



Federal Chamber of Automotive Industries

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

February 2015

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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'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 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:
- (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;
 - (b) to provide an information pathway to Repair Information that may be used by parties outside of the Authorised Dealer network; and
 - (c) to provide a fair means of access to Repair Information for parties outside the Authorised Dealer network.
- 1.3 The FCAI 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 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.
- 1.4 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.
- 1.5 In interpreting, applying and considering the provisions of the Code, all Independent Repairers who make a Request for Information/Special Tools are 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.

- 1.6 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 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;

- (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 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 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.

- 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; and
- (e) ensure that the prices for access to Repair Information are Commercially Reasonable Prices.

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 (or in some cases 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 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.

5.2 Each OEM will independently determine the terms and conditions of any supply of Repair Information and Special Tools to an Independent Repairer.

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 a 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 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;
 - (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 manufacturers, 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.