



# **Competition and Consumer (Access to Automotive Service and Repair Information) Regulations 20XX**

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Materials relating to the making of Regulations.

Dated XX XXXX 2019

Governor General Inscriptions

Responsible Minister Inscriptions

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## 1. Name

This instrument is the *Competition and Consumer (Access to Automotive Service and Repair Information) Regulations 20XX*.

## 2. Commencement

This instrument commences on 1 July 2019.

## 3. Authority

This instrument is made under the *Competition and Consumer Act 2010*.

## 4. Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## 5. Code of conduct

For the purposes of section 51AE of the *Competition and Consumer Act 2010*, the industry Code set out in Schedule 1:

- (a) is prescribed for the purposes of Part IVB; and
- (b) is declared to be a mandatory industry Code.

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## 6. Review of Code

- (a) The Minister administering section 51AE of the *Competition and Consumer Act 2010* must cause a review to be undertaken of the operation of the *Competition and Consumer (Access to Automotive Service and Repair Information) Regulations 20XX Code of Conduct* (the **Code**).
- (b) The review must start before the end of the period of 3 years after the commencement of this Code.
- (c) The review must assess the impact of the Code in improving consumer access to automotive service and repair services, increased fair and reasonable competition and commercial relations between consumers, participants in the Code and the motor vehicle industry more generally.
- (d) The review must address the following:
  - i. the extent to which Code participants are bound by the Code;
  - ii. levels of compliance with the Code by participants bound by the Code;
  - iii. whether the purposes of the Code (see Schedule 1, Clause 2 of the Code) are being met;
  - iv. the extent to which the Code assists in ensuring consumer choice and competition for the provision of motor vehicle service and repair;
  - v. whether there are any further measures that will improve the operation of the Code with respect to the matters mentioned in paragraphs (ii) and (iii);
  - vi. the interactions between the Code and the Franchising Code of Conduct and other Laws and Regulations;
  - vii. how the Code compares with overseas regulation of commercial relations between motor vehicle manufacturers, dealers, technicians, information aggregators, tool manufacturers and other supply chain participants;
  - viii. whether civil penalty provisions are adequate;
  - ix. any changes to the products and or services that should be covered by the Code;
  - x. whether the Code should be amended and, if so, the timing of any such amendment; otherwise

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- xi. this Code has effect until repealed or replaced.

## **Schedule 1— Access to Automotive Service and Repair Information**

### **Part 1—Introduction**

#### **Division 1—Preliminary**

##### **1. Name**

This Code is the *Competition and Consumer (Access to Automotive Service and Repair Information) Regulations 20XX*.

##### **2. Purpose of Code**

The purpose of this Code is to:

- (a) Ensure consumers consistently experience a competitive, convenient, professional, safety focussed, quality, service and repair experience for the life of a motor vehicle in accordance with laws, regulations, guarantees, and warranties; and through registered Australian businesses, and licensed where required.
- (b) Require motor vehicle manufacturers, selling their vehicles in the Australian market, to:
  - i. Make service and repair information; and manufacturers proprietary tools, as defined in this Code, for their vehicles sold in the Australian market, available in a manner described in this Code, to enable technicians, as described in this Code, to satisfactorily complete necessary service or repairs in an acceptable timeframe;
  - ii. Make service and repair information available to information aggregators; and
  - iii. Make data values, protocols and other information needed for development of non-proprietary tools.

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- (c) Provide for the establishment and operational requirements of an industry led, government oversighted, independently chaired, entity; to administer the requirements of this Code and contribute to compliance including:
- i. Provision of a Code Compliance Manager, appointed by the entity;
  - ii. Provision of a fair, reasonable and transparent industry participant grievance / dispute resolution procedure for disputes arising under this Code; and
  - iii. Provision of mechanisms and / or services to assist in the identification, validation, verification, and registration, of technicians accessing vehicle security information.

### **3. Application**

- (a) This Code applies to:
- i. motor vehicle manufacturers, their distributors and agents, and their franchised / authorised / licensed dealer networks;
  - ii. Technicians generally in automotive trades or in specialist professions; and may be employed by independent repair facilities, businesses and / or franchised / authorised / licensed dealer networks, or operate as sole traders;
  - iii. manufacturers of tools and equipment required for the service and repair of motor vehicles;
  - iv. an agent, business, or individual who represents, distributes, imports and sells motor vehicles independent of the motor vehicle manufacturers and their distributors / and franchised / authorised / licensed dealer networks;
  - v. information aggregators (see definitions); and
  - vi. any other individual or business in the automotive supply chain requiring access to service and repair information.

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## Division 2—Definitions

### 5. Definitions

In this Code:

**Act** means the *Competition and Consumer Act 2010*.

**Agent** means an individual or business that performs as a representative of the motor vehicle manufacturer and may be an individual or business that is contracted by the motor vehicle manufacturer to acquire, sell, market, establish rules, develop and oversight franchise and / or dealer agreements in the Australian market on behalf of a motor vehicle manufacturer.

**Aggregator** means a third-party provider of service and repair information. Such information can be accessed via publication or through an electronic portal and is usually by a paid subscription.

**Australian Automotive Council** is the entity created with accountability and responsibility for the operations of, and compliance with, this Code and other services and facilities provided by it.

**Authorised Dealer** means a franchisee or 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 to sell in the Australian market. *Also see Franchised Dealer.*

**Code** means the *Access to Automotive Service and Repair Information Code of Conduct (XXXX)*.

**Code Compliance Manager** means the person appointed by the entity under Division 2 Clause 30 to administer the requirements of the Code, ensure compliance with the Code and mediation, determination processes and procedures.

**Consumer** means as defined in the *Australian Competition and Consumer Act Cth 2010*.

**Consumer Guarantee (on Motor Vehicles)** under Australian Consumer Law means:

- (a) Suppliers and manufacturers guarantee that motor vehicles are of acceptable quality.
- (b) A supplier guarantees that motor vehicles will be reasonably fit for any purpose the consumer or supplier has specified.
- (c) Suppliers and manufacturers guarantee that their description of motor vehicles (for example, in a catalogue or television commercial) is accurate.
- (d) A supplier guarantees that motor vehicles will match any sample or demonstration model.
- (e) Suppliers and manufacturers guarantee that motor vehicles will satisfy any extra promises – or "express warranties" – made about them.



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- (f) A supplier guarantees they have the right to sell the motor vehicle (clear title), unless they alerted the consumer before the sale that they had "limited title". Note that licensing laws in some states or territories may require motor car traders to guarantee clear title.
  - (g) A supplier guarantees "undisturbed possession" or that no one will try to repossess or take back motor vehicles, or prevent the consumer using them, except in certain circumstances.
  - (h) A supplier guarantees that motor vehicles are free of any hidden securities or charges and will remain so, except in certain circumstances.
  - (i) Manufacturers or importers guarantee they will take reasonable steps to make spare parts and repair facilities available for a reasonable time after purchase.

Consumer guarantees cannot be excluded, even by agreement.

**Diagnostic Tool** means proprietary or non-proprietary diagnostic tools approved by an OEM or meeting standards defined in this Code for use in diagnosing repairs required for motor vehicles sold in the Australian market.

**Distributor** means an individual or business that is contracted by the motor vehicle manufacturer or their agent to acquire, sell, market, establish rules, develop and oversight franchise and / or dealer agreements in the Australian market on behalf of a motor vehicle manufacturer.

**Electronic modules** mean an electronic system and / or component for emissions, safety, security control which has a capability of identifying the likely area for a malfunction by means of trouble or fault Codes stored in a computer memory.

**Exclusions** – see Sub Clause 6.

**Extended Warranties** means extended coverage of the manufacturer's original warranty beyond the original time period usually at additional cost. They are in addition to and do not replace consumer guarantees.

**Fair and reasonable terms** mean:

- (a) Conduct is seen as being 'fair' if it is perceived to be morally right, e.g. ethical, dictated by conscience, honest, uncorrupted and free from prejudice, favouritism or self-interest, and balanced (the focus is primarily internal and subjective).
- (b) Conduct is seen as being 'reasonable' if it is perceived to be administratively just, e.g. lawful, in accordance with accepted standards of conduct, in good faith and for legitimate reasons, unbiased, rational, consistent, what is appropriate for a particular situation, etc. (the focus is primarily external and objective).
- (c) In commercial transactions, fair and reasonable means avoiding situations where a market participant uses a pricing structure to prevent or limit purchase and / or use of their product or service.

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***Fault Codes*** mean the same as trouble codes- see trouble codes definition

***Franchise Code of Conduct*** means a mandated and prescribed industry Code as defined in the Competition and Consumer (Industry Codes – Franchising) Regulation 2014.

***Franchise agreement*** means the right to carry on a business supplying goods or services under a specific system as defined in the Competition and Consumer (Industry Codes – Franchising) Regulation 2014, s. 5(2) (c). Dealer agreements for the sale of motor vehicles are deemed by the Franchising Code of Conduct to be franchise agreements.

***Franchised dealer*** means, any person or business that, in the ordinary course of its business, sells or leases new motor vehicles to consumers or other end users and diagnoses, services, maintains or repairs motor vehicles pursuant to a franchise / dealer agreement and is subject to the Franchising Code of Conduct.

***Immobiliser system*** means an electronic device designed for the sole purpose of preventing the theft of a motor vehicle by preventing the motor vehicle in which it is installed from starting without the correct activation or authorisation code.

***Intellectual Property*** is defined by IP Australia, and the Department of Communications as an invention, trade mark, design, brand or application of an idea. See also '***Trade Secret***' definition.

***Manufacturer*** means any person or business engaged in the manufacturing or assembling of new motor vehicles. It includes the importer, if the manufacturer does not have an office, distributor or agent in Australia.

***Manufacturer owned dealer*** means any person or business that, in the ordinary course of its business, sells or leases new motor vehicles to consumers from premises owned and operated by the Manufacturer, or its distributor or agent.

***Mediator*** means a person who is listed by the Code Compliance Manager under Sub Clause 30 (1).

***Motor Vehicle*** means any motor vehicle as defined by the latest version of the Vehicle Standard (Australian Design Rule - Definitions and Vehicle Categories) 2005. *(Please note: this will need to be potentially replaced by the Road Vehicle Standards Bill 2018 once passed by the Parliament and Royal Assent is granted).*

***Non-proprietary tools*** mean any tools and or equipment developed to replicate the diagnosis, repair, maintenance tasks of proprietary tools but developed independent of the motor vehicle manufacturer.

***OBD or OBD2*** means is the On Board Diagnostic System, or second generation '2' system.

***Original Equipment Manufacturer (OEM)*** means a business that produces parts and equipment that may be marketed by another manufacturer. The term OEM and Manufacturer can be interchangeable and sometime reflect the same meaning in certain circumstances.

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**Original Equipment Manufacturers Specifications** means a documented requirement, or set of documented requirements, to be satisfied by a given material, design, product, service, process or methodology specified by the product manufacturer.

**Proprietary tools** means any tools and /or equipment designed developed and provided by a motor vehicle manufacturer, and / or OEM, for exclusive use on their motor vehicle products.

**Qualified** means documented qualifications, and / or demonstrable extensive knowledge, experience and skills.

**Recall** means a vehicle has been found to be hazardous or non-compliant with a mandatory standard, or Original Equipment Manufacturers design, specification or purpose; or is subject to a ban. The purpose of a Recall, which is usually voluntary by a business, or ordered by legislation or regulation, is to prevent risk and injury by removing the source of the hazard or non-compliance.

**Service and Repair information** – see Clause 7.

**Sole Trader** means in the context of motor vehicle service and repair, a technician who operates their own business solely.

**Technician** means a person with an appropriate vocational, tertiary, or professional trade qualification, or demonstrable knowledge, experience and / or skills; engaged in the service or repair of a motor vehicle, and may be employed by a franchised new car dealer, independent or franchised vehicle repairer; or as a Sole Trader, who diagnoses, services, maintains or repairs motor vehicles.

**Telematics** means the branch of information technology which deals with the long-distance transmission of computerised information.

**Trade secret** means anything tangible or intangible or electronically stored or kept which constitutes, represents, evidences or records intellectual property including secret or confidentially held designs, processes, procedures, formulas, inventions or improvements, or secret or confidentially held scientific, technical, merchandising, production, financial, business or management information, or anything within the definition of intellectual property (also see Intellectual Property).

**Trouble Codes** mean codes that a motor vehicle On Board Diagnostic (OBD) System uses to notify of an issue with the motor vehicle. Each Trouble code corresponds to a fault detected in the motor vehicle. When the motor vehicle's OBD system detects an issue, it will activate a corresponding Trouble code (also applies to fault and / or security codes).

**Vehicle Security Professional Program** means a program requiring identification, criminal record, business documentation and other specified requirements / checks; to enable authorised access by an individual (who may be the nominated representative of a business) to vehicle immobiliser, anti-theft, security module and other security related information; required to start and normally operate a vehicle.

**VFACTS** means the automotive sales statistics published by the Federal Chamber of Automotive Industries.

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***Warranty or Warranties or Manufacturer's Warranty*** means a warranty provided by a vehicle manufacturer that promises consumers that:

- (a) Motor vehicle products will be free from defects for a certain period of time.
- (b) Defects will entitle the consumer to repair, replacement, refund or other compensation.

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## 6. Meaning of Exclusions

*Exclusions* mean the areas or specific matters that are permitted to be excluded under this Code:

- (a) Information exchanged between the manufacturer, their distributor or agent, 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;
- (b) Any information relating to warranties, warranty repairs, warranty defects, and / or voluntary or compulsory recalls;
- (c) Information generated by the motor vehicle or by or on behalf of a manufacturer on particular use of the vehicle by the driver/s; for the purposes of this exemption this does not include manufacturer held electronic log books or service history.
- (d) Manufacturers' direct information hotlines made available for franchised Dealers;
- (e) Information that a manufacturer is prohibited from disclosing under any law including privacy laws or under the terms of any agreement or contract (such as franchise or dealer agreements);
- (f) Any source code for software or full copies of any software programs;
- (g) Matters relating to franchise arrangements, including without limitation any confidential information;
- (h) Diagnostic service and repair information necessary to reset an immobiliser system or security related electronic module. If excluded under this subsection, the information necessary to reset an immobiliser system or security related electronic module must be obtained by a technician through the Vehicle Security Professional Program.
- (i) 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 manufacturer compliance with applicable Federal, State or Territory laws;
- (j) Intellectual Property of a manufacturer (other than information that is produced specifically for service, repair and maintenance purposes) or any information that might disclose intellectual property, trade secrets or confidential information of a manufacturer.

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## 7. Meaning of Service and Repair Information

*Service and Repair information* means:

- (a) all information required for diagnosis, servicing, inspection, periodic monitoring, repair, re-programming or re-initialising of the vehicle; and which the manufacturers provides access to for their franchised / authorised dealers and repairers; including all subsequent amendments and supplements to such information.
- (b) The information referred to in (a) must include, but is not necessarily be restricted to:
  - i. verifiable vehicle identification;
  - ii. service, technical and owner's manuals including recommended manufacturers service schedules;
  - iii. access to electronic log books / data in order to update them;
  - iv. manufacturer technical service bulletins, and service campaigns relating to an identified risk or hazard impacting the performance of the motor vehicle or component that falls outside a recall or warranty defect, warranty repairs or manufacturer obligations to consumer guarantees and statutory warranties;
  - v. collision repair procedures, measurements, and necessary details to affect a body repair to Original Equipment Manufacturer Specifications;
  - vi. security related information (subject to separate access procedures outlined in this Code through the Vehicle Security Professional Program) including immobiliser / pin / key / security module codes;
  - vii. component and diagnosis information (such as minimum and maximum theoretical values for measurements);
  - viii. wiring diagrams, layouts and pin data values;
  - ix. diagnostic fault / trouble / security (where applicable and appropriate) codes and testing procedures (including manufacturer specific codes);
  - x. engine performance, body control and other module application software and calibration software including pass-thru programming information;
  - xi. Manufacturer technical education resources needed by technicians or repair facilities through subscriptions; and by education providers through licencing. This does not include specific manufacturer training materials and / or resources, designed and provided specifically to franchise dealer employed technicians.
  - xii. Manufacturer published or provided service / procedure / repair times

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## **Division 3—Obligation to deal in good faith**

### **8. Obligation to deal in good faith**

- (a) All parties bound by this Code must at all times deal in good faith within the meaning of the unwritten law as in force from time to time.
- (b) In determining whether all parties bound by this Code dealt in good faith with the other, the following may be taken into account:
  - i. whether the trading relationship between the parties bound by this Code has been conducted without duress;
  - ii. whether the parties bound by this Code acted honestly and not arbitrarily.
- (c) Sub Clause (b) does not limit Sub Clause (a).

### **9. Agreement must not limit or exclude obligation to deal in good faith**

- (a) All parties bound by this Code, their businesses, and representatives must not enter into any agreement or undertaking that contains a provision that limits or excludes the obligation to deal in good faith with each other and, if it does, the provision has no effect.
- (b) An agreement must not be varied to include a provision that limits or excludes the obligation to deal in good faith and, if it does, the provision has no effect.

### **10. Freedom of association**

- (a) All parties bound by this Code must not provide an inducement to prevent technicians from:
  - i. being a member of an association; or
  - ii. associating with other technicians, their businesses, and representative organisations for a lawful purpose.
- (b) All parties bound by this Code must not discriminate, or take any other action, against any party, for:
  - i. being a member of an association; or
  - ii. associating with other manufacturers, dealers, businesses, technicians, their businesses or representative organisations for a lawful purpose.

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## **11. Provision of contact details**

- (a) All parties bound by this Code must make available to the Australian Automotive Council and the Code Compliance Manager, and keep updated:
  - i. Contact details of manufacturers, their distributors, and agents and technicians, their businesses and representative organisations; and
  - ii. Contact details for the Australian Automotive Council Code Compliance Manager.
  
- (b) The contact details must include position titles and contact telephone numbers on a maintained and updated electronic accessible database.



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## **Part 2 Principles, Requirements and Conduct generally**

### **Division 1**

#### **12. Principles**

##### **12.1 Principle 1 - Consumer Safety & Protection**

- (a) Consumers are entitled to and must be able to make a fully informed choice in relation to the service and / or repair work to be carried out.
- (b) They must be able to easily satisfy themselves that the technician is suitable as defined in this code, including any required specialisation, that the service and / or repair business is registered as an Australian Business and where required is licensed.
- (c) Consumers must be made aware, by their technician or their employer of whether the part /s to be used in the mechanical and / or body repair and/or maintenance of their motor vehicle is: genuine (manufacturer recommended) or non-genuine (sourced from an independent manufacturer / supplier); used or reconditioned; 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. Genuine Parts should be used where practicable when a vehicle is under warranty or where the vehicle is having a warranty defect rectified. Counterfeit parts are not supported.
- (d) Parties bound by this Code are required as far as practicable to ensure Consumer safety and protection by:
  - i. making available service and repair information;
  - ii. using service and repair information consistent with manufacturer or OEM specifications;
  - iii. continuous education and training as required;
  - iv. possession of proper use of tools and equipment necessary to carry out service and repairs to required specifications.

##### **12.2. Principle 2 - Consumer choice**

- (a) Consumers are able to choose who maintains and / or repairs their motor vehicle, cognisant of consumer guarantees, warranties and obligations of all parties bound by the Code.
- (b) Consumers are entitled to expect accessibility to a competitive motor vehicle service and repair market, irrespective of location or other factors.

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**12.3. Principle 3 - Relationship with Law and Regulation**

All parties bound by this Code recognise that nothing in this Code overrides or affects consumer guarantees, warranty obligations or other protections provided in Australian Consumer Law and / or the Competition and Consumer Act 2010; warranty or recall campaign fulfilment obligations; 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 and their distributors, agents or franchised motor vehicle dealers.

**12.4. Principle 4 – Vehicle manufacturer / OEM**

Vehicle Manufacturers and Original Equipment Manufacturers [OEMs] are recognised as the original designers and manufacturers of motor vehicle products and / or components included in them, sold in the Australian market, and are entitled to:

- (a) protect intellectual property as defined in this Code and elsewhere under Australian and International law;
- (b) obtain a return on product development and capital investment in unique or proprietary technologies, components, or products, as defined in this Code or elsewhere, for a period of time until such like technologies, components and / or products are available in more than one product of one manufacturer.
- (c) Other requirements as defined in Schedule 1, Clause 6.

**12.5. Principle 5 – Technicians**

Technicians are recognised for their documented qualifications, experience and skills, and are entitled to:

- (a) access all service and repair information as defined in this Code, irrespective of their place of employment;
- (b) undertake and fulfil service and repair services and work on all vehicles sold in the Australian market provided they are qualified, skilled, equipped and tooled to undertake such work;
- (c) not be advantaged or disadvantaged by additional requirements or charges that are not fairly and reasonably applied to other market participants;
- (d) acknowledge the importance of obtaining and using the service and repair information that is provided by Manufacturers and / or OEM's to ensure that repairs are carried out correctly to assure the safety and protection of consumers.

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**12.6. Principle 6 – Franchised Motor Vehicle Dealers**

Franchise Motor Vehicle dealers operating under contract and / or agreement to a vehicle manufacturer and / or OEM, and their / or their distributor and / or agent, are recognised as the representative business of vehicle manufacturers and their / or their distributors and / or agents in the Australian market and are therefore entitled to:

- (a) access all service and repair information as defined in this Code;
- (b) to undertake and fulfil warranty and recall work, including specific obligations under the Australian Consumer Law, Competition and Consumer Act and other Australian Law and regulations;
- (c) should not be advantaged or disadvantaged by additional requirements or charges that are not fairly and reasonably applied to other market participants; and
- (d) are entitled, as any other market participant to offer and provide lawful extended warranty products and services, knowing that these do not obfuscate consumer guarantees and are in accordance with Australian laws and regulations.

**12.7. Principle 7 – Fair and Reasonable**

- (a) All parties bound by the Code are expected to be fair and reasonable in all dealings including commercial transactions.
- (b) The principle of fairness is if it is perceived to be morally right, e.g. ethical, dictated by conscience, honest, uncorrupted and free from prejudice, favouritism or self-interest, and balanced.
- (c) The principle of reasonable is if it is perceived to be administratively just, e.g. lawful, in accordance with accepted standards of conduct, in good faith and for legitimate reasons, unbiased, rational, consistent, what is appropriate for a particular situation.

**12.8. Principle 8 – Ensuring the integrity of motor vehicle product**

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. Similarly the provision of service and repair information does not permit any action or activity that would or could bypass or affect the integrity of a vehicle's security; design standards; regulatory compliance, performance or legislated requirements.

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**12.9. Principle 9 Accountability**

Where all parties bound by this code have fair and reasonable access to all service and repair information, and where appropriate tools and equipment; the Technician and / or the business where that technician is employed, may be accountable for any failure to service or repair in accordance with the manufacturers published requirements, as defined in Australian laws and regulations.

**12.10. Principle 10 –Commitment to automotive transport**

The automotive industry, as a whole, is committed to providing 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.

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## Division 2 – Manufacturers

### 13. Application

- (a) This Division applies to manufacturers and their distributors and agents; and importers / businesses where a manufacturer and / or OEM does not have an office, distributor, or agent in Australia.

### 14. Requirements

- (a) Manufacturers will make service and repair information; and manufacturers proprietary tools, as defined in this Code, for their vehicles; available in a timely manner, electronically, to technicians operating within and outside the manufacturer franchised dealer network/s.
- (b) Manufacturers ability to offer extended warranty on their products is recognised
- (c) Except as provided in Sub Clause 18 (a) for model year 2002 motor vehicles and thereafter, a manufacturer of motor vehicles sold in Australia must provide the same service and repair information (as defined in this Code), that manufacturers make available to its franchised dealers network/s.
- (d) Except as provided in Sub Clause 18 (a) beginning with model year 2018 motor vehicles and thereafter, manufacturers of motor vehicles sold in Australia must provide access to their on board service and repair information system as required under this section by:
- (e) Ensuring compatibility with an off-the-shelf personal computer with sufficient memory, processor speed, connectivity and other capabilities as specified by the vehicle manufacturer.
- (f) A non-proprietary vehicle interface device that complies with the Society of Automotive Engineers standard J2534, Society of Automotive Engineers J1939, commonly referred to as SAE J2534 and SAE J1939, the International Organization for Standardization standard 22900, commonly referred to as ISO 22900 or any successor to SAE J2534, SAE J1939 or ISO 22900 as may be accepted or published by the Society of Automotive Engineers or the International Organization for Standardization.
- (g) An on board service and repair information system integrated and entirely self-contained within the vehicle, including, but not limited to, service information systems integrated into an on board display; or
- (h) A system that provides direct access to on-board diagnostic and repair information through a non-proprietary vehicle interface, such as Ethernet, universal serial bus or digital versatile disc.

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- (i) Each manufacturer must provide access to the same on board service and repair information available to their franchised dealer network/s, including technical updates to such on board systems, through such non-proprietary interfaces as referenced in Sub Clause 14 (f).
  - (j) Nothing in this Part shall be construed to require a franchised dealer to use a non-proprietary vehicle interface specified in this Clause, nor will this provision be construed to prohibit a manufacturer from developing a proprietary vehicle diagnostic and reprogramming device; provided, however, that:
    - i. the manufacturer also complies with this Code and Clauses within it; and
    - ii. the manufacturer also makes this device available to independent repair facilities upon fair and reasonable terms and otherwise complies with Clause 14 and the Code generally.
  - (k) Information and data will be provided through the manufacturer's internet-based diagnostic and repair information system or other electronically accessible manufacturer's repair information system. All content in any such manufacturer's repair information system must be made available to technicians in the same form and manner and to the same extent as is made available to franchised dealers utilising such diagnostic and repair information system and as described in Clause 14.
  - (l) Each manufacturer must provide access to manufacturer's service and repair information system, either free or for purchase in a consistent manner which may be short-term (hourly, daily or weekly), monthly and annually subscription based on fair and reasonable terms (which is defined in this Code). Such access may include by vehicle type, model, and unique vehicle identification.
  - (m) If a cost is to be applied to access some information then that cost is the same for all technicians, whether a sole trader, franchised dealership or franchised motor vehicle repairer or service business.
  - (n) Where service and maintenance records of a vehicle are kept in a central data base of the vehicle manufacturer or on its behalf, technicians must have access to such record under the same conditions as franchised dealers in order to be able to enter information on service and maintenance which they have performed.
  - (o) The vehicle service and repair information must always be available, except as required for maintenance purposes of the information system.

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## 15. Telematics

- (a) This Code does not specifically define the term Telematics in the context of the provision of service and repair information. However, where services or products are described by manufacturers or other entities as 'Telematics', these cannot restrict, impede or preclude the requirements of this Code for the provision of service and repair information.

## 16. Proprietary Tools Availability

- (a) Each manufacturer of motor vehicles sold in Australia must make available for purchase by all technicians all proprietary tools incorporating the same diagnostic, repair and wireless capabilities that such manufacturer makes available to its franchised dealers. Such proprietary tools must incorporate the same functional service and repair capabilities that such manufacturer makes available to franchised dealers. Each manufacturer must offer such proprietary tools for sale to technicians upon fair and reasonable terms.

## 17. Proprietary Tools

- (a) Any proprietary tools or information necessary to diagnose, service or repair a motor vehicle that a manufacturer sells to technicians in a manner and on terms and conditions more favorable than the manner and the terms and conditions which a franchised dealer obtains the same diagnostic tool or information necessary to diagnose, service or repair a motor vehicle, must also be offered to the franchised dealer in the same manner and on the same terms and conditions as provided to such technicians.
- (b) A manufacturer that sells to a technician any diagnostic tool necessary to diagnose, service or repair a motor vehicle and such diagnostic tool communicates with the vehicle using the same non-proprietary interface used by other manufacturers, the manufacturer delivering such a diagnostic tool must be prohibited from requiring any franchised dealer from continuing to exclusively purchase that manufacturer's proprietary tool and interface unless such proprietary interface has a capability not available in the non-proprietary interface.
- (c) Proprietary tools provided to technicians cannot be copied, changed, altered or interfered with.
- (d) The intellectual property including design, content, attributes remain the property of the manufacturer or Original Equipment Manufacturer.
- (e) Proprietary tools may not be provided if such tools are so specialised and produced in such small quantities (i.e. low volume specialist or vehicles / models) that it is not commercially viable for such tools to be made available.

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## 18. Vehicle Security Information

- (a) Manufacturers of motor vehicles sold in Australia may exclude service and repair information necessary to reset an immobiliser system or security-related electronic modules from information provided to technicians. If excluded under this Clause, the information necessary to reset an immobiliser system or security-related electronic modules must be obtained by technicians through the Vehicle Security Professional Program to be developed and delivered by the Australian Automotive Council (AAC) detailed in part 3.
- (b) The ACC will also provide the services, processes, methodology for identified, verified and registered technicians to access security information.

## 19. Information for Aggregators

- (a) Each manufacturer must provide service and repair information to each third-party service information provider with whom the manufacturer may have appropriate licensing, contractual or confidentiality agreements for the sole purpose of third party service information publications and systems.
- (b) Once a manufacturer makes such information available pursuant to this Code, the manufacturer will be considered to have satisfied its obligations under this section and thereafter not be responsible for the content and functionality of third party service information systems.
- (c) Aggregators are intended to be bound by the Code as any other party in terms of provision, fairness and reasonableness and other Clauses and Sub Clauses applicable in this Code.

## 20. Information for Tool Manufacturers

- (a) Each manufacturer must provide data values, protocols and other information needed by third party makers of non-proprietary tools with whom the manufacturer may have appropriate licensing, contractual or confidentiality agreements for the sole purpose of building non-proprietary tools.
- (b) Once a manufacturer makes such information available pursuant to this Clause, the manufacturer will be considered to have satisfied its obligations under this section and thereafter not be responsible for the content and functionality of non-proprietary tools.



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- (c) No manufacturer will be prohibited from making proprietary tools available to franchised dealers if such tools are for a specific specialised diagnostic or repair procedure developed for the sole purpose of a customer service campaign or performance of a specific technical service bulletin or recall after the vehicle was produced, and where original vehicle design was not originally intended for direct interface through a non-proprietary interface set out in this Clause. Provision of such proprietary tools under this Clause will not constitute a violation of this Clause even if such tools provide functions not available through the interface set forth in Sub Clause 16(a); provided, however, that such proprietary tools are also available to each third party upon fair and reasonable terms. Nothing in this clause authorises manufacturers to exclusively develop proprietary tools, without a non-proprietary equivalent as set forth in Sub Clause 16(a) for diagnostic or repair procedures that fall outside the provisions of this clause or to otherwise operate in a manner inconsistent with Sub Clause 16(a).

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## **Division 3—Technicians**

### **21. Application**

- (a) This Division applies to technicians or other parties bound by the Code accessing service and repair information.

### **22. Requirements**

- (a) Technicians may be employed in, but not limited to, sole traders, independent mechanical repair businesses, franchised independent mechanical repair businesses, franchised dealerships, motor body repairers and other automotive specialist trades such as: tyre retailing; engine reconditioning; auto electrical; brake and suspension repairers, transmission specialists and other automotive professions.
- (b) Technicians in any repair facility are entitled to the same level of service and repair information as defined in this Code, as is made available to manufacturer's franchised dealerships as soon as the information is made available to such dealerships.
- (c) Technicians must be aware and understand the requirements of Australian Consumer Law and other relevant laws and regulations particularly in regard to Consumer Guarantees, warranty and recalls.
- (d) Technicians will ensure their knowledge, skills, equipment and tools are appropriate for the repair being undertaken and in accordance with manufacturer specifications and obligations to consumer safety, security and protection.
- (e) Technicians' use of obtained vehicle and service repair information in the delivery of service, repair and maintenance services to a motor vehicle available is in accordance with this Code and Schedules, Divisions and Clauses within it, as well as any Australian laws and regulations.
- (f) Technicians will abide by any requirements, processes and rules governing access to manufacturer's service and repair information.
- (g) All Technicians may be required to pay fair and reasonable commercial costs for access to some information. There should be no price differentiation based on the place or type of employment. Technicians employers may make the payment on behalf of their employed technicians, but cannot profit or be made to pay a differential price for access, unless there are transparent, demonstrable commercial justification /s.
- (h) Technicians accessing secure information will abide by the requirements of any process, procedure, requirement, including provision of personal and business information for identification, verification, validation and registration.

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## Division 4—Franchised Dealers

### 23. Application

- (a) This Division applies to Franchise and / or new motor Vehicle dealers or other parties bound by the Code accessing service and repair information.

### 24. Requirements

- (a) Access to Service and Repair information must be on the same terms and conditions including, when appropriate, the same fair and reasonable commercial costs as any other parties bound by the Code, unless there are transparent, demonstrable, commercial, justification /s, for not doing so.
- (b) The role of the Technicians employed in a franchised motor vehicle dealer and / or any manufacturer / distributor / agent and authorised repairer, as the representative of the manufacturer is recognised for the added precedence required for compliance with consumer guarantees, warranty and recall obligations.
- (c) Through relationships, contracts and / or agreements with manufacturers, their distributors and / or agents; franchised or new authorised motor dealers may benefit from commercial, proprietary, or specialised information, equipment, tools, education, training or other materials specific to that relationship, contract or agreement. These attributes are accepted provided they do not materially advantage or disadvantage consumer safety, protection and choice or the ability of other technicians from accessing and using all necessary information in the conduct of service and repairs.
- (d) All Technicians may be required to pay fair and reasonable commercial costs for access to some information. There should be no price differentiation based on the place or type of employment. Technicians employers may make the payment on behalf of their employed technicians, but cannot profit or be made to pay a differential price for access.

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## Part 3—The Australian Automotive Council

### 25. Application

- (a) The Access to Automotive Service and Repair Information Code of Conduct requires the creation of an entity to enable efficient coordinated and facilitated Code operation administration and compliance, and to minimise costs and maximise resources.
- (b) The name of the entity will be the Australian Automotive Council (AAC).

### 26. Requirements

- (a) The Australian Automotive Council (AAC) will:
  - i. Facilitate the cooperation of key stakeholders in the provision of motor vehicle service and repair information for motor vehicles sold in Australia for the benefit of consumers.
  - ii. Provide the functions of Code Compliance Manager to administer the Code.
- (b) Develop and provide services, processes and mechanisms to facilitate the communication and connection to resources and sources of information between manufacturers, their distributors, agents, and representatives; and technicians, associated businesses and representatives.
  - i. Provide the systems, programs and processes to enable authorised access to security related information.
  - ii. Provide the mechanisms for dispute resolution and referral to external mediation, determination and / or other resolution mechanisms.
  - iii. Assist the Commonwealth Government and its regulator in enforcing compliance with this Code and other relevant laws and regulations.
  - iv. Facilitate the identification and correction of gaps in the availability and accessibility of automotive service information, training, diagnostic tools and equipment, and communications to automotive service and repair professionals.
  - v. Provide the mechanism to unite professional, competent and diverse teams to resolve consumer demands for automotive services, industry-wide problems and to effectively communicate solutions.

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- vi. Develop and maintain databases including, but not limited to:
1. Primary contact details of all parties bound by the Code;
  2. Mediation and Determination providers;
  3. Disputes lodged and resolutions achieved or not;
  4. Security, vetting accreditation registers etc.
- (c) In the development of product and services the AAC will give consideration to harmonisation with existing access to repair and service information infrastructure processes, procedures, requirements in other jurisdictions.
- (d) In the development and implementation of fit for purpose Australian solutions, such solutions should be cognisant to those deployed in other jurisdictions and incorporate common global solutions.

## 27. Organisation Structure

- (a) The AAC will be formed and operate as a not for profit, limited by guarantee company established in accordance with Corporations Act (Cth) 2009 including the development and endorsement of a proper modern constitution.
- (b) The AAC will operate in accordance with its constitution and the Corporations Act 2009 in the delivery of its accountabilities for the Code and products and services developed and provided to support the Code.
- (c) The AAC will have representation on the Board and Committees from automotive industry organisations automotive consumer organisations and their members and will also include representatives from Government. Member organisations are:
- Australian Automobile Association (AAA)
    - Representing motoring consumers
  - Australian Automotive Aftermarket Association (AAAA)
    - Representing aftermarket participants
  - Australian Automobile Dealers Association (AADA)
    - Representing new vehicle Motor
  - Federal Chamber of Automotive Industries (FCAI)
    - Representing the manufacturers, distributors and agents
  - The Motor Trades Association of Australia (MTAA) and Members
    - Representing the Retail, Service, Repair, Recycling and associated sectors and professions.
  - Office of the Australian Family Enterprises and Small Business Ombudsman

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- (d) The AAC Board will have an Independent Chair elected by the members.
  - (e) The AAC Board will constitute Committees and Sub Committees as required that will be co-chaired by Member organisations and have delegates with skills, knowledge and experience pertinent to the sphere of activity or area identified.
  - (f) The AAC will be established by equal co contributions from the Members to be determined at the formation of the company and will become self-funded through fees and charges applied to products and services provided by the AAC.
  - (g) Explanatory Memoranda and the AAC constitution provide further information and detail into the governance, structure, and operations of the organisation.

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## Part 4—Dispute resolution

### Division 1—General

#### 28. Dispute resolution procedure

This Part sets out a dispute resolution procedure for the Access to Service and Repair Information Code.

#### 29. When dispute resolution procedure may be used

- a. Manufacturers, technicians, industry associations, Code participants may use any dispute resolution procedures they choose to resolve Access to Service and Repair Information disputes that arise between them.
- b. However, if a technician (the *complainant*) begins the procedure set out in Clause 31 to resolve an Access to Service and Repair Information dispute with another person (the *respondent*), the respondent and the complainant must participate in the dispute resolution, mediation and, if appropriate, determination procedures as set out in this part.

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## **Division 2—Compliance Manager and mediators**

### **30. Code Compliance Manager**

- a. The Australian Automotive Council will appoint a Code Compliance Manager to administer the requirements of this Code, including mediation procedures.
  
- b. The Code Compliance Manager must compile a list of persons who are able to be appointed to be mediators for the purposes of this Part and this list will be published.



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## Division 3—Procedure

### 31. Procedure for dispute resolution

- (a) The procedure for dispute resolution for Access to Service and Repair Information disputes is as set out in this Clause.
- (b) Parties bound by this Code are to attempt to resolve any potential failing in information gaps with resolutions provided within 48 hours. If a gap has been identified then the OEM has 30 days to rectify.
- (c) If after 30 days, the OEM has not complied then compliance manager can appoint a mediator.
- (d) The complainant must give notice in writing to the respondent of the dispute and specify that the complainant is using this procedure to resolve the dispute.
- (e) The notice must specify:
  - i. the nature of the dispute; and
  - ii. what action the complainant thinks will settle the dispute; and
  - iii. what outcome the complainant wants.
- (f) The complainant and the respondent (the parties) must then try to resolve the dispute.
- (g) If the parties cannot resolve the dispute within 3 weeks after the notice being given, either party may request the Australian Automotive Council Code Compliance Manager to appoint a mediator for the dispute.
- (h) The Code Compliance Manager must not appoint a mediator if the Manager is satisfied that the complaint giving rise to the dispute is frivolous, vexatious or has previously been the subject of a mediation under this Part.
- (i) Subject to Sub Clause (h), the mediator must decide:
  - i. how the mediation is to be carried out (for example, by telephone or in meetings); and
  - ii. the time and place for the mediation; and
  - iii. the day that the mediation commences for the purposes of this Part.
- (j) The mediation must be conducted in Australia in a location and at a time convenient to the mediator and parties.
- (k) A party to the dispute must participate in the mediation and try to resolve the dispute in good faith as outlined in Part (1), Division (3).
- (l) For Sub Clause (9), a party is taken to participate in mediation if the party is represented at the mediation by a person who has the authority to enter an agreement to settle the dispute on behalf of the party.
- (m) The complainant may withdraw the dispute at any time.

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## **Division 4—Mediation**

### **32. Appointment of a mediator by Code Compliance Manager**

- a. If the Code Compliance Manager receives a request under Sub Clause 31(e), the Code Compliance Manager must appoint a mediator within 14 days after receiving the request.
- b. The mediator will be appointed from agreed list of mediation providers detailed in Schedule 2, Part 1, Division 1 of this Code.
- c. The Code Compliance Manager must give the parties to the dispute details of the mediator appointed.

### **33. Mediator to give notice of mediation**

Within 14 days after mediation under this Part has commenced, the mediator must notify the Code Compliance Manager that the mediation has commenced and the nature of the dispute.

Note: The mediator decides under Sub Clause 31(i) when mediation commences.

### **34. Mediator to give notice of successful mediation**

- a. If the parties have reached an agreement under a mediation under this Part, the mediator must:
  - i. set out in writing the terms of the agreement; and
  - ii. give a copy of the terms to each of the parties; and
  - iii. notify the Code Compliance Manager that the parties have reached an agreement.
- b. Notice under Sub Clause (a) must be given within 14 days after the agreement is reached.

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### 35. Termination of mediation

- a. The mediator of a dispute under this Part may terminate the mediation at any time if the mediator is satisfied that a resolution of the dispute is not likely to occur.
- b. If the complainant in mediation under this Part asks the mediator to terminate the mediation, the mediator must do so.
- c. If:
  - i. at least 30 days have elapsed since the start of the mediation of a dispute under this Part; and
  - ii. the dispute has not been resolved;
  - iii. the respondent may ask the mediator to terminate the mediation, and the mediator must do so.

Note: The mediator decides under Sub Clause 31(i) when mediation commences.

- d. If the mediator terminates the mediation, the mediator must issue a certificate stating:
  - i. the names of the parties; and
  - ii. the nature of the dispute; and
  - iii. that the mediation has finished; and
  - iv. that the dispute has not been resolved.
- e. The mediator must give a copy of the certificate to:
  - i. the Code Compliance Manager; and
  - ii. each of the parties to the dispute.

### 36. Costs of mediation

- a. Each party to a dispute involving a mediation under this Part must pay half of the costs (if any) of the mediation unless the parties to the mediation agree otherwise.
- b. Each party to a dispute involving mediation under this Part must pay his or her own costs of attending the mediation unless the parties agree otherwise.
- c. In this Clause, *costs of the mediation* include all reasonable costs associated with the carrying out of the mediation.

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### **37. Contractual rights unaffected by Part**

Nothing in this Part affects the right of a party to an agreement to take legal proceedings under the agreement or this Code.

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## **Division 5—Determination Process**

### **38. Application of the determination process**

- (a) If the parties have not resolved their dispute after mediation, either party has twenty-eight (28) days from the date of official receipt of the certificate of notification of mediation termination under Sub Clause 35 (d), to seek application to the Code Compliance Manager for the dispute to proceed to Determination.
- (b) The Code Compliance Manager will ensure all paperwork, materials, evidence collated during any mediation process is compiled for potential use by the determination provider.
- (c) The mediator involved in the mediation phase of the dispute must not act as an advocate, adviser or witness for a party during the determination phase, act as a Determination Provider or be required to disclose any information about any matter arising during the mediation phase unless otherwise agreed by the parties.
- (d) The documents previously submitted to the mediator shall on agreement of the parties be passed on to the Determination Provider, together with any report provided by the mediator on the facts, issues and claims. The mediator must not communicate to the Determination Provider.

### **39. Appointment of Determination Provider by Code Compliance Manager**

- a. If the Code Compliance Manager receives a request under Clause 38, the Code Compliance Manager must appoint a Determination Provider within 14 days after receiving the request.
- b. The Determination Provider will be appointed from agreed list of Determination Providers detailed in Schedule 2, Part 1, Division 2 of this Code.
- c. The Code Compliance Manager must give the parties to the dispute details of the Determination Provider appointed.

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## 40. Determination Provider Procedure

- (a) Within 14 days after a determination process under this Part has commenced, the Determination Provider must notify the Code Compliance Manager that the determination process has commenced.
  
- (b) The Determination Provider shall:
  - i. Adopt procedures suitable for quick, cost-effective and fair determination of the dispute, minimising formality as far as possible;
  - ii. Be independent of, and act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting its case and dealing with that of any opposing party;
  - iii. Apply the Code in managing determination procedures and making decisions under this scheme; and
  - iv. Only seek information related specifically to the matter under dispute.
  
- (c) The parties shall:
  - i. Do all things reasonably necessary for the quick, cost-effective and fair determination of the dispute; and
  - ii. Comply without unreasonable delay with any direction or ruling by the Determination Provider.
  
- (d) Unless amended by the Determination Provider, the dispute resolution process shall proceed in the manner set out below.
  - i. The applicant shall, within twenty-eight (28) days of the date on which the determination provider has notified commencement, provide to the other party or parties and to the Determination Provider a document specifying the nature and basis of the dispute to be determined.
  - ii. Within twenty-eight (28) days of the applicant submitting its dispute, the respondent or respondents shall submit its response to the applicant's dispute, setting out what it says as to the nature and basis of the dispute.
  - iii. The Determination Provider may make further directions or rulings as he or she considers reasonably appropriate in the circumstances. The Determination Provider may seek further information from either or both parties to assist in making a decision.
  - iv. The Determination Provider shall determine the matter on the written material served or may call for a face to face hearing or for additional materials: in order to conclude a determination.

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## **41. Determination Provider to give notice of Determination**

- (a) Once the Determination Provider has reached a Determination under this Part, the Determination Provider must:
  - i. set out in writing the determination and reasons; and
  - ii. give a copy of the terms to each of the parties; and
  - iii. notify the Code Compliance Manager that the Determination has been finalised and outcome reached.
- (b) Notice under Sub Clause (a) must be given within 14 days after the Determination is reached.

## **42. Termination of Determination Provider**

- (a) Once a Determination Process has started it cannot be stopped unless by full agreement of the parties and the Determination Provider and notified to the Code Compliance Manager.
- (b) The Determination Provider must:
  - i. If a hearing is required then convene a determination hearing within 90 days of original commencement;
  - ii. seek any technical or other advice, outside the parties, that may be required to reach a determination;
  - iii. provide a determination by 30 days after the final hearing date.

## **43. Costs of Determination**

- (a) Each party to a dispute involving determination under this Part must pay half of the costs (if any) of the determination unless the Determination Provider stipulates otherwise as part of any Determination.
- (b) Each party to a dispute involving Determination under this Part must pay his or her own costs of attending Determination unless the Determination Provider stipulates otherwise as part of the Determination.

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- (c) In this Clause, *costs of the Determination* include all reasonable costs associated with the carrying out of the Determination.

#### **44. Contractual rights unaffected by Part**

Nothing in this Part affects the right of a party to an agreement to take legal proceedings under the agreement or this Code.



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## **Schedule 2— List of authorised Mediators and Determination Providers**

List to be advised

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## **Schedule 3— Dealer Agreements**

### **Part 1—Introduction**

#### **Division 1—Preliminary**

##### **1. Name**

##### **2. Purpose of Schedule**

##### **3. Application**

The intent would be for further work to be done which captures how Dealer Agreements can be exercised out of the Franchising Code or where the Franchising Code might still apply, but with specific provisions added to this Draft Code to cover nuances only found in complex dealer agreements.

This may include matters pertaining to consumer guarantees, warranty, recall and other relevant considerations resulting from changes currently being considered under reviews and planned legislation to the ACL, CCA and Road Vehicle Standards Bill. It may also provide the vehicle for other recommendations of the ACCC Market Study into New Car Retailing.

It is suggested that additional Clauses could be added to purpose, application, definitions and other Divisions of the prepared Draft Code, and then if appropriate / acceptable an additional Schedule that covered these requirements could either be incorporated into the draft regulatory instrument or added as a schedule.

Ends.