

# Explanatory Notes on the Draft Access to Automotive Service and Repair Information Code of Conduct

## 1. GENERAL OVERVIEW

### ❖ WHY A DRAFT PRESCRIBED AND MANDATED CODE OF CONDUCT?

- MTAA and Members recognise that there is a wide variety of views and positions on whether an actual problem with accessing service and repair information exists, the extent any problem is impacting industry and consumers, or even whether a solution is required at all. There exists even within the extensive business constituents of MTAA members, and in different locations, differing views and positions on this matter.
- MTAA is of the opinion that the nature of any potential problem with access to service and repair information has changed over time. Problems being experienced are now more likely to reflect matters arising from the rapid incorporation of new and emerging technology, changes in automotive industry sectors, and the intersect of mobility and Information Communications Technologies.
- With a previous inquiry issuing cautionary findings that there may be an increasing risk of problems arising; the advocacy and representations made to numerous Parliamentarians over a number of Parliaments, by numerous stakeholders; and the renewed focus in the extensive investigations and recommendations of the Australian Competition and Consumer Commission (ACCC) New Car Market Study Final Report (December 2017), including a recommendation for a ‘mandated scheme or process to ensure access to service and repair information’; it is clear that there is now a growing commitment to resolve this ongoing matter.
- The ACCC did not recommend how a ‘mandated scheme’ should be implemented as this is a question of policy rather than regulation. This has prompted the Treasury Department to now examine the recommendation and the matters underlying it before advising Government on a recommended course of action.
- Based on these observations and the actions and activities internationally on this issue as well as other intelligence, the MTAA believes it inevitable that Government will adopt a solution.
- In the face of this likely outcome, MTAA respectfully suggests the Australian automotive industry cannot afford to persist with internal debate surrounding whether the matter exists or not, or the size or nature of the matter. Nor can the industry afford to provide inconsistent, fragmented solutions to policy makers.
- It is with all these factors in mind that MTAA took the unusual step of investigating and developing a Draft Code of Conduct to assist all stakeholders thinking and further consultation, within a short timeframe, in the development of a solution and even as a potential solution in itself.

## 1. GENERAL OVERVIEW

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- ❖ MTAA arrived at the concept of developing a Draft Code through a process of elimination. The Federation had attempted, with other signatories, to develop a Heads of Agreement (HoA) (2014) to drive an industry led solution to the identified concerns of service and repair information access. There were some problems with the execution of the HoA as expressed by some signatories. The ACCC Market Study final report has focused attention on the matter.
- ❖ Three options were given prominence in the ACCC New Car Retailing Market Study Final Report to how the recommendation of a mandated scheme for access to service and repair information might be achieved:
  1. **An additional compliance requirement for vehicles intending to be sold in the Australian market to have a mechanism / process for accessing Service and Repair information.** This might be achieved through a Design Rule or Motor (Road) Vehicle standard requirement. I.e. Any Manufacturer intending to sell their motor vehicle product in the Australian market would be required to provide assurance and the process of access to repair and service information for models they sell from a particular year model. This compliance requirement would need to be met prior to any approval for that make and model of motor vehicle to be sold in the Australian market. MTAA and Members do not support this option. There is currently a raft of changes being introduced to the Australian Parliament for a comprehensive revision of the previous Motor Vehicle Standards Act, known as the Road Vehicles Standards (RVSM) Bill. MTAA notes this draft Bill does not appear to have considered changes in regard to service and repair information access and therefore, there may be either an unacceptable delay to the Royal Assent of the RVSM Bill, or to the introduction of a solution for access to service and repair information, if such a requirement were to be incorporated into the RVSM Bill. Additionally MTAA has serious concerns that 'tick box' compliance requirement would not address operational matters, dispute notification and resolution, and may not necessarily address consistency of access and / or other matters better addressed by alternative solutions. There are also serious concerns regarding how such a rule could be applied retrospectively for vehicles already sold in the Australian market.
  2. **A prescribed and mandated industry Code of Conduct.** This option is supported by MTAA as it provides the capacity for consumer and industry needs and requirements to be better met. Importantly a prescribed and mandated Code provides industry the ability to facilitate and coordinate an efficient response with government compliance, enforcement and oversight. This is consistent with previous MTAA submissions and positions for an industry led solution with Government intervention if industry cannot or could not make a solution work and underpins this suggested approach and the development of this Draft Code.
  3. **A full legislated approach potentially complete with the creation of a unit or Department to administer the legislation and compliance with it.** MTAA and members do not support this option. There is danger in a legislated solution as it may have unintended consequences for consumers and the industry alike. MTAA does not believe legislation, irrespective of the intent, care or consultation, will necessarily address the complexities of the market and products in it. It will add to cost of government and potentially for consumers, and industry, in terms of the establishment of an oversight office, unit, agency or department, compliance, enforcement and 'red tape'. This option is considered too strong a solution for the problem identified, which could be better dealt with a prescribed and mandated Code of Conduct.

## 1. GENERAL OVERVIEW

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- ❖ The Draft Access to Automotive Service and Repair Information mandated and prescribed Code of Conduct is written and presented as close to how a draft final regulatory instrument **might** look. By preparing a draft of what a final regulatory instrument **might** look like, it allows for the full exploration of a wide variety of matters, the market, participants in it, and consumers, within the envelope of Australian legal and regulatory requirements.
- ❖ It is important to note that the Draft Code, while written to specifically address access to service and repair information has been written so that other simultaneous important matters may be potentially included either now or within a short timeframe. These other matters of significant importance include:
  - Incapacity of the Franchising Code of Conduct to adequately deal with Dealership Agreements due to size and complexities that were never envisaged by the Franchising Code and the nuances and complexities of Dealer Agreements and their intersect with Consumer Guarantees and other ACL and CCA provisions;
  - Unfair contract terms and conditions not adequately covered in the context of Dealership Agreements;
  - Application of provisions of the Competition and Consumer Act including Consumer Guarantees and warranties which, where applicable, are covered in this Draft Code.

If a united and consolidated approach on these matters can also be determined and agreed, they could also be included in this Draft Code through additional Parts and Schedules, and the instrument name could be changed to the *'Australian Automotive Code of Conduct'* to reflect the enhanced remit.
- ❖ There is no capacity when attempting to draft a regulatory instrument to raise or cover implications, impacts, nuances, relationships, or to 'explain' these. An example is the suggestion in the Draft Code that an entity be created with the accountability to operate and ensure compliance with the Code. While the creation and accountabilities of an entity are suggested to be in the remit of a Draft Code, the details of the composition, governance, management, resource structures, funding and operations of such an entity, are not. These are more commonly dealt with in Explanatory Memorandum or other complimentary documentation that usually accompanies the release of such an instrument.
- ❖ These explanatory notes therefore are designed and presented for a similar purpose – i.e. explaining the purpose and detail regarding the rationale and implications of provisions and content of the Draft Code. This document should be reviewed alongside the Draft Code.
- ❖ It is important to note that MTAA is not professing to be a regulation drafter and in presenting this Draft Code is not suggesting that every issue, every nuance, every requirement from a regulatory requirement perspective has been identified or met. Nor is MTAA seeking to undermine the accountability or undertake the work of policy makers, regulators, or legislation / regulation draftspersons. MTAA's has found the preparation of a Draft Code an improved means of identifying and presenting what a potential solution **might** look like so that this can be the base of constructive consultation on the development of a solution with parties, government and departments.

## 2. APPROACH TO THE CREATION OF A DRAFT CODE

- ❖ The MTAA Board of Directors and Members have endorsed a mandated and prescribed Code of Conduct as the most efficient, sustainable and viable solution of the options presented by the ACCC and being considered by Government. The presumptions underpinning the preparation of this Draft Code remain an industry led solution for the benefit of consumers and a viable, sustainable and profitable Australian automotive industry and Government.
- ❖ It is important to note that while the MTAA Board and Members have endorsed this option, it has not endorsed this Draft Code of Conduct per se. It has authorised it to be provided to appropriate stakeholders and government as a potential solution for consultation. The MTAA Board and Members reserve their right to consider and potentially endorse whatever the final solution may be pending the consideration of its various member and sectors constituents.
- ❖ **ANALYSIS and RESEARCH:** In investigating, developing, drafting, workshoping and now presenting this Draft Code, MTAA and Member Associations have invested considerable resources into the analysis of the issues and potential solutions. Analysis and investigations concentrated on:
  - The existing Heads of Agreement (2014) and signatory enabling documentation and issues and matters arising from it;
  - MTAA Member constituent expressed wants and needs and positions as outlined in MTAA endorsed positions and submissions (including do nothing at all);
  - AADA, AAAA, FCAI, AAAA and Consumer Group positions;
  - The United States Massachusetts Legislation;
  - The United States National Automotive Service Task Force;
  - The Memorandum of Understanding between US automakers and the automotive market for the provision of information;
  - The European commission legislation and requirements;
  - Consideration and inclusion of requirements of the ACL and CCA in the development and implementation of a Draft Code.
- ❖ MTAA in its approach also focused on a solution for consumers and well as industry participants. MTAA Members are the only associations that have business constituents in all sectors post manufacturing and are therefore ideally placed to understand the idiosyncrasies, nuances and implications of any solution and its impact on all likely participants.
- ❖ In this consumer and service delivery context, MTAA has also attempted to revitalise language. An example is the use of the word 'Technician' and the applicability of access to service and repair information by a technician, irrespective of their employment. It means a technician whether a sole trader, an employee of a franchised independent repair facility or a franchised new car retailer, or other form of employment, are all equally entitled to access and use information; in the same formats; and where payment is involved at the same commercially fair and reasonable cost. This approach attempts to remove from debate a traditional an 'us and them' or franchised dealer versus the rest mentality. MTAA understands that technicians in a franchised dealer operation can and do experience some of the same frustrations of being unable to access some information and are also sometimes bound to tools, equipment and technologies forced on them at sometimes larger costs than other manufacturer approved alternatives.

## 2. *APPROACH TO THE CREATION OF A DRAFT CODE (Cont.)*

- ❖ There are jurisdiction idiosyncrasies that potentially impact the foundations of such a regulatory instrument including the requirement of licensing in some States and Territories (NSW, ACT and WA), but not others (Vic, Qld, SA and NT), for motor vehicle sales, service and repair sectors of the Australian automotive industry. In some jurisdictions there is licensing for motor vehicle retailing, but not for service and repair.
- ❖ There is also the requirement in some jurisdictions, but not others, (more often associated with licensing) for formal qualifications in a variety of automotive trades. Unlike some international jurisdictions, Australia has a reasonably robust apprenticeship and trade qualification base, which provides increased mitigation to the risk of unqualified persons working on servicing and repairing highly complex motor vehicle products. The influence of these matters was given careful and lengthy consideration. MTAA has presumed that at a minimum, and for a prescribed regulatory instrument, consumers should expect that any person accessing service and repair information should be to undertake servicing and repair, and must be able to demonstrate appropriate qualifications, and / or skills, and / or experience. This is why the term qualified technician is used in the Draft Code.
- ❖ The MTAA recognises there are bona fide technicians who have years of knowledge, experience and skills, but do not have a formal qualification and these professionals should not be disadvantaged, irrespective of their place of employment. However, this recognition does not extend to inexperienced, unqualified and / or 'backyard' operators, with complex diagnosis and rectification requirements, and where the ramifications of getting it wrong could be catastrophic for consumers.
- ❖ MTAA has engaged a United States based consultancy, with an intimate knowledge of, and practical 'hands on' experience in, the development of solutions in the United States, to assist it in the development of this Draft Code. Included in this work was an examination of the history of the issue in that jurisdiction, the approach to resolution and key learnings since implementation. While there are still difficulties and issues, generally the United States jurisdiction is regarded as a more stable and simpler than the European Commission approach, which may be complicated further by the UK decision to withdraw from the European Common Market.
- ❖ MTAA has consistently advocated against merely uplifting the US or European solutions to Australia as each were born of differing circumstances and drivers and there are different market characteristics. An exemplar is Australia, unlike the US, has a robust, documentation backed, qualification base for its automotive and motor trade technicians. This has allowed MTAA to put greater emphasis on 'qualifications' where this is not possible in the United States. However there are significant elements that could be utilised in an Australian solution and some have been incorporated into the Draft Code or as products and / or services to operationalise the Draft Code.
- ❖ The United States based consultancy has provided invaluable assistance in ensuring language and requirements used in the Draft Code are fit for purpose, consistent with what United State automakers are familiar with and have agreed to so as to minimise the risk of multiple jurisdictional based differences each automaker then has to contend with.
- ❖ It is clear that while similar positions and fragmentation occurs in the United States, there also appears to have been a healthier collaborative effort to achieve a viable industry driven solution and this is what underpins MTAA's approach with the development of a Draft Code.

### 3. *Part 1 – Schedule 1: The introduction and Standard Requirements of a Code - Pages 4 -14*

- ❖ The Draft Code is as close to other similar regulatory instruments as it can be and therefore attempts to replicate conventions for schedules, divisions, and clauses as far as practicable. It is acknowledged these may not necessarily be correct, but as previously explained, MTAA is not attempting to do the work of drafters, but to define and present what a prescribed mandated Draft Code might look like.

#### ❖ PAGES 4 & 5 - The Regulatory Instrument:

These are requirements to provide the name of the Code, its commencement date, the Authority under which the Code is made, the purpose of schedules, the enabling legislation that permits the development and implementation of a Code of Conduct, and when the Code will be reviewed and considerations of the review process.

#### ❖ PAGES 6 to and inclusive of 14 - Schedule 1 – Introduction and Preliminary information

Schedule 1 is found in most prescribed and mandated Codes of Conduct and sets out the standard requirements of the Competition and Consumer Act (2010). These requirements include:

- **The name of the regulatory instrument** - As previously mentioned the current name of the Draft Code is *Access to Automotive Service and Repair Information*, **but** it could be changed to *Automotive Industry Code of Conduct*, if agreement and timeframes can be determined to also address matters previously mentioned.
- **The purpose of the Code –**
  - Considerable time was spent on the development of the purpose of the Code and is reflective of the matter needing to be addressed from a consumer's perspective, but with the needs, expectations and requirements of parties to be bound by the Draft Code given equal consideration. The requirements outlined in the *Purpose* have been influenced by, and drafted from, information contained from a variety of sources and a reflective of the Memorandum of Understanding between US Automakers and the automotive Industry, the Massachusetts Legislation and elements of the European Commission requirements with an overlay of limited understanding of Australian Consumer Law and Competition and Consumer Act.
  - The inclusion of information aggregators or those businesses that also provide service and repair information provided from the same manufacturing source are included as they are in other international jurisdictions. The provision of information by aggregator businesses provides alternative sources for information and promotes competition. Aggregators typically have contractual arrangements or other agreements with manufacturers to access and present information and would be equally bound by this Code to make available information consistently with direct gateways or channels.
  - The creation of an entity called *the Australian Automotive Council* for the purposes of the Draft Code enables industry to lead the administration and compliance requirements of the Draft Code and together to develop and implement the products and services including potentially a throughput gateway to Manufacturer portals and a security vetting system called the *Vehicle Security Professional Program*. The intent is that industry has a say and influence in the Code and its implementation and compliance due to complexities, requirements and number and variety of participants. As outlined by the ACCC the alternative would be a unit or a department being established to provide the same requirements from a government perspective which may be difficult and a far more complex process. The AAC is detailed further later in these explanatory notes.

### 3. *Part 1 – Schedule 1: The introduction and Standard Requirements of a Code - Pages 4 -14 (Cont.)*

- **Application** – this clause defines who the parties likely to be bound by the Code. It is deliberately constructed at a macro level as to do otherwise may require an exhaustive list that may still not capture all parties that could be impacted by the introduction of the Code. It is possible through further consultation and discussions that a more comprehensive descriptor is required. If this is the case then this could be dealt with under this Clause.
- **Definitions** –
  - This a significant section as it defines the terms, phrases, words, in general and peculiar to the automotive industry and mentioned in the Draft Code and will be the reference in the event of any ambiguity, interpretation, dispute in regard to Clauses and Sub Clauses of the Draft Code.
  - This was a considerable and considered piece of work with much time and resource devoted to identification, analysis, exploration, and investigation into what are the meanings of terms, words and phrases in the context of the Draft Code. These will clearly be reviewed, tested, discussed by parties, and legislation / regulation drafters. MTAA is not presenting these as a fait accompli, but a genuine base from which to start.
  - MTAA has sourced definitions from multiple and verifiable sources. Where not available or could not be located within Australian legal, legislative or regulatory materials, or have not previously been defined in such a context by Australian Law s, regulations, or in other definitions. MTAA has adopted definitions from other sources including definitions or descriptions used by other Australian automotive organisations, international jurisdiction legislation (such as Massachusetts Legislation and European Commission Laws and Regulations), accepted domestic and international automotive language and in a small number of examples, MTAA developed a definition for further consultation.
  - While every care has been taken to include definitions for most words terms and phrases of importance in the Draft Code, there may be omissions that through further consultation could be included or better defined.
  - Two matters have been given enhanced and detailed definitions. They are the definition of Service and Repair Information and Exclusions.
    1. **Exclusions** were formed by examining the exclusions contained in the (Heads of Agreement 2014) and the exclusions found in the Massachusetts Legislation and European Commission documentation; and in the enabling documentation of Australian Automotive organisations as signatories to the Heads of Agreement. Again, this is a first attempt contained in a Draft Code and will be subject to further consultation.
    2. **Service and Repair information** definition is central to the entire Draft Code and therefore critical to have it defined in full. This definition was formed by analysis and exploration of international jurisdictions, known literature, and existing Heads of Agreement and enabling documentation.
- MTAA believes the definitions provided are a reasonable and comprehensive first draft and reflective of known agreed positions and other definitions which have been accepted by regulators, legislators and industry participants, and provides them as the basis for discussion and eventual agreement. Whether they are appropriate as presented are for others to determine.

### 3. *Part 1 – Schedule 1: The introduction and Standard Requirements of a Code - Pages 4 -14 (Cont.)*

#### ○ **Definitions – Meaning of Exclusions**

- Not all service and repair information can be provided and will be excluded from the Draft Code for a variety of reasons and circumstances.
- Exclusions are therefore defined in some detail in the Draft Code. Whether an expansive definition is appropriate under this heading or should be incorporate elsewhere in the Draft Code is a matter for others to determine.
- The list in the Exclusions definition has been drafted based on identified and agreed exclusions in other jurisdictions, combined with input and feedback from MTAA Members and their constituents; the 2014 Heads of Agreement and the enabling documents of signatories to that agreement.
- However, the Draft Code does not include some exclusions that may have been present in the Heads of Agreement or enabling documentation, as these may have related to security and other related information, which that at that time was determined would not be made available. The presumption of the Draft Code is security related service and repair information will be made available, so therefore the exclusions definition attempts to take these considerations into account.
- Clearly again this is a draft for further consultation, discussion and agreement. It is envisaged that the entity that administers the code, and compliance with it, (suggested in the Draft Code to be the Australian Automotive Council) would have a mechanism by way of subcommittee or some other process that would regularly revisit, maintain and update exclusions as required.
- This same process / mechanism would also be the accountable area for administering any process, program or system developed to provide the secure access arrangements for such a system detailed further in these explanatory notes.

#### ○ **Definitions – Meaning of Service and Repair Information**

- Similarly the definition of Service and Repair information was a substantial piece of work based on identified and agreed definitions in other jurisdictions, combined with input and feedback from MTAA Members and their constituents; the 2014 Heads of Agreement and the enabling documents of signatories to that agreement as well as other sources.
- MTAA have been as comprehensive as possible in arriving at the presented definition, cognisant of exclusions, the needs and requirements of consumers and industry participants, in order to remove as far as practicable ambiguity, misinterpretation and or misconstruction of the intent. Whether an expansive definition is appropriate under this heading or should be incorporate elsewhere in the Draft Code is a matter for others to determine.
- This will be another area for considerable discussion, consultation, and agreement by parties expected to be bound by the Draft Code.



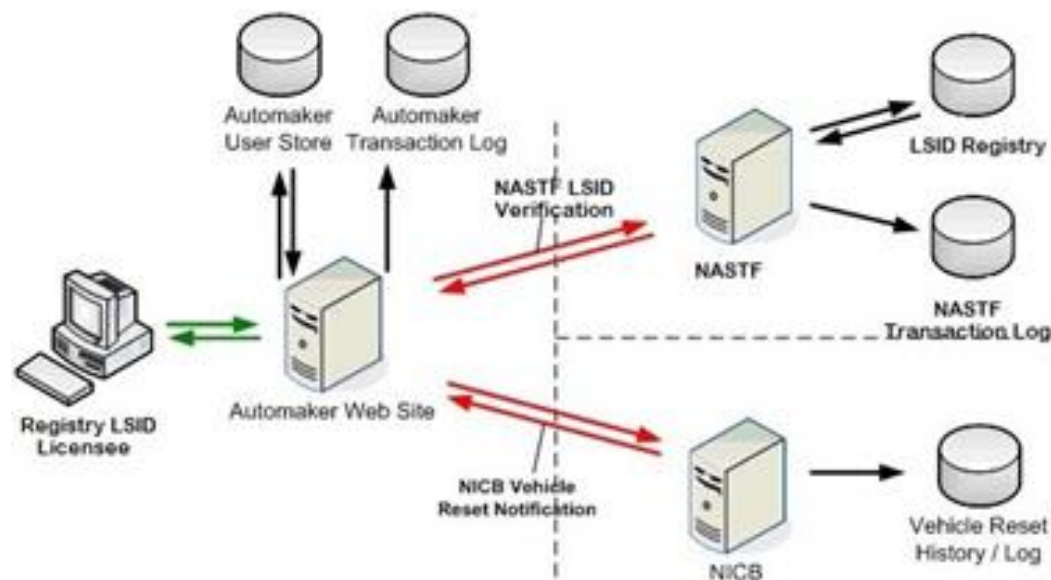
### 3. *Part 1 – Schedule 1: The introduction and Standard Requirements of a Code - Pages 4 -14 (Cont.)*

#### ○ Definitions - Vehicle Security Professional Program

- The **Vehicle Security Professional Program** (VSPP) is defined from the National Automotive Service Task Force (NASTF) in the United States and this securitisation access process / program has the commitment and involvement of United States vehicle manufacturers (including those manufacturers based outside the United States, but selling vehicles in the United States market), and automotive industry participants. MTAA suggests a variation of this model, fit for purpose to the Australian environment and suggested Draft Code and process may be a solution. Again the presumption in the Draft Code is that as in other jurisdictions, security information can be included in any information access regime provided the integrity and security of the information is assured and access to it and use is tightly controlled.
- It is recognised in most jurisdictions that a form of registration, vetting, validation, accreditation, including personal and police checks and potential linkages with national security and automotive databases, is a prerequisite for any access to vehicle security systems including immobilisers, keys etc. However, the United States system has shown that such a system can be achieved and work in the interests of all stakeholders and protect consumers.
- The NASTF Vehicle Security Professional (VSP) Registry is a service created from the NASTF Secure Data Release Model (SDRM), a project of the NASTF Vehicle Security Committee. SDRM is a data exchange system (see graphic below) conceived and designed cooperatively by automakers, the independent repair, insurance and law enforcement communities. It allows the aftermarket to access security sensitive information related to automobiles, i.e. key codes, PIN numbers, immobilizer reset information, and similar types of information. The NASTF VSP Registry program allows access to security-related information while protecting the safety and security of consumers and the integrity of automobile security systems. Further information of the NASTF model and processes can be found at <https://www.nastf.org/i4a/pages/index.cfm?pageid=3532>
- The MTAA has analysed the United States jurisdiction solutions and contracted a United States consultancy with expertise in the systems and processes and have identified no practical reasons why such a system cannot be also operated in Australia.
- Stakeholders will be aware that MTAA Member, the Victorian Automobile Chamber of Commerce, also developed an Australian Automotive Security Accreditation Scheme (AASAS), which MTAA endorsed as a potential solution and incorporated into submissions to the ACCC Market Study. The Australian Automotive Security Accreditation Scheme (AASAS) was developed along similar objectives to the United States model to ensure the vehicle security including personal and vehicle data are not compromised during the servicing and or repair process. An overview of the ASSAS model can be found in the MTAA submission to the Market Study or by contacting the MTAA.
- MTAA understands that such a system cannot be 'owned or controlled' by a single entity associated with the Australian automotive supply chain. Therefore, it is suggested that the VSPP, or ASSAS, or a hybrid with another name, is a system and / or process that could be provided as a service by the Australian Automotive Council as part of its accountabilities in administering the Code and ensuring compliance.
- Whether VSPP (used for the sake of exploration in the Draft Code) or ASSAS, or a hybrid; this capability is suggested as a clear deliverable of the Draft Code.

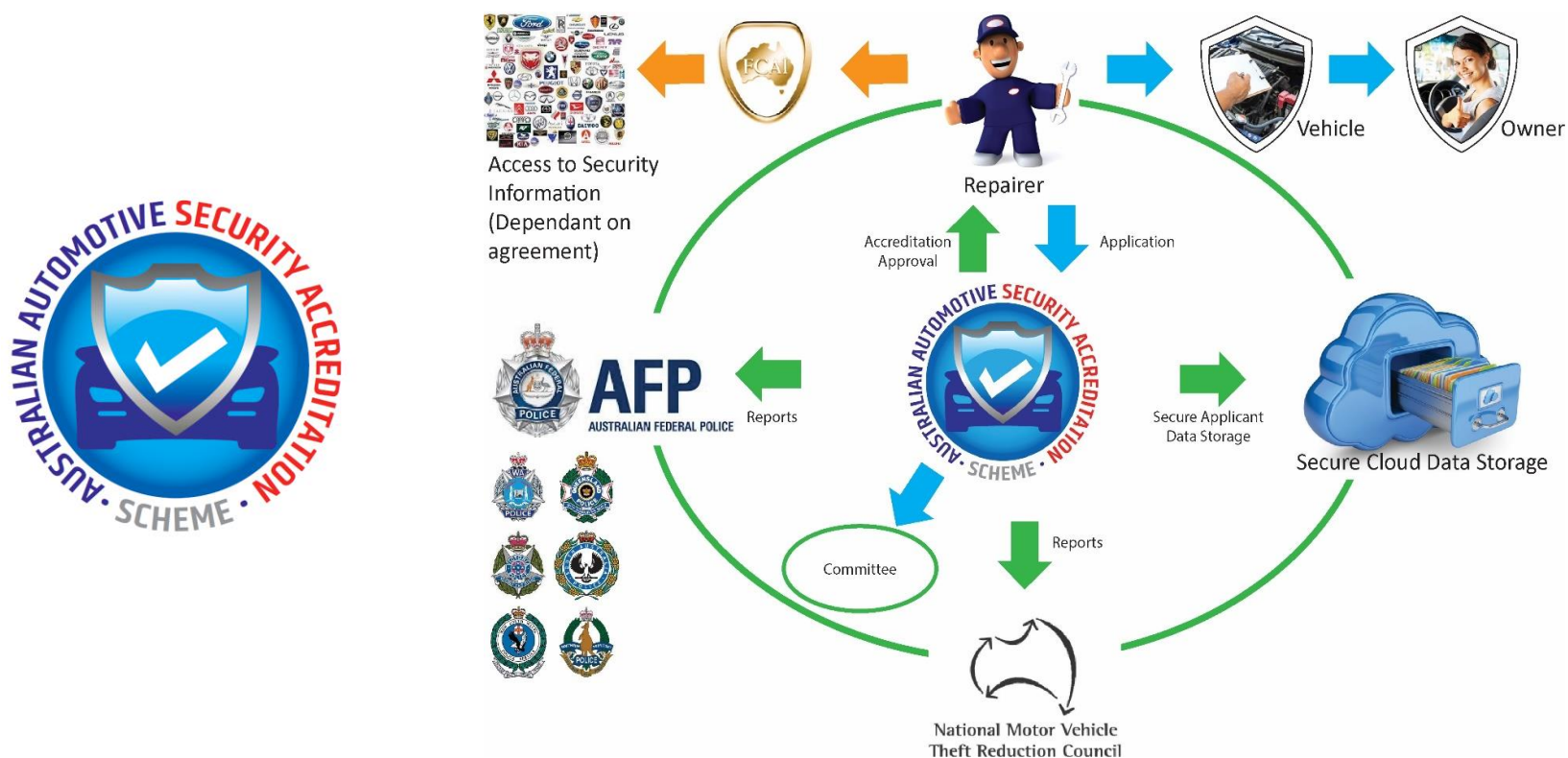
### 3. Part 1 – Schedule 1: The introduction and Standard Requirements of a Code - Pages 4 -14 (Cont.)

Definitions - Vehicle Security Professional Program - Diagrams of Security process / structure, NASTF



### 3. Part 1 – Schedule 1: The introduction and Standard Requirements of a Code - Pages 4 -14 (Cont.)

Definitions - Vehicle Security Professional Program - Diagrams of Security process / structure, ASSAS



### 3. *Part 1 – Schedule 1: The introduction and Standard Requirements of a Code - Pages 4 -14 (Cont.)*

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- **Obligations to deal in good faith**
  - This and the following Clause explains the proposition and meaning of 'Good Faith' which is a foundation of expected behaviours in a Code of Conduct
- **Freedom of Association**
  - Self-explanatory
- **Provision of contact details**
  - Self-explanatory

## 4. *Part 2– Schedule 1: Principles, Requirements and Conduct Generally - Pages 17 -27*

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### ❖ PAGES 17-20 - Division 1 Principles:

- As in the Heads of Agreement (2014), MTAA has incorporated a number of guiding principles as a preamble to Part 2 of the Draft Code which provides further detail and commitment regarding of parties bound by the Draft Code. Whether these are appropriate or located in the correct area of a Code of Conduct, is for others to determine. However, it is MTAA's view that guiding principles, along with definitions and other elements of the Draft Code assist in clarifying the rationale for the Code, outcomes, behaviours and actions expected in the administration of the Code, compliance with it, and services / products developed to implement the Code.
- The principles are expanded versions of those already agreed by signatories to the Heads of Agreement following extensive consultation at that time. Expansion of these principles reflects greater understanding generated by research and analysis, the requirements of a Code of Conduct solution, and the expectations of industry participants and consumers.
- **Principles 1 & 2** reflect consumer safety, protection and choice imperatives. Consumer rights are reflected in principles 1 & 2, including emphasis on qualification, registration and licensing of businesses (where appropriate), the types of parts to be used and because of consumer guarantee requirements that genuine parts should be use for warranty work and that counterfeit parts are not supported on grounds of consumer safety and protection.
- **Principles 3** is provided to reinforce that the Draft Code does not replace other laws and regulations.
- **Principles 4, 5 & 6** are provided to provide recognition and entitlements of three major stakeholder groups in the provision and use of service and repair information.
- **Principal 7** embodies fair and reasonable behaviours expected by all parties bound by the Code as a principle, as well as a requirement.
- **Principle 8** is provided to ensure parties bound by the Draft Code are committed to not allowing a motor vehicles' safety and environmental compliance is not compromised by providing information that could be used to bypass or affect the integrity of these requirements.
- **Principle 9** is provided to ensure parties bound by the Draft Code, irrespective of place of employment or type of profession may be held accountable or be ancillary to businesses or individuals held accountable for service or repair failures under Australian Consumer Law.
- **Principle 10** is provided to acknowledge that no one sector or the Australian automotive industry can service a national vehicle fleet fast approaching 20 million vehicles alone; the nations' continuing reliance on road transport and role of access to service and repair information to help achieve this.

## 4. *Part 2– Schedule 1: Principles, Requirements and Conduct Generally - Pages 17 -27*

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### ❖ **PAGES 20-25 - Division 2 Manufacturers:**

- **Under Division 2** the requirements of manufacturers as well as their distributors, agents and importers where a vehicle manufacturer does not have representation in Australia is outlined.
- The making of information available is not business specific rather than technician specific which is intended to provide the same level of access to technicians irrespective of where they are employed or self-employed.
- Timeliness is an issue previously discussed, is subjective, and open to differing interpretations. If a technician is working on the service or repair of a vehicle then they want the information to diagnose and service at that time. It may also be reasonable that for a period of time for a new model introduced to the Australian market, information may not be readily available. The suggested dates of 2002 and from 2018 models on reflects research conducted in other international jurisdictions and reflects year models adopted as baselines in those jurisdictions.
- This includes specific requirements for pass through technologies and standards that have also been adopted in the US jurisdiction and reflected in the Massachusetts Legislation and agreed through the Memorandum of US automakers.
- An important consideration is that franchised dealers should have access to either proprietary or non-proprietary tools to minimise the risk of being forced to accept specific requirements through dealer agreements that would not apply to other competitors in the market for the provision of service and repair information and vice versa.
- Different delivery systems were investigated for the Australian context including franchised dealer delivery for information to other technicians. There were too many considerations and risks that could not be adequately mitigated with this model – particularly when it came to consumer guarantee and warranty obligations. It was also considered the provision of information was a product manufacturer accountability and electronic access through portals etc. allowed for more efficient, effective and consistent information delivery.
- The Draft Code also recognises there will be information that is provided at no cost while other information may attract a price due to a number of considerations including complexity in the type and / or detail of the information being provided. The cost of the information is described as fair and reasonable which is also defined as it's the requirement that no sector be advantaged or disadvantaged by price applied to information provision. This is designed to ensure those technicians and the businesses that employ them have to pay a consistent price that does not differentiate unless there are transparent and justifiable commercial reasons for doing so.

## 4. *Part 2– Schedule 1: Principles, Requirements and Conduct Generally - Pages 17 -27*

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### ❖ PAGES 20-25 - Division 2 Manufacturers (Cont.):

- **Under Division 2** the term Telematics is referred to, but not defined. This may not remain the case when further consultation is undertaken.
- requirements of manufacturers as well as their distributors, agents and importers where a vehicle manufacturer does not have representation in Australia is outlined.
- The matter of proprietary and non-proprietary tools is also considered under this section to provide clarity that manufacturers developing tools should make those available to all technicians, while also providing surety regarding copyright, intellectual property and cost considerations.
- Unlike the Heads of Agreement (2014) the Draft Code includes a capability for qualified technicians, vetted, validated and registered to be able to access security related information such as immobiliser codes and pin codes for keys, security related modules etc. The United States jurisdiction has a strong, coordinated locksmith industry, which features prominently within that jurisdictions' arrangements for access to security related information. It is suggested that the Australian locksmith industry is neither equipped nor as coordinated as in the United States to take on this function in the same way, and therefore it is suggested that the service and repair industry are capable of undertaking these services.
- Information aggregators or those who act as third-party providers of manufacturers information, exist in all jurisdictions examined and, in some cases, are some manufacturers preferred method of information delivery through contracted or licensing arrangements. The Draft Code reflects the existence of these aggregators and their role in providing alternative sources of information.

### ❖ PAGE 26 - Division 3 - Technicians:

- **Division 3** outlines the requirements and expectations of technicians accessing service and repair information. As previously mentioned the Draft Code is founded on the premise of equality, fair and reasonable access to service and repair information that does not distinguish between where the technician is employed. It is a business or technician (sole trader or small business) decision whether to invest in the tools, equipment, training and other requirements of accessing service and repair information and there is an equal obligation on technicians to abide by Clauses and Sub Clauses in the Draft Code, including any obligations under consumer guarantees.

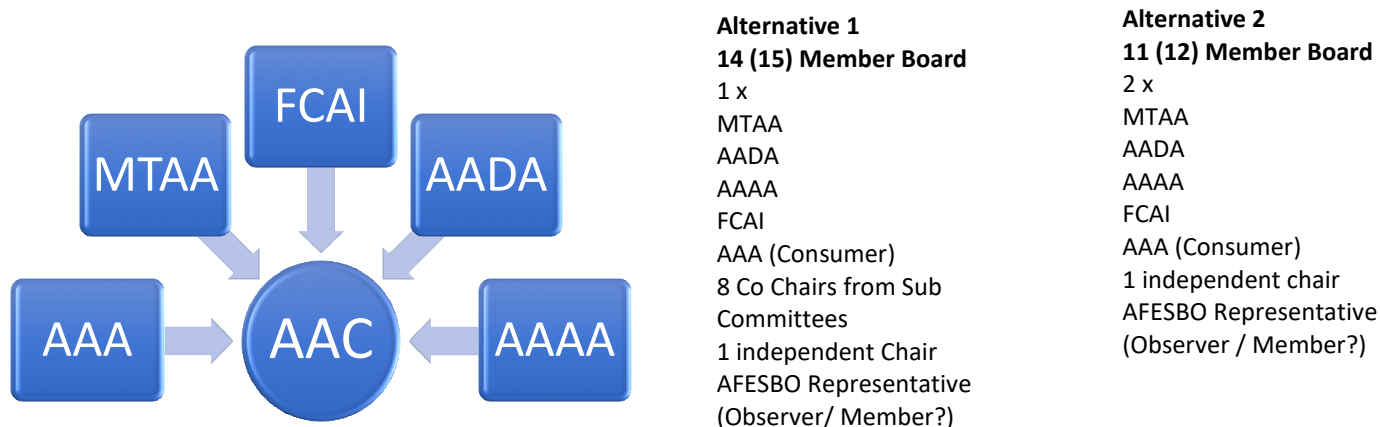
### ❖ PAGE 27 - Division 4 – Franchised Dealers:

- **Division 4** reflects the requirements and expectations for franchised dealers and that there are certain service and repair obligations that are exclusive to manufacturer's representative organisations, often through franchised dealerships, and particularly where it concerns obligations to consumers through warranty and consumer guarantees.

## 5. Part 3 – Schedule 1: The Australian Automotive Council - Pages 28 - 30

### ❖ The Australian Automotive Council:

- For the Draft Code to work effectively there needs to be an entity that will administer the code, provide products and services that enable the Code to operate fully and as suggested, contribute to compliance, and act as the hub for any disputation or problems arising from the implementation of the Code.
- The Draft Code suggests the creation of the Australian Automotive Council (AAC). It is suggested that by creating such an entity, the Australian automotive industry will have improved coordinated and facilitated capacity to put the systems and processes in place, in a shared accountability, to meet the requirements of a regulatory instrument that is prescribed and mandated. While other Codes of Conduct specify a Code compliance manager type role, usually required to be supplied by one of, or one grouping of the parties, MTAA suggests that if all of the components of the draft code were to be adopted, then there are other requirements beyond the scope of a single position.
- The suggested Australian Automotive Council would consist of equal representation of the five representative automotive sector groups including consumers through motoring organisations and representatives from government with an independent Chair. It is suggested that the Government role could be from the Australian Small Business and Family Enterprises Ombudsman Office. Consumers as motorists could be represented by the Australian Automobile Association with over 7 million members.

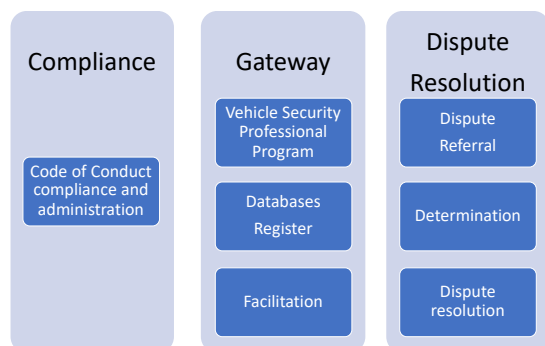




## 5. Part 3 – Schedule 1: The Australian Automotive Council - Pages 28 - 30

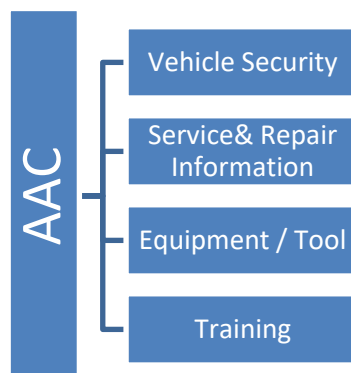
### ❖ The Australian Automotive Council:

- The ACC is based on the National Automotive Service Task Force in the United States where the format and processes have largely been found to be working. The AAC however takes the nuances and requirements of Australian company requirements and the regulatory instrument as providing greater rigour to its formation and operations.



Functional Areas of ACC

- The AAC would likely need to establish Sub Committees to determine, facilitate, coordinate and oversight specific subject matters such as Security, Portal Gateways (to manufacturers information provision sites), assist in identification and resolution of information gaps and dispute notification and resolution processes. The way these Sub Committees are established would be based on needs analysis but is premised on there being co-chairs from manufacturers and other appropriate Draft Code participants with subject matter expertise appointed as delegates as required.



Potential Sub Committees

## 5. *Part 3 – Schedule 1: The Australian Automotive Council - Pages 28 - 30*

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### ❖ **The Australian Automotive Council:**

- It is suggested that the AAC would be a not-for-profit limited by guarantee company with the suggested Board participants also being the Members of the Company.
- Initial funding primarily would be for the establishment of the company and for the selection and appointment of a Code Compliance Manager who is also Executive Officer of the Company. Initial funding it is envisaged would be provided equally by the members of the company. The ongoing costs could be sourced from revenues received from the establishment and maintenance of registration for security access which would be a cost to cover vetting, validation and registration.
- Total staffing initially would be one person who may be able to be located in the offices of an existing AAC member thereby minimising costs and taking advantage of existing administration and support facilities. However, the position would be independent of that member body and reports to the AAC Board.
- Sub Committees and their operation it is suggested would be voluntary and any costs associated with their administration and participation of delegates would be borne by the Member Company.
- MTAA has prepared a draft Constitution for the Company reflective of Corporations Act requirements, the Draft Code, the outlined responsibilities and suggested actions and will be made available as part of ongoing consultation.

## 6. *Part 4 – Schedule 1: Disputes, mediation and determination processes Pages 31-40*

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### ❖ Dispute resolution:

- The Draft Code provides a robust methodology for disputes to be raised, and if required, processes for mediation and final determination. This is a requirement of a Code of Conduct but is also necessary to address perceived or real shortcomings arising from the Heads of Agreement, and anticipated matters that may arise with the implementation and compliance with this Draft Code.
- It is important to point out that NASTF in the United States also has dispute resolution capability, but this process has not been enacted at all, due to the strong collaboration that appears to exist in the delivery of service and repair information in that jurisdiction.
- The mediation and determination processes have been modified from other Codes of Conduct, both prescribed, mandated and voluntary and are largely self-explanatory in the Draft Code.

### ❖ Conclusion

- MTAA has attempted to show what a prescribed and mandated Code of Conduct for the automotive industry in the Access to Service and Repair Information ***might*** look like. It is designed to assist kindred automotive organisations and government stakeholders and spark a catalyst for conversation, consultation, and hopefully a shared ownership and agreement of a solution in responsible timeframe.