2019‑2020

The Parliament of the

Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

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| **EXPOSURE DRAFT** |

Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2020

No. , 2020

(Treasury)

A Bill for an Act to amend the *Competition and Consumer Act 2010* in relation to sharing information for motor vehicle service and repair, and for related purposes

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A Bill for an Act to amend the *Competition and Consumer Act 2010* in relation to sharing information for motor vehicle service and repair, and for related purposes

The Parliament of Australia enacts:

^1 Short title

This Act is the *Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme)* *Act 2020*.

^2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections ^1 to ^3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. |  |
| 2. Schedule 1, Parts 1 and 2 | The later of:  (a) 1 July 2022; and  (b) the day after this Act receives the Royal Assent. |  |
| 3 Schedule 1, Part 3 | The later of:  (a) immediately after the commencement of the provisions covered by table item 2; and  (b) immediately after the commencement of the repeal of the *Motor Vehicle Standards Act 1989* by Schedule 2 to the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018*. |  |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

^3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Motor vehicle service and repair information sharing scheme

Part 1—Main amendments

Competition and Consumer Act 2010

1 After Part IVD

Insert:

Part IVE—Motor vehicle service and repair information sharing scheme

Division 1—Objects of Part and simplified outline

@1 Objects of Part

The objects of this Part are to:

(a) promote competition between Australian repairers of passenger and light goods motor vehicles and establish a fair playing field by mandating access to diagnostic, repair and servicing information on fair and reasonable commercial terms; and

(b) enable consumers to have those vehicles repaired by an Australian repairer of their choice who can provide effective and safe services; and

(c) encourage the provision of accessible and affordable diagnostic, repair and servicing information to Australian repairers, and to registered training organisations (for training purposes); and

(d) protect safety and security information about those vehicles to ensure the safety and security of consumers, information users and the general public; and

(e) provide for the resolution of disputes about the terms and conditions of supply or proposed supply of diagnostic, repair and servicing information for those vehicles and other matters relevant to the requirements of this Part.

@5 Simplified outline

This Part sets up a scheme to improve access by Australian motor vehicle repairers and registered training organisations (called “scheme RTOs”) to information that is needed to diagnose faults with, service and repair motor vehicles covered by the scheme.

Such information (called “scheme information”) is required to be offered for supply to Australian repairers and scheme RTOs at a price that does not exceed fair market value.

Those who supply scheme information (called “data providers”) to Australian repairers and scheme RTOs are protected from certain claims in doing so.

To protect the safety and security of vehicle owners, individuals who access scheme information relating to vehicle safety and security in order to diagnose faults and to service and repair scheme vehicles, or for the purposes of training provided in an RTO course, must satisfy certain criteria relating to whether they are fit and proper persons to have access to such information.

Sensitive information about such individuals may be obtained by data providers for this purpose. The handling of such information is also restricted under this Part. The information cannot be made available to anyone outside Australia (including to any data provider).

Provision is made for resolving disputes about the application of the Part in relation to scheme information.

An office is set up for an adviser in relation to the scheme to facilitate mediation of disputes between data providers and Australian repairers or scheme RTOs, and to provide information about the operation of the scheme.

Division 2—Key concepts

@10 Meaning of *scheme vehicle*

A ***scheme vehicle*** is:

(a) a light goods vehicle, within the meaning of a vehicle standard made under the *Motor Vehicle Standards Act 1989* that specifies definitions and vehicle categories for the purposes of that Act, that was manufactured on or after:

(i) 1 January 2002; or

(ii) a later date prescribed by the scheme rules; or

(b) a passenger vehicle (other than an omnibus), within the meaning of a vehicle standard made under the *Motor Vehicle Standards Act 1989* that specifies definitions and vehicle categories for the purposes of that Act, that was manufactured on or after:

(i) 1 January 2002; or

(ii) a later date prescribed by the scheme rules; or

(c) another kind of vehicle prescribed by the scheme rules.

@15 Meaning of *Australian repairer*

An ***Australian repairer*** is a person who, in Australia, carries on or actively seeks to carry on, a business that, to any extent, involves diagnosing faults with, servicing or repairing scheme vehicles.

Note: In some State and Territory jurisdictions, a person may need to hold a licence or particular qualifications to lawfully carry on such a business.

@20 Meaning of *scheme RTO* and *RTO course*

A ***scheme RTO*** is a registered training organisation that provides, or seeks to provide, a course (an ***RTO course***) in Australia providing training in diagnosing faults with, servicing or repairing scheme vehicles.

Note: ***RTO*** is short for registered training organisation.

@25 Meaning of *scheme information*

Main definition

(1) ***Scheme information*** is information in relation to scheme vehiclesprepared by or for manufacturers of scheme vehicles for use or training in conducting diagnostic, servicing or repair activities on those vehicles, as supplied to the market.

Exceptions

(2) However, ***scheme information*** does not include any of the following:

(a) a trade secret;

(b) the intellectual property of a person, other than intellectual property protected under the *Copyright Act 1968*;

(c) a source code version of a program;

(d) telemetry;

(e) global positioning system data;

(f) information supplied, or to be supplied, only to a restricted number of Australian repairers for the purposes of developing solutions to emerging or unexpected faults with a scheme vehicle;

(g) commercially sensitive information about an agreement between a data provider and another person;

(h) information relating to an automated driving system of a scheme vehicle.

Note: Scheme information may include safety and security information (see the definition of ***safety and security information*** in section @35). However, for restrictions on the supply of safety and security information to Australian repairers: see section @65.

(3) An ***automated driving system*** is a system which has a SAE level of 3 or greater under the Surface Vehicle Information Report J3016 published by SAE International, as amended from time to time.

Note: The Report, as amended to 2020, could in 2020 be viewed on SAE International’s website (https://www.sae.org/).

@30 Meaning of *data provider*

A ***data provider*** is:

(a) a corporation carrying on a business that includes supplying, to any extent and whether directly or indirectly, scheme information to one or more Australian repairers or scheme RTOs; or

(b) any person who carries on such a business in the course of, or in relation to, trade or commerce.

@35 Meaning of *safety and security information*

(1) ***Safety and security information***, for a scheme vehicle, is either or both of the following:

(a) safety information;

(b) security information.

Note: Restrictions apply in relation to the supply of scheme information that is safety and security information: see section @65.

(2) ***Safety information***, for a scheme vehicle, is information relating to any of the following systems installed in the vehicle, of a kind prescribed by the scheme rules:

(a) the hydrogen system;

(b) the high voltage system;

(c) the hybrid system;

(d) the electric propulsion system;

(e) another system prescribed by the scheme rules for the purposes of this paragraph.

(3) ***Security information***, for a scheme vehicle, is information relating to any of the following systems installed in the vehicle, of a kind prescribed by the scheme rules:

(a) the vehicle’s mechanical and electrical security system;

(b) another system prescribed by the scheme rules for the purposes of this paragraph.

@40 Supply of scheme information between related bodies corporate

To avoid doubt, this Part applies in relation to a supply of scheme information about a scheme vehicle from a data provider to an Australian repairer even if the data provider and the Australian repairer are related bodies corporate.

Division 3—Supply of scheme information

@45 Scheme information—offer to supply to Australian repairers and scheme RTOs

Scope

(1) This section applies if a data provider supplies, or offers to supply, scheme information of one or more kinds in relation to one or more kinds of scheme vehicles to one or more Australian repairers or scheme RTOs.

Main obligation

(2) The data provider must, by a publication in English on the internet that is accessible free of charge, make an offer (a ***scheme offer***) to supply, on terms and conditions that comply with section @55, the same scheme information in relation to that kind, or those kinds, of vehicle to all Australian repairers and scheme RTOs:

(a) in the same form in which it is supplied or offered for supply under subsection (1); or

(b) if supply in that form is not practicable or accessible—in an electronic form that is reasonably accessible to all Australian repairers and scheme RTOs.

Note 1: A pecuniary penalty of up to $10,000,000 may be imposed for a contravention of this subsection: see section 76.

Note 2: Restrictions apply in relation to the supply of scheme information that is safety and security information: see section @65.

Choice of supply period in scheme offer

(3) If the form in which scheme information is supplied allows for variability in the period for which the information is supplied, the data provider must make the scheme offer on terms and conditions that include provision for the supply of the scheme information:

(a) for any period nominated by an Australian repairer or scheme RTO; or

(b) by day, by month and by year.

Civil penalty:

(a) for a body corporate—600 penalty units; and

(b) for a person other than a body corporate—120 penalty units.

Scheme offer not to exceed fair market price

(4) The data provider must make a scheme offer for the supply of the scheme information in relation to a particular make, model or year of scheme vehicle at a price (the ***scheme price***) that does not exceed the fair market value of the information, as determined by reference to matters including those covered by subsection (5).

Note: A pecuniary penalty of up to $10,000,000 may be imposed for a contravention of this subsection: see section 76.

(5) For the purposes of subsection (4), this subsection covers the following matters:

(a) the price charged to other Australian repairers and scheme RTOs for supplying scheme information (whether under this Part or otherwise) in relation to a scheme vehicle:

(i) of that particular make, model and year; or

(ii) if pricing is not available for information in relation to a scheme vehicle of that particular make, model and year—pricing for information in relation to a scheme vehicle of a similar make, model and year;

(b) the terms and conditions on which such scheme information is offered for supply to Australian repairers and scheme RTOs (whether under this Part or otherwise), including as to the permitted use of the information, the means of access to the information, the number of permitted users, and the frequency or duration of use of the information;

(c) the anticipated demand by Australian repairers and scheme RTOs for supply of the scheme information on the basis of the scheme offer;

(d) the reasonable recovery of costs incurred in creating, producing and providing the scheme information for supply on the basis of the scheme offer;

(e) the price charged for the supply ofinformation similar to scheme information in overseas markets;

(f) the amount (if any) payable by the data provider to any person who has a proprietary interest in the scheme information.

Note: A data provider must pay compensation to a person whose copyright is infringed by a supply of scheme information: see subsection @60(3).

Publication of scheme offer

(6) The data provider must publish the scheme offer on the data provider’s website.

Civil penalty:

(a) for a body corporate—600 penalty units; and

(b) for a person other than a body corporate—120 penalty units.

(7) The data provider must:

(a) as soon as reasonably practicable after it publishes a scheme offer under subsection (6)—provide a copy of the scheme offer, in writing, to the scheme adviser; and

(b) notify the scheme adviser, in writing, as soon as reasonably practicable after any change to the scheme offer.

Civil penalty:

(a) for a body corporate—600 penalty units; and

(b) for a person other than a body corporate—120 penalty units.

@50 Scheme information—supply on request by Australian repairers or scheme RTOs

Scope

(1) This section applies if:

(a) a data provider makes, or is required to make, a scheme offer to supply scheme information in relation to a particular make, model and year of scheme vehicle; and

(b) either:

(i) an Australian repairer has a need to access the scheme information to diagnose faults with, service or repair that particular make, model and year of scheme vehicle in carrying on the Australian repairer’s business; or

(ii) a scheme RTO has a need to access the scheme information to provide an RTO course; and

(c) the Australian repairer or scheme RTO requests, in writing, the data provider to supply the scheme information about that particular make, model and year of scheme vehicle; and

(d) the Australian repairer or scheme RTO pays or offers to pay the scheme price, or another agreed price, for the scheme information.

Note: Restrictions apply in relation to the supply of scheme information that is safety and security information: see section @65.

Supply of scheme information

(2) Subject to section @65 (which deals with the supply of safety and security information), the data provider must supply the scheme information to the Australian repairer or scheme RTO in accordance with terms and conditions that comply with section @55:

(a) within the time agreed with the Australian repairer or scheme RTO; or

(b) if the scheme information includes safety and security information—before the end of 2 business days after the later of the following days:

(i) the day on which the Australian repairer or scheme RTO pays the scheme price, or another agreed price, for the scheme information;

(ii) the day on which the Australian repairer or scheme RTO provides, to the data provider, personal information mentioned in section @65 about individuals who are to access and use the safety and security information that enables the data provider to be reasonably satisfied that the supply of the safety and security information would not be prohibited under that section; or

(c) in any other case—before the end of 2 business days after the day on which the Australian repairer or scheme RTO pays the scheme price, or another agreed price, for the scheme information.

Note: A pecuniary penalty of up to $10,000,000 may be imposed for a contravention of this subsection: see section 76.

Data provider to notify scheme adviser of terms and conditions of supply

(3) If the data provider supplies scheme information to an Australian repairer or scheme RTO under this Part, the data provider must, within 2 business days after the supply, notify the scheme adviser, in writing, of the terms and conditions of the supply, including the price for which the information is supplied.

Civil penalty:

(a) for a body corporate—600 penalty units; and

(b) for a person other than a body corporate—120 penalty units.

@55 Scheme information—terms and conditions of supply and use

Terms and conditions of supply generally

(1) Subject to this section, nothing in this Part prevents a data provider from supplying scheme information under this Part subject to reasonable terms and conditions that do not prevent, restrict or limit the access to, or use of, the information for the purposes of diagnosing faults with, servicing or repairing scheme vehicles.

Prohibited terms or conditions

(2) However, a data provider must not enter into a contract for the supply of scheme information under this Part that contains any of the following terms or conditions:

(a) a term or condition requiring an Australian repairer or scheme RTO to acquire one or more services or products from the data provider or any other person;

(b) a term or condition prohibited by the scheme rules.

Civil penalty:

(a) for a body corporate—600 penalty units; and

(b) for a person other than a body corporate—120 penalty units.

(3) A term or condition of a contract for the supply of scheme information under this Part that contravenes subsection (2) is of no effect.

@60 Scheme information—interaction of supply obligations and other rights and obligations

Data provider must comply with supply obligations despite existence of other rights and obligations

(1) A data provider must comply with an obligation under this Part in relation to scheme information even if such compliance would constitute or result in one or more of the following:

(a) an infringement of copyright by the data provider or any other person;

(b) a breach of contract in relation to the supply of the scheme information;

(c) a breach of an equitable obligation of confidence to whichthe data provider is subject in relation to the supply of the scheme information.

Note 1: Division 4 of Part IVA of the *Copyright Act 1968* (which provides that certain uses of material by educational institutions do not infringe copyright) does not apply in relation to scheme information supplied under this Part (see paragraph 113P(1)(b) of that Act).

Note 2: A data provider is not criminally responsible for conduct that is justified or excused by or under this Part: see section 10.5 of the *Criminal Code* (lawful authority).

Compensation for third party copyright holders

(2) Subsection (3) applies if:

(a) a data provider supplies scheme information to an Australian repairer or scheme RTO under this Part; and

(b) a person (the ***third party claimant***) holds copyright in relation to some or all of the scheme information that is the subject of the supply; and

(c) the supply constitutes or results in an infringement of the copyright of the third party claimant; and

(d) apart from this section, the infringement would constitute an acquisition of property otherwise than on just terms (within the meaning of paragraph 51(xxxi) of the Constitution).

(3) The data provider must pay to the third party claimant an amount that represents compensation on just terms (within the meaning of paragraph (xxxi) of the Constitution) for the supply of the scheme information to the Australian repairer or scheme RTO.

(4) An amount payable by the data provider under subsection (3):

(a) is a debt due by the data provider to the third party claimant; and

(b) may be recovered by action in a court of competent jurisdiction.

(5) In a civil action by a third party claimant against a data provider for infringement of copyright in relation to scheme information supplied, or offered for supply, under this Part, it is a defence if the data provider proves that:

(a) the data provider was required to supply the scheme information, or offer to supply the scheme information, under this Part; and

(b) the data provider has paid to the third party claimant the compensation required to be paid under subsection (3).

Division 4—Information management

@65 Safety and security information—supply to Australian repairers and scheme RTOs

Supply of safety and security information

(1) A data provider must not supply scheme information under this Part that is safety and security information to an Australian repairer or a scheme RTO for a scheme vehicle of a particular make, model and year unless there are reasonable grounds for the data provider to believe that:

(a) the safety and security information is solely for use by an individual or individuals in diagnosing faults with, servicing or repairing that kind of vehicle:

(i) in the case of an Australian repairer—for the purposes of the Australian repairer’s business; or

(ii) in the case of a scheme RTO—for the purposes of providing an RTO course; and

(b) based on personal information about the individual covered by subsection (4), the individual is a fit and proper person to access and use the safety and security information.

Civil penalty:

(a) for a body corporate—600 penalty units; and

(b) for a person other than a body corporate—120 penalty units.

Fit and proper persons

(2) An individual is a ***fit and proper person*** to access and use safety and security information if the individual meets the criteria (the ***prescribed*** ***safety and security criteria***) prescribed by the scheme rules.

(3) For the purposes of subsection (2), different criteria may be prescribed in relation to each of the following:

(a) safety information;

(b) security information.

Personal information

(4) For the purposes of paragraph (1)(b), the following personal information about an individual is covered by this subsection:

(a) the individual’s name and residential address;

(b) information about the individual’s relationship to the Australian repairer or scheme RTO (as the case may be);

(c) the individual’s qualifications for using the safety and security information for the applicable purpose mentioned in paragraph (1)(a);

(d) in circumstances (if any) prescribed by the scheme rules—a criminal records check about the individual;

(e) any other information prescribed by the scheme rules relevant to working out whether the individual is a fit and proper person to access and use the safety and security information.

Note: This section applies despite section @50 (which deals with the supply of scheme information on request by an Australian repairer or scheme RTO).

@70 Safety and security information—use or disclosure of sensitive personal information

Scope

(1) This section applies in relation to sensitive information within the meaning of the *Privacy Act 1988*, if:

(a) the information is about an individual mentioned in subsection @65(1); and

(b) the information is disclosed to a data provider for the purpose of determining whether the individual is a fit and proper person to access and use safety and security information; and

(c) the data provider is a small business operator within the meaning of the *Privacy Act 1988*; and

(d) that Act would not, apart from this section, apply to the data provider in relation to the information about the individual.

Note: The *Privacy Act 1988* generally does not apply in relation to small business operators, except in relation to certain activities (see sections 6C to 6E of that Act).

Application of Privacy Act 1988

(2) Subject to this Division, the *Privacy Act 1988* applies in relation to the sensitive information as if the data provider were an organisation within the meaning of that Act.

Note: The Information Commissioner regulates the application of the *Privacy Act 1988*.

@75 Safety and security information—storage of, and access to, sensitive information

Scope

(1) This section applies in relation to sensitive information within the meaning of the *Privacy Act 1988*, if:

(a) the information is about an individual mentioned in subsection @65(1); and

(b) there are reasonable grounds for believing that the information is relevant to the determination by a data provider of whether the individual is a fit and proper person to access and use safety and security information.

Sensitive information must be stored in Australia

(2) If a data provider holds the sensitive information, the data provider must store the information in Australia or an external Territory.

Civil penalty:

(a) for a body corporate—1,500 penalty units; and

(b) for a person other than a body corporate—300 penalty units.

Preventing access to sensitive information outside Australia

(3) A person must not do anything that might reasonably enable the sensitive information to be accessed outside Australia by the data provider, or any other person.

Civil penalty:

(a) for a body corporate—1,500 penalty units; and

(b) for a person other than a body corporate—300 penalty units.

@80 Safety and security information—records of access

Scope

(1) This section applies if a data provider supplies safety and security information about a scheme vehicle to an Australian repairer or a scheme RTO under this Part.

Note: For restrictions on the supply of such information, see section @65.

Record‑keeping requirement

(2) The data provider must keep a record of the supply of the safety and security information for a period of 5 years after the day it is supplied, including the following:

(a) the time and date of supply;

(b) the name and contact detailsof the Australian repairer or scheme RTO;

(c) any personal information used by the data provider to determine whether an individual is a fit and proper person to access and use safety and security information;

(d) details of the scheme vehicle, including the following:

(i) the make, model and year of the vehicle;

(ii) the vehicle identification number of each vehicle for which the information is supplied;

(e) details of the safety and security information supplied.

Note: For restrictions on the use and disclosure of the information mentioned in paragraph (c), see sections @65 and @70.

Civil penalty:

(a) for a body corporate—600 penalty units; and

(b) for a person other than a body corporate—120 penalty units.

(3) The ***vehicle identification number*** for a vehicle is the number allocated to the vehicle in accordance with the national road vehicle standards as in force from time to time under the *Road Vehicle Standards Act 2018*.

Division 5—Dispute resolution

@85 Application

This Division applies to a dispute about any of the following:

(a) whether a person is a data provider;

(b) whether a person is an Australian repairer;

(c) whether a registered training organisation is a scheme RTO;

(d) whether particular information is scheme information, including whether it is safety and security information;

(e) the application of this Part in relation to particular scheme information:

(f) any other dispute about the operation of this Part that is prescribed by the scheme rules.

@90 Resolving disputes

A party to the dispute (the ***initiating party***) may initiate action to resolve the dispute against another party (the ***responding party***) in accordance with the procedure set out in this Division.

@95 Right to bring proceedings unaffected

This Division does not affect the right of the initiating party or the responding party to bring legal proceedings, under this Act or otherwise.

@100 Attempt to resolve dispute before mediation

(1) If the initiating party wishes to initiate action to resolve the dispute in accordance with this Division, the initiating party must give written notice to the responding party of the following:

(a) the nature of the dispute;

(b) the matter that is the subject of the dispute;

(c) the way in which that matter relates to the application of this Part;

(d) what outcome the initiating party wants;

(e) what action the initiating party thinks will resolve the dispute.

(2) The parties must then try to resolve the dispute.

Note: For when a party is taken to have tried to resolve a dispute, see section @105.

(3) If the parties cannot agree how to resolve the dispute within 2 business days, either party may refer the matter to a mediator for mediation under this Division.

(4) If the parties cannot agree on who should be the mediator, either party may request the scheme adviser to nominate a mediator.

(5) Within 2 business days after a request is made under subsection (4), the scheme adviser must nominate a mediator for the dispute.

@105 When is a party taken to have tried to resolve a dispute?

For the purposes of this Division, a party is taken to have tried to resolve a dispute if the party approaches the resolution of the dispute in a reconciliatory manner, including by doing any of the following:

(a) attending and participating in meetings at reasonable times;

(b) responding to communications to the party within a reasonable time;

(c) if the party has agreed to use a technical expert in resolving the dispute—considering the opinions of the technical expert;

(d) if a mediation process is being used to try to resolve the dispute—both:

(i) making the party’s intention clear, at the beginning of the process, as to what the party is trying to achieve through the process; and

(ii) observing any obligations relating to confidentiality that apply during or after the process.

@110 Mediation

(1) Subject to this section, a mediator appointed by the parties to a dispute may decide the time and place for mediation.

(2) The mediator may, with the agreement of the parties to the dispute, appoint a technical expert to assist in the resolution of the dispute.

(3) Unless the mediation is conducted using the technology referred to in subsection (4), the mediation must be conducted in Australia.

(4) The mediation may be conducted using any technology that allows a person to participate in the mediation without being physically present at the mediation.

(5) The parties must attend the mediation.

Civil penalty:

(a) for a body corporate—600 penalty units; and

(b) for a person other than a body corporate—120 penalty units.

(6) For the purposes of subsection (5), a party is taken to attend mediation in the following circumstances:

(a) the party is represented at the mediation by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party;

(b) the party, or the party’s authorised representative mentioned in paragraph (a), participates in the mediation using the technology referred to in subsection (4).

(7) The parties must then try to resolve the dispute.

Note: For when a party is taken to have tried to resolve a dispute, see section @105.

(8) Within 5 business days after the start of the mediation, the mediator must advise the scheme adviser that the mediation has started.

@115 Termination of mediation

(1) This section applies to the mediation of a dispute if the dispute has not been resolved within 30 days after the day the mediation starts.

(2) The mediator may terminate the mediation at any time unless satisfied that a resolution of the dispute is imminent.

(3) However, if either party asks the mediator to terminate the mediation, the mediator must do so.

(4) If the mediator terminates the mediation of a dispute under this section, the mediator must issue a certificate stating the following:

(a) the names of the parties;

(b) the nature of the dispute;

(c) whether the parties attended the mediation;

(d) that the mediation has finished;

(e) that the dispute has not been resolved.

(5) The mediator must give a copy of the certificate to:

(a) the scheme adviser; and

(b) each of the parties to the dispute.

@120 Costs of mediation

(1) The parties are equally liable for the costs of mediation under this Division unless they agree otherwise.

(2) The parties must pay their own costs of attending the mediation.

(3) The costs of mediation under this Division under subsection (1) include the following:

(a) the cost of the mediator;

(b) the cost of any additional input (including from technical experts) agreed by both parties to be necessary to conduct the mediation.

Division 6—Motor vehicle service and repair information scheme adviser

@125 Scheme adviser—establishment and appointment

(1) There is to be a motor vehicle service and repair information scheme adviser for the purposes of this Part.

(2) The Minister may, by instrument, appoint a person to be the scheme adviser.

(3) The scheme adviser is not entitled to be paid any remuneration or allowances.

@130 Scheme adviser—functions

(1) The scheme adviser has the following functions:

(a) to nominate mediators or technical experts for the purposes of Division 5 (dispute resolution);

(b) to report to the Minister:

(i) on the basis of any advice obtained from technical experts—about whether or not particular information is, or should be, scheme information; and

(ii) about any other matter relevant to the operation of this Part;

(c) to report to the Commission about any systemic regulatory or enforcement issues relating to the operation of this Part;

(d) to provide general advice in relation to the application of this Part, but excluding any information obtained in confidence;

(e) to publish on the scheme adviser’s website annual reports about:

(i) the number and type of inquiries and disputes relating to the operation of this Part over the period of a financial year;

(ii) the number and type of disputes for which a mediator has been appointed over that period;

(iii) resolution rates for disputes for which a mediator has been appointed over that period;

(iv) other relevant matters affecting the operation of this Part over the period, including any such matter directed by the Minister in writing;

(f) to provide information online to data providers, Australian repairers and scheme RTOs about the availability of scheme information and dispute resolution under this Part, but excluding any information obtained in confidence.

(2) Information about the terms and conditions of a contract on which scheme information is supplied under this Part that is notified to the scheme adviser under subsection @50(3) is taken not to be information obtained in confidence, except to the extent that it identifies, or enables identification of, the parties to the contract.

(3) The scheme adviser has all the powers necessary or convenient for the performance of the functions of that office.

(4) Section 34C of the *Acts Interpretation Act 1901* does not apply in relation to an annual report mentioned in paragraph (1)(e).

Note: Section 34C of the *Acts Interpretation Act 1901* would require such periodic reports to be given to the Minister and tabled in Parliament.

Division 7—Miscellaneous

@135 Civil penalty provisions

A provision of this Part that is of one of the following kinds and sets out at its foot a pecuniary penalty indicated by the words “civil penalty” is a civil penalty provision for the purposes of this Part and section 76:

(a) a subsection;

(b) a section that is not divided into subsections.

@140 Infringement notices

(1) Division 2A of Part IVB applies in relation to an alleged contravention of a civil penalty provision mentioned in an item in the table in subsection (2) in the same way in which it applies in relation to an alleged contravention of a civil penalty provision of an industry code (within the meaning of that Part).

(2) For the purposes of the application of Division 2A of Part IVB under subsection (1), the penalty to be specified in an infringement notice in relation to an alleged contravention of a provision mentioned in an item of the following table must be a penalty equal to the following:

| Penalties to be specified in infringement notices issued under this Part | | | | |
| --- | --- | --- | --- | --- |
| Item | For an alleged contravention of the following provision: | that relates to... | ...if the alleged contravention is by a body corporate—the number of penalty units must be: | ...and if the alleged contravention is by a person other than a body corporate—the number of penalty units must be: |
| 1 | subsection @45(3) | the choice of supply period in scheme offer | 60 | 12 |
| 2 | subsection @45(6) | publishing a scheme offer | 60 | 12 |
| 3 | subsection @45(7) | notifying the scheme adviser about scheme information offered | 60 | 12 |
| 4 | subsection @50(3) | notifying the scheme adviser of terms and conditions of supply | 60 | 12 |
| 5 | subsection @55(2) | prohibited terms or conditions in contracts of supply | 60 | 12 |
| 6 | subsection @65(1) | supplying safety and security information without reasonable grounds | 60 | 12 |
| 7 | subsection @80(2) | requiring a data provider to keep records | 60 | 12 |
| 8 | subsection @110(5) | failing to attend mediation | 60 | 12 |

@145 Concurrent operation of State and Territory laws

It is the Parliament’s intention that a law of a State or Territory should be able to operate concurrently with this Part unless the law is directly inconsistent with this Part.

@150 Acquisition of property

Scope

(1) This section applies to any of the following provisions:

(a) a provision of Division 3;

(b) any other provision of this Act, to the extent to which the provision relates to Division 3.

Effect of provision

(2) The provision has no effect to the extent (if any) to which its operation would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) otherwise than on just terms (within the meaning of that paragraph).

@155 Scheme rules

(1) The Minister may, by legislative instrument, make rules prescribing matters:

(a) required or permitted by this Part to be prescribed by the rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) To avoid doubt, the rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act;

(f) subject to section @65, authorise or require the disclosure of sensitive information (within the meaning of the *Privacy Act 1988*).

Part 2—Other amendments

Competition and Consumer Act 2010

2 Subsection 4(1)

Insert:

***Australian repairer***: see section @15.

***data provider***: see section @30.

***fit and proper person***, in relation to accessing and using safety and security information: see section @65.

***initiating party***: see section @90.

***prescribed safety and security criteria***: see section @65.

***registered training organisation*** has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

***responding party***: see section @90.

***RTO course***: see section @20.

Note: ***RTO*** is short for registered training organisation.

***safety and security information***: see section @35.

***safety information***: see section @35.

***scheme adviser*** means the motor vehicle service and repair information scheme adviser appointed under section @125.

***scheme information***: see section @25.

***scheme offer***: see section @45.

***scheme price***, for scheme information: see section @45.

***scheme RTO***: see section @20.

Note: ***RTO*** is short for registered training organisation.

***scheme rules*** means rules made by the Minister under section @155.

***scheme vehicle***: see section @10.

***security information***: see section @35.

3 Section 4M

Before “This Act”, insert “(1)”.

4 At the end of section 4M

Add:

(2) Paragraph (1)(b) does not apply for the purposes of section @60.

5 Before paragraph 5(1)(b)

Insert:

(ab) Part IVE;

6 Paragraph 5(1)(f)

Before “(b)”, insert “(ab),”.

7 Subsection 5(2)

After “sections 47 and 48”, insert “, and Divisions 3 and 4 of Part IVE,”.

8 Subsection 5(2)

Omit “those sections”, substitute “those provisions”.

9 Paragraph 29(1A)(a)

Before “VII”, insert “IVE,”.

10 Subsection 75B(1)

Omit “or IVBA”, substitute “, IVBA or IVE”.

11 After subparagraph 76(1)(a)(ib)

Insert:

(ic) a provision of Part IVE;

12 After paragraph 76(1A)(cb)

Insert:

(cc) for each act or omission to which this section applies that relates to a civil penalty provision of Part IVE—the number of penalty units for a body corporate set out at the foot of the provision; and

13 After paragraph 76(1B)(aab)

Insert:

(aac) for each act or omission to which this section applies that relates to a civil penalty provision of Part IVE—the number of penalty units for a person other than a body corporate set out at the foot of the provision; and

14 After subparagraph 80(1)(a)(iib)

Insert:

(iic) a provision of Division 3 of Part IVE;

15 Paragraph 82(1)(a)

Omit “or IVBA”, substitute “, IVBA or IVE”.

16 Subparagraph 83(1)(b)(i)

Omit “or IVBA”, substitute “, IVBA or IVE”.

17 Paragraphs 84(1)(b) and (3)(b)

Omit “or IVBA”, substitute “, IVBA or IVE”.

18 Subsections 86(1A) and (2)

After “section 56CD”, insert “, Part IVE”.

19 Paragraph 86A(1)(b)

After “section 56CD”, insert “, Part IVE”.

20 Paragraphs 86C(2)(a) and (b)

After “or 60K”, insert “or Part IVE”.

21 Subsection 86C(4) (paragraph (a) of the definition of *contravening conduct*)

Omit “or IVBA”, substitute “, IVBA or IVE”.

22 Paragraph 86E(1)(a)

After “Part IV”, insert “or IVE”.

23 Subsection 87(1)

After “or Part IVBA”, insert “or IVE”.

24 Paragraphs 87(1A)(a) and (b)

After “Part IVBA”, insert “or IVE”.

25 Subsection 87(1C)

After “Part IVBA”, insert “or IVE”.

26 Subsection 155AAA(21) (paragraph (a) of the definition of *core statutory provision*)

After “IVD (other than Division 5),” insert “IVE,”.

Copyright Act 1968

27 Subparagraph 113P(1)(b)(iii)

Omit “and”.

28 At the end of paragraph 113P(1)(b)

Add:

; or (iv) a work comprising scheme information within the meaning of Part IVE of the *Competition and Consumer Act 2010* (which provides for a motor vehicle service and repair information sharing scheme); and

Part 3—Amendments commencing later

Competition and Consumer Act 2010

29 Section @10 (definition of *scheme vehicle*, paragraphs (a) and (b))

Omit “*Motor Vehicle Standards Act 1989*”, substitute “*Road Vehicle Standards Act 2018*”.