to Service and Repair Information for Motor Vehicles was finalised by five signatory parties and witnessed by the Hon Bruce Billson Minister for Small Business, on 15 December 2014¹.

Despite our concerns that a voluntary framework would be difficult to monitor and enforce, the AAAA has, at all times, co-operated with the Heads of Agreement process and principles.

There is an unchallenged myth that the voluntary Heads of Agreement simply needs more time, more goodwill and more effort. A regular message from two of the signatory parties continues to be that the failure of the Heads of Agreement to produce any real improvements for the market or for consumers is because one party “walked away”.

There is no evidence to support this statement. Only one Steering Committee meeting was ever held (March 2016) and all signatories (except the Australian Automotive Dealer Association) attended this meeting for the full duration of the meeting. All requests for additional information, for attendance and dialogue were met. All parties released an ‘operative code’ as was required² – no signatory party walked away.

HEADS OF AGREEMENT: THE VOLUNTARY CODE

In our view, the failure of the ‘voluntary industry led’ solution actually occurred in February 2015 when the Federal Chamber of Automotive Industries (FCAI) released a subsidiary code that directly contradicted the core principles of 2014 Heads of Agreement. The recycled (and previously rejected) FCAI Code contained a range of clauses that effectively thwarted the intent of the Heads of Agreement.

The February 2015 FCAI ‘subsidiary code’ was the essentially the same document that was first submitted to the negotiating table in February 2014 by the FCAI and the AMIF³. It was rejected at that time because it effectively sanctioned the ability of individual car manufacturers to maintain the status quo of non-disclosure.

The same document (minus references to the AMIF) was once again released by the FCAI in September 2014⁴ while negotiations on a voluntary agreement were still underway. At that time the Australian Automotive Aftermarket Association and the Australian Automobile Association notified the Minister for Small Business⁵ that progress on an industry led outcome had once again been stymied by the car industry’s unilateral decision to re-release a one-sided code that ensured there would be no competition reform in the automotive service and repair industry.

The Minister subsequently intervened and called a meeting⁶, asking for one last ditch effort before mandatory intervention would be considered. The intervention worked – the Minister chaired this meeting and an agreement was reached. The Heads of Agreement was amended over a four-week period and finally signed by all parties on 15 December 2014.

1. Refer to Appendix 1 - Agreement on Access to Service and Repair Information for Motor Vehicles

2. Refer to Appendix 2 - ‘Your Car, Your Choice’ AAAA Choice of Repairer Code of Practice

3. Australian Motor Industry Federation – previously known as the Motor Trades Association of Australia – representing authorised dealerships and non-dealership repairers

4. Refer to Appendix 3 – all three versions of the FCAI Code and comparisons between each version

5. Refer to Appendix 4 – AAAA Correspondence to the Hon Bruce Billson MP, Minister for Small Business, 8 October 2014

6. Refer to Appendix 5 - Statement by the Minister for Small Business, The Hon Bruce Billson MP – Motoring Industry Back Around the Table, 30 October 2014

SUBSIDIARY CODES

Under the Industry Heads of Agreement all signatory parties were required to release a subsidiary code to give operational effect to the Heads of Agreement. All of these codes were subsequently released prior to April 30, 2015. The February 2015 FCAI Code was the first of these to be released (although the FCAI failed to notify the other signatory parties of its release) and disappointingly it was a recycled version of a previously rejected document that was not consistent with the Heads of Agreement.

To validate that our negative assessment of the FCAI 'subsidiary' code was accurate, the AAAA commissioned legal advice⁷ requesting a review of any inconsistencies between the FCAI Code and the HoA. This advice confirmed that the FCAI Code contained the following inconsistencies:

a) Participation in the Code

Whilst the FCAI Code is voluntary in the conventional sense there is a secondary form of voluntary involvement as each individual FCAI member may then choose to enter the voluntary Code voluntarily.

b) Commercially reasonable prices

The FCAI Code defines commercially reasonable prices (for the provision of repair information) as "the price set by each individual OEM at their discretion". This enables OEMs to set completely arbitrary pricing for the relevant information which is in contradiction with the principle of 'fair and reasonable' terms.

c) Definition of repair information

Principle four of the of the HoA confirms that "the repairer should be able to assess all information required for 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". This principle does not reconcile with the definition set out for repair information in Clause 2.1 of the FCAI Code.

The FCAI Code has a catch all exclusion of repair information at 2.1(h)(xvi) that repair information does not extend to the inclusion of "all information (whether repair and maintenance related or not) that is provided from time to time by an OEM to an Authorised Dealer." This allows an unfettered discretion for OEMs to routinely exclude the provision of information to independents.

Scope and coverage

The FCAI Code limits the provision of information to 'New Vehicles'. Despite the presence of a definitions section - 'new vehicles' is not defined in the FCAI Code. A narrow interpretation of new vehicles by FCAI members could prevent the provision of important information for many repairers in the aftermarket.

Complaints regarding breaches of the Code

The FCAI Code introduces a secondary dispute resolution process which has the capacity to obfuscate the proper running of the agreed process and decision timelines that do not appear capable of obtaining commercially viable outcomes for the complainants.

⁷ Refer to Appendix 6 - CCA Compliance Solutions Pty Ltd Review of the FCAI Code

DISPUTES

February 2015 – only two months after the signing of the Heads of Agreement (HoA), was the beginning of the end of the voluntary regime.

Without a compliant FCAI subsidiary code, all disputes regarding lack of access to repair and service information were now rendered moot. If every car manufacturer/importer can simply set their own rules and mandated that repair data will not be disclosed, it is impossible to lodge a credible complaint.

The Heads of Agreement framework was simply not robust enough to withstand such overt sabotage. It had no structures in place to measure or review whether the subsidiary codes were consistent with the HoA principles. The HoA did establish a Steering Committee. However, without a secretariat or government oversight it was unclear who would convene the Steering Committee meetings and as a result only one meeting of the Steering Committee occurred between December 2014 and February 2017. The HoA had no infrastructure at all: no monitoring, no measurement, no enforcement and no agreed dispute resolution process.

Despite a number of attempts by the Australian Automobile Association to convene the inaugural meeting, the catalyst for this first and only meeting of the Steering Committee (March 2016), occurred only after government officials inquired on progress and requested observer status at a Steering Committee meeting. Then, with remarkable efficiency, all signatory parties (except the Dealership Association) made themselves available for a meeting of the Committee.

During the period in which the signatory parties were negotiating a meeting date and venue, disputes could conceivably have been lodged directly with either individual car manufacturers or the FCAI. However, neither dispute mechanism process could be utilised because of the 'catch all' exemption on the FCAI definition of repair information. As outlined above the exemption allowed individual FCAI members to determine what would and would not be

disclosed and it remains unclear as to which companies were voluntary signatories to the FCAI Code. Thus, it was difficult to see on what grounds a complaint could be lodged and with which car companies. With no clear grounds it is not likely that any independent repairer would ever lodge a complaint that is destined to fail and will likely result in less cooperation than is currently afforded. Fear of retribution and the withdrawal of the current (limited) level of cooperation were frequently cited by small independent operators⁸.

The AAAA did formally raise issues regarding the lack of HoA compliance by the car industry at the March 2016 Steering Committee meeting. We were asked at that meeting by the committee to provide evidence of alleged systemic breaches of the HoA and on 17th May 2016, the AAAA lodged formal notification⁹ of breaches based on information provided over a number of months from independent repair businesses when a lack of disclosure of technical and diagnostic information had a detrimental impact on customers or their business.

The five key systemic issues identified were:

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

Our submission included an analysis of each of the issues across the top 15 car brands sold in Australia—which represented almost 90% of vehicles sold in 2015. We also contended that the systemic failure to provide this information, extended to the overwhelming majority of car companies operating in the Australian market.

⁸. Refer to Appendix 7 – AAAA fact sheet: Why the Agreement of Access to Service and Repair Information for Motor Vehicles Failed

⁹. Refer to Appendix 8 – Evidence of systemic failure to provide critical repair and service information to consumers and their repairer of choice. Australian Automotive Aftermarket Association May 2016

The complaint/analysis of systemic breaches of the HoA was summarily dismissed without any dialogue and no ability for representation or supplementary information to be provided. The Steering Committee was simply notified via letter from the FCAI that the systemic evidence had been dismissed by FCAI¹⁰. The AAAA was not invited to submit further information and it was clear that no future dialogue would be welcomed on the availability of repair and service information in this market.

There was also a clear Catch 22 embedded in the dispute processes. The Steering Committee was only interested in systemic evidence. Without any investigative infrastructure, there was no ability to investigate individual complaints. However, the evidence we provided was subsequently rejected by the FCAI because it lacked the specific details of individual events – i.e. there was no information about a specific repair job or the vehicle make and model. The Steering Committee wanted only the information on wide-spread lack of disclosure (systemic) and the FCAI required specifics of each individual event.

10. Refer to Appendix 9 – FCAI correspondence to Agreement Steering Committee denying systemic breaches, July 2016

FCAI PORTAL

The FCAI informed the Steering Committee that a portal had been established containing hyperlinks to some of the car manufacturers web sites that, in theory, would enable subscription to repair and service information.

Of course, all genuine efforts to supply information are welcomed and as an industry body we encouraged members to visit this portal on a regular basis and to utilise the web site and report back on the usefulness of this site for locating the appropriate repair and service information. It was our expectation that this portal would take a repairer to manufacturer's sites giving the workshop an option to subscribe for a fee on a daily, weekly, monthly or annual basis.

Over a period of six months, we monitored workshop experience of the site and concluded that the value of this 'portal' is limited. By way of example, Hyundai is a top selling high volume vehicle brand in the Australian market. If a repairer sought out the FCAI web site, clicked on 'Service and Repair Information', and clicked on the link to Hyundai, the result would be an open email frame addressed to technical@hyundai.com.au. Presumably, the repairer would write an email requesting access to information and await a response. This is hardly an adequate arrangement for the repairer who needs to return the car to the owner that afternoon.

In contrast, the erWin system now provided by the VW group is an improvement but has limited information and functionality when compared to the EU and US versions of this same site. The point here is that each of these manufacturers provide a limited amount of information and most do not. Many of the hyperlinks do not work - quite a few take the user to a page that indicates that there are 'technical problems' or that have pages with 'greyed' out sections. At our regular meetings with workshop owners, it would appear that the Holden AC Delco site is currently the best example of what could and should be provided¹¹: this information is provided for Australian models in an appropriate format and with reasonable download speeds.

The HoA Steering Committee does not monitor the FCAI site and its links and there is no facility under the HoA to report issues with these sites. We have from time to time suggested that workshops contact manufacturers to ask for the required information. Some of these requests go unanswered and some are simply rejected outright.

With no monitoring, no measurement and no consequences - the FCAI Portal certainly looks good when you open onto the page, but the usefulness is limited and we have seen little growth in the number of participating car companies over the past 24 months. That is not to say that there has been no progress: the AC Delco site was welcomed, and the very recent addition of erWin, is also welcomed. But there is no sense that these gains will remain and no sense that any further OEM participation can be expected.

¹¹. Refer Appendix 10 - AAAA media release: Holden leads in sharing repair data with independent workshops, 24 September 2015

TIMELINE

2011

The Federal Government commissioned an inquiry into access to automotive repair data and information to be undertaken by the Commonwealth Consumer Affairs Advisory Council CCAAC.

2012

Release of the CCAAC report which concluded that there is a likelihood of consumer detriment. In the CCAAC conclusions it is noted that there is a likelihood that detriment will increase as cars are more likely to be controlled by computer control units and these units need to be 'read' in order to understand how the car is running and what might be wrong with the car.

The CCAAC urges the automotive industry to expedite current processes to develop, within a reasonable period of time, an outcome (such as a voluntary industry code of conduct) that ensures there is a process for independent repairers to access repair information. We would expect there to be significant progress towards such an outcome over the next 12 months.

CCAAC recommends that the Government canvass regulatory options to ensure reasonable access to repair information, if industry is unable to arrive at an effective industry outcomes, and access to repair information becomes a barrier to competition in the market for repairs.

Commonwealth Consumer Affairs Advisory Council 27 November 2012

2012

The Australian government supports the CCAAC recommendations and issues the following statement¹²:

The Australian Government supports industry self-regulation as the appropriate mechanism to ensure that is reasonable access in the industry to repair information and notes that there are clear incentives for the automotive industry in developing an industry-led outcome. If access to repair information becomes a barrier to competition in the market for repairs and the automotive repair industry has not been able to arrive at an effective industry solution to address such concerns, the Government will consider relevant regulatory options, including a mandatory code of conduct.

In this respect, if significant progress towards an industry-led outcome has not been made before the end of 2013, the Government will release a consultation Regulation Impact Statement seeking comments from stakeholders on the extent of the problem and different regulatory options that are available to respond to this issue.

The Australian government supports a review of the adequacy of any industry-led outcome within 18 months of implementation.

2013

All parties agreed to work towards a heads of agreement to establish principles for the sharing of vehicle repair and service information. During the negotiations the auto aftermarket (independent repairers) and the consumer organisations (AAA) were advocating the same policy position – **fair access to data on fair and reasonable terms based on international precedent.**

¹². Refer to Appendix 11 – Australian Government response to the Commonwealth Consumer Affairs Advocacy Council's final report on the Sharing of repair information in the automotive industry (December 2012)

2014

February 2014, FCAI produce an industry code that justifies the status quo (non-disclosure of certain classes of repair and service information). This code sanctions the withholding of data and information on the grounds that such disclosure would compromise 'security or safety'. This Code was rejected by the Australian Automobile Association (AAA), and the AAAA. In October, the FCAI again released a slightly amended version of the same code of conduct - and again it was rejected by industry stakeholders. Negotiations stalled. In response to community concern and media attention, the Minister intervened, and warned that a mandatory option would be considered if the parties could not agree. He convened and chaired a meeting and as a result, Industry participants finally agree to the principle that consumers have the right to choose their own repairer, a satisfactory draft was developed and in December 2014 industry Heads of Agreement was signed.

2015

As required by the Heads of Agreement, all of the Signatory Parties produced subsidiary codes of conduct: three of these (AMIF, AAA and AAAA) were compliant/consistent with the 2015 Heads of Agreement (HoA).

The FCAI Code of Conduct released in February 2015, did not comply with the Heads of Agreement. The FCAI February 2015 Code was actually a slightly amended version of the February 2014 and October 2014 rejected codes. The FCAI code did not reference the Heads of Agreement and did not comply with the operative provisions of the Agreement.

March 2016

HoA Steering Committee invited the submission of evidence of systemic breaches of the HoA

May 2016

AAAA lodges submission outlining evidence of systemic breaches of the voluntary code.

July 2016

FCAI rejects the complaints without dialogue or representation and states that the VACC Our Auto service is able to provide most data and other data requests are 'excluded' from the FCAI Code

APPENDIX 1:

AGREEMENT ON ACCESS TO SERVICE AND REPAIR INFORMATION FOR MOTOR VEHICLES

FEDERAL CHAMBER OF AUTOMOTIVE
INDUSTRIES, ET AL.

DECEMBER 2014

AGREEMENT ON

ACCESS TO SERVICE AND

REPAIR INFORMATION

FOR MOTOR VEHICLES

2014

PREAMBLE

The competitiveness of the automotive sales and repair industry is of significant importance to Australian consumers. Motor vehicle ownership in Australia is at more than one vehicle for every two people, and vehicle servicing and repair is a key aspect of vehicle ownership. The ongoing viability of all sectors of the Australian automotive industry including importers and distributors; retail dealerships; automotive component, part and product retailers and aftermarket product suppliers; independent motor vehicle repairers; motoring clubs and roadside assistance service providers; and associated automotive sectors; is in the interests of consumers and the nation's ongoing reliance on road transport.

The economic activity created by a competitive automotive market will also contribute to creating and maintaining skilled employment, efficient customer service and viable and cost effective industries.

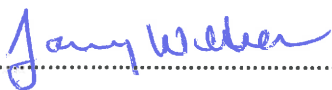
The availability of service and repair information can include specifications for oils and lubricants, diagrams of wiring looms and voltages for electronic components. Access to this information is becoming increasingly important to the repair of motor vehicles due to the prevalence, and interoperability of electronic systems in vehicles.

The content of this Agreement and matters covered by it have been guided by the Commonwealth Consumer Affairs Advisory Council (CCAAC). CCAAC has examined the issues of service and repair information and found that while the market for motor vehicle repair services is competitive and there was no evidence of market failure or evidence of systemic consumer detriment, the accessibility of repair information has the potential to become a barrier to entry in this market going forward.

This Agreement is representative of industry and consumer interests and intends to provide a safeguard to consumers and a competitive market to ensure that the availability of repair information does not become a barrier to entry in the market.

SIGNATORIES TO THIS AGREEMENT

The Signatory Parties agree to endeavour to work collaboratively to ensure that there continues to be a fair and reasonable competitive market within the vehicle service and repair industry.



.....
Tony Weber, Chief Executive

Federal Chamber of Automotive Industries



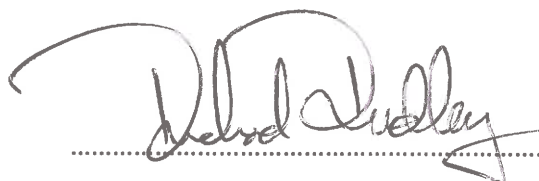
.....
Patrick Tessier, Chief Executive Officer

Australian Automotive Dealer Association
Limited



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Andrew McKellar, Chief Executive

Australian Automobile Association



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Richard Dudley, Chief Executive Officer

Australian Motor Industry Federation



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Stuart Charity, Executive Director

Australian Automotive Aftermarket Association

AGREED PRINCIPLES

1. Consumers are able to choose who maintains and / or repairs their motor vehicle.
2. Signatory Parties to this Agreement recognise that nothing in this Agreement overrides or affects Original Equipment Manufacturers (OEM)¹ warranty or recall campaign fulfilment, warranties against defects in respect of consumers' vehicles; extended warranty and vehicle maintenance contracts; or any other lawful contractual arrangements entered into between consumers and motor vehicle manufacturers or motor vehicle dealers.
3. The consumer is entitled to full information regarding the maintenance and repair of their motor vehicle product. Consumers must be made aware, by their nominated repairer, of whether the part /s to be used in the mechanical and / or body repair and/or maintenance of their motor vehicle is: genuine (OEM recommended) or non-genuine (sourced from an independent manufacturer / supplier); fit-for-purpose; compatible with the operating systems of the recipient vehicle; and compliant with all regulatory requirements, including provisions of the Australian Consumer Law. This will help ensure that consumers can make a fully informed choice in relation to the work to be carried out, the parts to be used and whether those repairs or maintenance services meet OEM specifications.
4. 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.
5. That motor vehicle component manufacturers and Original Equipment Manufacturers [OEM] have a right to protect intellectual property and should be able to obtain a return on product development and capital investment in unique or proprietary technologies.

¹ OEM means an authorised full volume importer of motor vehicles that is a member of the FCAI

6. New motor vehicle retailers are free to provide mechanical repair services, motor body repair services and professional automotive services to consumers, if this is the fully informed choice of the consumer, and the retailer is appropriately licensed (where applicable), qualified, equipped and skilled with the necessary training and knowledge to meet consumer, business, legislative and regulatory requirements.
7. Independent mechanical repairers, motor body repairers and other automotive specialist trades such as: tyre retailing; engine reconditioning; auto electrical; brake and suspension repairers; third party data providers; and aftermarket scan tool companies; are free to provide mechanical repair, body repair, and professional automotive services to consumers and the automotive trades, if this is the fully informed choice of the consumer, and these sector businesses are appropriately licensed (where applicable), qualified, equipped and skilled with the necessary training and knowledge to meet consumer, business, legislative and regulatory requirements.
8. Service and repair information will be made available on commercially fair and reasonable terms.
9. The provision of service and repair information does not extend to manufacturers providing any trade secrets or information that would or could bypass or affect the integrity of a vehicle's security; design standards; regulatory compliance, performance or legislated requirements.
10. The automotive industry, as a whole, is committed to improve accessibility to service and repair information for the benefit of Australian consumers; acknowledges the nation's ongoing reliance on road-based transportation and mobility systems; and recognises the inability of any one part of the sector alone to meet consumer demand for such services in current market conditions.
11. The aftermarket component and repair industries acknowledge the importance of obtaining and using the service and repair information that is provided by OEM's to ensure that repairs are carried out correctly to assure the safety of consumers and will advocate and encourage the use of the information consistent with OEM specifications.

12. There is some information that may not be able to be shared. This may, for example, result from confidentiality arrangements, security, legislative, regulatory or privacy considerations; the lack of robust monitoring or enforcement mechanisms to assure the protection of information or the bona fides of those who may access it, or intellectual property or proprietary considerations.

13. This Agreement will be the guiding document for separate enabling documents between the Signatory Parties and their members to enact the principles of this Agreement. The principles should be read cumulatively and not selectively.

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

OPERATION OF THE AGREEMENT

- a) The operation of this Agreement will be overseen by a steering committee comprising one representative of each of the Signatory Parties to this Agreement.

- b) The steering committee will meet at least once a year.

- c) The Australian Government may nominate a representative or representatives to attend meetings of the steering committee as an observer and may provide independent advice back to the relevant Minister on the operation and performance of the Agreement.

- d) The Signatory Parties can replace or substitute respective representatives at any time and for any reason, however that representative must be a full time employee or Office Bearer of the Signatory Party.

- e) The Signatory Parties to this Agreement will resolve the selection of a chairperson to chair each meeting of the steering committee.

- f) Changes to this Agreement can be made by the Signatory Parties only on a unanimous basis.

- g) The Signatory Parties to this Agreement will implement their own internal arrangements/codes of practice/member agreements, to give effect to the Signatory Party obligations under this Agreement. These documents will be made available to the public.

- h) The Signatory Parties agree to developing and implementing enabling documentation within three months of the date of execution of this Agreement.

CONFIDENTIAL INFORMATION

- i) The Signatory Parties to this Agreement must not disclose any confidential information acquired in membership, participation and consideration of any matter or business item brought before it.

DISPUTE RESOLUTION - COMPLIANCE WITH AGREED PRINCIPLES

- j) The Signatory Parties will make bona fide efforts to resolve any dispute in regard to compliance with the Agreed Principles listed above within the normal processes of the steering committee, prior to commencing a process of dispute resolution.
- k) Should it be required, the Signatory Parties will enact a formal dispute resolution process, which will include access to professional mediation, by an agreed third party.
- l) Any Signatory Party to this Agreement can notify the steering committee of a systematic and / or systemic breach of the Agreed Principles under this Agreement by a Signatory Party including a systematic and / or systemic breach by a Signatory Party's participating member.

VEHICLE DATA AND TELEMATICS: OWNERSHIP AND ACCESS

- m) The Signatory Parties note that the progressive uptake of emerging vehicle telematics technologies are enabling increased transmission and use of data relating to vehicle use, performance and diagnostics.
- n) The Signatory Parties acknowledge that access to and ownership of telematics data from individual vehicles presents a number of emerging issues for consumers; vehicle manufacturers; and motor vehicle repairers and service providers.
- o) The Signatory Parties agree to implement a process to develop protocols relating to vehicle data access and ownership. The Signatory Parties agree that progress should be reported within 12 months of commencement of this Agreement.

APPENDIX 2:
YOUR CAR, YOUR CHOICE -
CHOICE OF REPAIRER
CODE OF PRACTICE

AUSTRALIAN AUTOMOTIVE
AFTERMARKET ASSOCIATION

APRIL 2015



Your car, Your choice.

**Australian Automotive Aftermarket Association
Choice of Repairer - Code of Practice**

April 2015

Choice of Repairer Code of Practice



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

- ▶ That consumers should be able to choose who maintains and/or repairs their motor vehicle.
- ▶ Independent repairers should be able to access all information required for the diagnosis, body repair, servicing, inspection, periodic monitoring and reinitialising of the vehicle in line with the service and repair information that manufacturers provide to their authorised dealerships.

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

Australian Automotive Aftermarket Association



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

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Background

Fair and Open Competition in the Australian Automotive Aftermarket

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Introduction

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

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

Section One: Access to Data and Repair Information

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

The repairer should be able to access all information required for the diagnosis, body repair, servicing, inspection, periodic monitoring, and reinitialising of the vehicle, in line with the service and repair information manufacturers provide their authorised dealers and repairers.

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

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

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

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

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

Information to be Shared

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

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

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

This agreement should result in all vehicle manufacturers operating in Australia making available for purchase by independent repairers, the same diagnostic and repair information including software updates, re-initialisation codes, technical service bulletins, and technical repair updates that each manufacturer makes available to their dealers, with the exception of the information necessary to reset vehicle entry and immobiliser systems. This security related information should not be made available until Australia develops a secure data release model system (SDRM) as is currently in place in the North American market.

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

Section Two: Fair and Reasonable Terms

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

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

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

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

Section Three: Complaints and Dispute Resolution

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

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

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

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

The requirement in the short term is:

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

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

Section Four: Vehicle Servicing and Warranties

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

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

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

What the ACCC says:

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

New Vehicle Warranty

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

New and Used Vehicle Servicing

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

Qualified Staff

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

Manufacturer's Specifications

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

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

Genuine or appropriate quality parts

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

Express Warranties

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

Our commitment under this independent aftermarket industry code is that:

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

Section Five: Parts Information

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

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

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

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

There are four sources of automotive parts:

1. **Original Equipment Manufactured (OEM) Parts** – these are usually manufactured by the car makers' parts suppliers. In addition to providing parts for the manufacture of the vehicle, these suppliers enter into an agreement to supply additional parts that are distributed by the car companies through their dealer networks as 'genuine' parts.
2. **OEM supplier branded parts** – these are the same manufacturers as the 'genuine' parts (above) but the supplier uses their own company branding. Same part, same manufacturer, different box.
3. **Independent Aftermarket Parts** –replacement parts that are manufactured specifically for use after the car is built. They are quality, fit for purpose, interchangeable parts with the same functionality as the Original Equipment part but produced by a different manufacturer to the OEM supplier (above).
4. **Specialist Parts & Modification and Performance Enhancement** – parts and accessories that the car companies do not include in the original build and are added after purchase to modify the vehicle for its intended end use (bull bars, suspension lift kits, roof racks, tow bars etc.).

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

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

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

Section Six: Repairer Training

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

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

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

Additional Information

Australian Automotive Aftermarket Association

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

Australian Automotive Aftermarket Association – Choice of Repairer

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

Consumer Guarantees on services

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

Australian Competition and Consumer Commission - Warranties

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

APPENDIX 3:

DRAFT FCAI VOLUNTARY CODE OF PRACTICE FOR ACCESS TO SERVICE AND REPAIR INFORMATION FOR MOTOR VEHICLES

1. FEBRUARY 2014 DRAFT

2. COMPARISON OF SEPTEMBER 2014
AND FEBRUARY 2015 VERSIONS

CONFIDENTIAL



Federal Chamber of Automotive Industries

**Voluntary Code of Practice
Access to Service and Repair
Information for Motor Vehicles**

Effective 2014

A. BACKGROUND

1. CONTEXT

- 1.1 The Voluntary Code of Practice for Access to Service and Repair Information for Motor Vehicles (*the Code*) has been developed by the Federal Chamber of Automotive Industries (*FCAI*) in consultation with the Australian Motor Industry Federation (*AMIF*) as a means of securing industry concordance on the process to be followed where parties other than Authorised Dealers request access to proprietary service and repair information in Australia. The primary purpose of the Code is to provide guidance to the wider industry on the pathway to the provision of the Repair Information and to give broad indications of where there are any restrictions on the provision of particular data.
- 1.2 The Code is the Motor Vehicle manufacturers' and importers' response to the recommendations contained in the Commonwealth Consumer Affairs Advisory Council's (*CCAAC*) final report into the Sharing of repair information in the automotive industry dated 27 November 2012. The Code, apart from providing a guide to interested repair and service providers which identifies the particular pathway to access Repair Information, will lead interested parties to the details of any costs and restrictions or obligations in relation to use of the information involved and note conditions precedent to accessing or using any Repair Information.

2. GOALS

The objectives of the Code are:

- 2.1 to provide an information pathway to Repair Information that may be used by parties outside of the Authorised Dealer network in return for the payment of Commercially Reasonable Prices;
- 2.2 to clearly articulate the requirements and obligations that parties accessing Repair Information under this Code are subject to;
- 2.3 to provide a fair means of access to Repair Information for parties outside the Authorised Dealer network without unfairly advantaging those parties to the detriment of Authorised Dealers; and
- 2.4 to reflect the principle that any costs associated with the development of systems to meet the requirements of this Code will be passed on to the users of the system in a reasonable and justifiable manner which may include the OEM assessment of cost recovery given the likely volume of usage based on such criteria as the size of the Australian market and the overseas experience with similar programs.

3. CONSULTATION

- 3.1 In developing the Code, the FCAI consulted with the Australian Motor Industry Federation and the Chair of the CCAAC.

4. GUIDANCE TO INDEPENDENT REPAIRERS

- 4.1 The FCAI and AMIF support a responsible approach to ensuring that the public have an opportunity to choose the repair or service facility that best suits their particular needs whilst maintaining the safety, security and environmental performance of their Motor Vehicle. While a wide range of information is available from a variety of sources, the Code explicitly excludes the provision of certain information including that relating to particular aspects of security, safety and environmental performance by OEMs.
- 4.2 An annual review of the operation of the Code with representatives from the independent repair industry will be scheduled as required. This will be organised through the peak independent aftermarket motor vehicle repair industry body, the AMIF and the FCAI.
- 4.3 In interpreting, applying and considering the provisions of the Code, the FCAI and AMIF note that it is relevant to take into account both the investment in tools, equipment and training that OEM Authorised Dealers are required to make, and the expectation that equivalent requirements would apply to other organisations seeking access to Repair Information.

5. GUIDANCE TO OEMS

- 5.1 The Code is voluntary. The purpose of the Code is to respond to the CCAAC observation that while there is no evidence of any consumer detriment there may be value in development of an industry code to prevent access to Repair Information becoming a barrier to entry to the market for repair and maintenance services of Motor Vehicles in the future.
- 5.2 The Code development has taken guidance from a range of inputs including international experience with similar codes albeit in much larger markets.
- 5.3 The Code is set as a minimum standard and it is noted that a wide range of OEMs already provide Repair Information to a range of Independent Repairers.

B. TERMS APPLYING TO ACCESS TO REPAIR INFORMATION AND SPECIAL TOOLS

6. DEFINITIONS

6.1 In this Code, the following definitions apply:

- (a) **Authorised Dealers:** means a franchisee or a new Motor Vehicle dealer located in Australia authorised by an OEM to sell, service and repair new Motor Vehicles manufactured and/or imported by the OEM;
- (b) **Commercially Reasonable Prices:** means the price set by each individual OEM at their own discretion or (in relation to Special Tools) their respective independent Special Tool supplier with the approval of the OEM for access to Repair Information or the purchase of Special Tools. The setting of such prices may, but does not have to, take into account some, or all, of the following:

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- (i) The price the Authorised Dealers pay or are deemed to have paid for the Repair Information or Special Tools excluding any rebates or incentives applied to Authorised Dealers;
 - (ii) The ability of the OEM to recoup the added cost of development of the Repair Information and Special Tools delivery mechanism for use by the Independent Repairers through sales within the Australian market;
 - (iii) The extent to which the Repair Information or Special Tools generate income, or are expected to generate income, by users;
 - (iv) Any other matters reasonably related to the cost of the provision and development of the Repair Information or the Special Tools; and
 - (v) The cost of distribution of such Repair Information or Special Tools.
- (c) **Diagnostic Tool:** means proprietary diagnostic tools approved by an OEM for use in diagnosing repairs required for Motor Vehicles that they distribute;
- (d) **Excluded Information:** means security, safety and environmental information that an OEM decides not to provide access to and any information listed in subparagraph (i) below as being excluded from the definition of Repair Information;
- (e) **Independent Repairer:** means a company, person or other entity that is not an Authorised Dealer but is otherwise in the business of and appropriately qualified to provide Motor Vehicle repair or servicing services to customers;
- (f) **Motor Vehicle:** means passenger motor vehicles, light commercial vehicles, four wheel drive passenger vehicles and utility vehicles designed for transport of persons or goods on public roads;
- (g) **OEM:** means a manufacturer or authorised importer of Motor Vehicles that is a member of the FCAI and which has endorsed this Code;
- (h) **Operative Date:** means a date occurring three months after the date on which the FCAI and AMIF have both approved this Code or if approved separately the later date of approval;
- (i) **Repair Information:** means service, maintenance and repair information which is in the possession of an OEM and which has been made available to Authorised Dealers by an OEM. Service and Repair Information comprises workshop repair manuals, body repair manuals and wiring diagrams but does not include the following information:
- (i) Information exchanged between the OEM and an Authorised Dealer or any other party for the purpose of resolving a technical issue (whether in general or related to a specific vehicle) for which there is no update of a service manual as yet published;

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- (ii) Information relating to warranties, service history, campaigns or other recalls;
- (iii) Information generated by the Motor Vehicle or by or on behalf of an OEM on particular use of the vehicle by the driver/s;
- (iv) OEM's direct information hotlines made available for Authorised Dealers;
- (v) Information that an OEM is prohibited from disclosing under any law including privacy laws or under the terms of any agreement;
- (vi) Repair history for a particular Motor Vehicle;
- (vii) Any information that is not generally available to Authorised Dealers;
- (viii) Any source code for software or full copies of any software programs;
- (ix) Matters relating to franchise arrangements, including without limitation any confidential information;
- (x) Information relating to a specific repair on a specific Motor Vehicle;
- (xi) Information relating to the security of a Motor Vehicle including but not limited to key codes and the security programs of immobilizer equipment and systems;
- (xii) Any information (including vehicle computer updates) that may result in non-compliance with any relevant safety, emission or any other legislation affecting Motor Vehicles;
- (xiii) Diagnostic Tools and information pertaining to those tools and related software updates;
- (xiv) Parts catalogues published by an OEM;
- (xv) Any commercially sensitive information of an OEM;
- (xvi) Intellectual Property of an OEM (other than intellectual property contained in information that is produced specifically for repair and maintenance purposes) or any information that might disclose intellectual property, trade secrets or confidential information of an OEM.

For the avoidance of doubt but subject to any other limitations in this Code, Repair Information:

- (xvii) is limited to information that is reasonably required by a qualified repairer to the extent that recognized training and experience alone would not be sufficient to repair, service and maintain a Motor Vehicle; and

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- (xviii) does not have to include all information (whether repair and maintenance related or not) that is provided from time to time by an OEM to an Authorised Dealer.
- (j) **Request for Information/Special Tools** means a request by an Independent Repairer to purchase Repair Information or Special Tools from an OEM;
- (k) **Special Tools**: means hand tools specifically designed by or on behalf of an OEM for application to a particular task in the maintenance, repair or servicing of a particular Motor Vehicle distributed by the relevant OEM;
- (l) **VFACTS** : Means the automotive sales statistics published by the Federal Chamber of Automotive Industries.

7. SCOPE AND COVERAGE OF THE CODE

- 7.1 The Code applies to all OEMs. Further, to the extent that the Code imposes restrictions or obligations upon Independent Repairers that seek access to the Repair Information from an OEM, such Independent Repairers will be required to agree to comply with those restrictions or obligations at the point of accessing the Repair Information.
- 7.2 The Code will be reviewed and as necessary amended by written agreement between the FCAI and AMIF from time to time. Notification of any such amendments will be through the FCAI and AMIF web-sites. The FCAI and AMIF websites will have a page with links to the individual websites of the various OEMs. Each OEM website will contain information about access to that individual OEM's Repair information and Special Tools and will be managed by each OEM separately.
- 7.3 The Code will apply to Repair Information and Special Tools requested after the Operative Date. The release of Repair Information will be within a reasonable time of such information being made available to Authorised Dealers.
- 7.4 The Code does not apply to Motor Vehicles imported other than by the OEM. (i.e. repair information and special tools for grey imports are not subject to the Code).
- 7.5 This Code extends only so far as to require the provision of Repair Information and Special Tools that are accessible by the OEM and does not require an OEM to provide any information or tools that may be available outside Australia but are not in the possession of the OEM.

8. ACCESS TO REPAIR INFORMATION AND SPECIAL TOOLS

- 8.1 Each OEM shall:
- (a) make Repair Information available to Independent Repairers at Commercially Reasonable Prices;
- (b) upon request advise Independent Repairers on where they may purchase Special Tools at Commercially Reasonable Prices;

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- (c) ensure that the Repair Information that is made available to Independent Repairers is made available in a similar form to the form it is made available to Authorised Dealers (e.g. on-line, in hard copy or soft copy);
- (d) provide the information to access Special Tools where those tools are not provided by the OEM, or alternatively make these tools available to Independent Repairers at Commercially Reasonable Prices through Authorised Dealers;
- (e) at its discretion provide access to Repair Information on its web-site or other medium in a subscription model in blocks of time where possible, for example in time blocks of 24 hours, 7 days, 30 days or 1 year; and
- (f) ensure that the prices for access to Repair Information are Commercially Reasonable Prices given development and maintenance costs of any specialist systems and expected volumes of use given overall market penetration of any particular marque.

8.2 This Code is not intended to restrict or prescribe the method by which Repair Information will be made available to an Independent Repairer but the path to the most current and accurate Repair Information will generally be through the individual OEMs' websites (via the FCAI/AMIF portal). On occasions, Repair Information will not be available on-line and may only be purchased in hard copy from the OEM. There may be other independent arrangements that OEMs and/or third party suppliers develop for access to Repair Information; however these arrangements are outside the intended ambit of this Code.

9. OBLIGATIONS UPON PARTIES ACCESSING REPAIR INFORMATION AND SPECIAL TOOLS

9.1 It is understood and acknowledged that Independent Repairers will be granted access to Repair Information and Special Tools under this Code subject to the following conditions:

- (a) The Repair Information is applicable only to the use, repair and replacement of new genuine parts and may not be applicable where the Independent Repairer uses non-genuine parts in the repair or maintenance of a Motor Vehicle;
- (b) An OEM may provide Repair Information and/or Special Tools to an Independent Repairer on the condition that whenever the Independent Repairer does not use new genuine parts it must inform its customers of that fact and if relevant, that the performance of the Motor Vehicle may be affected;
- (c) All Repair Information and Special Tools are proprietary to the OEM and are subject to applicable copyright, trademarks and other intellectual property rights of the OEM and/or supplier of the Special Tools. Their production or disclosure is subject to the copyright, trademarks and other intellectual property rights relating to such Repair Information and/or Special Tools and they remain the exclusive property of the OEM and or Special Tool supplier and all rights remain with the OEM and/or Special Tool supplier;

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- (d) The fact that an Independent Repairer has been given access to Repair Information under the provisions of this Code does not give the Independent Repairer, or any associated group or organisation, the right to claim or represent themselves as "factory trained", "authorised dealer", or make any other representation that would imply the OEM's approval or authorisation of the Independent Repairer;
- (e) To the maximum extent permitted by law the Repair Information and the Special Tools are provided by the OEM without any warranty or guarantee as to their fitness for intended purpose or accuracy;
- (f) To the maximum extent permitted by law each Independent Repairer does not have any rights of recourse against any OEM or party supplying the Repair Information or Special Tools;
- (g) Repair Information provided and Special Tools are used by the Independent Repairers at their own risk (including in relation to personal injury and property damage);
- (h) All Repair Information and Special Tools provided under this Code are provided solely to assist Independent Repairers to provide repair services to their customers and such information must not be copied, sold, republished or provided to other parties and shall not be used to obtain access to intellectual property of an OEM or be used to reverse engineer any part, component, hardware or software;
- (i) Repair Information and Special Tools provided under this Code are appropriate for use only by suitably qualified, experienced and competent Independent Repairers and the onus is on the Independent Repairer seeking to purchase the Repair Information and/or Special Tools to determine that they fit this description; and
- (j) In the event that an Independent Repairer has a number of company owned outlets or franchised outlets at which repair and servicing services are provided, such Independent Repairer is prohibited from reproducing or making available any Repair Information it has obtained under this Code at more than one such outlet, unless Commercially Reasonable Prices are paid for each such outlet to have access to such repair Information.

10. COMPLIANCE AND ADMINISTRATION – THE REVIEW COMMITTEE

- 10.1 Assessment of compliance with the Code is to be administered by a Review Committee to be established under a memorandum of understanding which will be developed between the FCAI, AMIF and CCAAC.
- 10.2 The Review Committee will undertake periodic reviews of the Code as necessary in consultation with relevant stakeholders to determine whether any amendments to the Code are necessary or desirable.
- 10.3 The Review Committee will consist of:

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- (a) A representative from the FCAI ("FCAI Rep");
 - (b) A representative from an OEM ("OEM Rep");
 - (c) A representative from the AMIF ("AMIF Rep");
 - (d) A representative from a member of the AMIF ("AMIF Member Rep");
 - (e) A representative from the Australian Automotive Dealers Association being an Authorised Dealer of new Motor Vehicles of a marque representing one (at least) of the top ten marques by sales volume in Australia (based on VFACTS reports in the previous calendar year) ("Authorised Dealer Rep");
 - (f) Mr Colin Neave, the Chair of CCAAC or such other member as the remaining members of the Review Committee may decide ("Independent Rep").
- 10.4 The OEM Rep will be the Chair of the Review Committee unless all members of the Review Committee members agree to another member being appointed to that role.
- 10.5 The OEM Rep appointed to the Review Committee will always hold the position of Chair unless an alternative member is appointed Chair under section 10.4.
- 10.6 The Chair of the Review Committee, together with support from the FCAI Rep and the AMIF Rep, will be responsible for management of the Review Committee.
- 10.7 Members of the Review Committee will be eligible to hold their positions for two years. The parties which appoint the OEM Rep, the AMIF Member Rep and the Authorised Dealer Rep must rotate every two years. The FCAI Rep will nominate the parties to appoint these representatives every two years.
- 10.8 The FCAI and AMIF will work to increase industry awareness of the Code and the review process described in section 11 below.

11. COMPLAINTS REGARDING ALLEGED BREACHES OF THIS CODE

GENERAL GUIDELINES

- 11.1 The Review Committee will review (*Access Review*) all complaints made by Independent Repairers alleging that an OEM has failed to comply with this Code in relation to a Request for Information/Special Tools made by the Independent Repairer. Access Reviews will only be conducted upon the presentation of evidence to the Review Committee by an Independent Repairer that there has been a failure to comply with this Code by an OEM in relation to a Request for Information/Special Tools made by the complainant.
- 11.2 The Review Committee will only consider complaints made in writing, and addressed to the FCAI at Level 1, 59 Wentworth Avenue, Kingston, ACT 2604 or delivered through email to info@fcai.com.au and specific information will be required for inclusion in complaints in order to provide that complaints are dealt with in an effective and efficient manner.

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- 11.3 The Review Committee will ensure that all complaints are considered in a timely fashion. As a general rule the Review Committee will endeavour to finalise its determination within six weeks of receipt of a proper and complete complaint.
- 11.4 The Review Committee will advise the complainant of the result of their findings in writing. The Review Committee will also maintain a register of complaints and the findings of any investigations.
- 11.5 In the event that an Independent Repairer fails to comply with the terms of this Code in relation to Repair Information or Special Tools accessed from an OEM, any OEM affected by the breach may exercise any and all rights available to such OEM in connection with such default. In addition, the FCAI, AMIF and the OEMs may refuse further access to Repair Information and/or Special Tools by an independent Repairer which any of them have determined, in good faith, has failed to observe the terms of this Code in relation to Repair Information or Special Tools obtained. The FCAI and AMIF may publish details of any failure to comply with the provisions of this Code including details of the Independent Repairer(s) involved.
- 11.6 Decisions of the Review Committee regarding an Access Review will be decided by simple majority indicated to the Chair of the Review Committee by any agreed mechanism. No decision of the Review Committee regarding an Access Review can be made unless all members of the Review Committee vote upon that decision. Where there is no majority following the vote, the Chair of the Review Committee will have the casting vote.
- 11.7 Where a particular Access Review involves an organisation associated directly or indirectly with a Review Committee member that representative will be temporarily replaced on the Committee during the Access Review. The party whose member is being replaced will appoint the replacement, provided that the replacement must not be affected by the same conflict of interest as the member being replaced.

COMPLAINT PROCESS

- 11.8 Where an Independent Repairer believes that an OEM has breached this Code in relation to a Request for Information/Special Tools, that Independent repairer (**Complainant**) may contact the Review Committee as outlined in section 11.2 above.
- 11.9 The Complainant must provide the following details before the Review Committee will conduct the Access Review:
- (a) Names, address and contact details of the Complainant;
 - (b) Details of the OEM alleged to have breached the Code;
 - (c) Full details including the VIN of the subject Motor Vehicle;
 - (d) Details of the repair to be undertaken by the Complainant;
 - (e) A copy of the Request for Information/Special Tools that has not, in the view of the Complainant, been complied with (in full or in part);

DRAFT - FOR DISCUSSION

- (f) A short statement on the methodology used to make the Request for Information/Special Tools; and
 - (g) a statement identifying the basis for and evidence in support of the Complainant's allegation that the OEM the subject of the Access review has breached the Code.
- 11.10 Upon receiving a complaint which complies with section 11.9 the Review Committee inform itself of the facts relevant to the Access Review in whatever way it considers appropriate.
- 11.11 If the Review Committee decides that the OEM has not breached the Code the Complainant will be advised as such. No further action will be undertaken by the Review Committee and the Review Committee may elect not to consider further complaints that are related to the same Request for Information/Special Tools.
- 11.12 If the Review Committee decides that the OEM has failed to comply with the Code in response to the Complainant's Request for Information/Special Tools, the Review Committee will contact the OEM requesting a written response within 5 working days providing, where relevant, information explaining:
- (a) Where the Repair Information or Special Tools may be purchased at Commercially Reasonable Prices;
 - (b) If the Repair Information or Special Tools cannot be purchased at Commercially Reasonable Prices, an explanation for why that is so; or
 - (c) If the Repair Information or Special Tools do not exist, a statement to that effect.
- 11.13 All OEMs are obliged to provide a response to such a request by the Review Committee. Where the Review Committee in consideration of the information provided by the OEM together with the information supplied by the Complainant decides that the Repair Information or Special Tools requested should be made available under this Code, then the OEM involved will, within 5 working days of being notified of such decision, provide the Repair Information or Special Tools (as the case may be) to the Complainant.
- 11.14 The Review Committee may, if the Chair so chooses, organise any meeting of the parties to a particular Access Review and this meeting may be conducted by any suitable media.
- 11.15 The Review Committee will not consider:
- (a) The price of the Repair Information or Special Tools unless it is manifestly contrary to the provisions of this Code;
 - (b) The methodology that an OEM may choose to use to provide the Repair Information or Special Tool to the Independent Repairers;
 - (c) Access to OEM hot-lines or information sources;
 - (d) Any refusal by an OEM to provide Repair Information or Special Tool to an Independent Repairer that is not made available to an Authorised Dealer in Australia.

DRAFT - FOR DISCUSSION

12. OTHER INFORMATION

- 12.1 All existing legal rights and obligations are unaffected by this Code. All FCAI Members choose to be bound by this Code at their discretion.
- 12.2 All information including documents and correspondence developed during the Review Committee process is confidential and is not available to parties not directly involved in the Access Review process.
- 12.3 The above limitation does not prohibit the publication of high level summary data by the FCAI and AMIF of actions taken following the Access Review and the results of Access Reviews undertaken but only to the extent that such data does not identify the parties to an Access Review or allow their identities to be discerned.

13. IMPLEMENTATION

- 13.1 This Voluntary Code of Practice is in force from the Operative Date.
- 13.2 Each member of the FCAI that manufacturers, imports or distributes Motor Vehicles will be given the opportunity to acknowledge their organisation's commitment to the Code and these commitments will be listed on the FCAI web-site at www.fcai.com.au. If an OEM later decides that there are other methodologies they wish to apply to provide their Repair Information to Independent Repairers, or for any other reason they wish to withdraw their support from the Code, they may advise FCAI of that intention at any time.
- 13.3 FCAI Members that become bound by the Code will provide the contact details for a responsible officer who will be the designated contact for all communication with that OEM for the purposes of this Code.
- 13.4 This Code may be amended by the FCAI from time to time following reviews by the Review Committee.
- 13.5 This Voluntary Code as amended from time to time remains in operation for a period of four years from the Operative Date and is subject to review six months prior to expiration.

CONFIDENTIAL

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Federal Chamber of Automotive Industries

Voluntary Code of Practice

Access to Service and Repair
Information for Motor Vehicles

~~September 2014~~ [February 2015](#)

A. BACKGROUND

1. CONTEXT

1.1 The Voluntary Code of Practice for Access to Service and Repair Information for Motor Vehicles (**the Code**) has been developed by the Federal Chamber of Automotive Industries (**FCAI**) to ensure that the service and repair of motor vehicles is carried out in a manner that best protects the ~~consumer~~consumer's interest in their vehicle~~..~~. To assist in achieving this, the Code, which has been developed following the Commonwealth Consumer Affairs Advisory Council's (CCAAC) report on Sharing of Service and Repair Information in the Automotive Industry, facilitates access for independent repairers to service and repair information and ~~provide~~provides a methodology to seek information where it appears unavailable. The Code takes into account the particularities of the Australian market and has considered relevant aspects of other countries' activities in this area.

1.2 The objectives of the Code are:

~~1.2(a)~~ To ensure that vehicle repairs are carried out in a professional manner and to ensure that the safety, structural integrity, regulatory compliance, presentation and utility of the vehicle is restored or maintained;

~~1.3(b)~~ to provide an information pathway to Repair Information that may be used by parties outside of the Authorised Dealer network; and

~~1.4 to clearly articulate the requirements and obligations that parties accessing Repair Information under this Code are subject to;~~

~~1.5(c)~~ to provide a fair means of access to Repair Information for parties outside the Authorised Dealer network.

1.63 The FCAI ~~support~~supports a responsible approach to ensuring that the public have an opportunity to choose the repair or service facility that best suits their particular needs. While a wide range of information is available from a variety of sources, the Code ~~explicitly excludes~~does not require the provision of certain information including that relating to particular aspects of security, safety and environmental compliance or performance by OEMs. However, each OEM is free to determine whether, and on what terms, to supply information to Independent Repairers in addition to Repair Information.

1.74 A periodic review of the operation of the Code with representatives from the independent repair industry will be scheduled as required. This will be organised through the FCAI. An initial review of the Code must be conducted within eighteen months of the commencement of the Code.

1.85 In interpreting, applying and considering the provisions of the Code, all Independent Repairers who make a Request for Information/Special Tools are ~~taken to have agreed that they must~~expected to invest in and maintain at all times a level of tools, equipment and training that is appropriate to ensure that the standard of service and repairs provided to the consumer by the Independent Repairer is not less than the minimum industry standards for the applicable

class of vehicle and where there is no industry standard, is at least equal to generally accepted industry standards.

1.96 The FCAI will promote the Code amongst its members and will encourage wider awareness of the Code through the independent repair sector. The FCAI also ~~notes~~ notes the significant steps taken, wherever practicable, by manufacturers/distributors and representatives of the independent repair sector to further enhance availability of information through on-line tools such as OEMTech (www.OEMTech.com.au). The Code is set as a minimum standard and it is noted that a wide range of OEMs already provide Repair Information to a range of Independent Repairers. Despite anything to the contrary in this Code, Repair Information covered by the Code is limited to information that is reasonably required by a qualified repairer to the extent that recognised training and experience alone would not be sufficient to repair, service and maintain a Motor Vehicle.

1.7 As stated above, the Code only reflects the minimum standard for OEMs in relation to the supply of Repair Information and Special Tools to Independent Repairers. Accordingly, each participating OEM is free to provide any additional materials or information to Independent Repairers over and above the minimum standard established by this Code as they see fit and this Code does not restrict in any way the supply of Repair Information, Special Tools, additional materials or further information to Independent Repairers.

B. TERMS APPLYING TO ACCESS TO REPAIR INFORMATION AND SPECIAL TOOLS

2. DEFINITIONS

2.1 In this Code, the following definitions apply:

(a) **Authorised Dealers**: means a franchisee or a new Motor Vehicle dealer located in Australia authorised by an OEM to sell, service and repair new Motor Vehicles manufactured and/or imported by the OEM;

(b) **Commercially Reasonable Prices**: means the price set by each individual OEM at their own discretion or (in relation to Special Tools) their respective independent Special Tool supplier with the written approval of the OEM for access to Repair Information or the purchase of Special Tools. The setting of such prices may, but does not have to, take into account some, or all, of the following:

(i) The price the Authorised Dealers pay or are deemed to have paid for the Repair Information or Special Tools excluding any rebates or incentives applied to Authorised Dealers;

(ii) The added cost of development of the Repair Information and Special Tools delivery and distribution mechanism for use by the Independent Repairers through sales within the Australian market;

(iii) The extent to which the Repair Information or Special Tools generate income, or are expected to generate income, by users; ~~and~~

(iv) the development and maintenance costs of any specialist systems and expected volumes of use given overall market penetration of any particular marque; and

(v) Any other matters reasonably related to the cost of the provision and development of the Repair Information or the Special Tools.

(c) **Diagnostic Tool:** means proprietary diagnostic tools approved by an OEM for use in diagnosing repairs required for Motor Vehicles that they distribute;

(d) **Independent Repairer:** means a company, person or other entity that is not an Authorised Dealer but is otherwise in the business of providing, and is appropriately qualified to provide Motor Vehicle repair or servicing services to customers;

(e) **Motor Vehicle:** means passenger motor vehicles, light commercial vehicles, four wheel drive passenger vehicles and utility vehicles designed for transport of persons or goods on public roads;

(f) **OEM:** means a manufacturer or authorised importer of Motor Vehicles that is a member of the FCAI and which has agreed with the FCAI in writing to be bound by this Code;

(g) **Operative Date:** means a date occurring three months after the date on which the FCAI approve this Code;

(h) **Repair Information:** means service, maintenance and repair information which is in the possession of an OEM and which has, for a period of at least six months, been made available to Authorised Dealers by an OEM. Service and Repair Information comprises/comprise workshop repair manuals, body repair manuals and wiring diagrams but does not include the following information:

(i) Information exchanged between the OEM and an Authorised Dealer or any other party for the purpose of resolving a technical issue (whether in general or related to a specific vehicle) for which there is no update of a service manual as yet published; Information relating to warranties, service history, campaigns or other recalls;

(ii) Information generated by the Motor Vehicle or by or on behalf of an OEM on particular use of the vehicle by the driver/s;

(iii) OEM's direct information hotlines made available for Authorised Dealers;

(iv) Information that an OEM is prohibited from disclosing under any law including privacy laws or under the terms of any agreement;

(v) Repair history for a particular Motor Vehicle;

(vi) Any information that is not generally available to Authorised Dealers;

- (vii) Any source code for software or full copies of any software programs;
 - (viii) Matters relating to franchise arrangements, including without limitation any confidential information;
 - (ix) Information relating to a specific repair on a specific Motor Vehicle;
 - (x) Diagnostic service and repair information necessary to reset an immobiliser system or security related electronic modules
 - (xi) Any information (including vehicle computer updates) that may result in non-compliance with any relevant safety, emission or any other legislation affecting Motor Vehicles or OEM compliance with applicable Federal, state or territory laws;
 - (xii) Diagnostic Tools and information pertaining to those tools and related software updates;
 - (xiii) Parts catalogues published by an OEM;
 - (xiv) Any commercially sensitive information of an OEM;
 - (xv) Intellectual Property of an OEM (other than information that is produced specifically for repair and maintenance purposes) or any information that might disclose intellectual property, trade secrets or confidential information of an OEM; [and](#)
 - (xvi) does not have to include all information (whether repair and maintenance related or not) that is provided from time to time by an OEM to an Authorised Dealer.
- (i) **Request for Information/Special Tools** means a request by an Independent Repairer to purchase Repair Information or Special Tools from an OEM;
 - (j) **Special Tools**: means hand tools specifically designed by or on behalf of an OEM for application to a particular task in the maintenance, repair or servicing of a particular Motor Vehicle distributed by the relevant OEM and which tools, the OEM has the right and is able to supply to any other person; [and](#)
 - (k) **VFACTS**: Means the automotive sales statistics published by the Federal Chamber of Automotive Industries.

3. SCOPE AND COVERAGE OF THE CODE

3.1 The Code applies to all OEMs that are members of the FCAI and are manufacturers or distributors of passenger motor vehicles, light commercials and four wheel drives. Further, to the extent that the Code ~~imposes restrictions or obligations upon~~ [relates to](#) Independent Repairers that seek access to the Repair Information from an OEM, such Independent Repairers will be required to agree to comply with ~~those restrictions or obligations~~ [the relevant OEM's terms and conditions](#) at the point of accessing the Repair Information and will be deemed to have so agreed upon provision of or accessing such information.

3.2 It is envisaged that the FCAI website will have a page with links to the individual websites of the various OEMs. Each OEM website will contain [general](#) information about access to that individual OEM's Repair information and Special Tools and will be managed by each OEM separately.

3.3 The Code will apply to Repair Information and Special Tools requested after the Operative Date.

3.4 The Code applies to New Motor Vehicles imported by the OEM only. This Code extends only so far as to require the provision of Repair Information and Special Tools that are accessible by the OEM and does not require an OEM to provide any information or tools that may be available outside Australia but are not in the possession of the OEM.

4. ACCESS TO REPAIR INFORMATION AND SPECIAL TOOLS

4.1 Each OEM shall:

(a) make Repair Information available to Independent Repairers at Commercially Reasonable Prices;

(b) upon request advise Independent Repairers on where they may purchase Special Tools;

(c) provide the information to access Special Tools where those tools are not supplied by the OEM (to the extent that the OEM is in possession of such information and is permitted to provide it), or alternatively make these tools available to Independent Repairers through Authorised Dealers;

(d) at its discretion provide access to Repair Information on its web-site or other medium in a subscription model in blocks of time where possible, ~~for example in time blocks of 24 hours, 7 days, 30 days or 1 year; and; and~~

(e) ensure that the prices for access to Repair Information are Commercially Reasonable Prices ~~given development and maintenance costs of any specialist systems and expected volumes of use given overall market penetration of any particular marque.~~

4.2 This Code is not intended to restrict or prescribe the method by which Repair Information will be made available to an Independent Repairer. The path to the Repair Information will generally be through the individual OEMs' websites (via the FCAI portal). On occasions, Repair Information will not be available on-line and may only be purchased in hard copy from the OEM. There may be other arrangements that OEMs develop for access to Repair Information.

5. OBLIGATIONS UPON PARTIES ACCESSING REPAIR INFORMATION AND SPECIAL TOOLS

5.1 At a minimum, it is understood and acknowledged that Independent Repairers will be granted access by OEMs to Repair Information and Special Tools under this Code in accordance with the following principles, subject to the following terms and conditions: determined independently by each OEM. Unless otherwise agreed with the relevant OEM:

(a) The Repair Information is applicable only to the use, repair and replacement of new genuine parts and may not be applicable where the Independent Repairer uses non-genuine parts in the repair or maintenance of a Motor Vehicle;

(b) An OEM may provide Repair Information and/or Special Tools to an Independent Repairer on the condition that whenever the Independent Repairer does not use or will not be using new genuine parts sourced from the OEM or its authorised parts suppliers, the Independent Repairer must inform its customers of that fact and if relevant, that the performance of the Motor Vehicle may be affected;

(c) All Repair Information and Special Tools are proprietary to the OEM and are subject to applicable copyright, trademarks and other intellectual property rights of the OEM and/or supplier of the Special Tools. Their production or disclosure is subject to the copyright, trademarks and other intellectual property rights relating to such Repair Information and/or Special Tools and they remain the exclusive property of the OEM and or Special Tool supplier and all rights remain with the OEM and/or Special Tool supplier; and

(d) The fact that an Independent Repairer has been given access to Repair Information under the provisions of this Code does not give the Independent Repairer, or any associated group or organisation, the right to claim or represent themselves as “factory trained”, “authorised dealer”, or make any other representation that would imply the OEM’s approval or authorisation of the Independent Repairer;

~~(e) To 5.2 Each OEM will independently determine the maximum extent permitted by law the terms and conditions of any supply of Repair Information and the Special Tools are provided by the OEM without any warranty or guarantee as to their fitness for intended purpose or accuracy;~~

~~(f) To the maximum extent permitted by law each an Independent Repairer does not have any rights of recourse against any OEM or party supplying the Repair Information or Special Tools;~~

~~(g) Repair Information provided and Special Tools are used by the Independent Repairers at their own risk (including in relation to personal injury and property damage);~~

~~(h) All Repair Information and Special Tools provided under this Code are provided solely to assist Independent Repairers to provide repair services to their customers and such information must not be copied, sold, republished or provided to other parties and shall not be used to obtain access to intellectual property of an OEM or be used to reverse engineer any part, component, hardware or software;~~

~~(i) Repair Information and Special Tools provided under this Code are appropriate for use only by suitably qualified, experienced and competent Independent Repairers and the onus is on the Independent Repairer seeking to purchase the Repair Information and/or Special Tools to determine that they fit this description; and~~

~~(j) In the case of an Independent Repairer who owns or is associated with more than one repair business including through franchised outlets at which service and repairs are provided, such an Independent Repairer is prohibited from reproducing or making available any Repair Information it has obtained under this Code at more than one such outlet or site, unless~~

~~Commercially Reasonable Prices are paid for each such outlet to have access to the Repair Information.~~

6. COMPLIANCE AND ADMINISTRATION – THE REVIEW COMMITTEE

6.1 Assessment of compliance with the Code is to be administered by a Review Committee.

6.2 The Review Committee will undertake periodic reviews of the Code as necessary in consultation with relevant stakeholders to determine whether any amendments to the Code are necessary or desirable.

6.3 The Review Committee will consist of:

(a) A representative from the FCAI ("**FCAI Rep**");

(b) A representative from an OEM ("**OEM Rep**");

(c) A representative from the independent repair sector;

(d) A representative from the Australian Automotive Dealers Association being an Authorised Dealer of new Motor Vehicles of a marque representing one (at least) of the top ten marques by sales volume in Australia (based on VFACTS reports in the previous calendar year) ("**Authorised Dealer Rep**").

6.4 The OEM Rep will be the Chair of the Review Committee.

6.5 The Chair of the Review Committee will be assisted by the FCAI secretariat who will act as the Secretary for the Committee.

6.6 Members of the Review Committee (other than the FCAI Rep) will be eligible to hold their positions for two years after which they must resign and are not eligible for re-appointment for at least a further two years. The FCAI Rep will nominate the parties to appoint these representatives every two years.

6.7 The FCAI will work to increase industry awareness of the Code and the review process described in section 7 below.

6.8 In any review of the Code, the Committee may seek advice from a strategic advisory Committee consisting of members from the independent repair industry and advocates for motor vehicle consumers.

7. COMPLAINTS REGARDING ALLEGED BREACHES OF THIS CODE

GENERAL GUIDELINES

7.1 The Review Committee will review (**Access Review**) any complaint made in accordance with this section 7 by an Independent Repairer (**Complainant**) alleging that an OEM has failed to comply with this Code in relation to a Request for Information/Special Tools made by the Independent Repairer. Access Reviews will only be conducted upon the presentation of evidence to the Review Committee by an Independent Repairer that there has been a failure to comply with this Code by an OEM in relation to a Request for Information/Special Tools made by the Complainant.

7.2 The Review Committee will only consider complaints made in writing, and addressed to the FCAI at Level 1, 59 Wentworth Avenue, Kingston, ACT 2604 or delivered through email to info@fcai.com.au and specific information will be required for inclusion in complaints in order to provide that complaints are dealt with in an effective and efficient manner.

7.3 The Complainant must provide the following details before the Review Committee will conduct the Access Review:

- (a) Names, address, ABN and contact details of the Complainant;
- (b) Details of the OEM alleged to have breached the Code;
- (c) Full details including the VIN of the subject Motor Vehicle;
- (d) Details of the repair to be undertaken by the Complainant;
- (e) A copy of the Request for Information/Special Tools that has not, in the view of the Complainant, been complied with (in full or in part);
- (f) A short statement on the methodology used to make the Request for Information/Special Tools; and

(g) a statement identifying the basis for and evidence in support of the Complainant's allegation that the OEM the subject of the Access Review has breached the Code.

7.4 Upon receiving a complaint which complies with section 7.3, the Review Committee must inform itself of the facts relevant to the Access Review in whatever way it considers appropriate.

7.5 If the Review Committee decides that the OEM has not breached the Code the Complainant will be advised as such. No further action will be taken by the Review Committee and the Review Committee may determine not to consider further complaints that are related to the same Request for Information/Special Tools.

7.6 If the Review Committee decides that the OEM has failed to comply with the Code in response to the Complainant's Request for Information/Special Tools, the Review Committee will contact the OEM requesting a written response within 5 working days providing, where relevant, information explaining:

(a) Where the Repair Information or Special Tools may be purchased at Commercially Reasonable Prices;

(b) If the Repair Information or Special Tools cannot be purchased at Commercially Reasonable Prices, an explanation for why that is so; or

(c) If the Repair Information or Special Tools do not exist, a statement to that effect.

7.7 All OEMs are obliged to provide a response to a request under section 7.6 by the Review Committee. Where the Review Committee, having considered the information provided by the OEM together with the information supplied by the Complainant, decides that the Repair Information requested should be made available under this Code, then the OEM involved will, within 5 working days of being notified of such decision, provide the Repair Information to the Complainant. In the case of Special Tools, the same timelines will apply subject to availability.

7.8 The Review Committee may, if the Chair so chooses, organise any meeting of the parties to a particular Access Review and this meeting may be conducted by any suitable media.

7.9 The Review Committee will endeavour to finalise its determination within six weeks of receipt of a proper and complete complaint.

7.10 The Review Committee will advise the Complainant of the result of their findings in writing. The Review Committee will also maintain and publish a register of complaints and the findings of any investigations.

7.11 Decisions of the Review Committee regarding an Access Review will be decided by simple majority indicated by any agreed mechanism to the Chair of the Review Committee. Where a particular Access Review involves [an Independent Repairer's complaint](#) associated directly or indirectly with a Review Committee member (other than as a member of that representative's parent organisation) that representative will be temporarily replaced on the Committee during the Access Review. The party whose representative is being

replaced will appoint the replacement, provided that the replacement must not be affected by the same conflict of interest as the representative being replaced.

7.12 In the event that an Independent Repairer fails to comply with the terms of this Code in relation to Repair Information or Special Tools accessed from an OEM, any OEM affected by the breach may exercise any and all rights available to such OEM in connection with such default. In addition, the FCAI and the OEMs may, ~~in good faith independently determine to unilaterally refuse further access to Repair Information and/or Special Tools by an Independent Repairer which any of them have determined, in good faith, that~~ has failed to observe the terms of this Code in relation to Repair Information or Special Tools obtained.

7.13 The Review Committee will only consider the refusal of an OEM to make available Repair Information and will not consider any other matters including the following:

(a) The price of the Repair Information or Special Tools ~~unless it is manifestly contrary to the provisions of this Code;~~

(b) The methodology that an OEM may choose to use to provide the Repair Information or Special Tool to the Independent Repairers;

(c) Access to OEM hot-lines or information sources; [or](#)

(d) Any refusal by an OEM to provide Repair Information or Special Tools to an Independent Repairer that is not made available to an Authorised Dealer in Australia.

8. OTHER INFORMATION

8.1 All existing legal rights and obligations of a person are unaffected by this Code unless that person, being an FCAI member or an Independent Repairer, elects or is otherwise taken by its conduct, to be bound by this Code. All FCAI Members choose to be bound by this Code at their discretion. An Independent Repairer who has been notified of this Code before Repair Information or Special Tools are made available to it, is taken to have elected to be bound by this Code by accepting or accessing the Repair Information or Special Tool.

8.2 All information including documents and correspondence developed during the Review Committee process is confidential and is not available to parties not directly involved in the Access Review process.

8.3 The above limitation does not prohibit the publication of high level summary data by the FCAI of actions taken following the Access Review and the results of Access Reviews undertaken but only to the extent that such data does not identify the parties to an Access Review or allow their identities to be discerned.

9. IMPLEMENTATION

9.1 This Voluntary Code of Practice is in force from the Operative Date.

9.2 Each member of the FCAI that manufactures, imports or distributes Motor Vehicles will be given the opportunity to acknowledge its commitment to the Code and those commitments will be listed on the FCAI web-site at www.fcai.com.au. If an OEM later

decides that there are other methodologies they wish to apply to provide their Repair Information to Independent Repairers, or for any other reason they wish to withdraw their support from the Code, they may advise FCAI of that intention at any time. The effective date of withdrawal will be three months from the receipt of the notification mentioned above.

9.3 FCAI Members that become bound by the Code will provide the contact details for a responsible officer who will be the designated contact for all communication with that OEM for the purposes of this Code.

9.4 This Code may be amended by the FCAI from time to time following reviews by the Review Committee.

9.5 This Voluntary Code as amended from time to time remains in operation for a period of four years from the Operative Date and is subject to review six months prior to expiration.

APPENDIX 4:

CORRESPONDENCE TO HON BRUCE BILLSON, MINISTER FOR SMALL BUSINESS

AUSTRALIAN AUTOMOTIVE
AFTERMARKET ASSOCIATION

8 OCTOBER 2014



**Australian Automotive
Aftermarket Association Ltd**

A.B.N. 23 002 271 454

Suite 16, Building 3, 195 Wellington Road
Clayton, Victoria, 3168, Australia

Phone: 03 9545 3333

Fax: 03 9545 3355

Email: info@aaaa.com.au

Web: www.aaaa.com.au

8th October 2014

The Hon Bruce Billson MP
Minister for Small Business
Parliament House
CANBERRA ACT 2600

Dear Minister,

FAIR COMPETITION IN THE AUTOMOTIVE REPAIR AND SERVICE INDUSTRY

It is with sincere regret that I write to you today to inform you that the automotive industry has been unable to reach agreement on a voluntary industry code for the sharing of automotive service and repair data. After seven months of intensive negotiations we have reached the point in which the Australian Motor Industry Federation (AMIF), the Australian Automobile Association (AAA) and the Australian Automotive Aftermarket Association (AAAA) have a united position and the Federal Chamber of Automotive Industries (FCAI) have, through their unilateral actions, walked away from the negotiation table.

As you are aware, in 2012 the Commonwealth Consumer Affairs Advisory Council (CCAAC) completed a major inquiry into vehicle data sharing and the key recommendation arising from the Inquiry was that the automotive industry was required to *"develop an industry-led outcome within a reasonable period of time that ensures there is an avenue for independent repairers to reasonably access repair information"*. In the absence of an effective, industry-led outcome in a reasonable period of time, the CCAAC indicated that there may be a case for government intervention as they had formed the view that the accessibility of repair information could become a barrier to competition in the automotive repair industry.

We met with you in January this year and you stated that the Abbott government fully supported the recommendations of the CCAAC, and that you would be taking an active interest in this matter. It was your view that the relevant stakeholders should meet in the first instance to develop a voluntary code that would lead to consumer choice and fair competition. Since our January meeting all of the key stakeholders have been meeting regularly and have been active participants in the process.

I should point out that at the very first stakeholder meeting on the 27th February the FCAI tabled a draft code that did not in any way offer a solution and did not meet any of the required minimum standards. The unilateral FCAI draft code:

- Lacks substance – it has 1 ½ pages of excluded information including all data relating to the safety, security and emissions of a vehicle.
- Is inequitable – the car company decides what information they provide at what price.

- Is not practical – there is no requirement to provide information to 3rd party data providers or aftermarket scan tools companies which is essential in a market with 68 different brands and 360 models of vehicles on offer.
- Is non-binding – car companies can opt in or out as they see fit.
- Has no teeth – there are little if any consequences for the car company for non-compliance.
- Has a biased dispute resolution system – the FCAI and the new car dealers control the overwhelming majority of seats on review committee.

As a result the FCAI draft was rejected by all key stakeholders - except the new car dealers.

We then commenced, what we believed to be, a genuine 'in good faith' discussion and negotiation over a number of months on an equitable multi-party code of practice which included appropriate administrative, governance and dispute resolution mechanisms and a formal review process. It is important that I point out that the FCAI were strongly counselled not to release their unilateral code while we were negotiating this voluntary industry code.

The process for negotiating this code was difficult; many of our meetings were less than pleasant, however we were of the view that genuine progress was being made and that we were relatively close to a resolution. However on 24 September, with no prior notice, the FCAI made the decision to release their internal code of practice. This FCAI code differs very little from their opening gambit that was categorically rejected by the other industry and consumer representative groups. The FCAI '*Voluntary Code of Practice Access to Service and Repair Information for Motor Vehicles – Sept 2014*' has been published and distributed to industry as their formal response to the CCAAC Inquiry.

While we are totally dismayed at the actions of the FCAI, we would like to be able to say that their behaviour was out of character. It is not. It is completely consistent with the arrogance, contempt and disrespect that the FCAI have displayed with respect to this issue from the outset. It is clear from their latest actions that the FCAI had no intention of genuinely working towards an industry-led solution and instead were engaged in a process of delaying and time wasting.

If I am surprised, it is at the lack of judgement the FCAI have displayed in their mistaken view that somehow your Government would accept this inadequate code as a solution to this critical competition policy issue. This unilateral FCAI code does not go close to providing a solution and arguably makes matters worse – the code effectively sanctions the withholding of essential repair and service data from consumers and the independent repair industry. In addition, this action by the FCAI is completely out of step with data sharing agreements that have been successfully brokered in North America and in Europe by the same car companies that are behaving so poorly in Australia.

While we understand that you have indicated that you would only consider a mandated solution to this matter as a last resort, we believe that we have now arrived at that

point. As a result of the recent actions of the FCAI, the AAA, the AMIF and the AAAA are all in agreement that the process of negotiating an industry-led code of practice has now concluded and we are ready to work with you on the alternative path. We therefore seek an urgent meeting with you to discuss the next steps. I am of the view that it would be valuable to convene a discussion jointly with the AAA, the AMIF and ourselves and look forward to your urgent attention to this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Stuart Charity', written over a horizontal line.

Stuart Charity
Executive Director

The Australian Automotive Aftermarket Association Ltd (AAAA) is the national industry association representing manufacturers, distributors, wholesalers, importers, mechanical repair & modification services and retailers of automotive parts and accessories, tools and equipment in Australia. The Association has over 1,600 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 independent small and medium size businesses. AAAA member companies employ more than 30,000 people in a sector that turns over \$11 billion per annum. Visit <http://www.aaaa.com.au/>

APPENDIX 5: STATEMENT: MOTORING INDUSTRY BACK AROUND THE TABLE

HON BRUCE BILLSON MP
MINISTER FOR SMALL BUSINESS

30 OCTOBER 2014



MINISTER FOR SMALL BUSINESS

STATEMENT BY THE MINISTER FOR SMALL BUSINESS THE HON. BRUCE BILLSON MP

MOTORING INDUSTRY BACK AROUND THE TABLE

Today's roundtable of peak bodies representing the whole of the automotive industry supply and service chain and consumers agreed on an action plan to finalise principles on the sharing of information and technical specifications.

This will ensure the implementation of a competitive and transparent vehicle sales and service system for all Australian motorists

A revised draft Heads of Agreement has been circulated and sets the broad parameters for industry cooperation and collaboration.

A strengthened focus on motorists having information about their servicing options has been added to ensure the agreed principles are centred around the consumer's interests.

In the coming weeks individual peak bodies will work to secure sign off on the revised Heads of Agreement, with the view to industry-wide endorsement.

Once settled, the Heads of Agreement will establish the structure around which individual industry associations will develop more detailed voluntary codes to bring the agreement into operation within each specific industry sectors.

This welcomed progress on agreeing an industry wide Heads of Agreement will be supported with input from the ACCC and the federal Treasury.

The positive and constructive discussions held today showed a shared commitment to resolving contentious industry issues.

I was encouraged by each peak body's preparedness to move promptly.

Today's roundtable was attended by:

AAA, AAAA, AADA, AMIF, FCAI and VACC

As observers: ACCC and the Treasury

<ends>

APPENDIX 6:

ADVICE TO AAAA ON FCAI VOLUNTARY CODE OF PRACTICE

CCA COMPLIANCE SOLUTIONS

29 JUNE 2015



29 June 2015

Stuart Charity
Australian Automotive Aftermarket Association (AAAA)
Suite 16, Building 3,
195 Wellington Road,
Clayton VIC 3168

Dear Mr Charity,

Re: Federal Chamber of Automotive Industries (FCAI) – Voluntary Code of Practice Access to Service and Repair Information for Motor Vehicles

Background

In December 2014, a Heads of Agreement (“**the Agreement**”) covering access to service and repair information for motor vehicles was signed between a number of parties in the automotive sector.

The parties to the Agreement are the Federal Chamber of Automotive Industries (“**FCAI**”), the Australian Automotive Dealer Association (“**AADA**”), the Australian Automotive Association (“**AAA**”), the Australian Motor Industry Federation (“**AMIF**”) and the Australian Automotive Aftermarket Association (“**AAAA**”). These parties are collectively known as the *Signatory Parties*.

The primary purpose of the Agreement is to facilitate the availability of service and repair information in the automotive sector.

The Agreement is representative of industry and consumer interests and intends to provide a safeguard to consumers as well as a competitive market to ensure that availability of repair information does not become a barrier to entry into the market.

The content of the Agreement and matters covered by it have been guided by the Commonwealth Consumer Affairs Advisory Council (“**CCAAC**”).

The Agreement consists of fourteen “Agreed Principles”, and, amongst other things, contains clauses setting out the Operation of the Agreement. It also provides that a dispute resolution process may be enacted (by agreement of the steering committee) as required in relation to non-compliance with the Agreed Principles.

The Agreement stipulates that all Signatory Parties have agreed to implement their own internal arrangements/codes of practice/member agreements to give effect to the Signatory Party obligations under this Agreement. The Agreement further stipulates that these documents are to be made publicly available. I am instructed consensus was reached by the Signatory Parties to introduce individual Codes of Practice as their means of giving effect to their respective obligations.

Scope of review

On or around February 2015 the FCAI released its *Voluntary Code of Practice Access to Service and Repair Information for Motor Vehicles* (“**the FCAI Code**”). The AAAA has bona fide concerns that the FCAI Code will not give effect to FCAI member obligations stemming from the Agreement. To this

end, the AAAA has engaged CCA Compliance Solutions Pty Ltd (“**CCA**”) to conduct a review of the FCAI Code.

CCA is a compliance consultancy firm. CCA provides assistance to the AAAA on a regular basis on matters of compliance, including but not limited to trade practices compliance.

Agreed Principles

1. Consumers are able to choose who maintains and/or repairs their motor vehicle
2. Signatory Parties to this Agreement recognise that nothing in this Agreement overrides or affects Original Equipment Manufacturers (OEM) warranty or recall campaign fulfilment, warranties against defects in respect of consumers' vehicles; extended warranty and vehicle maintenance contracts; or any other lawful contractual arrangements entered into between consumers and motor vehicle manufacturers or motor vehicle dealers.
3. The consumer is entitled to full information regarding the maintenance and repair of their motor vehicle product. Consumers must be made aware, by their nominated repairer, of whether the part/s to be used in the mechanical and/ or body repair and/ or maintenance of their motor vehicle is: genuine (OEM recommended) or non-genuine (sourced from an independent manufacturer/supplier); fit-for-purpose; compatible with the operating systems of the recipient vehicle; and compliant with all regulatory requirements, including provisions of the Australian Consumer Law. This will help ensure that consumers can make a fully informed choice in relation to the work to be carried out, the parts to be used and whether those repairs or maintenance services meet OEM specifications.
4. The repairer should be able to assess all information required for 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.
5. The motor vehicle component manufacturers and Original Equipment Manufacturers [OEM] have a right to protect intellectual property and should be able to obtain a return on product development and capital investment in unique or proprietary technologies.
6. New motor vehicle retailers are free to provide mechanical repair services, motor body repair services and professional automotive services to consumers, if this is the fully informed choice of the consumer, and the retailer is appropriately licensed (where applicable), qualified, equipped and skilled with the necessary training and knowledge to meet consumer, business, legislative and regulatory requirements.
7. Independent mechanical repairers, motor body repairers and other automotive specialist trades such as; tyre retailing; engine reconditioning; auto electrical; brake and suspension repairers; third party data providers; and aftermarket scan tool companies; are free to provide mechanical repair, body repair, and professional automotive services to consumers and the automotive trades, if this is the fully informed choice of the consumer, and these sector businesses are appropriately licensed (where applicable), qualified, equipped and skilled with the necessary training and knowledge to meet consumer, business, legislative and regulatory requirements.
8. Service and repair information will be made available on commercially fair and reasonable terms.
9. The provision of service and repair information does not extend to manufacturers providing any trade secrets or information that would or could bypass or affect the integrity of a vehicle's security; design standards; regulatory compliance, performance or legislated requirements.
10. The automotive industry, as a whole, is committed to improve accessibility to service and repair information for the benefit of Australian consumers; acknowledges the nation's ongoing

reliance on road-based transportation and mobility systems; and recognises the inability of any one part of the sector alone to meet consumer demand for such services in current market conditions.

11. The aftermarket component and repair industries acknowledge the importance of obtaining and using the service and repair information that is provided by OEMs to ensure that repairs are carried out correctly to assure the safety of consumers and will advocate and encourage the use of information consistent with OEM specifications.
12. There is some information that may not be able to be shared. This may, for example, result from confidentiality arrangements, security, legislative, regulatory or privacy considerations; the lack of robust monitoring or enforcement mechanisms to assure the protection of information or the bona fides of those who may access it, or intellectual property or proprietary considerations.
13. This Agreement will be the guiding document for separate enabling documents between the Signatory Parties and their members to enact the principles of this Agreement. The principles should be read cumulatively and not selectively.
14. There is a recognition that while dissemination of service and repair information is critical, the industry also acknowledges the importance of ongoing repairer training to ensure that the sector is proficient and efficient.

FCAI Code – broad discretions

a) Participation in the Code

The FCAI Code affords its members a number of broad discretions. By way of primary example, whilst the FCAI Code is voluntary in the conventional sense (inasmuch as the FCAI body has developed and entered the Code voluntarily) there is a secondary form of voluntary involvement as each individual FCAI member may then choose to enter the voluntary Code voluntarily.

b) Commercially reasonable prices

The FCAI Code defines *commercially reasonable prices* (for the provision of repair information) as “the price set by each individual OEM at their discretion”. This appears to favour OEMs to set completely arbitrary pricing for the relevant information. Moreover, the terminology in the Agreement is *fair and reasonable terms*. Fair and reasonable terms encompasses far more than the relevant pricing. Fairness and reasonableness of terms, amongst other things, extends to the timely provision of service and repair information.

c) Definition of repair information

Principle four of the agreement confirms that “*the repairer should be able to assess all information required for 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*”. This principle does not reconcile with the definition set out for repair information in Clause 2.1 of the FCAI Code.

The FCAI Code has a catch all exclusion of repair information at 2.1(h)(xvi) that repair information does not extend to the inclusion of “all information (whether repair and maintenance related or not) that is provided from time to time by an OEM to an Authorised Dealer.” In practical application this would allow an unfettered discretion for OEMs to routinely exclude the provision of information to independents.

The capacity for OEMs to refuse to provide information pursuant to 2.1(h)(ix) is also prima facie quite arbitrary and does not appear to be consistent with all parties commitment in the Agreement to safety.

FCAI Code – scope and coverage

Clause 3.1 of the FCAI Code contends that the “Code applies to all OEMs that are members of the FCAI and are manufacturers or distributors of passenger motor vehicles, light commercials and four wheel drives.” Prima facie this appears to contradict the definition section which indicates that an OEM means “a manufacturer or authorised importer of Motor Vehicles that is a member of the FCAI and which has agreed with the FCAI in writing to be bound by this Code”. Moreover, both statements need to be assessed in conjunction with the FCAI members’ absolute discretion whether they choose to enter the FCAI Code.

The FCAI Code insofar as it also seeks to impart obligations on independent parties which are not a party to the FCAI Code, may be seen as a form of *ultra vires*. That is, in practical application, the independents’ obligations should only be required to be consistent with the Agreement and stem from their own respective Codes.

The FCAI Code indicates “to the extent that the Code relates to Independent Repairers that seek access to the Repair Information from an OEM, such Independent Repairers will be required to agree to comply with the relevant OEM’s terms and conditions at the point of accessing the Repair Information and will be deemed to have so agreed upon provision of or accessing such information”. The independents’ obligations stem from their own respective Codes and the principles in the Heads of Agreement. The terms under which the information should or should not be supplied is already contemplated under the Agreement.

The FCAI Code limits the provision of information to “New Vehicles”. Despite the presence of a definitions section – new vehicles is not defined in the FCAI Code. A narrow interpretation of new vehicles by FCAI members could prevent the provision of important information for many repairers in the aftermarket.

FCAI Code – Obligations Upon Parties Accessing Repair Information and Special Tools

As indicated above, the FCAI Code seeks to impart obligations on independent parties which are not a party to the FCAI Code. The Agreement and each party’s own respective Code is where their respective obligations arise.

Sub Clause 5.1 (a) indicates “that the Repair Information is applicable only to the use, repair and replacement of new genuine parts and may not be applicable where the Independent Repairer uses non-genuine parts in the repair or maintenance of a Motor Vehicle”. The AAAA may wish to seek specialist advice concerning potential competitive conduct considerations arising from this provision including approaching the Australian Competition and Consumer Commission (“ACCC”) for further guidance. To this end, it is unclear why an independent should be prevented from obtaining information for the installation of a non-genuine part which has equal specifications to the genuine part.

Clause 5.2 indicates that “Each OEM will independently determine the terms and conditions of any supply of Repair Information and Special Tools to an Independent Repairer.” This provision affords the OEM arbitrary rights which are ostensibly inconsistent with the Agreement. Under the Agreement “Service and repair information will be made available on commercially fair and reasonable terms.”

FCAI Code – Complaint regarding breaches of the Code

Some elements of the FCAI Code dispute resolution are not inconsistent with the agreed process in the Agreement. However, it’s the Agreement which clearly sets out the dispute resolution process for non-compliance with the agreed principles. The introduction of a secondary dispute resolution process specific to the FCAI Code has the capacity to obfuscate the proper running of the agreed process. Additionally the timelines set out in the FCAI do not appear capable of obtaining commercially viable outcomes for the complainants.

Concluding remarks

For the reasons set out above, it is our considered view that the FCAI Code is inconsistent with the Agreement. It is unlikely that the other signatory parties would have contemplated the two levels of voluntary commitment required by FCAI members.

The broad discretions afforded under the FCAI Code for its members could allow for compliance with the Code without providing service and repair information on commercially fair and reasonable terms, as required by the Agreement. That would appear to be a somewhat perverse outcome.

The ACCC has extensive experience in guiding key stakeholders in the development of voluntary industry codes. The ACCC has published – *Guidelines for developing effective voluntary industry codes of conduct* – this is a useful guidance tool for parties seeking to implement a voluntary code. Given the propensity for significant consumer detriment and possible prevention of market entrants, should the codes fail to meet their objectives, all signatories parties may wish to consider reviewing their codes against these guidelines.

Should wish to discuss this matter any further please do not hesitate to contact the writer.

Yours sincerely,

Rody Hall
Director
CCA Compliance Solutions Pty Ltd

APPENDIX 7:

FACT SHEET - WHY THE AGREEMENT ON ACCESS TO SERVICE AND REPAIR INFORMATION FOR MOTOR VEHICLES FAILED

AUSTRALIAN AUTOMOTIVE AFTERMARKET
ASSOCIATION

MARCH 2016



FACT SHEET #4

Why the Agreement on Access to Service and Repair Information for Motor Vehicles Failed

I thought the industry signed a voluntary code?

The industry signed a 'Heads of Agreement' in December 2015. The agreed principles state that:

1. Consumers are able to choose who maintains and/or repairs their motor vehicle.

4. 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.

8. Service and repair information will be made available on commercially fair and reasonable terms.

**Agreement on Access to Service and Repair Information for Motor Vehicles
Agreed Principles (excerpts) pp 4-5**

Why didn't it work?

The voluntary industry Heads of Agreement is a principles document. What matters to consumers and repairers is how the car companies implement these principles.

The industry association that represents the car makers (FCAI) drafted their own voluntary internal code before the Heads of Agreement was signed and it does not conform to the key principles of the Heads of Agreement; the document effectively justifies why most information will not be made available to a consumer's repairer of choice.

How does the FCAI Code contradict the Heads of Agreement? Why did they do that?

Whilst the FCAI code does set out the intention to share repair information with the independent service and repair sector, it then goes on to exclude a range of essential elements from its definition of 'repair information', including information provided by the manufacturers to dealers for the purpose of resolving a technical issue (but not included as an update to service manuals), information related to service campaigns and recalls, repair history, diagnostic tools, parts catalogues, and *does not have to include all information (whether repair and maintenance related or not) that is provided from time to time by an OEM to an Authorised Dealer*. In other words – pretty much everything needed to repair and service modern cars has been classified as out of bounds.

What about security or safety, that sounds important?

It sounds like it, but it's a trick: every single auto repair job could fit in to the above definition. All of the components on the car are about safety – a door handle is about safety – but you don't want to go to a dealer to replace a door handle on a ten year old car. The windscreen wipers are a safety item, but everyone knows that you should have a choice about whether the dealer fits these, whether your independent repairer fits them, or if you want to buy these yourself and fit them in your own garage. This section is an excuse to withhold information for the lifetime of the car. This is the same excuse the manufacturers used in Europe and North America until government worked it out and simply made it mandatory to share the information.

Car manufacturers like to represent that the dealership is the best option, and it may be for some, but this should be the customer's choice, not a result of anti-competitive practices by the manufacturers. The manufacturers also like to imply that the car is a sophisticated machine and they can't hand over information because independent repairers don't know what they're doing. This is unfair. Independent repairer apprenticeship training complies with the same standards as the dealerships. In terms of complexity of the vehicle, many dealerships already use specialists in the independent market to assist with complex repairs. Our industry is well trained – whether you work in the independent workshop or a dealership

But shouldn't car companies protect their intellectual property?

We cannot reverse engineer a car just by knowing what oil it takes. No phone repairer that replaces an iPhone screen could make their own iPhone, or would even want to make an iPhone. We don't want the intellectual property, and the framework that is used elsewhere in the world for the sharing of service and repair information sufficiently protects intellectual property, whilst being very clear on what is protected and what should be accessible to car owners' preferred repairers. There has been no breach of intellectual property in countries where there is mandatory sharing of data.

Why doesn't a voluntary process work?

In no other market on earth is there a successful voluntary agreement – every comparable market to ours uses a mandatory solution.

There are a lot of reasons the voluntary process has failed. There is no reason for car companies to comply – no commercial imperative, and no regulatory imperative. Only **thirteen** of 68 vehicle manufacturers have service and repair links on the FCAI website, and only one of these sites works well and provides information that complies with the Code.

FCAI members can choose to opt in and out, as their code states that participation is entirely voluntary. Not all car companies are FCAI members, and not all FCAI members have agreed to comply. FCAI released their Code without notifying repairers; no effort was made to ensure that the flow of repair information improved. In fact for some brands, it's become worse!

All car companies still refuse to share all technical service bulletins. If a vehicle has a technical notice that informs the dealer that there is a known fault or a glitch, we don't know about it – despite the fact that some of these issues are about safety, these bulletins are not shared with the car owner or their preferred repairer. Secrecy is not good for competition, nor is it good for road safety.

It's been 15 months since the agreement was signed – why hasn't anything happened? If only one car maker complies with the Heads of Agreement, why aren't the others compelled to do so?

It's a voluntary process and no government agency was charged with the responsibility of monitoring the process. The steering committee did not meet because no group had a responsibility or a mandate to call meetings, and the car companies weren't interested in getting feedback on the (lack of) progress.

Government agencies have pointed out that they are not a signatory to the Heads of Agreement, but we are not sure how this abrogates the responsibility of government to ensure fair and open competition. Not being a signatory should not have prevented government from at least asking for a report on progress. Perhaps the car makers knew that nobody was watching, so why bother doing the right thing? At least one car company thought differently, but that's not enough to ensure competition in auto repair and maintenance.

The FCAI has a dispute mechanism in their code, why didn't you use it?

We didn't use their dispute system because the FCAI Code effectively exempts the car makers from providing most information, so it's hard to see what we would be able to complain about. On what grounds could we complain? The FCAI Code effectively argues that we can't have access – and we don't – so what exactly do we lodge a dispute about?

We might complain that a car company will not share information and their response is likely to be:

- We are not required to make available that data because we have exempted it under IP, security or safety clauses in the FCAI Code; and/or
- We are not actually participants in the FCAI Voluntary Code

With no grounds to complain, and a very small chance of success, it is not likely that any independent repairer will ever lodge a complaint.

If the Heads of Agreement isn't working, how are you still fixing cars?

Many independent mechanics have previously worked in dealerships. Personal relationships can lead to contact with the local dealer, and we can find out some information through these networks.

For large repair chains, you can often find the answer by calling other workshops who have dealt with the same issue previously. We use a lot of workarounds and are pretty innovative in how we get the information. However, we worry about how much longer we can use these workarounds.

Over 90% of vehicles in Australia are imported from overseas, and many are available in markets with mandatory sharing of service and repair information. This means that some information is available from overseas information portals, however it is often incomplete or not available for the specific model sold into the Australian market. Many of these websites are geoblocked so that they cannot be accessed from Australia, and diagnostic codes are deliberately varied in Australian models to prevent local independent repairers from purchasing the same repair information that is available overseas.

Whilst it looks like we are still repairing cars, the reality is that every year the independent repair industry gets smaller – workshops are closing. We are 7-8 times larger than the dealer footprint, but current trends would indicate that this will not be the case for much longer.

How has this been addressed overseas?

A number of Right to Repair bills had been proposed in the United States Congress and several state legislatures that would require vehicle manufacturers to provide the same information to independent service facilities as they do new car dealers. Versions of these bills were generally supported by independent repair and aftermarket associations and opposed by automotive manufacturers and dealerships. Since first introduced at the federal level in 2001, no version of the legislation had become law until the Massachusetts legislature passed H4362, a Right to Repair bill, on 31 July 2012. This law was passed in advance of a binding ballot initiative referendum that appeared on Massachusetts' state-wide ballot on 6 November. **The measure passed with 86% voter support.**

Following the Massachusetts ballot, a Memorandum of Understanding was agreed to by industry associations in order to implement sharing of essential vehicle service and repair information nationwide in the same form required by Massachusetts law.

In 2010 the European Commission introduced a new competition law framework for the automotive sector focusing on aftermarket issues, mandating the sharing of vehicle service and repair information across the European Union through the introduction of generic and sector-specific regulations and guidelines. It recognised that the independent aftermarket increases choice for consumers and keeps the price of repairs competitive by putting pressure on car manufacturers' authorised repair networks.

The regulations clearly specify what technical information must be shared by manufacturers as a condition of sale into the European market. The European Commission has emphasised that access should be given to independent repairers upon request and without undue delay, in a usable form, and that the price charged should not discourage access to it by failing to take into account the extent to which the independent operator uses the information.

What happens next?

Having now passed well beyond the twelve month period since the Heads of Agreement was signed, we have formed the view that a mandatory solution is the only way to satisfactorily address this issue – despite our best efforts to arrive at a sensible voluntary agreement. After five years of negotiation, what we do know is that preserving choice and fair competition in our industry cannot occur on a voluntary basis because of the power imbalance between the players – if the vehicle manufacturers won't voluntarily comply, we simply cannot achieve an outcome.

What happens if there is no prescribed code?

If independent repairers don't have access to information, they will increasingly not be able to repair modern vehicles. Simple supply and demand economics will see the price of car repair escalate for every motor vehicle on our roads, and household expenditure on vehicle running costs will increase. When the cost of vehicle maintenance and repair increases, so too does the cost of every single consumable good and professional service.

Issues with access to diagnostic information have an even greater effect on consumers in rural and regional areas; the lack of a dealership footprint and a higher cost in transporting cars back to the dealership is already resulting in significantly greater consumer detriment in regional and rural areas than in metropolitan areas.

This is not a small, industry specific issue, it is comparable to grocery shopping and utilities. There are 13 million vehicles in Australia and almost every household is affected by car repair costs. In an average three month period 6.5 million people have their cars serviced and 42% use a non-dealer option.

APPENDIX 8:

EVIDENCE OF SYSTEMIC FAILURE TO PROVIDE CRITICAL REPAIR AND SERVICE INFORMATION TO CONSUMERS AND THEIR REPAIRER OF CHOICE

AUSTRALIAN AUTOMOTIVE AFTERMARKET
ASSOCIATION

MAY 2016

Evidence of systemic failure to provide
critical repair and service information to
consumers and their repairer of choice

Australian Automotive Aftermarket Association
May 2016

1. Introduction

1.1 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).

1.2 The underlying principles incorporated into this agreement included¹:

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.

1.3 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.

1.4 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.

1.5 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

1.6 In the major overseas markets of North America and Europe the provision of repair and service information to consumers and/or repairer is mandated. In the case of Europe—which is of special significance to Australia as Government

¹ December 2014. *Agreement on access to service and repair information for motor vehicles*, pp. 4-5

policy is to harmonise Australian vehicle standards to those established by the United Nations Economic Commission of Europe (UNECE) – the non-availability of technical information is considered to be a serious matter and can lead to the withdrawal of ‘type approval’ certification.

- 1.7 The Euro 5 emissions regulation (applied to new vehicles in Europe from 9/2009) places an obligation on all manufacturers to provide independent repairers with standardised access to all technical repair information that is made available to dealers. This same obligation does not exist in Australian Euro 5 emission regulations.

2. Technical Service Bulletins

- 2.1 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.
- 2.2 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 OEM part numbers.
- 2.3 If the repair involves 're-flashing' (reprogramming) the vehicle's electronic control units (ECUs), the bulletin will provide the calibration information and codes.
- 2.4 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.
- 2.5 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.
- 2.6 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.
- 2.7 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.

Table 1: Availability of technical information and technical service bulletins from FCAI website for top-15 car brands (by sales) in Australia

Vehicle Brand	Technical Information Available from FCAI Portal	Technical Service Bulletins Available
Audi	YES	YES
Holden	YES	YES
Volkswagen	YES	YES
* BMW	YES	NO
* Ford	YES	NO
* Toyota	YES	NO
* Honda	NO	NO
* Hyundai	NO	NO
* Jeep	NO	NO
* Kia	NO	NO
* Mazda	NO	NO
* Mercedes-Benz	NO	NO
* Mitsubishi	NO	NO
* Nissan	NO	NO
* Subaru	NO	NO

Notes:

1. Technical service bulletins not available for balance of 53 brands selling vehicles into Australia
2. Asterix denotes systemic failure to provide technical service bulletins

3. Re-Initialisation & Calibration

- 3.1 In instances where an electronic control unit (ECU) loses connection to power (i.e. car battery replaced, re-charged) or an ECU or system component is disconnected or replaced, systems must be re-initialised.
- 3.2 The reason for this is that many ECUs lose any customised settings that may have been set and stored in their memory. For example, an electric sunroof has a motor for operating the roof and is controlled by an ECU. The ECU in this system stores motor position information relative to the maximum open/closed position of the roof and interacts with a number of related systems, to prevent accidental closing. When the ECU loses power, it has to 're-learn' this information.
- 3.3 Initialisation procedures vary widely, depending on the vehicle model and the system. In some cases, the re-learning is a simple matter of operating the system in a pre-determined sequence. This information is generally available from the workshop manual for the particular make and model and accessible by a consumer or nominated independent repairer. In many instances however, the original settings programmed into the ECU must be downloaded from the vehicle manufacturer (factory settings).
- 3.4 Accessing the software requires a link to the manufacturer and, in some cases, a PIN code. This is a relatively simple process for a dealer, but the independent repairer must access the software via the manufacturers' technical information portal, if available.
- 3.5 Even if available, the independent repairer then may require a PIN code which is usually only provided to the dealer. At this point the repairer has little choice but to send the vehicle to the nearest dealer, which in some cases requires long distance towing, to undertake a relatively simple procedure at considerable cost and inconvenience to the consumer and/or repairer.
- 3.6 The next wave of technology for the modern car is the incorporation of collision avoidance features, such as adaptive cruise control and lane change. In many instances these features are – or are soon to be – mandated by regulation.
- 3.7 Advanced driver assistance system (ADAS) electronics use a complex combination of sensors, radar, and cameras working together to either warn the driver of hazards or take control to complete or correct the situation. To function correctly these devices must be precisely positioned in the vehicle and very accurately aimed.

- 3.8 Servicing of these once very simple systems has changed considerably. For example, many manufacturers require that radar and cameras located behind the windscreen are re-calibrated, to ensure the ADAS is operating correctly, after windscreen replacement. In some instances, manufacturers are even recommending re-calibration of ADAS systems after a wheel alignment. There are also unconfirmed reports from the United States that dealers of a well-known manufacturer will not calibrate ADAS systems unless an OE replacement windscreen is fitted.
- 3.9 This issue will be of particular interest to the body repair industry. The collision impact on vehicle bodies, no matter how small, is likely to have significant consequences on the accuracy of ADAS. The calibration equipment is likely to be specialised and require customised facilities, and may create a new specialist repair industry segment.
- 3.10 Without access to manufacturer technical information, and in some cases, diagnostic and re-programming tools, independent repairers cannot hope to calibrate and/or validate the integrity or accuracy of these systems, putting consumers' – and other road users' – safety at risk.

Table 2: Availability of technical information and re-initialisation/calibration information from FCAI website for top-15 car brands (by sales) in Australia

Vehicle Brand	Technical Information Available from FCAI Portal	Re-Initialisation and Calibration Information Available
Audi	YES	YES
Holden	YES	YES
Volkswagen	YES	YES
* BMW	YES	NO
* Ford	YES	NO
* Toyota	YES	NO
* Honda	NO	NO
* Hyundai	NO	NO
* Jeep	NO	NO
* Kia	NO	NO
* Mazda	NO	NO
* Mercedes-Benz	NO	NO
* Mitsubishi	NO	NO
* Nissan	NO	NO
* Subaru	NO	NO

Notes:

1. Re-initialisation and calibration information and codes not available for balance of 53 brands selling vehicles into Australia
2. Asterix denotes systemic failure to provide re-initialisation and calibration information and codes

4. On-Board Diagnostics & Software Upgrades

- 4.1 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.
- 4.2 The intent of OBD, mandated for all vehicles, was twofold:
- To ensure vehicle emissions were well maintained using diagnostic technology to analyse engine management systems, and
 - To make the diagnosis and repair of vehicles easier, more accurate and more efficient for all repair service providers.
- 4.3 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.
- 4.4 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.
- 4.5 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’.
- 4.6 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.

Table 3: Availability of technical information and access to manufacturer software from FCAI website for top-15 car brands (by sales) in Australia

Vehicle Brand	Technical Information Available from FCAI Portal	Access to Manufacturer Software
Audi	YES	YES
Holden	YES	YES
Volkswagen	YES	YES
* BMW	YES	NO
* Ford	YES	NO
* Toyota	YES	NO
* Honda	NO	NO
* Hyundai	NO	NO
* Jeep	NO	NO
* Kia	NO	NO
* Mazda	NO	NO
* Mercedes-Benz	NO	NO
* Mitsubishi	NO	NO
* Nissan	NO	NO
* Subaru	NO	NO

Notes:

1. Manufacturers' software not available for balance of 53 brands selling vehicles into Australia
2. Asterix denotes systemic failure to provide manufacturers' software

5. Oil Specifications

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 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.

5.8 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.

Table 4: Oil specifications and requirements to use manufacturer-branded oils by top-15 car brands (by sales) in Australia

Vehicle Brand	Manufacturer Oils	Manufacturer Specifications
Ford	NON-BRANDED	GENERIC
Holden	NON-BRANDED	GENERIC
Jeep	NON-BRANDED	GENERIC
Kia	NON-BRANDED	GENERIC
Subaru	NON-BRANDED	GENERIC
Audi	NON-BRANDED	SPECIFIC
Volkswagen	NON-BRANDED	SPECIFIC
* BMW	BRANDED	SPECIFIC
* Honda	BRANDED	SPECIFIC
* Hyundai	BRANDED	SPECIFIC
* Mazda	BRANDED	SPECIFIC
* Mercedes-Benz	BRANDED	SPECIFIC
* Mitsubishi	BRANDED	SPECIFIC
* Nissan	BRANDED	SPECIFIC
* Toyota	BRANDED	SPECIFIC

Notes:

1. Asterix denotes systemic failure to provide oil specifications to consumers and third-party repairers

6. Digital Service Books

- 6.1 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.
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 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.
- 6.6 The extent to which the consumer is fully informed of this situation during vehicle purchase is unknown.
- 6.7 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.
- 6.8 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”².
- 6.9 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.

² Australian Government 2012. *Sharing of repair information in the automotive industry: Final report*, Commonwealth Consumer Affairs Advisory Council, The Treasury, p 24

- 6.10 In Australia, no other manufacturer has yet replaced the log book with a digital-only service book, although there are anecdotal reports that BMW either has or will shortly move to online service records.
- 6.11 Similar systems have been introduced in Europe and North America. Toyota in North America have an on-line service history record, but in this case the owner is able to access the record and update it with any details of DIY or nominated repairer servicing. In Europe most major manufacturers have moved to a digital service book which can be updated by registered independent repairers. Registration of independent repairers is undertaken via the manufacturers' technical information websites.

7. Summary

- 7.1 AAAA members identified technical service bulletins, re-initialisation and calibration information and codes, on-board diagnostics and software upgrades, oil specifications, digital service books as key issues where a lack of access to technical and diagnostic information has had a detrimental impact on their customers or their business.
- 7.2 Analysis of these five key issues, and the information made available to third-party repairers through online portals linked to the FCAI website, shows that across the top 15 brands sold in Australia—which represent almost 90% of vehicles sold in 2015—there is evidence of systemic failure to provide critical repair and service information.

Table 5: Availability of critical service and repair information across top-15 car brands (by sales) in Australia

Key Area	Number of Brands Providing Access	Number of Brands Not Providing Access
Technical Service Bulletins	3	12
Key Area	Number of Brands Providing Information	Number of Brands Not Providing Information
Re-Initialisation and Calibration	3	12
Key Area	Number of Brands Providing Access	Number of Brands Not Providing Access
On-Board Diagnostics and Software Upgrades	3	12
Key Area	Number of Brands Providing Specifications	Number of Brands Not Providing Specifications
Oil Specifications	5	10
Key Area	Number of Brands with Hard-Copy Book	Number of Brands with Dealer-Only Online Book
Service History	14	1

APPENDIX 9:

CORRESPONDENCE TO AGREEMENT STEERING COMMITTEE IN RESPONSE TO AAAA EVIDENCE

FEDERAL CHAMBER OF AUTOMOTIVE
INDUSTRIES

JULY 2016



**FEDERAL CHAMBER
OF AUTOMOTIVE
INDUSTRIES**

ABN 53 008 550 347

28 July 2016

LEVEL 1

59 WENTWORTH AVENUE

KINGSTON ACT 2604

AUSTRALIA

PHONE: 02 6247 3811

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Dear Steering Committee Members

On 17 May, the Australian Automotive Aftermarket Association (AAAA) wrote to the Steering Committee members of the Agreement on Access to Service and Repair Information for Motor Vehicles 2014 (the "Agreement"), alleging systemic breaches of the agreed principles of the Agreement by members of the Federal Chamber of Automotive Industries (FCAI).

The AAAA asserted that systemic breaches have occurred in the following areas:

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

The FCAI and its members have reviewed in detail the allegations presented by the AAAA and do not accept the AAAA's allegations that there are systemic breaches of the Agreement. The allegations presented do not constitute systemic breach of the Agreement, and one allegation (lack of access to technical service bulletins) is explicitly excluded from the scope of the Agreement. To be a systemic breach, the complaint must present data to the effect of when a breach occurred, the nature of the breach including brand, model, variant, and information not available or not supplied. This information has not been provided by the AAAA.

Participating FCAI members continue to provide access to service and repair information to independent repairers, as they have in the past. There are various pathways to access service and repair information, as evidenced by the fact that the majority of the 18 million registered vehicles in Australia continue to be serviced and repaired today by the independent repair sector.

The pathways to access to service and repair information include access provided by Australian car brands directly or through third party providers of national on-line portals and call centres such as the MTAA/VACC-operated Tech Online and Our Auto. The MTAA/VACC portal offers a single point of on-line access to the largest automotive technical library in the southern hemisphere as well as providing a dedicated call centre that operates during business hours. In 2015, this centre took 62,000 calls nationally and the VACC portal had more than 700,000 pages of information viewed on-line.

To provide an additional pathway for independent repairers to access automotive technical information, the FCAI has developed a portal to supplement access to the existing pathways described above. The FCAI's portal provides a single reference or website entry point to a number of FCAI members' on-line access points. However, these pathways are not the only method to access service and repair information and to suggest otherwise would be misleading.

Further, in the formulation of the Agreement, an undertaking was given by all parties to review any issues via the Steering Committee mechanism and to develop a collegiate response. Recent public actions by the AAAA do not assist in a considered assessment of the issues.

The FCAI and member brands remain committed to continuing to provide access to service and repair information, consistent with the Industry Agreement and the FCAI's Code of Practice.

Yours sincerely



Tony Weber
Chief Executive
Federal Chamber of Automotive Industries

APPENDIX 10:

MEDIA RELEASE: HOLDEN LEADS IN SHARING REPAIR DATA WITH INDEPENDENT WORKSHOPS

AUSTRALIAN AUTOMOTIVE AFTERMARKET
ASSOCIATION

24 SEPTEMBER 2015



Media Release 24 September 2015

AAAA: Holden leads in sharing repair data with independent workshops

The Australian Automotive Aftermarket Association (AAAA) welcomes GM Holden leadership in sharing vehicle repair information with independent workshop operators.

The *Agreement on Access to Service and Repair Information for Motor Vehicles* – signed by five key automotive industry and consumer groups in December 2014 – set requirements for the type of information to be made accessible to independent repairers.

Parties to the agreement are the AAAA, Australian Automobile Association, Australian Automotive Dealer Association, Australian Motor Industry Federation and the Federal Chamber of Automotive Industries.

The agreement provides for access to 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. Independent workshops are required to pay a reasonable fee to access this data.

AAAA Executive Director Stuart Charity said the Association recognises GM Holden leadership in the Australian market with respect to its action to share repair and service information. “By opening access for all Australian repairers to the AC Delco Technical Delivery System, which is now populated with Australian vehicle specific content, GM Holden has taken a big step forward,” said Stuart Charity.

“Since 2009, AAAA has led the drive to create a level playing field for the service and repair sector. The 2011 Commonwealth Consumer Affairs Advisory Council (CCAAC) report recommended that the industry develop a code of conduct for data sharing. Bruce Billson, the former Federal Minister for Small Business, facilitated the challenging negotiations between the parties.

“AAAA hopes that GM Holden’s initiative creates a precedent that will be followed by all car companies operating in Australia. This will achieve our aim to ensure all Australian vehicle owners retain their right to choose who repairs their vehicle – a dealer or an independent workshop.

“AAAA acknowledges that Toyota/Lexus, Ford, Audi/Skoda, Jaguar/Land Rover and BMW have also made some technical information available. But their current efforts all fall well short of what is required under the industry Heads of Agreement.

“Together with GM Holden there are now nine car brands out of the 68 sold in Australia offering some level of data access. That leaves a long way to go in ensuring competition and choice for all car owners,” said Stuart Charity.

Regulation still a real option

All multi-national car companies operating in Australia already make data available to independent workshops in their European and North American markets and are members of the FCAI. Car companies have had nine months since signing the voluntary agreement to deliver effective access to this data.

Stuart Charity said all brands must quickly follow Holden's lead to demonstrate that a voluntary agreement will work. "The Heads of Agreement set a 12 month timeline to review whether it has had a meaningful impact on the availability of repair and service information," he said.

"If this does not occur as a result of this voluntary process, we will advocate strongly for the Federal Government to introduce a mandatory solution, as has been done in Europe and the USA.

"The time is ticking for all car companies selling vehicles in Australia to comply with the full requirements of the Heads of Agreement by December 2015.

"To fairly and comprehensively monitor how well vehicle makers meet their obligations under the Heads of Agreement, AAAA has launched an online Incident Reporting Portal.

"The AAAA encourages independent workshops to contribute their data accessing experiences – both positive and negative," said Stuart Charity.

The Incident Reporting Portal questionnaire can be used as often as required and takes only moments to complete at: <https://www.research.net/s/incidentreportingportal>.

Photo caption HeadsofAgreement.jpg: *The Agreement on Access to Service and Repair Information for Motor Vehicles signed in December 2014 by the AAAA, Australian Automobile Association, Australian Automotive Dealer Association, Australian Motor Industry Federation and the Federal Chamber of Automotive Industries was facilitated by Bruce Billson, the then Federal Minister for Small Business (second right). He outlined the principles of the agreement at the AAAA Awards night where he was pictured with (left to right) GM Holden's Paul Rietveld, Ultra Tune's Mike Smith, AAAA's Stuart Charity and GM Holden's Paula Hilditch.*

About the Australian Automotive Aftermarket Association Limited (AAAA):

The AAAA is the national industry association representing manufacturers, distributors, wholesalers, importers and retailers of automotive parts and accessories, tools and equipment in Australia. The Association has over 1,900 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 independent small and medium size businesses. Member companies are located in metropolitan, regional and rural Australia. The parts and maintenance sector of the \$108 billion Australian automotive industry represents about \$34 billion. AAAA member companies employ more than 40,000 people and export over \$800 million worth of product a year. Visit <http://www.aaaa.com.au/>

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APPENDIX 11:
RESPONSE TO THE CCAAC
FINAL REPORT ON SHARING
OF REPAIR INFORMATION IN
THE AUTOMOTIVE INDUSTRY

AUSTRALIAN GOVERNMENT

DECEMBER 2012

ATTACHMENT

Australian Government response to the Commonwealth Consumer Affairs Advisory Council's final report on the *Sharing of repair information in the automotive industry* (December 2012)

The Australian Government welcomes the opportunity to respond to the final report of the Commonwealth Consumer Affairs Advisory Council (CCAAC) on the *Sharing of Repair information in the automotive industry* released in December 2012.

Under its terms of reference, CCAAC examined whether there is any evidence of detriment to consumers and the market for automotive repairs as a result of the accessibility of repair information. CCAAC found that at present, there are a wide range of automotive repair services available to consumers and that there is a relatively low level of consumer detriment associated with the accessibility of repair information at this time. However, this could change over time if this became a barrier to entry to the market for the supply of automotive repair services.

On the other hand, CCAAC considered that relatively simple steps could be taken to improve access to repair information. The Australian Government understands that through its consultations, CCAAC also considered that there was appetite within the automotive industry to develop an industry-led outcome to this issue. CCAAC urged the industry to expedite current processes to develop an appropriate outcome in response.

The Australian Government recognises the importance of the automotive repair industry to Australian consumers. There is more than one motor vehicle in Australia for every two people, and automotive servicing and repair is an important aspect of motor vehicle ownership. As such, the Australian Government encourages the automotive repair industry to continue to work collaboratively with other industry participants to progress development of an industry-led outcome to this matter.

CCAAC made three key recommendations in its final report. These recommendations are that:

1. consumer agencies continue to educate consumers that they are not required to have their vehicle repaired by an 'authorised' repairer to ensure continuation of their manufacturers' warranty;
2. the automotive industry expedite current processes to develop, within a reasonable period of time, an outcome (such as voluntary industry code of conduct) that ensures there is a process for independent repairers to access repair information. CCAAC expected there to be significant progress towards such an outcome over the next 12 months; and
3. the Government canvass regulatory options to ensure reasonable access to repair information, if industry is unable to arrive at an effective industry outcome, and access to repair information became a barrier to competition in the market for repairs.

The Australian Government supports the three recommendations contained in the CCAAC report and the following table outlines the Government's response:

RESPONSE TO CCAAC'S RECOMMENDATIONS

Recommendation	Government Position	Government Response
<p>1. CCAAC recommends that consumer agencies should continue to educate consumers that they are not required to have their vehicle repaired by an 'authorised' repairer to ensure the continuation of their manufacturer's warranty.</p>	<p>Support</p>	<p>The Australian Government supports CCAAC's recommendation that Australian consumer agencies should continue to educate consumers about their rights under the Australian Consumer Law (ACL) when accessing repair services.</p> <p>The Australian Government will raise the matter of educating consumers regarding the application of the ACL to motor vehicles through the Consumer Affairs Australia and New Zealand Committee, which comprises Australian and New Zealand consumer affairs agencies.</p>
<p>2. CCAAC urges the automotive industry to expedite current processes to develop within a reasonable period of time, an outcome (such as a voluntary industry code of conduct) that ensures there is a process for independent repairers to access repair information. CCAAC expect there to be a significant progress towards such an outcome over the next twelve months.</p> <p>- CCAAC would expect an industry outcome to address the accessibility of repair information to rural and regional repairers as one of the first priority areas, given the greater potential for consumer detriment in such areas. CCAAC also encourage industry to reach an early outcome on issues which it may be possible to resolve relatively simply (for example, making</p>	<p>Support</p>	<p>The Australian Government supports CCAAC's recommendation that the automotive industry should expedite current processes to develop an industry-led outcome that ensures there is a process for independent repairers to access repair information.</p> <p>As part of this process, the Australian Government will ask the Chairman of CCAAC, Mr Colin Neave AM, to monitor the industry-led process and expects industry to report to the Assistant Treasurer on progress by mid-2013, including providing a clear timeline for implementation of a voluntary initiative. It is expected that significant progress towards an industry-led outcome will be made before the end of 2013.</p> <p>An industry-led outcome should ensure that consumers have access to repair services at reasonable prices now and into the future. The Australian Government also encourages the automotive industry to consider the other issues noted by CCAAC in its report, including the accessibility of repair services in rural and regional areas. The automotive industry is also encouraged to seek guidance from the ACCC in developing an industry-led response.</p>

<p>overseas websites - available to Australian repairers).</p>		
<p>- CCAAC also encourages the industry to seek guidance from the Australian Competition and Consumer Commission, consult widely across the industry and involve an independent third- party in leading development of an industry code.</p>		
<p>3. CCAAC recommends that the Government canvass regulatory options to ensure reasonable access to repair information, if industry is unable to arrive at an effective industry outcome, and access to repair information becomes a barrier to competition in the market for repairs.</p> <p>- A review of the adequacy of an industry-led outcome should be conducted within 18 months of implementation.</p>	<p>Support</p>	<p>The Australian Government supports industry self-regulation as the appropriate mechanism to ensure there is reasonable access in the industry to repair information and notes that there are clear incentives for the automotive industry in developing and agreeing an industry-led outcome. If access to repair information becomes a barrier to competition in the market for repairs and the automotive repair industry has not been able to arrive at an effective industry solution to address such concerns, the Government will consider relevant regulatory options, including a mandatory code of conduct.</p> <p>In this respect, if significant progress towards an industry-led outcome has not been made before the end of 2013, the Government will release a consultation Regulation Impact Statement seeking comments from stakeholders on the extent of the problem and different regulatory options that are available to respond to this issue.</p> <p>The Australian Government supports a review of the adequacy of any industry-led outcome within 18 months of implementation.</p>

