

29 January 2021

Mandatory Motor Vehicles Scheme  
Market Conduct Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Via email: [repairinfo@treasury.gov.au](mailto:repairinfo@treasury.gov.au)

## **Submission: Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2020 - Exposure Draft**

The Australian Automotive Aftermarket Association (AAAA) welcomes the Motor Vehicle Service and Repair Information Sharing Scheme Exposure Draft, and we are very pleased to see the progress that was achieved throughout 2020.

We note the principles of the Bill are sound as is the intention to enact this legislation as an amendment to the Competition and Consumer Act. We also note that there is a desire to make the scheme obligations reasonable and practical because the Penalties are considerable – providing our industry with a level of reassurance that this is indeed a serious regulator competition instrument.

The flexibility of the Scheme is enhanced with Ministerial powers to regulate Scheme Rules and the establishment of a Scheme Advisor both of which are clever instruments, ensuring the Act can deal promptly with efforts to frustrate the Scheme and that the Law can evolve with as new automotive technology is introduced into the Australian market.

We do understand that this is a complex instrument that has taken some time to craft, and we thank you for the consultative way you have worked closely with us over the past five years.

The attached table (**Attachment Two**) provides feedback on the Exposure Draft on a clause-by-clause basis. I know from our recent meeting that you preferred to see our response formatted in this manner, and we agree: given that we are now at the pointy end of this journey, we wanted to respond in a concise and constructive form. I did, however, want to include four key points at the outset that are covered in our attachment as suggested amendments – but I felt it also important to include additional commentary to fully convey the rationale and reasoning that underpins our concerns.

Our concerns with the draft relate to:

1. The specified time for information provision – most importantly the 2-day delay to supply information to independent repairers.
2. The exclusions of Automated Vehicle Systems and Electric (and Hybrid) Vehicle Propulsion Systems.
3. The exclusion of telemetry.
4. The decision to not include pass through technology and data aggregators.

## 1. Specified Time for The Supply of Information.

We acknowledge the legislation drafting process did not include a deliberate intention to introduce a competition inequality by mandating a two-day delay for independent repairers. In fact, the explanatory memorandum is clear that there is an expectation of 'functional equality' between dealers and independent repairers.

We understand the 2-day allowance is likely to be based on your desire to provide the Data Provider with reasonable conditions for data supply. However, whilst you see the 2-days as a reasonable maximum, any unnecessary delay of information to an independent workshop is significant, especially considering the very same data arrives in real-time to dealerships. I note that both the Treasury and the ACCC have made prior references to the essential requirement that data is delivered in real time to independent repairers. I know your expectation is that the two-day period is a maximum and that in reality there will be real time delivery - but I can assure you that we do not share your optimism. We, of course, understand that unique requests may take longer - that is understandable, in fact, these complex and unique inquiries could take longer than two days - however, the majority of what is required on a day-to-day basis by the overwhelming majority of workshops is information and connectivity that should be readily available in real-time. If the dealers have real-time access, so too should the independent repair sector.

## 2. The Exclusions of Automated Vehicle Systems and Electric (And Hybrid) Vehicle Propulsion Systems.

We do understand the intent here is not to exclude the service, repair, and diagnostic information for the entire vehicle, and to quarantine some systems and maintain access to the remainder of the vehicle. However, despite our efforts in the limited time available we have been unable to locate any clear delineation. All the repairable items on an electric car have some interaction with the electrical system. It is not possible to make a defining statement that would meet the objectives of the Act. The effect of excluding electric, hybrid and autonomous systems is that the owners of these vehicles will

### Timing of access to information

3.13. The Code would mandate fair and equal real time access to information for all repairers. It would adopt the principle that information should be available to all those who purchase it or are provided with it in the same form and manner, to the same extent and at the same time. This would mean that information covered by the Code and provided to dealerships would have to be concurrently made generally available.

- *Mandatory scheme for the sharing of motor vehicle service and repair information. Consultation paper February 2019. Australian Government. The Treasury.*

The mandatory scheme should, subject to the type of regulation used, address the following operational matters:

### Real time access

Car manufacturers should make available to independent repairers, in real time, the same digital files and codes, such as software updates and reinitialisation codes, made available to dealers to repair or service new cars.

- *New Car Retailing Industry - a market study by the ACCC. December 2017*

progressively have reduced choice and the market for regular maintenance of these vehicles will cease to be regulated and protected by this competition instrument. Our view is there is simply no clear reason to exclude these systems by unilateral exclusion in the Act.

Our preference is to embed any safety issues in the Scheme Rules: The development of Scheme Rules should allow for accreditation or vetting to ensure that individual technicians and workshops are qualified to receive and utilise this data. There is a current and well-accepted Australian Standard that supports and mandates conditions for the safe repair and maintenance of electric vehicles.

The operational regime that underpins this legislation (the Scheme Advisor) is fully capable of establishing processes and safety precautions that protect the technician, consumers, and other road users.

Our attached detailed assessment of the Exposure Draft does not provide for alternate wording for these sections. We are of the view that these exclusions should be removed, and safety and security issues should be addressed in the Scheme Rules.

### 3. The Telemetry Exclusion

Telemetry is a method of transmitting and utilising vehicle diagnostic information. Whilst we understand that we do not require access to non-diagnostic information, it does not seem logical that this relatively new method of for transmitting this information should be excluded by the Scheme. We are aware of trends in the European market to increase the reliance on wireless transmission of diagnostic information and attempts by some car manufacturers to remove the OBD Port from the vehicle which would prevent independent repairer access to the diagnostic system.

Our preference would be that if, and when the car manufacturer removes the OBD port or reduce the functionality of the physical interface, an alternative interface must be provided. Ideally, we would like to see telematics access included in this Scheme in a manner that replicates the Massachusetts Right to Repair ballot result in 2020, however we understand this may be a bridge too far for the Australian legislation. While you may not wish to pick it up in this edition, it would seem unnecessary and unwise to explicitly exclude this technology in the Act. It seems to us that by ruling out telemetry data access as a unilateral decision, it will be as an open invitation to the car makers to simply move more quickly from OBD diagnostic access to wireless transmission of the diagnostic data to avoid their obligations under the Scheme. I can not see why there is any need to specify that we are locked out of Telematics in this legislation.

### 4. Pass Through Technology and Data Aggregators

We welcome the clear and unequivocal emphasis on information generation and provision in the Draft. We are however, concerned that there is less emphasis on the issue of connectivity. As you are aware, most independent repairers subscribe to a data

aggregator and use universal scan tools to access their subscription data and scan for diagnostic information and update the vehicle software.

We feel from the way the Law is drafted that there is a sense of a one-way information flow, i.e., the Data Providers generate and disseminate information, and that information is used to diagnose, repair and service. It is true that data and information is accessed and then used to service vehicles, however there is also a critical two-way data relationship. To conduct the service and repair, automotive technicians are increasingly required to use a scan tool (J2534) which will interface with the manufacturer's web site to accept and 'pass through' software updates, reinitialization codes and other diagnostic and repair data.

I understand that your assumption is that the tool providers and the data aggregators are service providers generating a service-offering and a customer base will evolve as a natural consequence of the legal requirements that will soon apply to the car manufacturers. Your view is that these service providers will provide a critical method for the car makers to meet and fulfill their obligations. However, we feel that this draft of the legislation does not recognise this critical issue of connectivity to a degree that would naturally lead to greater take up of the data aggregators and pass-through technology. Past experience has demonstrated that the market does not evolve into this regime automatically - and a critical component of the USA and the European regulatory frameworks, is the requirement to provide data in a form that is readable by a universal scan tool; and we believe it should be legislated in Australia.

Each manufacturer shall provide diagnostic repair information to each aftermarket scan tool company and each third party service information provider with whom the manufacturer has appropriate licensing, contractual or confidentiality agreements for the sole purpose of building aftermarket diagnostic tools and third party service information publications and systems.

- *Massachusetts Right to Repair 2012.*

## Summary

In reviewing this draft, we revisited recent case studies (**Attachment One**) to assess the degree to which this amendment to the CCA would address real world market behaviour. I note that so many of our specific examples to the ACCC during the investigation period concerned scan tools and specifically, the lack of functionality for these tools to read and reprogramme new parts into the vehicle. We have included examples of problems initialising the part, or re-integrating a part that was purchased from the dealership because it is important to keep the real-world examples front of mind. After all, the real test of this legislation is: Does it address these real examples of highly professional well-trained mechanics, frustrated by a lack of access to data and information in a usable form? The test of whether this Law is effective is: Will it result in fairness, just outcomes and a competitive market for consumers? I think if we allow a two-day delay, exempt the future car parc and ignore pass through technology, we may not reach the full potential of this remarkable and landmark regulatory reform.

I would like to take this opportunity to thank you once again for the Motor Vehicle Service and Repair Information Sharing Scheme Exposure Draft. Our industry has eagerly awaited such as momentous step towards a fair and even playing field and we look forward to working with you on this in the coming months.

Please contact us if you require any more information, or if you wish to meet with any of our members to discuss the technical application of this legislation.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Stuart Charity', written in a cursive style.

Stuart Charity  
Chief Executive Officer  
Australian Automotive Aftermarket Association

### **35. WHAT ISSUES, IF ANY, HAVE CONSUMERS AND INDEPENDENT REPAIRERS HAD IN ACCESSING APPROPRIATE PARTS OR TOOLS TO REPAIR OR SERVICE A NEW CAR?**

There are many examples of difficulties in parts access. In early 2016, we asked repairers to provide specific examples of difficulties accessing parts or tools. We received a large number of complaints and a number of these across different car brands and model types are extracted here to illustrate what these difficulties are, and the implications for repairers and consumers<sup>8</sup>:

#### **Problems initialising the part, or reintegrating a part that was purchased from the dealership:**

##### **VW Caddy**

One example. We had to replace the ignition barrel, cylinder & key on a VW Caddy, parts the dealer happily sold me, when it came time to commission the new ignition cylinder with our scan tool, the 4-digit code required was not accessible for me from the dealer. Four phone calls and the promise that the service department will get back to me never eventuated.

##### **Ford Territory Ghia**

Steering angle sensor failure. Whole steering column needs to be replaced. Once replaced the steering angle sensor has to be programmed to suit the vehicle. (Not just calibrated) It needs to be programmed first after it's been replaced and then calibrated. We had to return the vehicle to do the dealer to have it programmed. (They also calibrated it) We can calibrate, but cannot program it.

##### **Ford FG Falcon**

We had a FG falcon with an air bag issue from the crash shop that our scan tool diagnosed a faulty air bag module. Sourced a new genuine module from local Ford dealer and had to get it programmed by local dealer. Car was mobile so we drove this to the dealer. They said could we leave it with them, they took 2 days and charged us excessively to programme vehicle, client not

happy and we nearly lost contract with crash shop over delays even though we told them it was at dealer being sorted. We can tow truck vehicles in the city, not sure what you would do in the country to get them to a dealer?

##### **Ford Focus | Ford Mondeo | Ford Transit**

These vehicles require special tools to replace the timing belts/chains and cannot be purchased locally through the dealer network. We are prepared to purchase the tools as a group – but they specifically stated that we cannot buy these tools. Many of our staff were trained in the Ford network and have a lot of experience in the dealer network. Without the tools, it is impossible to undertake testing or replacement.

##### **Holden Astra TS**

We had a client with a TS Astra that had an engine ECU fault requiring a replacement ECU. We purchased a new genuine ECU from our local dealer but it had to be programmed into the vehicle, our local dealer stated they could not programme the ECU for 3 days “too busy” so to get our client back on the road we had to tow truck the vehicle to a dealer in the city, pay a programming fee and tow truck the vehicle back to us. Would have been happy to pay a fee to download and unlock/programme vehicle in house to save inconvenience and possible vehicle damage whilst in tow truck operators' control.

8. Australian Automotive Aftermarket Association, May 2016. *Evidence of critical repair and service information currently withheld from consumers and their repairer of choice.*

**Astra 2004 AH**

Model breaks down, I have it towed to my local garage (I'm hundreds of kilometres from a dealership) The local technician can source a new computer for me, but is unable to fit it because the computer has to be told/programmed it is being fitted to my particular optioned model (auto climate control, ABS and so on). I then have to have the car towed hundreds of kilometres because Holden in this case has withheld the rights to say that only a dealership has the right to fit a new part. Scan tools can communicate with this new computer, but without being "hooked into Holden's network"; the part cannot be taught the programming

**Mercedes A190**

We had a 2009 Mercedes A190 towed to the workshop from another repairer. The Steering lock was faulty and would not turn the steering wheel or start. Mercedes once sold you the new Steering lock and Green program key to program the steering lock into the vehicle. As of this year, they will not sell you the steering lock or supply the green program key. They want you to tow the vehicle to a Mercedes workshop and for them to fit and program the part. It will cost a minimum \$500 just to install the part and tow the vehicle before the cost of the part is added. This is costly for the client and time consuming.

**Nissan**

Bought a diesel particulate filter from a Nissan dealer and after fitting new filter needed to go back to dealer for force burn. One dealer charged \$110.00 another dealer charged \$280.00.

**Volvo**

A customer brought in their Volvo in that had the ABS light on dash, after some diagnosis it revealed that it needed a new ABS module (Anti-Lock Braking system). We purchased the correct part directly from the manufacturer and installed it for the customer however the manufacturers neglected to let us know that the ABS

module needed to be programmed in and we wasted hours of non-billable time trying to get it to work. Finally, after multiple phone calls and stuffing around we were told it need to be programmed by the dealers only. We had to re-book the customer in and drive her vehicle to the dealer who kept her car for 2 days (as they would fit us in when they could) and cost an additional \$300+ which we could not charge out to our customer and also had to provide the customer with a loan vehicle. The customer was extremely inconvenienced without a car for days and we were out of pocket around \$500.00 for the job as we tried to keep the customer happy by keeping the price as close as possible to our estimate.

**Suzuki Vitara 2008**

We recently had a 2008 Suzuki Grand Vitara that has an issue with EGR Valve; we purchased the part from local dealership and then was told that after the fact that it needed a connector set, then to have to try to get technical information that was not forthcoming from that dealership. Contacted another dealership through Repco connections and they sent to us information that should have been originally supplied with parts.

The vehicle went to local dealership eventually leaving us with footing the cost for their diagnostic recoding when they could have informed us originally the procedure for this vehicle. This has left us greatly out of pocket as owner paid dealership and not us.

**Audi A4 Petrol**

A recent example was servicing a 2014 Audi A4 Petrol; we completed the service items as per the service schedule and ticked these items off as being serviced in the service book. These vehicles have a Long Life Service reset that no generic scan tool can reset. The vehicle was returned to Audi to reset the Long Life Service and Audi refused to reset the Long Life Service Reset because they did not do the service. The customer offered to pay to have the Long Life Service reset but the Dealer still refused.



## Attachment Two

### AAAA Review – Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2020

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NO.	SECTION NUMBER	COMMENT
1.	<p><b>@1 Objects of Part</b></p> <p>The objects of this Part are to:</p> <p>(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</p> <p>(b) enable consumers to have those vehicles repaired by an Australian repairer of their choice who can provide effective and safe services; and</p> <p>(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</p> <p>(d) protect safety and security information about those vehicles to ensure the safety and security of consumers, information users and the general public; and</p> <p>(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.</p>	<p>We are supportive of the Objectives.</p> <p>Commentary in regard to the content of this Bill is provided with the assistance of our AAAA Members, our international partners and our Legal Advisor: Emma Dalley, Principal Lawyer, Industry Legal Group January 2021. Our commentary and suggested changes are offered as a result of our review of the Bill and in particular:</p> <ol style="list-style-type: none"> <li>1. The degree to which the instruments, definitions, inclusions and exclusions are likely to fulfill or frustrate the objectives of this Act.</li> <li>2. Our legal advisors have assisted in analysing the degree to which the content of the Bill is consistent with the Explanatory Memorandum.</li> <li>3. We have leveraged our international relationships to review the efficacy of the Bill to fulfil the objectives and aims that we share with the USA and the EU data sharing regimes.</li> <li>4. Our review of the inclusions and exclusions has also been undertaken with a view to ensuring that the instrument provides for competition in this decade and beyond. Our commentary is offered in the context of ensuring that this instrument does not become redundant with the progressive take up of vehicles with</li> </ol>



NO.	SECTION NUMBER	COMMENT
		<p>alternate fuel propulsion systems.</p> <p>5. We appreciate the principle to protect safety of all users, however we note that the ACCC was very clear that protecting safety is not a justification for withholding information. The ACCC findings noted that certain information may require a vetting process, but 'safety' is not a rationale for not sharing, not making available this critical information.</p>
2.	<p><b>@5 Simplified outline</b></p> <p>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.</p> <p>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.</p> <p>Those who supply scheme information (called “data providers”) to Australian repairers and scheme RTOs are protected from certain claims in doing so.</p> <p>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.</p> <p>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</p>	<p>Although only an outline, language used in the Explanatory Memorandum is broader in scope compared to this section of the Bill. For example, the Memorandum states “information <b>used</b>” whereas the Bill states “information <b>that is needed</b>” which is arguably narrower in scope and subjective.</p> <p>The definition for scheme information section 25 includes the broader “information used”. However, note other concerns with section 25 (below).</p>

NO.	SECTION NUMBER	COMMENT
	<p>anyone outside Australia (including to any data provider).</p> <p>Provision is made for resolving disputes about the application of the Part in relation to scheme information.</p> <p>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.</p>	
3.	<p><b>@10 Meaning of <i>scheme vehicle</i></b></p> <p>A <i>scheme vehicle</i> is:</p> <p>(a) a light goods vehicle, within the meaning of a vehicle standard made under the <i>Motor Vehicle Standards Act 1989</i> that specifies definitions and vehicle categories for the purposes of that Act, that was manufactured on or after:</p> <p>(i) 1 January 2002; or</p> <p>(ii) a later date prescribed by the scheme rules; or</p> <p>(b) a passenger vehicle (other than an omnibus), within the meaning of a vehicle standard made under the <i>Motor Vehicle Standards Act 1989</i> that specifies definitions and vehicle categories for the purposes of that Act, that was manufactured on or after:</p> <p>(i) 1 January 2002; or</p> <p>(ii) a later date prescribed by the scheme rules; or</p> <p>(c) another kind of vehicle prescribed by the scheme rules.</p>	<p>We broadly agree with the coverage and support the future inclusion of other vehicle types in a manner and process as described.</p> <p>Consistent with the Explanatory Memorandum, the scheme does not extend to other vehicle types e.g. heavy vehicles. The scheme does not cover vehicles over 4.5 tonnes.</p> <p>We agree and appreciate the mechanism that other vehicle types may be included in the future, subject to further consultation and assessment.</p> <p>The definition of passenger and light goods vehicles in the Act includes vehicles up to 3.5 tonnes. However, we note that due to the evolution of our Australian car park fleet toward larger ‘pick up’ style vehicles, the design of this Law may (unintentionally) exclude some newer models on our roads. The vehicles that should be (but would not be included) in the Scheme are the light goods vehicles that are 3.5 tonnes up to 4.5 tonnes (ADR Category NB1 in <b>Attachment Three</b>). ADR NB1 vehicles can be driven with a standard light vehicle driver licence and these vehicles include a significantly growing vehicle class of dual cab larger utilities for example: the Dodge Ram and the Chevrolet Silverado. We certainly have no disagreement with the exclusion of heavy vehicles and farm equipment – at this time, however, we are of the view that the Dodge Ram and the Chevrolet Silverado certainly comply with the objectives of</p>

NO.	SECTION NUMBER	COMMENT
		<p>the Act and should be included as Scheme Vehicles.</p> <p><b>Proposal:</b></p> <p>Include ADR NB1 Category Vehicles up to 4.5 tonnes.</p>
4.	<p><b>@15 Meaning of Australian repairer</b></p> <p>An <b>Australian repairer</b> 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.</p> <p>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.</p>	<p><b>Concern:</b></p> <p>The definition of ‘servicing’ may not include modification to vehicles.</p> <p>Persons modifying vehicles should have access to the information to achieve the objects of the scheme, including a promoting competition, establishing a fair playing field to increase competition and continued safety of vehicles. Modification is not only used for individual recreational purposes (tow bar and roof racks), but also for industries, including mining, farming and tourism. Vehicle Modification is a critical function to support the mobility of individuals with ambulatory disabilities. Failing to specifically include ‘modification’, may result is a portion of independent mechanics not having access to scheme information.</p> <p><b>Proposal:</b></p> <p>Insert the word ‘modifying’ after the word ‘servicing,’ as follows: ‘involves diagnosing faults with, servicing, modifying or repairing scheme vehicles’.</p> <p><b>Other section effected:</b></p> <p>This concern also effects the following definitions and, as a result, the application of the scheme, including:</p> <ul style="list-style-type: none"> <li>• the meaning of RTO and RTO course (section 20);</li> <li>• the meaning of scheme information (section 25);</li> </ul>

NO.	SECTION NUMBER	COMMENT
		<ul style="list-style-type: none"> <li>• scheme information – terms and conditions of supply and use (section 55); and</li> <li>• safety and security information – supply to Australian repairers and scheme RTOs (section 65).</li> </ul>
5.	<p><b>@20 Meaning of <i>scheme RTO</i> and <i>RTO course</i></b></p> <p>A <b><i>scheme RTO</i></b> is a registered training organisation that provides, or seeks to provide, a course (an <b><i>RTO course</i></b>) in Australia providing training in diagnosing faults with, servicing or repairing scheme vehicles.</p> <p>Note: <b><i>RTO</i></b> is short for registered training organisation.</p>	<p><b>Concern:</b></p> <p>As set out in item 4 for ‘Australian repairer’.</p> <p><b>Proposal:</b></p> <p>Amend section 20 by inserting the words ‘modifying’ after the word ‘servicing,’ as follows: ‘training in diagnosing faults with, servicing, modifying or repairing scheme vehicles’.</p>
6.	<p><b>@25 Meaning of <i>scheme information</i></b></p> <p><i>Main definition</i></p> <p>(1) <b><i>Scheme information</i></b> is information in relation to scheme vehicles prepared 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.</p> <p><i>Exceptions</i></p> <p>(2) However, <b><i>scheme information</i></b> does not include any of the following:</p> <p>(a) a trade secret;</p> <p>(b) the intellectual property of a person, other than intellectual property protected under the <i>Copyright Act 1968</i>;</p>	<p><b>Concerns:</b></p> <p>1. If the information is not prepared ‘by or for manufacturers of scheme vehicles’ then it will not be considered scheme information. The term ‘manufacturer’ is not defined and, while the CCA does define ‘corporation’ broadly, including holding companies, it may not capture all corporate structures. There may be a corporate or supply structure that is not captured by the scheme. For example, where the car manufacturer hires a third party, subsidiary or other more complex corporate structure, to assemble, produce, distribute, and/or design the vehicle. There may be an instance where such a structure is employed for all or part of what would otherwise be considered scheme information. The gap is not captured by the meaning of data provider as a data provider is only required to provide ‘scheme information’, so that if the information falls outside of the meaning of ‘scheme information’ it is not captured by the</p>

NO.	SECTION NUMBER	COMMENT
	<p>(c) a source code version of a program;</p> <p>(d) telemetry;</p> <p>(e) global positioning system data;</p> <p>(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;</p> <p>(g) commercially sensitive information about an agreement between a data provider and another person;</p> <p>(h) information relating to an automated driving system of a scheme vehicle.</p> <p>Note: Scheme information may include safety and security information (see the definition of <b>safety and security information</b> in section @35). However, for restrictions on the supply of safety and security information to Australian repairers: see section @65.</p> <p>(3) An <b>automated driving system</b> 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.</p> <p>Note: The Report, as amended to 2020, could in 2020 be viewed on SAE International's website (<a href="https://www.sae.org/">https://www.sae.org/</a>).</p>	<p>scheme.</p> <p>2. As set out in item 4 for 'Australian repairer'.</p> <p>3. Regarding section 25(2)(f), the fault itself may fall within the information that is an exception to scheme information in section 25(2)(f) so that it does not need to be supplied. This may impact on the repairer's ability to do their work effectively, and result in safety concerns and unnecessary costs for consumers and businesses.</p> <p>4. The Explanatory Memorandum lists electronic logbooks as scheme information at paragraph 1.23. However, the Bill does not deal with whether the Australian Repairer will be able to record logbook services in the electronic logbook. It is important for safety reasons that logbook servicing is recorded in the electronic logbook. This way the owner of the vehicle, and a potential purchaser of the vehicle, can confirm whether a service was or was not completed. It also assists Australian repairers to ascertain if service items that should have been serviced previously where serviced and to discuss the service of such items with the vehicle owner. If logbook services cannot consistently be recorded in electronic logbooks essential service items may be overlooked, which may impact on safety or incur unnecessary costs for the consumer (for example, if a service item is not due for a service and was not serviced when previously required (but this could not be recorded in the logbook), this may create a safety issue or unnecessary damage to the vehicle). Clearly updating the logbook is also important in future warranty claims. The consumer is obligated to maintain the vehicle and the electronic logbook is the accepted evidence that the vehicle has been maintained as per the service schedule.</p>

NO.	SECTION NUMBER	COMMENT
		<p>5. Telemetry is an alternate method of transmitting vehicle diagnostic information. It is not a separate consideration – it is a means of transmitting data. Should the OBD port be removed from the vehicle, it will become the only method of receiving diagnostic information. It would appear to be unnecessary and unreasonable to exclude telematics in a unilateral exclusion as proposed in (d).</p> <p>6. Section (h) excludes information related to the Automated Driving System for level 3 vehicles. There are a range of electronic and mechanical components that would be considered to be part of the automated system that would be excluded under this definition. The effect of this will be an inability to replace a windscreen, replace tyres and brakes and most importantly, to recalibrate the sensors.</p> <p><b>Proposals:</b></p> <p>1. Include a definition for manufacturer, that at a minimum in addition to the interpretation of ‘corporation’ in the CCA, includes ‘related body corporate (section 50 Corporations Act 2001 (Cth), and ‘associated entities’ (s 50AAA Corporations Act 2001), and is defined to include instances where the vehicle is designed, produced, assembled or otherwise created by a third party or an related party or associated entity on behalf of the manufacturer (similarly broad to that in the ACL).</p> <p>2. Amend section 25(1) by inserting the word ‘modification’ after the word ‘servicing,’ as follows: ‘in conducting diagnostic, servicing, modification or repair activities’.</p>

NO.	SECTION NUMBER	COMMENT
		<p>3. Amend section 25(2)(f) by inserting words to the effect ‘but, without limitation, excluding the fault itself and any information that may assist diagnostic activities and safe service and repair activities while the solution is being developed’. <b>[Note:</b> please let us know if there is any other information that may be useful in this circumstance that may assist in such circumstances].</p> <p>4. Include a new section (or subsection), providing that Australian repairers must be able to record services in electronic logbooks.</p> <p>5. Remove section (d) Telemetry and future telematics matters can be considered under Scheme Rules.</p> <p>6. Remove section (h) Automated Vehicle System matters can be considered under the Scheme Rules.</p> <p><b>Other comment:</b></p> <p>1. From an efficacy perspective, consider whether any of the excluded information may contain relevant information required for diagnostic, servicing, modifying or repair activities. If so, consider whether the exclusion should only apply to the extent that it is not relevant for such diagnostic, servicing, modifying or repair activities. For example, if a trade secret or part thereof (which is not included in the definition for scheme information, but which may be provided separately to car dealership networks and manufacturer preferred repairers) is used for conducting diagnostic, servicing, modifying or repair activities then this information should also be provided to other Australian repairers and scheme RTOs.</p>
7.	@30 Meaning of <i>data provider</i>	No concern with this section. The Bill does not include the definition in



NO.	SECTION NUMBER	COMMENT
	<p>A <b>data provider</b> is:</p> <p>(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</p> <p>(b) any person who carries on such a business in the course of, or in relation to, trade or commerce.</p>	<p>paragraph 1.18 of the Explanatory Memorandum but should achieve the same.</p>
8.	<p><b>@35 Meaning of safety and security information</b></p> <p>(1) <b>Safety and security information</b>, for a scheme vehicle, is either or both of the following:</p> <p>(a) safety information;</p> <p>(b) security information.</p> <p>Note: Restrictions apply in relation to the supply of scheme information that is safety and security information: see section @65.</p> <p>(2) <b>Safety information</b>, 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:</p> <p>(a) the hydrogen system;</p> <p>(b) the high voltage system;</p> <p>(c) the hybrid system;</p> <p>(d) the electric propulsion system;</p>	<p>Paragraph 1.104 of the Explanatory Memorandum notes that the “Minister will take advice from industry stakeholders on what scheme information should be considered safety and security information and the corresponding access criteria”.</p> <p>We agree with this mechanism.</p> <p>The exclusion of information in regard to alternate propulsion systems is not supported. We understand that this mechanism is designed to support the safety of the automotive technician. The Bill is essentially a competition instrument and we would argue that the inclusion of an OH&amp;S mechanism is unnecessary, and that the exclusion of alternate propulsion systems will provide for a market in which independent repairers have a progressively shrinking vehicle population due the expected rise in alternate propulsion systems.</p> <p>Whilst we clearly agree with mechanisms that support employee safety, we are concerned that this Bill is not the right instrument to legislate for worker safety and we disagree that the Act should unilaterally exclude electric propulsion systems.</p> <p>In our view, the safety of the Automotive Technician can be assured through two clear and present mechanisms:</p>

NO.	SECTION NUMBER	COMMENT
	<p>(e) another system prescribed by the scheme rules for the purposes of this paragraph.</p> <p>(3) <b>Security information</b>, 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:</p> <p>(a) the vehicle’s mechanical and electrical security system;</p> <p>(b) another system prescribed by the scheme rules for the purposes of this paragraph.</p>	<p>a) Workshop compliance with AS 5732:2015 Australian Standard Electric Vehicle Operations – Maintenance and Repair, (Summary of this Standard appears as <b>Attachment Four</b>), and</p> <p>b) State based Occupational Health and Safety Legislation.</p> <p>Our preference is that alternate fuels are considered in the scheme rules and not excluded in the Act.</p> <p><b>Proposal:</b></p> <p>Remove @35 (2) (a) and (b) and (c) and (d).</p>
9.	<p><b>@40 Supply of scheme information between related bodies corporate</b></p> <p>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.</p>	<p><b>Concern:</b></p> <p>The Explanatory Memorandum states that the definition of data provers captures the sharing of information within vertically integrated structures and with related bodies corporate.</p> <p>However, section 40 only mentions data providers that are related to Australian repairers and does not include reference to scheme RTOs.</p> <p><b>Proposal:</b></p> <p>While it may be less common for a data provider to be related to a scheme RTO, the following is recommended for completeness.</p> <p>In section 40, after the words ‘Australian repairer’ insert the words ‘or scheme RTOs’ as follows: ‘to an Australian repairer or scheme RTO even if the data provider and the Australian repairer or scheme RTO are related bodies corporate.’</p>

NO.	SECTION NUMBER	COMMENT
10.	<p><b>@45 Scheme information—offer to supply to Australian repairers and scheme RTOs</b></p> <p><i>Scope</i></p> <p>(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.</p> <p><i>Main obligation</i></p> <p>(2) The data provider must, by a publication in English on the internet that is accessible free of charge, make an offer (a <b>scheme offer</b>) 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:</p> <p>(a) in the same form in which it is supplied or offered for supply under subsection (1); or</p> <p>(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.</p> <p>Note 1: A pecuniary penalty of up to \$10,000,000 may be imposed for a contravention of this subsection: see section 76.</p> <p>Note 2: Restrictions apply in relation to the supply of scheme information that is safety and security information: see section @65.</p> <p><i>Choice of supply period in scheme offer</i></p>	<p><b>Concerns:</b></p> <ol style="list-style-type: none"> <li>1. With section 45(5)(f), the data provider may be able to inflate the price to be paid a related company with a proprietary interest in the scheme information. Such an inflation in price may be a factor used to determine the fair market value of the scheme price.</li> </ol> <p><b>Proposals:</b></p> <ol style="list-style-type: none"> <li>1. In section 45(5)(f), after the words ‘interest in the scheme information’ insert words to the effect ‘however, if the amount payable is unreasonably high in the circumstances, then a reasonable amount’.</li> </ol> <p><b>Accessible Format:</b></p> <p>In our view the accessible format should include a reference to universal scan tools. The information provided by the Data Provider must be able to be transmitted to the vehicles and create a connection to the manufacturers portal in order to update software and program new or replacement parts. Without a reference to scan tools, the Law could be interpreted to legislate the provision of static information and by inference, exclude the critical component of connectivity as identified in the ACCC final report. In the ACCC finding there was a clear acknowledgement of the role of these tools that are needed to repair or service a new car. The ACCC made specific reference to ‘diagnostic, testing and scanning tools’ and the scanning tool was defined as ‘Tools that are connected to a car to download and display fault codes, generally can also be used to upload software updates and reinitialisation codes.’ <b>(Attachment Five)</b></p>

NO.	SECTION NUMBER	COMMENT
	<p>(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:</p> <p>(a) for any period nominated by an Australian repairer or scheme RTO; or</p> <p>(b) by day, by month and by year.</p> <p>Civil penalty:</p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p> <p><i>Scheme offer not to exceed fair market price</i></p> <p>(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 <b>scheme price</b>) that does not exceed the fair market value of the information, as determined by reference to matters including those covered by subsection (5).</p> <p>Note: A pecuniary penalty of up to \$10,000,000 may be imposed for a contravention of this subsection: see section 76.</p> <p>(5) For the purposes of subsection (4), this subsection covers the following matters:</p> <p>(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:</p>	<p><b>Proposal:</b></p> <p>Include reference to scan tools: <i>if supply in that form is not practicable or accessible</i> via a universal J2534 scan tool.</p>

NO.	SECTION NUMBER	COMMENT
	<p>(i) of that particular make, model and year; or</p> <p>(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;</p> <p>(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;</p> <p>(c) the anticipated demand by Australian repairers and scheme RTOs for supply of the scheme information on the basis of the scheme offer;</p> <p>(d) the reasonable recovery of costs incurred in creating, producing and providing the scheme information for supply on the basis of the scheme offer;</p> <p>(e) the price charged for the supply of information similar to scheme information in overseas markets;</p> <p>(f) the amount (if any) payable by the data provider to any person who has a proprietary interest in the scheme information.</p> <p>Note: A data provider must pay compensation to a person whose copyright is infringed by a supply of scheme information: see subsection @60(3).</p> <p><i>Publication of scheme offer</i></p> <p>(6) The data provider must publish the scheme offer on the data provider’s website.</p>	

NO.	SECTION NUMBER	COMMENT
	<p>Civil penalty:</p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p> <p>(7) The data provider must:</p> <p>(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</p> <p>(b) notify the scheme adviser, in writing, as soon as reasonably practicable after any change to the scheme offer.</p> <p>Civil penalty:</p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p> <p>@50 Scheme information—supply on request by Australian</p>	

<p>11.</p>	<p><b>@50 Scheme information—supply on request by Australian repairers or scheme RTOs</b></p> <p><i>Scope</i></p> <p>(1) This section applies if:</p> <p>(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</p> <p>(b) either:</p> <p>(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</p> <p>(ii) a scheme RTO has a need to access the scheme information to provide an RTO course; and</p> <p>(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</p> <p>(d) the Australian repairer or scheme RTO pays or offers to pay the scheme price, or another agreed price, for the scheme information.</p> <p>Note: Restrictions apply in relation to the supply of scheme information that is safety and security information: see section @65.</p> <p><i>Supply of scheme information</i></p> <p>(2) Subject to section @65 (which deals with the supply of safety and</p>	<p><b>Concerns:</b></p> <ol style="list-style-type: none"> <li>1. As set out in item 4 for ‘Australian repairer’.</li> <li>2. Two-day time lag for independent repairers. It is understood that from time to time, unique requests will require a grace time period to allow the data provider to respond. However, our view is that a unilateral 2-day time delay will result in all information being subject to this delay. This instrument has the potential to build in a disadvantage for independent repairers, for roadside assistance and for mobile mechanics. There should be no distinction between the time period for manufacturer accredited repairs and independent repairers. It is difficult to envisage a scenario in which it is appropriate to withhold information for two days simply because the Act allows for, and sanctions, this delay.</li> <li>3. In our view a 2-day delay for information that is already available in real time contradicts the clear requirement for data providers to “supply in a form that is practicable and accessible” (which is considered to be a breach of a main obligation under Division 3 @45 (2)(b). The ACCC also considered that data provision should occur in ‘real-time’ (<b>Attachment Six</b>)</li> </ol> <p><b>Proposals:</b></p> <ol style="list-style-type: none"> <li>1. Amend section 50(1)(b)(i) by inserting the word ‘modify’ after the word ‘service,’ as follows: ‘service, modify or repair that particular make’.</li> <li>2. Amend to ensure that Scheme Providers supply scheme information in the same time frame as supplied to the dealer network. If the accredited repairers receive information in real time so should the independent repairer. The time period should be considered to be a</li> </ol>
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<p>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:</p> <p>(a) within the time agreed with the Australian repairer or scheme RTO; or</p> <p>(b) if the scheme information includes safety and security information—before the end of 2 business days after the later of the following days:</p> <p>(i) the day on which the Australian repairer or scheme RTO pays the scheme price, or another agreed price, for the scheme information;</p> <p>(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</p> <p>(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.</p> <p>Note: A pecuniary penalty of up to \$10,000,000 may be imposed for a contravention of this subsection: see section 76.</p> <p><i>Data provider to notify scheme adviser of terms and conditions of supply</i></p> <p>(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.</p>	<p>part of the functional equality that is referred to in regard to scheme format. The time period is integral to the format.</p> <p><b>Proposal:</b></p> <p><b>Accessible Format:</b></p> <p>The definition of ‘accessible format’ should include an overt reference to universal scan tools.</p>
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NO.	SECTION NUMBER	COMMENT
	<p><i>Civil penalty:</i></p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p>	
12.	<p><b>@55 Scheme information—terms and conditions of supply and use</b></p> <p><i>Terms and conditions of supply generally</i></p> <p>(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.</p> <p><i>Prohibited terms or conditions</i></p> <p>(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:</p> <p>(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;</p> <p>(b) a term or condition prohibited by the scheme rules.</p> <p><i>Civil penalty:</i></p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p>	<p><b>Concerns:</b></p> <ol style="list-style-type: none"> <li>As set out in item 4 for ‘Australian repairer’.</li> </ol> <p><b>Proposals:</b></p> <ol style="list-style-type: none"> <li>Amend section 55(1) by inserting the word ‘modifying’ after the word ‘servicing,’ as follows: ‘servicing, modifying or repairing.’</li> </ol>

NO.	SECTION NUMBER	COMMENT
	<p>(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.</p>	
13.	<p><b>@60 Scheme information—interaction of supply obligations and other rights and obligations</b></p> <p><i>Data provider must comply with supply obligations despite existence of other rights and obligations</i></p> <p>(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:</p> <p>(a) an infringement of copyright by the data provider or any other person;</p> <p>(b) a breach of contract in relation to the supply of the scheme information;</p> <p>(c) a breach of an equitable obligation of confidence to which the data provider is subject in relation to the supply of the scheme information.</p> <p>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).</p> <p>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).</p> <p>Compensation for third party copyright holders</p> <p>(2)Subsection (3) applies if:</p> <p>(a)a data provider supplies scheme information to an Australian repairer or scheme RTO under this Part; and</p>	<p><b>Concerns:</b></p> <p>1. While the data provider may have a defence available under section 60(5), it is unclear to what extent is the Independent Repairer or scheme RTO is protected/indemnified for their permitted use of the scheme information.</p> <p><b>Proposal</b></p> <p>1. Amend section 60(3) to include any compensation recoverable in relation to the use of the scheme information by the Independent Repairer or scheme RTO. Amend section 60(5) to cover any claims made against the Independent Repairer or scheme RTO.</p>

NO.	SECTION NUMBER	COMMENT
	<p>(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</p> <p>(c)the supply constitutes or results in an infringement of the copyright of the third party claimant; and</p> <p>(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).</p> <p>(3)The data provider must pay to the third party claimant an amount that represents compensation on just terms (within the meaning of paragraph (xxxii) of the Constitution) for the supply of the scheme information to the Australian repairer or scheme RTO.</p> <p>(4)An amount payable by the data provider under subsection (3):</p> <p>(a)is a debt due by the data provider to the third party claimant; and</p> <p>(b)may be recovered by action in a court of competent jurisdiction.</p> <p>(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:</p> <p>(a)the data provider was required to supply the scheme information, or offer to supply the scheme information, under this Part; and</p> <p>(b)the data provider has paid to the third party claimant the compensation required to be paid under subsection (3).</p>	
14.	<b>@65 Safety and security information—supply to Australian repairers and scheme RTOs</b>	<i>Concerns:</i>

NO.	SECTION NUMBER	COMMENT
	<p><i>Supply of safety and security information</i></p> <p>(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:</p> <p>(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:</p> <p>(i) in the case of an Australian repairer—for the purposes of the Australian repairer’s business; or</p> <p>(ii) in the case of a scheme RTO—for the purposes of providing an RTO course; and</p> <p>(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.</p> <p>Civil penalty:</p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p> <p><i>Fit and proper persons</i></p> <p>(2) An individual is a <b>fit and proper person</b> to access and use safety and security information if the individual meets the criteria (the <b>prescribed safety and security criteria</b>) prescribed by the scheme rules.</p>	<ol style="list-style-type: none"> <li>1. As set out in item 4 for ‘Australian repairer’.</li> <li>2. Also, there is no clear prohibition on requesting more personal or sensitive information than that specified in section 65 or the scheme rules, or limiting requests for information to what is reasonably necessary to assist the data provider determine that there are reasonable grounds to believe the person is a fit and proper person for the purpose of section 65(1). There should be a requirement that data providers do not request more sensitive information, or personal information, than there are reasonable grounds for believing they require to make the assessment that a person is a fit and proper person to receive safety and security information. Without such a requirement more information than is reasonably necessary may be requested.</li> </ol> <p><b>Proposals:</b></p> <ol style="list-style-type: none"> <li>1. Amend section 65(1)(a) by inserting the word ‘modifying’ after the word ‘servicing,’ as follows: ‘servicing, modifying or repairing.’</li> <li>2. Create a new section (or add a new sub-section to section 65), providing the wording similar to section 75(1)(b), to the effect that data providers should only seek information they have reasonable grounds for believing is relevant to determining whether a person is a fit and proper person to access and use safety and security information, or that data providers may not request more information than that specified in section 65 or the scheme rules.</li> </ol> <p><b>Other comments:</b></p>

NO.	SECTION NUMBER	COMMENT
	<p>(3) For the purposes of subsection (2), different criteria may be prescribed in relation to each of the following:</p> <p>(a) safety information;</p> <p>(b) security information.</p> <p><i>Personal information</i></p> <p>(4) For the purposes of paragraph (1)(b), the following personal information about an individual is covered by this subsection:</p> <p>(a) the individual’s name and residential address;</p> <p>(b) information about the individual’s relationship to the Australian repairer or scheme RTO (as the case may be);</p> <p>(c) the individual’s qualifications for using the safety and security information for the applicable purpose mentioned in paragraph (1)(a);</p> <p>(d) in circumstances (if any) prescribed by the scheme rules—a criminal records check about the individual;</p> <p>(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.</p> <p>Note: This section applies despite section @50 (which deals with the supply of scheme information on request by an Australian repairer or scheme RTO).</p>	<p>We note and agree with the mechanism as outlined in the Explanatory Memorandum at paragraph 1.110, that the criteria for determining if a person is a fit and proper person will be “identified in consultation with industry”.</p>

NO.	SECTION NUMBER	COMMENT
15.	<p><b>@75 Safety and security information—storage of, and access to, sensitive information</b></p> <p><i>Scope</i></p> <p>(1) This section applies in relation to sensitive information within the meaning of the <i>Privacy Act 1988</i>, if:</p> <p>(a) the information is about an individual mentioned in subsection @65(1); and</p> <p>(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.</p> <p><i>Sensitive information must be stored in Australia</i></p> <p>(2) If a data provider holds the sensitive information, the data provider must store the information in Australia or an external Territory.</p> <p>Civil penalty:</p> <p>(a) for a body corporate—1,500 penalty units; and</p> <p>(b) for a person other than a body corporate—300 penalty units.</p> <p><i>Preventing access to sensitive information outside Australia</i></p> <p>(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.</p>	<p><b>Concern:</b></p> <p>The scope in section 75(1) may create uncertainty or create a loophole, in relation to the handling and storage of sensitive information.</p> <p>It appears the intent of the section is that sensitive information held by a data provider should be subject to the obligations set out in sections 75(2) and 75(3) (being that sensitive information must be held in Australia or an external Territory and must not be accessed by any person outside Australia). However, whether these obligations apply seems to be based on a subject consideration in 75(1)(b).</p> <p>Additionally, section 80(2) requires the data provider to retain the information used to determine whether a person is a fit and proper person. It is likely to include sensitive information, which should be subject to section 75(2) and 75(3).</p> <p>Not all sensitive information may be subject to sections 75(2) and 75(3).</p> <p><b>Proposal:</b></p> <p>Amend section 75 so that any sensitive information held by the data provider is subject to the obligations set out in section 75(2) and section 75(3).</p>



NO.	SECTION NUMBER	COMMENT
	Civil penalty: (a) for a body corporate—1,500 penalty units; and (b) for a person other than a body corporate—300 penalty units.	
16.	<p><b>@85 Application</b></p> <p>This Division applies to a dispute about any of the following:</p> <p>(a) whether a person is a data provider;</p> <p>(b) whether a person is an Australian repairer;</p> <p>(c) whether a registered training organisation is a scheme RTO;</p> <p>(d) whether particular information is scheme information, including whether it is safety and security information;</p> <p>(e) the application of this Part in relation to particular scheme information;</p> <p>(f) any other dispute about the operation of this Part that is prescribed by the scheme rules.</p>	<p><b>Concern:</b></p> <p>To assist to resolve dispute and for data collection purposes by the scheme advisor, it may be beneficial to also include the following as disputes to which the dispute resolution process applies:</p> <ul style="list-style-type: none"> <li>• access to safety and security information, including whether a person is a fit and proper person;</li> <li>• issues with terms and conditions, including fair price and discrepancies in format and information searchability between various Australian repairers and RTO.</li> </ul> <p><b>Reason for concern:</b></p> <p>Scheme participants may miss the opportunity to resolve a dispute in a cost efficient and timely manner. Further, the scheme advisor may not be receiving all relevant data to identify any issues with the scheme.</p> <p><b>Proposal:</b></p> <p>Amend section 85 by including the following:</p> <ul style="list-style-type: none"> <li>• whether a determination on access to safety and security</li> </ul>

NO.	SECTION NUMBER	COMMENT
		<p>information, including whether a person is a fit and proper person was correctly made (an independent review body may be better suited for this);</p> <ul style="list-style-type: none"> <li>• issues with terms and conditions, including, but not limited to, fair price and discrepancies in format and information searchability between various Australian repairers and RTO.</li> </ul>
17.	<p><b>@90 Resolving disputes</b></p> <p>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.</p>	No concern with this section.
18.	<p><b>@95 Right to bring proceedings unaffected</b></p> <p>This Division does not affect the right of the initiating party or the responding party to bring legal proceedings, under this Act or otherwise.</p>	No concern with this section.
19.	<p><b>@100 Attempt to resolve dispute before mediation</b></p> <p>(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:</p> <p>(a) the nature of the dispute;</p> <p>(b) the matter that is the subject of the dispute;</p> <p>(c) the way in which that matter relates to the application of this Part;</p> <p>(d) what outcome the initiating party wants;</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT
	<p>(e) what action the initiating party thinks will resolve the dispute.</p> <p>(2) The parties must then try to resolve the dispute.</p> <p>Note:For when a party is taken to have tried to resolve a dispute, see section @105.</p> <p>(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.</p> <p>(4) If the parties cannot agree on who should be the mediator, either party may request the scheme adviser to nominate a mediator.</p> <p>(5) Within 2 business days after a request is made under subsection (4), the scheme adviser must nominate a mediator for the dispute.</p>	
20.	<p><b>@105 When is a party taken to have tried to resolve a dispute?</b></p> <p>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:</p> <p>(a) attending and participating in meetings at reasonable times;</p> <p>(b) responding to communications to the party within a reasonable time;</p> <p>(c) if the party has agreed to use a technical expert in resolving the dispute—considering the opinions of the technical expert;</p> <p>(d) if a mediation process is being used to try to resolve the dispute—both:</p> <p>(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</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT
	(ii) observing any obligations relating to confidentiality that apply during or after the process.	
21.	<p><b>@110 Mediation</b></p> <p>(1) Subject to this section, a mediator appointed by the parties to a dispute may decide the time and place for mediation.</p> <p>(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.</p> <p>(3) Unless the mediation is conducted using the technology referred to in subsection (4), the mediation must be conducted in Australia.</p> <p>(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.</p> <p>(5) The parties must attend the mediation.</p> <p>Civil penalty:</p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p> <p>(6) For the purposes of subsection (5), a party is taken to attend mediation in the following circumstances:</p> <p>(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;</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT
	<p>(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).</p> <p>(7) The parties must then try to resolve the dispute.</p> <p>Note: For when a party is taken to have tried to resolve a dispute, see section @105.</p> <p>(8) Within 5 business days after the start of the mediation, the mediator must advise the scheme adviser that the mediation has started.</p>	
22.	<p><b>@115 Termination of mediation</b></p> <p>(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.</p> <p>(2) The mediator may terminate the mediation at any time unless satisfied that a resolution of the dispute is imminent.</p> <p>(3) However, if either party asks the mediator to terminate the mediation, the mediator must do so.</p> <p>(4) If the mediator terminates the mediation of a dispute under this section, the mediator must issue a certificate stating the following:</p> <p>(a) the names of the parties;</p> <p>(b) the nature of the dispute;</p> <p>(c) whether the parties attended the mediation;</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT
	<p>(d) that the mediation has finished;</p> <p>(e) that the dispute has not been resolved.</p> <p>(5) The mediator must give a copy of the certificate to:</p> <p>(a) the scheme adviser; and</p> <p>(b) each of the parties to the dispute.</p>	
23.	<p><b>@120 Costs of mediation</b></p> <p>(1) The parties are equally liable for the costs of mediation under this Division unless they agree otherwise.</p> <p>(2) The parties must pay their own costs of attending the mediation.</p> <p>(3) The costs of mediation under this Division under subsection (1) include the following:</p> <p>(a) the cost of the mediator;</p> <p>(b) the cost of any additional input (including from technical experts) agreed by both parties to be necessary to conduct the mediation.</p>	No concern with this section.
24.	<p><b>@125 Scheme adviser—establishment and appointment</b></p> <p>(1) There is to be a motor vehicle service and repair information scheme adviser for the purposes of this Part.</p> <p>(2) The Minister may, by instrument, appoint a person to be the scheme adviser.</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT
	(3) The scheme adviser is not entitled to be paid any remuneration or allowances.	
25.	<p><b>@130 Scheme adviser—functions</b></p> <p>(1) The scheme adviser has the following functions:</p> <p>(a) to nominate mediators or technical experts for the purposes of Division 5 (dispute resolution);</p> <p>(b) to report to the Minister:</p> <p>(i) on the basis of any advice obtained from technical experts—about whether or not particular information is, or should be, scheme information; and</p> <p>(ii) about any other matter relevant to the operation of this Part;</p> <p>(c) to report to the Commission about any systemic regulatory or enforcement issues relating to the operation of this Part;</p> <p>(d) to provide general advice in relation to the application of this Part, but excluding any information obtained in confidence;</p> <p>(e) to publish on the scheme adviser’s website annual reports about:</p> <p>(i) the number and type of inquiries and disputes relating to the operation of this Part over the period of a financial year;</p> <p>(ii) the number and type of disputes for which a mediator has been appointed over that period;</p>	No concern with this section.



NO.	SECTION NUMBER	COMMENT
	<p>(iii) resolution rates for disputes for which a mediator has been appointed over that period;</p> <p>(iv) other relevant matters affecting the operation of this Part over the period, including any such matter directed by the Minister in writing;</p> <p>(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.</p> <p>(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.</p> <p>(3) The scheme adviser has all the powers necessary or convenient for the performance of the functions of that office.</p> <p>(4) Section 34C of the Acts Interpretation Act 1901 does not apply in relation to an annual report mentioned in paragraph (1)(e).</p> <p>Note: Section 34C of the Acts Interpretation Act 1901 would require such periodic reports to be given to the Minister and tabled in Parliament.</p>	
26.	<p><b>@135 Civil penalty provisions</b></p> <p>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:</p> <p>(a) a subsection;</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT																				
	(b) a section that is not divided into subsections.																					
27.	<p><b>@140 Infringement notices</b></p> <p>(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).</p> <p>(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:</p> <hr/> <p><b>Penalties to be specified in infringement notices issued under this Part</b></p> <table border="1"> <thead> <tr> <th data-bbox="271 874 322 895">Item</th> <th data-bbox="367 874 495 1023">For an alleged contravention of the following provision:</th> <th data-bbox="517 874 667 895">that relates to...</th> <th data-bbox="786 874 936 1086">...if the alleged contravention is by a body corporate—the number of penalty units must be:</th> <th data-bbox="981 874 1131 1150">...and if the alleged contravention is by a person other than a body corporate—the number of penalty units must be:</th> </tr> </thead> <tbody> <tr> <td data-bbox="271 1177 293 1198">1</td> <td data-bbox="367 1177 465 1230">subsection @45(3)</td> <td data-bbox="517 1177 757 1230">the choice of supply period in scheme offer</td> <td data-bbox="853 1177 875 1198">60</td> <td data-bbox="1048 1177 1070 1198">12</td> </tr> <tr> <td data-bbox="271 1246 293 1267">2</td> <td data-bbox="367 1246 465 1299">subsection @45(6)</td> <td data-bbox="517 1246 741 1267">publishing a scheme offer</td> <td data-bbox="853 1246 875 1267">60</td> <td data-bbox="1048 1246 1070 1267">12</td> </tr> <tr> <td data-bbox="271 1315 293 1335">3</td> <td data-bbox="367 1315 465 1367">subsection @45(7)</td> <td data-bbox="517 1315 712 1367">notifying the scheme adviser about scheme</td> <td data-bbox="853 1315 875 1335">60</td> <td data-bbox="1048 1315 1070 1335">12</td> </tr> </tbody> </table>	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	60	12	No concern with this section.
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NO.	SECTION NUMBER	COMMENT																																													
	<p style="text-align: center;">information offered</p> <hr/> <table border="0"> <tr> <td style="width: 5%;">4</td> <td style="width: 15%;">subsection @50(3)</td> <td style="width: 40%;">notifying the scheme adviser of terms and conditions of supply</td> <td style="width: 10%; text-align: center;">60</td> <td style="width: 10%; text-align: center;">12</td> </tr> <tr> <td colspan="5"><hr/></td> </tr> <tr> <td>5</td> <td>subsection @55(2)</td> <td>prohibited terms or conditions in contracts of supply</td> <td style="text-align: center;">60</td> <td style="text-align: center;">12</td> </tr> <tr> <td colspan="5"><hr/></td> </tr> <tr> <td>6</td> <td>subsection @65(1)</td> <td>supplying safety and security information without reasonable grounds</td> <td style="text-align: center;">60</td> <td style="text-align: center;">12</td> </tr> <tr> <td colspan="5"><hr/></td> </tr> <tr> <td>7</td> <td>subsection @80(2)</td> <td>requiring a data provider to keep records</td> <td style="text-align: center;">60</td> <td style="text-align: center;">12</td> </tr> <tr> <td colspan="5"><hr/></td> </tr> <tr> <td>8</td> <td>subsection @110(5)</td> <td>failing to attend mediation</td> <td style="text-align: center;">60</td> <td style="text-align: center;">12</td> </tr> </table>	4	subsection @50(3)	notifying the scheme adviser of terms and conditions of supply	60	12	<hr/>					5	subsection @55(2)	prohibited terms or conditions in contracts of supply	60	12	<hr/>					6	subsection @65(1)	supplying safety and security information without reasonable grounds	60	12	<hr/>					7	subsection @80(2)	requiring a data provider to keep records	60	12	<hr/>					8	subsection @110(5)	failing to attend mediation	60	12	
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28.	<p><b>@145 Concurrent operation of State and Territory laws</b></p> <p>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.</p>	No concern with this section – consistent with Explanatory Memorandum.																																													
29.	<p><b>@150 Acquisition of property</b></p> <p><i>Scope</i></p> <p>(1) This section applies to any of the following provisions:</p> <p>(a) a provision of Division 3;</p> <p>(b) any other provision of this Act, to the extent to which the provision relates to Division 3.</p>	No concern with this section.																																													

NO.	SECTION NUMBER	COMMENT
	<p><i>Effect of provision</i></p> <p>(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).</p>	
30.	<p><b>@155 Scheme rules</b></p> <p>(1) The Minister may, by legislative instrument, make rules prescribing matters:</p> <p>(a) required or permitted by this Part to be prescribed by the rules; or</p> <p>(b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.</p> <p>(2) To avoid doubt, the rules may not do the following:</p> <p>(a) create an offence or civil penalty;</p> <p>(b) provide powers of:</p> <p>(i) arrest or detention; or</p> <p>(ii) entry, search or seizure;</p> <p>(c) impose a tax;</p> <p>(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;</p>	

NO.	SECTION NUMBER	COMMENT
	(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).	
31.	<b>Part 2—Other amendments</b>	In relation to 10, 15 to 17, 21, 23 to 25, “Part IVBA” appears to be a typographical error. We believe this should be “Part IVB”.  Otherwise, no concern with this section.
32.	<b>Part 3—Amendments commencing later</b>  <b>29 Section @10 (definition of <i>scheme vehicle</i>, paragraphs (a) and (b))</b>	As set out above at item 3. No concern with this section.

# Attachment Three

## 3.3. Applicability Table

<b>Vehicle Category</b>	<b>ADR Category Code</b>	<b>UNECE Category Code</b>	<b>Manufactured on or After</b>	<b>Acceptable Prior Rules</b>
Moped 2 wheels	LA	L1	1 Jan 2005	Nil
Moped 3 wheels	LB	L2	1 Jan 2005	Nil
Motor cycle	LC	L3	1 Jan 2005	Nil
Motor cycle and sidecar	LD	L4	1 Jan 2005	Nil
Motor tricycle	LE	L5	1 Jan 2005	Nil
	LEM			
	LEP			
	LEG			
Passenger car	MA	M1	1 Jan 2005	Nil
Forward-control passenger vehicle	MB	M1	1 Jan 2005	Nil
Off-road passenger vehicle	MC	M1	1 Jan 2005	Nil
Light omnibus	MD	M2		
up to 3.5 tonnes 'GVM' and up to 12 seats	MD1		1 Jan 2005	Nil
up to 3.5 tonnes 'GVM' and more than 12 seats	MD2		1 Jan 2005	Nil
over 3.5 tonnes and up to 4.5 tonnes 'GVM'	MD3		1 Jan 2005	Nil
over 4.5 tonnes and up to 5 tonnes 'GVM'	MD4		1 Jan 2005	Nil
Heavy omnibus	ME	M3	1 Jan 2005	Nil
Light goods vehicle	NA	N1	1 Jan 2005	Nil
Medium goods vehicle	NB	N2		
over 3.5 tonnes up to 4.5 tonnes 'GVM'	NB1		1 Jan 2005	Nil
over 4.5 tonnes up to 12 tonnes 'GVM'	NB2		1 Jan 2005	Nil
Heavy goods vehicle	NC	N3	1 Jan 2005	Nil
Very light trailer	TA	O1	1 Jan 2005	Nil
Light trailer	TB	O2	1 Jan 2005	Nil
Medium trailer	TC	O3	1 Jan 2005	Nil
Heavy trailer	TD	O4	1 Jan 2005	Nil



## **Electric vehicle operations— Maintenance and repair**



This Australian Standard® was prepared by Committee EM-001, Electric Vehicle Operation. It was approved on behalf of the Council of Standards Australia on 2 July 2015. This Standard was published on 6 August 2015.

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The following are represented on Committee EM-001:

- Australian Automobile Association
  - Australian Electric Vehicle Association
  - Australian Industry Group
  - Auto Skills Australia
  - Chargepoint
  - Consumers Federation of Australia
  - Curtin University of Technology
  - Electrical Regulatory Authorities Council
  - Energy Networks Association
  - Federal Chamber of Automotive Industries
  - National Association of Testing Authorities Australia
  - Transport for NSW
  - Tritium
  - Victorian Automobile Chamber of Commerce
- 

This Standard was issued in draft form for comment as DR AS 5732:2014.

Standards Australia wishes to acknowledge the participation of the expert individuals that contributed to the development of this Standard through their representation on the Committee and through the public comment period.

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Australian Standard<sup>®</sup>

**Electric vehicle operations—  
Maintenance and repair**

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## PREFACE

This Standard was prepared by the Standards Australia Committee EM-001, Electric Vehicle Operation.

This Standard has been produced to provide requirements and guidance on the safe and appropriate handling procedures for those within the mechanical repair, body repair and refinishing industries when working on plug-in electrical vehicles (PEVs), hybrid electric vehicles (HEVs), battery electric vehicles (BEVs) and plug-in hybrid electric vehicles (PHEVs).

## CONTENTS

	<i>Page</i>
<b>SECTION 1 SCOPE AND GENERAL</b>	
1.1 SCOPE.....	4
1.2 OBJECTIVE.....	4
1.3 REFERENCED DOCUMENTS.....	4
1.4 DEFINITIONS AND ACRONYMS .....	5
<b>SECTION 2 SAFE WORKING PRACTICES</b>	
2.1 GENERAL.....	7
2.2 APPAREL .....	7
2.3 LIVE CIRCUITS .....	7
2.4 FIRST AID .....	8
2.5 SAFETY DATA SHEETS .....	9
2.6 SAFE HANDLING RESS.....	9
2.7 DAMAGED PERSONAL PROTECTIVE EQUIPMENT .....	9
<b>SECTION 3 GENERAL SERVICE WORKING AREAS</b>	
3.1 APPLICATION .....	10
3.2 PREMISES .....	10
3.3 DESIGNATED PERSONNEL.....	10
3.4 PREVENTION OF OVERHEATING WARNING LABEL.....	10
<b>SECTION 4 PLUG-IN ELECTRIC VEHICLE, HYBRID ELECTRIC VEHICLE, BATTERY ELECTRIC VEHICLE AND PLUG-IN HYBRID ELECTRIC VEHICLE REPAIR</b>	
4.1 GENERAL.....	11
4.2 PERSONAL PROTECTIVE EQUIPMENT FOR DEPOWERING RESS PROCESS	11
4.3 DISABLE PROCEDURES .....	12
4.4 ISOLATE DEPOWER VEHICLE RESS .....	13
4.5 SERVICE AND MAINTAIN PEVs, HEVs, BEVs AND PHEVs.....	14
4.6 MOVING A PEV, HEV, BEV OR PHEV WITHIN A WORKSHOP.....	15
<b>SECTION 5 DAMAGED HIGH VOLTAGE BATTERIES</b>	
5.1 GENERAL.....	16
5.2 INSPECTION OF HIGH VOLTAGE BATTERIES .....	16
5.3 REMOVAL OF HIGH VOLTAGE BATTERIES (RESS).....	16
<b>SECTION 6 FIRE SAFETY</b>	
6.1 GENERAL.....	18
6.2 PROCEDURE.....	18
6.3 FIRE SAFETY EQUIPMENT .....	18
6.4 HOSE REELS.....	19
6.5 FIRE EXTINGUISHERS.....	19
<b>SECTION 7 DECOMMISSIONING, SCRAPPING OF HYBRID ELECTRIC AND BATTERY ELECTRIC VEHICLES</b>	
7.1 GENERAL.....	20
7.2 RECHARGEABLE ENERGY STORAGE SYSTEM (RESS).....	20

## STANDARDS AUSTRALIA

## Australian Standard

## Electric vehicle operations—Maintenance and repair

## SECTION 1 SCOPE AND GENERAL

## 1.1 SCOPE

This Standard sets out requirements for the premises and procedures for the following types of work or activity associated with plug-in electric vehicles (PEVs), hybrid electric vehicles (HEVs), battery electric vehicles (BEVs) and plug-in hybrid electric vehicles (PHEVs):

- (a) Routine motor vehicle maintenance and repairs not involving the high voltage (HV) rechargeable energy storage system (RESS), for example, lubrication, brake repair, wheel alignment, body or windscreen repairs, cleaning or detailing, and tyre fitting.
- (b) Maintenance, servicing and repairs to vehicles which involves working on or with high voltage (HV) rechargeable energy storage systems (RESS) including the need to disconnect hazardous voltage systems of the PEV, HEV, BEV or PHEV.
- (c) Handling procedures and storage precautions required in the event where the vehicle's structural integrity has been compromised, and the RESS is to be removed from the PEV, HEV, BEV or PHEV.

## 1.2 OBJECTIVE

The objective of this Standard is to provide vehicle servicing personnel and vehicle body repairers and refinishers with the minimum requirements for working areas for vehicles with HV RESS, in order to ensure work on the vehicles is carried out in a safe manner.

## 1.3 REFERENCED DOCUMENTS

The following documents are referenced in this Standard:

AS

1851 Routine service of fire protection systems and equipment

2225 Insulating gloves for electrical purposes

2441 Installation of fire hose reels

AS/NZS

1221 Fire hose reels

1841 Portable fire extinguishers

1841.1 Part 1: General requirements

1841.5 Part 5: Specific requirements for powder type extinguishers

1841.6 Part 6: Specific requirements for carbon dioxide type extinguishers

1850 Portable fire extinguishers—Classification, rating and performance testing

2210 Safety, protective and occupational footwear

2210.1 Part 1: Guide to selection, care and use


SDS Safety Data Sheets (obtainable from the original equipment manufacturer)

# Attachment Five

## Appendix E – Types of technical information to repair and service new cars

Table E1 provides a non-exhaustive list of the types of technical information that may be needed to repair or service a new car, of which the ACCC is currently aware.

**Table E1: Types of information and data to repair to repair and service new cars**

Information or data	Description
Body/collision repair methods and dimensions	The manufacturer's recommended methods for welding and completing structural and non-structural repairs to a car. <sup>649</sup>
Component overhaul procedures	Instructions for completing a refurbishment of car components, for example, instructions for tuning-up car engines to the manufacturer's specifications, including for in-chassis and major overhauls of the car's engine and its components. <sup>650</sup>
Component specifications	The design requirements of car parts made by component level suppliers, which may include specifications such as suspension roll gradients to determine front and rear roll stiffness. <sup>651</sup>
Diagnostic and testing procedures	The practices for accessing the on-board diagnostic system of a car to identify the problems a car may have. <sup>652</sup>
Diagnostic, testing and scanning tools	<p>Tools that are connected to a car to download and display fault codes, generally can also be used to upload software updates and reinitialisation codes.</p> <p>The picture on the right illustrates a typical proprietary diagnostic tool with an OBD II connector, which is designed to plug into the car.</p> 
Electrical circuit and wiring diagrams and voltages for electronic components	Schematic layout of a car's wiring and components and specifications. <sup>653</sup>
Electronic logbooks	An electronic logbook includes information about the car, such as manufacturer specifications regarding servicing, and provides a record of the service history of the car. It may be stored in the car's on-board diagnostic system, in the cloud, in the car's keys or in another electronic medium.
Lubricant specifications	Description of the type (synthetic, part synthetic or mineral) and viscosity of oil recommended by a manufacturer for use in lubricating different car components e.g. crankcase, automatic transmission, differential, 4WD transfer, 4WD differential or power steering, may be contained in repair and service manuals or logbooks. <sup>654</sup>

<sup>649</sup> Toyota (US), [Collision Repair Information](#), December 2013, accessed 17 July 2017.

<sup>650</sup> Supertune.com.au, [What is a car engine overhaul?](#), 2016, accessed 17 July 2017.

<sup>651</sup> Cai Z., Chan S., Tang X., Xin J. (2013) The Process of Vehicle Dynamics Development. In: SAE-China, FISITA (eds) Proceedings of the FISITA 2012 World Automotive Congress. Lecture Notes in Electrical Engineering, vol 195. Springer, Berlin, Heidelberg.

<sup>652</sup> AAA (US), [Automobile Computer Diagnosis – AAA Experts Explain How Repair Shops Find Problems](#), 17 September 2012, accessed 17 July 2017.

<sup>653</sup> AAA submission, November 2016, p. 29; AAAA submission, November 2016.

<sup>654</sup> Castrol (AU), [Engine oil](#), 2017, accessed 17 July 2017; Caltex (AU), [Oil & Product Finder](#), 2017, accessed 17 July 2017.

# Attachment Six

## **Recommendations on access to technical information for new cars**

### **Recommendation 4.1**

A mandatory scheme should be introduced for car manufacturers to share technical information with independent repairers, on commercially fair and reasonable terms. The mandatory scheme should provide independent repairers with access to the same technical information which car manufacturers make available to their authorised dealers and preferred repairer networks, including environmental, safety and security-related information (if it is made available to dealers).

The mandatory scheme should place an obligation on car manufacturers and other industry participants to achieve the underlying aims and principles of the Heads of Agreement (including those in relation to training and reinforcing existing statutory obligations on independent repairers to ensure repairs and servicing are carried out correctly to car manufacturers' specifications to assure the safety of consumers).

The mandatory scheme should, subject to the type of regulation used, address the following operational matters:

#### **Real time access**

- Car manufacturers should make available to independent repairers, in real time, the same digital files and codes, such as software updates and reinitialisation codes, made available to dealers to repair or service new cars.

#### **Coverage**

- Obligations on sharing technical information should apply to all car manufacturers in Australia.
- Relevant intermediaries should have options to access technical information from car manufacturers on commercially fair and reasonable terms.

#### **Definitions**

- All relevant terms, conditions and exclusions should be defined in the regulation, for instance, defining diagnostic tools and their relevance to facilitating access to technical information, as well as defining environmental, safety and security-related information.

#### **Dispute resolution**

- Any dispute resolution processes should be timely and accessible by all relevant stakeholders.
- Any dispute resolution processes should be subject to compulsory mediation and binding arbitration by an independent external party.

#### **Governance/consultation**

- Key stakeholders should meet regularly to discuss the rapidly changing nature of repair and service information.

#### **Security-related information and data**

- Similar to the EU or US models, a process for the secure release of environmental, safety and security-related technical information should be established or authorised under the mandatory scheme.
- The mandatory scheme should also set out a process for vetting end users accessing environmental, safety and security-related technical information and for tracing the use of that information.

#### **Enforcement**

- If appropriate, options to enforce the terms of any regulation should be included (e.g. penalties).

# AAAA Review – Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2020

NO.	SECTION NUMBER	COMMENT
1.	<p><b>@1 Objects of Part</b></p> <p>The objects of this Part are to:</p> <p>(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</p> <p>(b) enable consumers to have those vehicles repaired by an Australian repairer of their choice who can provide effective and safe services; and</p> <p>(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</p> <p>(d) protect safety and security information about those vehicles to ensure the safety and security of consumers, information users and the general public; and</p> <p>(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.</p>	<p>We are supportive of the Objectives.</p> <p>Commentary in regard to the content of this Bill is provided with the assistance of our AAAA Members, our international partners and our Legal Advisor: Emma Dalley, Principal Lawyer, Industry Legal Group January 2021. Our commentary and suggested changes are offered as a result of our review of the Bill and in particular:</p> <ol style="list-style-type: none"> <li>1. The degree to which the instruments, definitions, inclusions and exclusions are likely to fulfill or frustrate the objectives of this Act.</li> <li>2. Our legal advisors have assisted in analysing the degree to which the content of the Bill is consistent with the Explanatory Memorandum.</li> <li>3. We have leveraged our international relationships to review the efficacy of the Bill to fulfil the objectives and aims that we share with the USA and the EU data sharing regimes.</li> <li>4. Our review of the inclusions and exclusions has also been undertaken with a view to ensuring that the instrument provides for competition in this decade and beyond. Our commentary is offered in the context of ensuring that this instrument does not become redundant with the progressive take up of vehicles with</li> </ol>

NO.	SECTION NUMBER	COMMENT
		<p>alternate fuel propulsion systems.</p> <p>5. We appreciate the principle to protect safety of all users, however we note that the ACCC was very clear that protecting safety is not a justification for withholding information. The ACCC findings noted that certain information may require a vetting process, but 'safety' is not a rationale for not sharing, not making available this critical information.</p>
2.	<p><b>@5 Simplified outline</b></p> <p>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.</p> <p>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.</p> <p>Those who supply scheme information (called “data providers”) to Australian repairers and scheme RTOs are protected from certain claims in doing so.</p> <p>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.</p> <p>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</p>	<p>Although only an outline, language used in the Explanatory Memorandum is broader in scope compared to this section of the Bill. For example, the Memorandum states “information <b>used</b>” whereas the Bill states “information <b>that is needed</b>” which is arguably narrower in scope and subjective.</p> <p>The definition for scheme information section 25 includes the broader “information used”. However, note other concerns with section 25 (below).</p>



NO.	SECTION NUMBER	COMMENT
	<p>anyone outside Australia (including to any data provider).</p> <p>Provision is made for resolving disputes about the application of the Part in relation to scheme information.</p> <p>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.</p>	
3.	<p><b>@10 Meaning of <i>scheme vehicle</i></b></p> <p>A <i>scheme vehicle</i> is:</p> <p>(a) a light goods vehicle, within the meaning of a vehicle standard made under the <i>Motor Vehicle Standards Act 1989</i> that specifies definitions and vehicle categories for the purposes of that Act, that was manufactured on or after:</p> <p>(i) 1 January 2002; or</p> <p>(ii) a later date prescribed by the scheme rules; or</p> <p>(b) a passenger vehicle (other than an omnibus), within the meaning of a vehicle standard made under the <i>Motor Vehicle Standards Act 1989</i> that specifies definitions and vehicle categories for the purposes of that Act, that was manufactured on or after:</p> <p>(i) 1 January 2002; or</p> <p>(ii) a later date prescribed by the scheme rules; or</p> <p>(c) another kind of vehicle prescribed by the scheme rules.</p>	<p>We broadly agree with the coverage and support the future inclusion of other vehicle types in a manner and process as described.</p> <p>Consistent with the Explanatory Memorandum, the scheme does not extend to other vehicle types e.g. heavy vehicles. The scheme does not cover vehicles over 4.5 tonnes.</p> <p>We agree and appreciate the mechanism that other vehicle types may be included in the future, subject to further consultation and assessment.</p> <p>The definition of passenger and light goods vehicles in the Act includes vehicles up to 3.5 tonnes. However, we note that due to the evolution of our Australian car park fleet toward larger ‘pick up’ style vehicles, the design of this Law may (unintentionally) exclude some newer models on our roads. The vehicles that should be (but would not be included) in the Scheme are the light goods vehicles that are 3.5 tonnes up to 4.5 tonnes (ADR Category NB1 in <b>Attachment Three</b>). ADR NB1 vehicles can be driven with a standard light vehicle driver licence and these vehicles include a significantly growing vehicle class of dual cab larger utilities for example: the Dodge Ram and the Chevrolet Silverado. We certainly have no disagreement with the exclusion of heavy vehicles and farm equipment – at this time, however, we are of the view that the Dodge Ram and the Chevrolet Silverado certainly comply with the objectives of</p>

NO.	SECTION NUMBER	COMMENT
		<p>the Act and should be included as Scheme Vehicles.</p> <p><b>Proposal:</b></p> <p>Include ADR NB1 Category Vehicles up to 4.5 tonnes.</p>
4.	<p><b>@15 Meaning of <i>Australian repairer</i></b></p> <p>An <b><i>Australian repairer</i></b> 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.</p> <p>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.</p>	<p><b>Concern:</b></p> <p>The definition of ‘servicing’ may not include modification to vehicles.</p> <p>Persons modifying vehicles should have access to the information to achieve the objects of the scheme, including a promoting competition, establishing a fair playing field to increase competition and continued safety of vehicles. Modification is not only used for individual recreational purposes (tow bar and roof racks), but also for industries, including mining, farming and tourism. Vehicle Modification is a critical function to support the mobility of individuals with ambulatory disabilities. Failing to specifically include ‘modification’, may result is a portion of independent mechanics not having access to scheme information.</p> <p><b>Proposal:</b></p> <p>Insert the word ‘modifying’ after the word ‘servicing,’ as follows: ‘involves diagnosing faults with, servicing, modifying or repairing scheme vehicles’.</p> <p><b>Other section effected:</b></p> <p>This concern also effects the following definitions and, as a result, the application of the scheme, including:</p> <ul style="list-style-type: none"> <li>• the meaning of RTO and RTO course (section 20);</li> <li>• the meaning of scheme information (section 25);</li> </ul>

NO.	SECTION NUMBER	COMMENT
		<ul style="list-style-type: none"> <li>• scheme information – terms and conditions of supply and use (section 55); and</li> <li>• safety and security information – supply to Australian repairers and scheme RTOs (section 65).</li> </ul>
5.	<p><b>@20 Meaning of <i>scheme RTO</i> and <i>RTO course</i></b></p> <p>A <b><i>scheme RTO</i></b> is a registered training organisation that provides, or seeks to provide, a course (an <b><i>RTO course</i></b>) in Australia providing training in diagnosing faults with, servicing or repairing scheme vehicles.</p> <p>Note: <b><i>RTO</i></b> is short for registered training organisation.</p>	<p><b>Concern:</b></p> <p>As set out in item 4 for ‘Australian repairer’.</p> <p><b>Proposal:</b></p> <p>Amend section 20 by inserting the words ‘modifying’ after the word ‘servicing,’ as follows: ‘training in diagnosing faults with, servicing, modifying or repairing scheme vehicles’.</p>
6.	<p><b>@25 Meaning of <i>scheme information</i></b></p> <p><i>Main definition</i></p> <p>(1) <b><i>Scheme information</i></b> is information in relation to scheme vehicles prepared 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.</p> <p><i>Exceptions</i></p> <p>(2) However, <b><i>scheme information</i></b> does not include any of the following:</p> <p>(a) a trade secret;</p> <p>(b) the intellectual property of a person, other than intellectual property protected under the <i>Copyright Act 1968</i>;</p>	<p><b>Concerns:</b></p> <p>1. If the information is not prepared ‘by or for manufacturers of scheme vehicles’ then it will not be considered scheme information. The term ‘manufacturer’ is not defined and, while the CCA does define ‘corporation’ broadly, including holding companies, it may not capture all corporate structures. There may be a corporate or supply structure that is not captured by the scheme. For example, where the car manufacturer hires a third party, subsidiary or other more complex corporate structure, to assemble, produce, distribute, and/or design the vehicle. There may be an instance where such a structure is employed for all or part of what would otherwise be considered scheme information. The gap is not captured by the meaning of data provider as a data provider is only required to provide ‘scheme information’, so that if the information falls outside of the meaning of ‘scheme information’ it is not captured by the</p>

NO.	SECTION NUMBER	COMMENT
	<p>(c) a source code version of a program;</p> <p>(d) telemetry;</p> <p>(e) global positioning system data;</p> <p>(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;</p> <p>(g) commercially sensitive information about an agreement between a data provider and another person;</p> <p>(h) information relating to an automated driving system of a scheme vehicle.</p> <p>Note: Scheme information may include safety and security information (see the definition of <b>safety and security information</b> in section @35). However, for restrictions on the supply of safety and security information to Australian repairers: see section @65.</p> <p>(3) An <b>automated driving system</b> 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.</p> <p>Note: The Report, as amended to 2020, could in 2020 be viewed on SAE International's website (<a href="https://www.sae.org/">https://www.sae.org/</a>).</p>	<p>scheme.</p> <p>2. As set out in item 4 for 'Australian repairer'.</p> <p>3. Regarding section 25(2)(f), the fault itself may fall within the information that is an exception to scheme information in section 25(2)(f) so that it does not need to be supplied. This may impact on the repairer's ability to do their work effectively, and result in safety concerns and unnecessary costs for consumers and businesses.</p> <p>4. The Explanatory Memorandum lists electronic logbooks as scheme information at paragraph 1.23. However, the Bill does not deal with whether the Australian Repairer will be able to record logbook services in the electronic logbook. It is important for safety reasons that logbook servicing is recorded in the electronic logbook. This way the owner of the vehicle, and a potential purchaser of the vehicle, can confirm whether a service was or was not completed. It also assists Australian repairers to ascertain if service items that should have been serviced previously where serviced and to discuss the service of such items with the vehicle owner. If logbook services cannot consistently be recorded in electronic logbooks essential service items may be overlooked, which may impact on safety or incur unnecessary costs for the consumer (for example, if a service item is not due for a service and was not serviced when previously required (but this could not be recorded in the logbook), this may create a safety issue or unnecessary damage to the vehicle). Clearly updating the logbook is also important in future warranty claims. The consumer is obligated to maintain the vehicle and the electronic logbook is the accepted evidence that the vehicle has been maintained as per the service schedule.</p>

NO.	SECTION NUMBER	COMMENT
		<p>5. Telemetry is an alternate method of transmitting vehicle diagnostic information. It is not a separate consideration – it is a means of transmitting data. Should the OBD port be removed from the vehicle, it will become the only method of receiving diagnostic information. It would appear to be unnecessary and unreasonable to exclude telematics in a unilateral exclusion as proposed in (d).</p> <p>6. Section (h) excludes information related to the Automated Driving System for level 3 vehicles. There are a range of electronic and mechanical components that would be considered to be part of the automated system that would be excluded under this definition. The effect of this will be an inability to replace a windscreen, replace tyres and brakes and most importantly, to recalibrate the sensors.</p> <p><b>Proposals:</b></p> <p>1. Include a definition for manufacturer, that at a minimum in addition to the interpretation of ‘corporation’ in the CCA, includes ‘related body corporate (section 50 Corporations Act 2001 (Cth), and ‘associated entities’ (s 50AAA Corporations Act 2001), and is defined to include instances where the vehicle is designed, produced, assembled or otherwise created by a third party or an related party or associated entity on behalf of the manufacturer (similarly broad to that in the ACL).</p> <p>2. Amend section 25(1) by inserting the word ‘modification’ after the word ‘servicing,’ as follows: ‘in conducting diagnostic, servicing, modification or repair activities’.</p> <p>3. Amend section 25(2)(f) by inserting words to the effect ‘but,</p>

NO.	SECTION NUMBER	COMMENT
		<p>without limitation, excluding the fault itself and any information that may assist diagnostic activities and safe service and repair activities while the solution is being developed’. [Note: please let us know if there is any other information that may be useful in this circumstance that may assist in such circumstances].</p> <p>4. Include a new section (or subsection), providing that Australian repairers must be able to record services in electronic logbooks.</p> <p>5. Remove section (d) Telemetry and future telematics matters can be considered under Scheme Rules.</p> <p>6. Remove section (h) Automated Vehicle System matters can be considered under the Scheme Rules.</p> <p><b>Other comment:</b></p> <p>1. From an efficacy perspective, consider whether any of the excluded information may contain relevant information required for diagnostic, servicing, modifying or repair activities. If so, consider whether the exclusion should only apply to the extent that it is not relevant for such diagnostic, servicing, modifying or repair activities. For example, if a trade secret or part thereof (which is not included in the definition for scheme information, but which may be provided separately to car dealership networks and manufacturer preferred repairers) is used for conducting diagnostic, servicing, modifying or repair activities then this information should also be provided to other Australian repairers and scheme RTOs.</p>
7.	<p><b>@30 Meaning of <i>data provider</i></b></p> <p>A <i>data provider</i> is:</p>	<p>No concern with this section. The Bill does not include the definition in paragraph 1.18 of the Explanatory Memorandum but should achieve the same.</p>

NO.	SECTION NUMBER	COMMENT
	<p>(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</p> <p>(b) any person who carries on such a business in the course of, or in relation to, trade or commerce.</p>	
8.	<p><b>@35 Meaning of safety and security information</b></p> <p>(1) <b>Safety and security information</b>, for a scheme vehicle, is either or both of the following:</p> <p>(a) safety information;</p> <p>(b) security information.</p> <p>Note: Restrictions apply in relation to the supply of scheme information that is safety and security information: see section @65.</p> <p>(2) <b>Safety information</b>, 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:</p> <p>(a) the hydrogen system;</p> <p>(b) the high voltage system;</p> <p>(c) the hybrid system;</p> <p>(d) the electric propulsion system;</p> <p>(e) another system prescribed by the scheme rules for the purposes of this</p>	<p>Paragraph 1.104 of the Explanatory Memorandum notes that the “Minister will take advice from industry stakeholders on what scheme information should be considered safety and security information and the corresponding access criteria”.</p> <p>We agree with this mechanism.</p> <p>The exclusion of information in regard to alternate propulsion systems is not supported. We understand that this mechanism is designed to support the safety of the automotive technician. The Bill is essentially a competition instrument and we would argue that the inclusion of an OH&amp;S mechanism is unnecessary, and that the exclusion of alternate propulsion systems will provide for a market in which independent repairers have a progressively shrinking vehicle population due the expected rise in alternate propulsion systems.</p> <p>Whilst we clearly agree with mechanisms that support employee safety, we are concerned that this Bill is not the right instrument to legislate for worker safety and we disagree that the Act should unilaterally exclude electric propulsion systems.</p> <p>In our view, the safety of the Automotive Technician can be assured through two clear and present mechanisms:</p> <p>a) Workshop compliance with AS 5732:2015 Australian Standard</p>

NO.	SECTION NUMBER	COMMENT
	<p>paragraph.</p> <p>(3) <b>Security information</b>, 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:</p> <p>(a) the vehicle’s mechanical and electrical security system;</p> <p>(b) another system prescribed by the scheme rules for the purposes of this paragraph.</p>	<p>Electric Vehicle Operations – Maintenance and Repair, (Summary of this Standard appears as <b>Attachment Four</b>), and</p> <p>b) State based Occupational Health and Safety Legislation.</p> <p>Our preference is that alternate fuels are considered in the scheme rules and not excluded in the Act.</p> <p><b>Proposal:</b></p> <p>Remove @35 (2) (a) and (b) and (c) and (d).</p>
9.	<p><b>@40 Supply of scheme information between related bodies corporate</b></p> <p>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.</p>	<p><b>Concern:</b></p> <p>The Explanatory Memorandum states that the definition of data provers captures the sharing of information within vertically integrated structures and with related bodies corporate.</p> <p>However, section 40 only mentions data providers that are related to Australian repairers and does not include reference to scheme RTOs.</p> <p><b>Proposal:</b></p> <p>While it may be less common for a data provider to be related to a scheme RTO, the following is recommended for completeness.</p> <p>In section 40, after the words ‘Australian repairer’ insert the words ‘or scheme RTOs’ as follows: ‘to an Australian repairer or scheme RTO even if the data provider and the Australian repairer or scheme RTO are related bodies corporate.’</p>
10.	<b>@45 Scheme information—offer to supply to Australian repairers and</b>	<b>Concerns:</b>



NO.	SECTION NUMBER	COMMENT
	<p><b>scheme RTOs</b></p> <p><i>Scope</i></p> <p>(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.</p> <p><i>Main obligation</i></p> <p>(2) The data provider must, by a publication in English on the internet that is accessible free of charge, make an offer (a <b>scheme offer</b>) 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:</p> <p>(a) in the same form in which it is supplied or offered for supply under subsection (1); or</p> <p>(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.</p> <p>Note 1: A pecuniary penalty of up to \$10,000,000 may be imposed for a contravention of this subsection: see section 76.</p> <p>Note 2: Restrictions apply in relation to the supply of scheme information that is safety and security information: see section @65.</p> <p><i>Choice of supply period in scheme offer</i></p> <p>(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</p>	<p>1. With section 45(5)(f), the data provider may be able to inflate the price to be paid a related company with a proprietary interest in the scheme information. Such an inflation in price may be a factor used to determine the fair market value of the scheme price.</p> <p><b>Proposals:</b></p> <p>1. In section 45(5)(f), after the words ‘interest in the scheme information’ insert words to the effect ‘however, if the amount payable is unreasonably high in the circumstances, then a reasonable amount’.</p> <p><b>Accessible Format:</b></p> <p>In our view the accessible format should include a reference to universal scan tools. The information provided by the Data Provider must be able to be transmitted to the vehicles and create a connection to the manufacturers portal in order to update software and program new or replacement parts. Without a reference to scan tools, the Law could be interpreted to legislate the provision of static information and by inference, exclude the critical component of connectivity as identified in the ACCC final report. In the ACCC finding there was a clear acknowledgement of the role of these tools that are needed to repair or service a new car. The ACCC made specific reference to ‘diagnostic, testing and scanning tools’ and the scanning tool was defined as ‘<i>Tools that are connected to a car to download and display fault codes, generally can also be used to upload software updates and reinitialisation codes.</i>’ (<b>Attachment Five</b>)</p> <p><b>Proposal:</b></p>

NO.	SECTION NUMBER	COMMENT
	<p>make the scheme offer on terms and conditions that include provision for the supply of the scheme information:</p> <p>(a) for any period nominated by an Australian repairer or scheme RTO; or</p> <p>(b) by day, by month and by year.</p> <p>Civil penalty:</p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p> <p><i>Scheme offer not to exceed fair market price</i></p> <p>(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 <b><i>scheme price</i></b>) that does not exceed the fair market value of the information, as determined by reference to matters including those covered by subsection (5).</p> <p>Note: A pecuniary penalty of up to \$10,000,000 may be imposed for a contravention of this subsection: see section 76.</p> <p>(5) For the purposes of subsection (4), this subsection covers the following matters:</p> <p>(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:</p> <p>(i) of that particular make, model and year; or</p>	<p>Include reference to scan tools: <i>if supply in that form is not practicable or accessible</i> via a universal J2534 scan tool.</p>

NO.	SECTION NUMBER	COMMENT
	<p>(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;</p> <p>(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;</p> <p>(c) the anticipated demand by Australian repairers and scheme RTOs for supply of the scheme information on the basis of the scheme offer;</p> <p>(d) the reasonable recovery of costs incurred in creating, producing and providing the scheme information for supply on the basis of the scheme offer;</p> <p>(e) the price charged for the supply of information similar to scheme information in overseas markets;</p> <p>(f) the amount (if any) payable by the data provider to any person who has a proprietary interest in the scheme information.</p> <p>Note: A data provider must pay compensation to a person whose copyright is infringed by a supply of scheme information: see subsection @60(3).</p> <p><i>Publication of scheme offer</i></p> <p>(6) The data provider must publish the scheme offer on the data provider's website.</p> <p>Civil penalty:</p>	

NO.	SECTION NUMBER	COMMENT
	<p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p> <p>(7) The data provider must:</p> <p>(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</p> <p>(b) notify the scheme adviser, in writing, as soon as reasonably practicable after any change to the scheme offer.</p> <p>Civil penalty:</p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p> <p>@50 Scheme information—supply on request by Australian</p>	

<p>11.</p>	<p><b>@50 Scheme information—supply on request by Australian repairers or scheme RTOs</b></p> <p><i>Scope</i></p> <p>(1) This section applies if:</p> <p>(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</p> <p>(b) either:</p> <p>(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</p> <p>(ii) a scheme RTO has a need to access the scheme information to provide an RTO course; and</p> <p>(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</p> <p>(d) the Australian repairer or scheme RTO pays or offers to pay the scheme price, or another agreed price, for the scheme information.</p> <p>Note: Restrictions apply in relation to the supply of scheme information that is safety and security information: see section @65.</p> <p><i>Supply of scheme information</i></p> <p>(2) Subject to section @65 (which deals with the supply of safety and</p>	<p><b>Concerns:</b></p> <ol style="list-style-type: none"> <li>1. As set out in item 4 for ‘Australian repairer’.</li> <li>2. Two-day time lag for independent repairers. It is understood that from time to time, unique requests will require a grace time period to allow the data provider to respond. However, our view is that a unilateral 2-day time delay will result in all information being subject to this delay. This instrument has the potential to build in a disadvantage for independent repairers, for roadside assistance and for mobile mechanics. There should be no distinction between the time period for manufacturer accredited repairs and independent repairers. It is difficult to envisage a scenario in which it is appropriate to withhold information for two days simply because the Act allows for, and sanctions, this delay.</li> <li>3. In our view a 2-day delay for information that is already available in real time contradicts the clear requirement for data providers to “supply in a form that is practicable and accessible” (which is considered to be a breach of a main obligation under Division 3 @45 (2)(b). The ACCC also considered that data provision should occur in ‘real-time’ (<b>Attachment Six</b>)</li> </ol> <p><b>Proposals:</b></p> <ol style="list-style-type: none"> <li>1. Amend section 50(1)(b)(i) by inserting the word ‘modify’ after the word ‘service,’ as follows: ‘service, modify or repair that particular make’.</li> <li>2. Amend to ensure that Scheme Providers supply scheme information in the same time frame as supplied to the dealer network. If the accredited repairers receive information in real time so should the independent repairer. The time period should be considered to be a</li> </ol>
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<p>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:</p> <p>(a) within the time agreed with the Australian repairer or scheme RTO; or</p> <p>(b) if the scheme information includes safety and security information—before the end of 2 business days after the later of the following days:</p> <p>(i) the day on which the Australian repairer or scheme RTO pays the scheme price, or another agreed price, for the scheme information;</p> <p>(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</p> <p>(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.</p> <p>Note: A pecuniary penalty of up to \$10,000,000 may be imposed for a contravention of this subsection: see section 76.</p> <p><i>Data provider to notify scheme adviser of terms and conditions of supply</i></p> <p>(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.</p>	<p>part of the functional equality that is referred to in regard to scheme format. The time period is integral to the format.</p> <p><b>Proposal:</b></p> <p><b>Accessible Format:</b></p> <p>The definition of ‘accessible format’ should include an overt reference to universal scan tools.</p>
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NO.	SECTION NUMBER	COMMENT
	<p><i>Civil penalty:</i></p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p>	
12.	<p><b>@55 Scheme information—terms and conditions of supply and use</b></p> <p><i>Terms and conditions of supply generally</i></p> <p>(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.</p> <p><i>Prohibited terms or conditions</i></p> <p>(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:</p> <p>(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;</p> <p>(b) a term or condition prohibited by the scheme rules.</p> <p><i>Civil penalty:</i></p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p>	<p><b>Concerns:</b></p> <ol style="list-style-type: none"> <li>As set out in item 4 for ‘Australian repairer’.</li> </ol> <p><b>Proposals:</b></p> <ol style="list-style-type: none"> <li>Amend section 55(1) by inserting the word ‘modifying’ after the word ‘servicing,’ as follows: ‘servicing, modifying or repairing.’</li> </ol>

NO.	SECTION NUMBER	COMMENT
	<p>(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.</p>	
13.	<p><b>@60 Scheme information—interaction of supply obligations and other rights and obligations</b></p> <p><i>Data provider must comply with supply obligations despite existence of other rights and obligations</i></p> <p>(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:</p> <p>(a) an infringement of copyright by the data provider or any other person;</p> <p>(b) a breach of contract in relation to the supply of the scheme information;</p> <p>(c) a breach of an equitable obligation of confidence to which the data provider is subject in relation to the supply of the scheme information.</p> <p>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).</p> <p>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).</p> <p>Compensation for third party copyright holders</p> <p>(2)Subsection (3) applies if:</p> <p>(a)a data provider supplies scheme information to an Australian repairer or scheme RTO under this Part; and</p>	<p><b>Concerns:</b></p> <p>1. While the data provider may have a defence available under section 60(5), it is unclear to what extent is the Independent Repairer or scheme RTO is protected/indemnified for their permitted use of the scheme information.</p> <p><b>Proposal</b></p> <p>1. Amend section 60(3) to include any compensation recoverable in relation to the use of the scheme information by the Independent Repairer or scheme RTO. Amend section 60(5) to cover any claims made against the Independent Repairer or scheme RTO.</p>



NO.	SECTION NUMBER	COMMENT
	<p>(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</p> <p>(c)the supply constitutes or results in an infringement of the copyright of the third party claimant; and</p> <p>(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).</p> <p>(3)The data provider must pay to the third party claimant an amount that represents compensation on just terms (within the meaning of paragraph (xxxii) of the Constitution) for the supply of the scheme information to the Australian repairer or scheme RTO.</p> <p>(4)An amount payable by the data provider under subsection (3):</p> <p>(a)is a debt due by the data provider to the third party claimant; and</p> <p>(b)may be recovered by action in a court of competent jurisdiction.</p> <p>(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:</p> <p>(a)the data provider was required to supply the scheme information, or offer to supply the scheme information, under this Part; and</p> <p>(b)the data provider has paid to the third party claimant the compensation required to be paid under subsection (3).</p>	
14.	<b>@65 Safety and security information—supply to Australian repairers and scheme RTOs</b>	<i>Concerns:</i>

NO.	SECTION NUMBER	COMMENT
	<p><i>Supply of safety and security information</i></p> <p>(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:</p> <p>(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:</p> <p>(i) in the case of an Australian repairer—for the purposes of the Australian repairer’s business; or</p> <p>(ii) in the case of a scheme RTO—for the purposes of providing an RTO course; and</p> <p>(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.</p> <p>Civil penalty:</p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p> <p><i>Fit and proper persons</i></p> <p>(2) An individual is a <b>fit and proper person</b> to access and use safety and security information if the individual meets the criteria (the <b>prescribed safety and security criteria</b>) prescribed by the scheme rules.</p>	<ol style="list-style-type: none"> <li>1. As set out in item 4 for ‘Australian repairer’.</li> <li>2. Also, there is no clear prohibition on requesting more personal or sensitive information than that specified in section 65 or the scheme rules, or limiting requests for information to what is reasonably necessary to assist the data provider determine that there are reasonable grounds to believe the person is a fit and proper person for the purpose of section 65(1). There should be a requirement that data providers do not request more sensitive information, or personal information, than there are reasonable grounds for believing they require to make the assessment that a person is a fit and proper person to receive safety and security information. Without such a requirement more information than is reasonably necessary may be requested.</li> </ol> <p><b>Proposals:</b></p> <ol style="list-style-type: none"> <li>1. Amend section 65(1)(a) by inserting the word ‘modifying’ after the word ‘servicing,’ as follows: ‘servicing, modifying or repairing.’</li> <li>2. Create a new section (or add a new sub-section to section 65), providing the wording similar to section 75(1)(b), to the effect that data providers should only seek information they have reasonable grounds for believing is relevant to determining whether a person is a fit and proper person to access and use safety and security information, or that data providers may not request more information than that specified in section 65 or the scheme rules.</li> </ol> <p><b>Other comments:</b></p> <p>We note and agree with the mechanism as outlined in the Explanatory</p>

NO.	SECTION NUMBER	COMMENT
	<p>(3) For the purposes of subsection (2), different criteria may be prescribed in relation to each of the following:</p> <p>(a) safety information;</p> <p>(b) security information.</p> <p><i>Personal information</i></p> <p>(4) For the purposes of paragraph (1)(b), the following personal information about an individual is covered by this subsection:</p> <p>(a) the individual’s name and residential address;</p> <p>(b) information about the individual’s relationship to the Australian repairer or scheme RTO (as the case may be);</p> <p>(c) the individual’s qualifications for using the safety and security information for the applicable purpose mentioned in paragraph (1)(a);</p> <p>(d) in circumstances (if any) prescribed by the scheme rules—a criminal records check about the individual;</p> <p>(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.</p> <p>Note: This section applies despite section @50 (which deals with the supply of scheme information on request by an Australian repairer or scheme RTO).</p>	<p>Memorandum at paragraph 1.110, that the criteria for determining if a person is a fit and proper person will be “identified in consultation with industry”.</p>

NO.	SECTION NUMBER	COMMENT
15.	<p><b>@75 Safety and security information—storage of, and access to, sensitive information</b></p> <p><i>Scope</i></p> <p>(1) This section applies in relation to sensitive information within the meaning of the <i>Privacy Act 1988</i>, if:</p> <p>(a) the information is about an individual mentioned in subsection @65(1); and</p> <p>(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.</p> <p><i>Sensitive information must be stored in Australia</i></p> <p>(2) If a data provider holds the sensitive information, the data provider must store the information in Australia or an external Territory.</p> <p>Civil penalty:</p> <p>(a) for a body corporate—1,500 penalty units; and</p> <p>(b) for a person other than a body corporate—300 penalty units.</p> <p><i>Preventing access to sensitive information outside Australia</i></p> <p>(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.</p>	<p><b>Concern:</b></p> <p>The scope in section 75(1) may create uncertainty or create a loophole, in relation to the handling and storage of sensitive information.</p> <p>It appears the intent of the section is that sensitive information held by a data provider should be subject to the obligations set out in sections 75(2) and 75(3) (being that sensitive information must be held in Australia or an external Territory and must not be accessed by any person outside Australia). However, whether these obligations apply seems to be based on a subject consideration in 75(1)(b).</p> <p>Additionally, section 80(2) requires the data provider to retain the information used to determine whether a person is a fit and proper person. It is likely to include sensitive information, which should be subject to section 75(2) and 75(3).</p> <p>Not all sensitive information may be subject to sections 75(2) and 75(3).</p> <p><b>Proposal:</b></p> <p>Amend section 75 so that any sensitive information held by the data provider is subject to the obligations set out in section 75(2) and section 75(3).</p>

NO.	SECTION NUMBER	COMMENT
	<p>Civil penalty:</p> <p>(a) for a body corporate—1,500 penalty units; and</p> <p>(b) for a person other than a body corporate—300 penalty units.</p>	
16.	<p><b>@85 Application</b></p> <p>This Division applies to a dispute about any of the following:</p> <p>(a) whether a person is a data provider;</p> <p>(b) whether a person is an Australian repairer;</p> <p>(c) whether a registered training organisation is a scheme RTO;</p> <p>(d) whether particular information is scheme information, including whether it is safety and security information;</p> <p>(e) the application of this Part in relation to particular scheme information;</p> <p>(f) any other dispute about the operation of this Part that is prescribed by the scheme rules.</p>	<p><b>Concern:</b></p> <p>To assist to resolve dispute and for data collection purposes by the scheme advisor, it may be beneficial to also include the following as disputes to which the dispute resolution process applies:</p> <ul style="list-style-type: none"> <li>• access to safety and security information, including whether a person is a fit and proper person;</li> <li>• issues with terms and conditions, including fair price and discrepancies in format and information searchability between various Australian repairers and RTO.</li> </ul> <p><b>Reason for concern:</b></p> <p>Scheme participants may miss the opportunity to resolve a dispute in a cost efficient and timely manner. Further, the scheme advisor may not be receiving all relevant data to identify any issues with the scheme.</p> <p><b>Proposal:</b></p> <p>Amend section 85 by including the following:</p> <ul style="list-style-type: none"> <li>• whether a determination on access to safety and security</li> </ul>

NO.	SECTION NUMBER	COMMENT
		<p>information, including whether a person is a fit and proper person was correctly made (an independent review body may be better suited for this);</p> <ul style="list-style-type: none"> <li>• issues with terms and conditions, including, but not limited to, fair price and discrepancies in format and information searchability between various Australian repairers and RTO.</li> </ul>
17.	<p><b>@90 Resolving disputes</b></p> <p>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.</p>	No concern with this section.
18.	<p><b>@95 Right to bring proceedings unaffected</b></p> <p>This Division does not affect the right of the initiating party or the responding party to bring legal proceedings, under this Act or otherwise.</p>	No concern with this section.
19.	<p><b>@100 Attempt to resolve dispute before mediation</b></p> <p>(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:</p> <p>(a) the nature of the dispute;</p> <p>(b) the matter that is the subject of the dispute;</p> <p>(c) the way in which that matter relates to the application of this Part;</p> <p>(d) what outcome the initiating party wants;</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT
	<p>(e) what action the initiating party thinks will resolve the dispute.</p> <p>(2) The parties must then try to resolve the dispute.</p> <p>Note:For when a party is taken to have tried to resolve a dispute, see section @105.</p> <p>(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.</p> <p>(4) If the parties cannot agree on who should be the mediator, either party may request the scheme adviser to nominate a mediator.</p> <p>(5) Within 2 business days after a request is made under subsection (4), the scheme adviser must nominate a mediator for the dispute.</p>	
20.	<p><b>@105 When is a party taken to have tried to resolve a dispute?</b></p> <p>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:</p> <p>(a) attending and participating in meetings at reasonable times;</p> <p>(b) responding to communications to the party within a reasonable time;</p> <p>(c) if the party has agreed to use a technical expert in resolving the dispute—considering the opinions of the technical expert;</p> <p>(d) if a mediation process is being used to try to resolve the dispute—both:</p> <p>(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</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT
	(ii) observing any obligations relating to confidentiality that apply during or after the process.	
21.	<p><b>@110 Mediation</b></p> <p>(1) Subject to this section, a mediator appointed by the parties to a dispute may decide the time and place for mediation.</p> <p>(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.</p> <p>(3) Unless the mediation is conducted using the technology referred to in subsection (4), the mediation must be conducted in Australia.</p> <p>(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.</p> <p>(5) The parties must attend the mediation.</p> <p>Civil penalty:</p> <p>(a) for a body corporate—600 penalty units; and</p> <p>(b) for a person other than a body corporate—120 penalty units.</p> <p>(6) For the purposes of subsection (5), a party is taken to attend mediation in the following circumstances:</p> <p>(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;</p>	No concern with this section.



NO.	SECTION NUMBER	COMMENT
	<p>(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).</p> <p>(7) The parties must then try to resolve the dispute.</p> <p>Note: For when a party is taken to have tried to resolve a dispute, see section @105.</p> <p>(8) Within 5 business days after the start of the mediation, the mediator must advise the scheme adviser that the mediation has started.</p>	
22.	<p><b>@115 Termination of mediation</b></p> <p>(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.</p> <p>(2) The mediator may terminate the mediation at any time unless satisfied that a resolution of the dispute is imminent.</p> <p>(3) However, if either party asks the mediator to terminate the mediation, the mediator must do so.</p> <p>(4) If the mediator terminates the mediation of a dispute under this section, the mediator must issue a certificate stating the following:</p> <p>(a) the names of the parties;</p> <p>(b) the nature of the dispute;</p> <p>(c) whether the parties attended the mediation;</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT
	<p>(d) that the mediation has finished;</p> <p>(e) that the dispute has not been resolved.</p> <p>(5) The mediator must give a copy of the certificate to:</p> <p>(a) the scheme adviser; and</p> <p>(b) each of the parties to the dispute.</p>	
23.	<p><b>@120 Costs of mediation</b></p> <p>(1) The parties are equally liable for the costs of mediation under this Division unless they agree otherwise.</p> <p>(2) The parties must pay their own costs of attending the mediation.</p> <p>(3) The costs of mediation under this Division under subsection (1) include the following:</p> <p>(a) the cost of the mediator;</p> <p>(b) the cost of any additional input (including from technical experts) agreed by both parties to be necessary to conduct the mediation.</p>	No concern with this section.
24.	<p><b>@125 Scheme adviser—establishment and appointment</b></p> <p>(1) There is to be a motor vehicle service and repair information scheme adviser for the purposes of this Part.</p> <p>(2) The Minister may, by instrument, appoint a person to be the scheme adviser.</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT
	<p>(3) The scheme adviser is not entitled to be paid any remuneration or allowances.</p>	
25.	<p><b>@130 Scheme adviser—functions</b></p> <p>(1) The scheme adviser has the following functions:</p> <p>(a) to nominate mediators or technical experts for the purposes of Division 5 (dispute resolution);</p> <p>(b) to report to the Minister:</p> <p>(i) on the basis of any advice obtained from technical experts—about whether or not particular information is, or should be, scheme information; and</p> <p>(ii) about any other matter relevant to the operation of this Part;</p> <p>(c) to report to the Commission about any systemic regulatory or enforcement issues relating to the operation of this Part;</p> <p>(d) to provide general advice in relation to the application of this Part, but excluding any information obtained in confidence;</p> <p>(e) to publish on the scheme adviser’s website annual reports about:</p> <p>(i) the number and type of inquiries and disputes relating to the operation of this Part over the period of a financial year;</p> <p>(ii) the number and type of disputes for which a mediator has been appointed over that period;</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT
	<p>(iii) resolution rates for disputes for which a mediator has been appointed over that period;</p> <p>(iv) other relevant matters affecting the operation of this Part over the period, including any such matter directed by the Minister in writing;</p> <p>(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.</p> <p>(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.</p> <p>(3)The scheme adviser has all the powers necessary or convenient for the performance of the functions of that office.</p> <p>(4)Section 34C of the Acts Interpretation Act 1901 does not apply in relation to an annual report mentioned in paragraph (1)(e).</p> <p>Note:Section 34C of the Acts Interpretation Act 1901 would require such periodic reports to be given to the Minister and tabled in Parliament.</p>	
26.	<p><b>@135 Civil penalty provisions</b></p> <p>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:</p> <p>(a) a subsection;</p>	No concern with this section.

NO.	SECTION NUMBER	COMMENT																				
	(b) a section that is not divided into subsections.																					
27.	<p><b>@140 Infringement notices</b></p> <p>(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).</p> <p>(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:</p> <hr/> <p><b>Penalties to be specified in infringement notices issued under this Part</b></p> <table border="1"> <thead> <tr> <th data-bbox="271 874 322 895">Item</th> <th data-bbox="367 874 495 1023">For an alleged contravention of the following provision:</th> <th data-bbox="517 874 667 895">that relates to...</th> <th data-bbox="786 874 936 1086">...if the alleged contravention is by a body corporate—the number of penalty units must be:</th> <th data-bbox="981 874 1131 1150">...and if the alleged contravention is by a person other than a body corporate—the number of penalty units must be:</th> </tr> </thead> <tbody> <tr> <td data-bbox="271 1177 293 1198">1</td> <td data-bbox="367 1177 465 1230">subsection @45(3)</td> <td data-bbox="517 1177 757 1230">the choice of supply period in scheme offer</td> <td data-bbox="853 1177 875 1198">60</td> <td data-bbox="1048 1177 1070 1198">12</td> </tr> <tr> <td data-bbox="271 1246 293 1267">2</td> <td data-bbox="367 1246 465 1299">subsection @45(6)</td> <td data-bbox="517 1246 741 1267">publishing a scheme offer</td> <td data-bbox="853 1246 875 1267">60</td> <td data-bbox="1048 1246 1070 1267">12</td> </tr> <tr> <td data-bbox="271 1315 293 1335">3</td> <td data-bbox="367 1315 465 1367">subsection @45(7)</td> <td data-bbox="517 1315 712 1367">notifying the scheme adviser about scheme</td> <td data-bbox="853 1315 875 1335">60</td> <td data-bbox="1048 1315 1070 1335">12</td> </tr> </tbody> </table>	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	60	12	No concern with this section.
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	<table border="1"> <tr> <td data-bbox="264 240 293 261"></td> <td data-bbox="360 240 472 261"></td> <td data-bbox="517 240 696 261">information offered</td> <td data-bbox="853 240 882 261"></td> <td data-bbox="1032 240 1061 261"></td> </tr> <tr> <td data-bbox="264 284 284 304">4</td> <td data-bbox="360 284 472 341">subsection @50(3)</td> <td data-bbox="517 284 696 373">notifying the scheme adviser of terms and conditions of supply</td> <td data-bbox="853 284 882 304">60</td> <td data-bbox="1032 284 1061 304">12</td> </tr> <tr> <td data-bbox="264 395 284 416">5</td> <td data-bbox="360 395 472 453">subsection @55(2)</td> <td data-bbox="517 395 696 485">prohibited terms or conditions in contracts of supply</td> <td data-bbox="853 395 882 416">60</td> <td data-bbox="1032 395 1061 416">12</td> </tr> <tr> <td data-bbox="264 507 284 528">6</td> <td data-bbox="360 507 472 564">subsection @65(1)</td> <td data-bbox="517 507 696 612">supplying safety and security information without reasonable grounds</td> <td data-bbox="853 507 882 528">60</td> <td data-bbox="1032 507 1061 528">12</td> </tr> <tr> <td data-bbox="264 635 284 655">7</td> <td data-bbox="360 635 472 692">subsection @80(2)</td> <td data-bbox="517 635 696 692">requiring a data provider to keep records</td> <td data-bbox="853 635 882 655">60</td> <td data-bbox="1032 635 1061 655">12</td> </tr> <tr> <td data-bbox="264 715 284 735">8</td> <td data-bbox="360 715 472 772">subsection @110(5)</td> <td data-bbox="517 715 696 735">failing to attend mediation</td> <td data-bbox="853 715 882 735">60</td> <td data-bbox="1032 715 1061 735">12</td> </tr> </table>			information offered			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	
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28.	<p><b>@145 Concurrent operation of State and Territory laws</b></p> <p>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.</p>	No concern with this section – consistent with Explanatory Memorandum.																														
29.	<p><b>@150 Acquisition of property</b></p> <p><i>Scope</i></p> <p>(1) This section applies to any of the following provisions:</p> <p>(a) a provision of Division 3;</p> <p>(b) any other provision of this Act, to the extent to which the provision relates to Division 3.</p>	No concern with this section.																														

NO.	SECTION NUMBER	COMMENT
	<p><i>Effect of provision</i></p> <p>(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).</p>	
30.	<p><b>@155 Scheme rules</b></p> <p>(1) The Minister may, by legislative instrument, make rules prescribing matters:</p> <p>(a) required or permitted by this Part to be prescribed by the rules; or</p> <p>(b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.</p> <p>(2) To avoid doubt, the rules may not do the following:</p> <p>(a) create an offence or civil penalty;</p> <p>(b) provide powers of:</p> <p>(i) arrest or detention; or</p> <p>(ii) entry, search or seizure;</p> <p>(c) impose a tax;</p> <p>(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;</p>	

NO.	SECTION NUMBER	COMMENT
	<p>(e) directly amend the text of this Act;</p> <p>(f) subject to section @65, authorise or require the disclosure of sensitive information (within the meaning of the Privacy Act 1988).</p>	
31.	<b>Part 2—Other amendments</b>	<p>In relation to 10, 15 to 17, 21, 23 to 25, “Part IVBA” appears to be a typographical error. We believe this should be “Part IVB”.</p> <p>Otherwise, no concern with this section.</p>
32.	<p><b>Part 3—Amendments commencing later</b></p> <p><b>29 Section @10 (definition of <i>scheme vehicle</i>, paragraphs (a) and (b))</b></p>	As set out above at item 3. No concern with this section.