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30 January 2021

Mandatory Motor Vehicles Scheme
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600
Via Email: repairinfo@treasury.gov.au

Dear Market Conduct Division

The Motor Trades Association of Australia Limited (MTAA) thanks the Treasury Department, Market Conduct Division, for the opportunity to provide a submission on the draft legislation and explanatory memorandum for the introduction of Motor Vehicle Service and Repair Information Sharing Scheme.

MTAA recognises the importance and significance of the draft legislation and the investigations and preparations for its introduction undertaken by the Commonwealth Government and its Departments and Agencies.

MTAA believes that the draft legislation is a world-leading policy that will address and enable Australian consumers to exercise their rights of choice in servicing and repairing the nation's 20 million-strong fleet. Simultaneously it will provide Australian automotive, small businesses ability to compete better and offer a range of automotive services without the level of impediment and a potential detriment experienced because they cannot access information. It will also assist motor vehicle dealerships who are required to accept terms and conditions that force procurement of, and sometimes excessive payment for, tools equipment, software programs, databases etc. provided by the manufacturer or their subsidiary/agent. Alternatives, sometimes supported by the same manufacturer, are available, but Dealers and Agents are not permitted to access them by the nature of business agreements.

MTAA is a unique peak not-for-profit automotive sector organisation whose members are the State and Territory Motor Trades Associations and Automobile Chambers of Commerce. MTAA Member organisations have constituents thousands of automotive businesses representing the entire automotive supply chain providing unparalleled capacity to consider and address policy and regulation impacting the sector. This submission draws on materials and input provided by State and Territory Associations and their automotive businesses.

Please contact Mr Richard Dudley, CEO MTAA, if the Division requires further information or clarity regarding this submission at [REDACTED] or [REDACTED]

Yours Sincerely,

A handwritten signature in black ink that reads "Richard Dudley".

Richard Dudley
Chief Executive Officer
Motor Trades Association of Australia Limited



MTAA Member Associations



1. Summary

The Motor Trades Association of Australia Limited (MTAA) welcomes and supports the draft legislation and explanatory memorandum in scope and intent.

MTAA recognises the complexities of the market conduct the Bill seeks to address and in-depth investigations, research and analysis undertaken by Commonwealth Departments and Agencies headed by the Market Conduct Division of the Treasury Department.

The Draft Legislation (the Bill) and the Explanatory Memorandum (EM) represents a significant milestone that is essential for a nation that will continue to be reliant for the foreseeable future on road transport.

It ensures consumer requirements to have the maximum opportunity to exercise choice to have their vehicles serviced and repaired at dealers, agents, independent mechanical repairers, motor body repairers, and many other specific automotive trade professions.

MTAA on behalf of member organisations and their thousands of automotive business constituents provides this submission highlighting key areas and specific observations and recommendations where the Federation believes there are opportunities to improve the Bill, clarify intent, and mitigate risks for potential misinterpretation.

MTAA raises the following critical areas for further consideration:

- Clarity and consistency in terms in the Bill and the Explanatory Memorandum (EM)
- Clarity and consistency in the definitions of Australian Repairer, Data Provider, Manufacturer, Scheme Information, Scheme operation, and linkages.
- Clarity and consistency in the conditions set out on Data Providers for delivery of information, including real-time for everyday Scheme information and potentially longer for more complex or previously unknown service and repair issues.
- Suggested additional functions and roles of the Scheme Adviser, including the capacity to provide an alternative pathway for assessing:
 - Credentials and bona fides of intending Australian Repairer Scheme Participants, and
 - Credentials for Australian Repairers who may wish to apply for authorisation as a Fit and Proper person for Secure Data access.
- Potential unintended consequences arising from those areas included exceptions to the Scheme and its operation.



2. Recommendations:

Recommendation 1:

Legislation drafters review the Objects as part of consideration other matters raised in this submission.

Recommendation 2:

Amend Objects Clause (d) or draft a separate Object to include: *'individuals accessing safety and security information for scheme vehicles will be required to satisfy certain criteria relating to whether they are fit and proper persons to have access to such information'*.

Recommendation 3:

Consider the inclusion of more specific Scheme Adviser requirements to establish appropriate mechanisms/committees to cater for references to RTOs and other matters.

Recommendation 4:

Include an alternate pathway in the Bill for the Scheme Adviser to develop and provide a service to locally check and vet credentials and requirements outlined in the Bill and Scheme Rules for access to Scheme Information and fit and proper assessment for secure data.

Recommendation 5:

Add to the functions of the Scheme Adviser requirements to develop, implement operate, and report on an online system that:

- Provides an initial gateway for those accessing Scheme information to have credentials and requirements pre-checked and approved
- Provided an initial gateway for persons accessing Secure Data to have credentials, requirements and fit and proper assessment undertaken and approved.
- For the system to generate an ID on approval that can be uniformly used by Data Providers when approached for access to Scheme Information.
- Is stored securely and safely in Australia and per Commonwealth Data Security and privacy requirements.
- Includes data in reporting requirements demanded by the Bill.



Recommendation 6:

MTAA recommends assigning the Scheme Adviser a capacity to consider future applications from industries, organisations or persons to include other vehicle types as Scheme Vehicles. For example, a Technical Committee of the Scheme Adviser independently assesses such applications. It provides advice and a recommendation to the Scheme Adviser and where appropriate the Minister for inclusion in Scheme Vehicles or not.

Recommendation 7:

MTAA recommends the inclusion of the words in the Bill 'modifying', 'dismantling/recycling' parts supplies after the term 'servicing,' as follows: 'involves diagnosing faults with, servicing, modifying, repairing, supply parts, dismantling/recycling scheme vehicles'.

The EM and any subsequent guidance material should also clarify and include these industries and persons.

Recommendation 8:

MTAA recommends the inclusion of the words in the Bill 'modifying', 'dismantling/recycling' parts supplies after the term 'servicing,' as follows: 'involves diagnosing faults with, servicing, modifying, repairing, supply parts, dismantling/recycling scheme vehicles'.

The EM and any subsequent guidance material should also clarify and include these industries and persons.

Recommendation 9:

Consider adding to Scheme Information access to parts catalogues and OEM and aftermarket tools designed and intended for use in service, modification, repair and dismantling/recycling.

Recommendation 10:

Consider additional information and examples on what specific information is included, excluded, and regular updating as necessary by processes outlined in the Bill.

Recommendation 11:

After consideration of input from the Draft Bill consultation process, adjust meaning if required,



Recommendation 12:

MTAA recommends the inclusion of a definition for a 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).

Recommendation 13:

MTAA recommends that pass-through technology, including hardware such as scan tools or remote wireless access, be recognised in the Bill and EM as a critical component in the use of accessed information. Consideration of the Massachusetts legislation terminology may be of assistance.

Recommendation 14:

MTAA respectfully recommends Telemetry be removed as an exception or redrafted to address expressed concerns.

Recommendation 15:

MTAA recommends Clause 2 (h) be removed or replaced with 'information relating to an automated driving system of a scheme vehicle is excluded unless it relates to diagnostic, service and repair or for training purposes'

Recommendation 16:

MTAA recommends the inclusion of the words in the Bill ' modifying', 'dismantling/recycling' parts supplies after the term 'servicing,' as follows: 'involves diagnosing faults with, servicing, modifying, repairing, supply parts, dismantling/recycling scheme vehicles'.

The EM and any subsequent guidance material should also clarify and include these industries and persons.

Recommendation 17:

MTAA respectfully recommends 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 a more permanent solution is developed'.

Recommendation 18:

MTAA recommends Clause 2 (h) be removed or significantly redrafted.





Recommendation 19:

MTAA respectfully recommends Include a new section (or subsection), providing that Australian repairers must be able to record services in electronic logbooks.

Recommendation 20:

MTAA respectfully recommends consideration of 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 or recycling 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, repair or recycling activities, then this information should also be provided to other Australian repairers and scheme RTOs.

Recommendation 21:

MTAA respectfully recommends consideration of a definitive list of service and repair information and exceptions be included in the Scheme Rules to remove any ambiguity.

Recommendation 22:

MTAA recommends the inclusion of the EM descriptor in the Bill as a definition qualification.

EM 1.18 to be included in the Bill Definition

'A data provider may be a vehicle manufacturer, data owner, or licensee. This could include an Australian subsidiary of an overseas vehicle manufacturer, an affiliated car dealership, or a data aggregator who sells service and repair information in its own right.'

Recommendation 23:

MTAA recommends first consideration be given to the appropriateness of including propulsion systems as Safety information as opposed to scheme information.



MTAA Member Associations



Recommendation 24:

MTAA recommends the inclusion of:

'The Minister will take advice from industry stakeholders on what scheme information should be considered safety and security information and the corresponding access criteria''.

as a function of the Scheme Adviser and included in the Functions of the Scheme Adviser in the Bill.

Recommendation 25:

MTAA respectfully recommends consideration of altering 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.'

Recommendation 26:

MTAA recommends inserting words after *'interest in the scheme information'* *'however, if the amount payable is unreasonably high in the circumstances, a fair and reasonable amount must prevail'*.

Recommendation 27:

MTAA recommends consideration of improving the clarity of timeframes described in Section @50. In order to address concerns.

it is further suggested:

- Remove reference to 'agreement on timeframes'
- The Scheme Adviser be tasked with determining standard scheme information based on information already provided to dealers.
- Prescribe real time access for standard information.
- Prescribe two-days maximum for the processing of fit and proper and credential checks and approval, payment clearance for access.
- Prescribe extended timeframes for highly complex or unique matters that have not been previously identified.

MTAA also refers to @5 Simplified Outcome and MTAA's recommendations for an alternative pathway where the Scheme Adviser undertakes the actions for credential and fit and proper assessment and clearance.



Recommendation 28:

MTAA recommends the inclusion of the words in the Bill 'modifying', 'dismantling/recycling' parts supplies after the term 'servicing,' as follows: 'involves diagnosing faults with, servicing, modifying, repairing, supply parts, dismantling/recycling scheme vehicles'.

The EM and any subsequent guidance material should also clarify and include these industries and persons.

Recommendation 29:

MTAA recommends consideration of further examples of prohibitions and restrictions with additional clarity on Terms and Conditions.

MTAA respectfully recommend Amend section 60(3) to include any compensation recoverable in relation to the use of the scheme information by Australian Repairers or scheme RTOs. Amend section 60(5) to cover any claims made against the Independent Repairer or scheme RTO.

Recommendation 30:

MTAA respectfully recommend Amend section 60(3) to include any compensation recoverable in relation to the use of the scheme information by Australian Repairers or scheme RTOs. Amend section 60(5) to cover any claims made against the Independent Repairer or scheme RTO.

Recommendation 31:

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 relevant to determining whether a person is a fit and proper person,

Recommendation 32:

Draft a provision that limits information sought cannot exceed that specified in section 65 or the Scheme Rules.

Recommendation 33:

MTAA respectfully recommends 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).



Recommendation 34:

MTAA respectfully recommends an amendment to Section 85 by including the following:

- whether a determination on access to safety and security information,
- whether a person is a fit and proper person was correctly made (an independent review body may be better suited for this)
- 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.

Recommendation 35:

MTAA recommends consideration be given to the addition of a determination phase in the event of failed mediation.

Recommendation 36:

MTAA recommends consideration be given to the addition of a detailed list of functions of the Scheme Adviser in addition to those highlighted in the Bill and EM.

Recommendation 37:

Review linkages between Scheme Rules Scheme Adviser and the Bill in considering submissions to the draft legislation.



3. Detailed Considerations

MTAA supports the intent of the Bill and EM and its timely enactment.

MTAA understands the considerable time and resources in reaching this milestone. The significant difficulties in drafting legislation to meet the Australian Competition and Consumer Commission (ACCC) recommendation and subsequent government intervention investigations.

The legislation framework, interconnection with Australian Consumer Law and the Competition and Consumer Act and Bill provisions and explanation of those provisions are in the view of MTAA fit for purpose and meets the need for government intervention in this area.

With these observations in mind and acknowledging the need to consider the input of stakeholders and interested parties resulting from consultation on the draft legislation, MTAA cannot countenance any extended delays in introducing the legislation to Parliament and its Royal Assent. MTAA strongly urges a bipartisan approach by automotive sector industries, the government, opposition, cross-bench, and interested parties.

MTAA on behalf of Members and their thousands of automotive sector constituents provides the following matters for consideration to further improve and clarify the legislation, guidance materials, and Scheme operation.

- **Page 1: Legislation proximity to Australian Law and Regulation**

MTAA welcomes and supports the draft legislation's presentation as A Bill for an Act to amend the *Competition and Consumer Act* (Cth) 2010 in relation to sharing information for motor vehicle service and repair, and for related purposes.

- **Page 2: Intended Commencement date**

While MTAA and Members would prefer an earlier implementation date, MTAA recognises legislation processes and the preparation and transition time required for all stakeholders to develop and introduce systems, mechanisms, processes and procedures required by the Bill.

Therefore, MTAA supports a 'hard' introduction date of 1 July 2022. What MTAA means by 'hard introduction' is that from 1 July 2022 the Scheme is implemented and fully operational. Given the time to reach the draft legislation milestone and the rapidly evolving automotive sector, 1 July 2022 must not be allowed to drift or become a 'negotiable' timeline.



MTAA strongly encourages passage of the legislation through the Australian Parliament and Royal Assent well before the 2021 winter recess. Action for Royal Assent before the Winter recess will allow a full 12 months for preparation and transition, including the Scheme Adviser's establishment.

▪ Page 4 @1 Objects of Part

MTAA notes and generally agree with objects. However, some inconsistencies in terminology and words between the Bill and the EM reduces clarity.

MTAA understands the Explanatory Memorandum's intent to provide greater detail by explaining the Bill's intention. However, broader terminology in the EM may likely increase the risk of misinterpretation or cause clarity issues, resulting in a worst-case scenario, causes of future dispute notification.

For example, the EM describes the Scheme as mandating '**all service and repair information**'. Simultaneously, the Bill details specific limitations or exceptions imposed on some information that may be required.

As detailed further in the next section, the EM states' Information **used**' whereas the Bill states' **information that is needed**', while in @ 25, Scheme Definition refers back to the term 'information **used**'.

MTAA believes another potential inconsistency is Objects Clause (d) where the safety and security of consumers, information users and the general public is detailed. MTAA suggests strengthening Clause (d) to include protections for those accessing the information, including technicians instead of information users. Please see next section @ 5 Simplified Outline.

MTAA respectfully suggests legislation drafters review the Objects after consideration of inputs received from this and other submissions.

Recommendation 1:

MTAA recommends legislation drafters review the Objects as part of consideration other matters raised in this submission.



- **Page 5 @5 Simplified Outline**

Clarity and Consistency:

MTAA raises several matters under this section that also have relevance across the Bill and EM areas.

As mentioned above, the EM states 'Information **used**' whereas the Bill states 'information **that is needed**', while in @ 25, Scheme Definition refers back to the term 'information **used**'.

MTAA suggests that the term 'information that is needed' is subjective and narrower in scope and may increase the risk for misinterpretation causing scheme operation constraints.

Such terms should be consistent across the Bill and EM.

On-Page 5, there is a reference to the requirement that: '*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.*' However, there is no mention of such criteria in the Objects.

MTAA suggests Amending Objects Clause (d) or drafting a separate Object to include these requirements.

Given the reference to registered training organisations called 'Scheme RTO's', MTAA suggests considering including in the Bill and the EM, requirements for the Scheme Adviser to establish 'appropriate committees or mechanisms' to address needs of the Bill and the EM.

For example, the Scheme Adviser is required to have a mechanism, such as an RTO Advisory Committee, to allow for greater collaboration between OEM's, Data Providers, the Scheme Adviser and RTO's to facilitate the identification and mitigation of knowledge gaps, i.e., diagnostics and programming etc.

The Simplified Outline also states that Data Providers may obtain sensitive information about individuals to ensure they are fit and proper persons. However, the information cannot be made available to anyone outside Australia (including any Data Provider).

MTAA suggests this may be a source of potential future problems. MTAA understands most Data Provider portals' actual location are likely to reside or originate in international jurisdictions.



Outlined requirements may result in Data Providers needing to capture this information to grant access to fit and proper persons but cannot store the data in international jurisdictions.

Critically MTAA cannot readily identify in the Bill or find a reference in the EM of any alternative pathway to only Data Providers being the only party able to satisfy the assessment of credentials of potential Scheme participants.

While recognising the right of Data Providers to develop and implement their own processes for checking and assessing requirements of potential persons accessing data, either at scheme information or secure data level, MTAA believes there may be a critical omission for an alternative pathway to meeting this obligation.

There is a significant risk that multiple and diverse interpretations of the Bills requirements to check and assess those wanting to use Scheme information and Secure Data will result in a cumbersome, clunky and costly outcome. There is a risk that some Data Providers may seek above and beyond sensitive and personal information that the Bill does not prescribe. There are risks and problems associated with the secure storage of data, and that this data cannot be stored offshore. There is a risk that this area may become a cause of disputes.

MTAA has been a strong advocate of the development and implementation of a system to undertake the functions of identifying and checking credentials and qualifications of persons wanting access to Scheme Information and Secure Data (with higher requirements), or both. And for the data to be stored securely and safely according to government and privacy requirements in Australia.

MTAA believes such a system could easily incorporate Bill provisions and Scheme Rules and include processes for the authorisation and approval of Data Providers to ensure ownership of the system.

The development, implementation and operation of such a system MTAA suggests must be a Scheme Adviser function. It would be required to develop and operate an electronic online system to perform checking, vetting and validation of applicants wanting including the capacity to upload and securely store required documentation to access information on two levels:

- Scheme information
- Secure Data

MTAA has an intimate knowledge of such a system already used successfully in the United States, with the participation, agreement and approval of Data Providers including manufacturers.





The US System, provided by the National Automotive Service Task Force (NASTF), integrates with United States national security and law enforcement agencies and their databases.

After exhaustive investigations and analysis by MTAA, this system (that enjoys most manufacturers and Data Providers' support and participation in the US) is transferable to the Australian context. As outlined in the Bill, the Scheme Adviser is ideally positioned to adapt these established systems for use in Australia.

Data Providers will have presented a two-tiered access process.

The first tier is an online system to assess and approve all Scheme Information applicants as a service to Data Providers. Such a system would ensure proper assessment of credentials, qualifications and any other requirements specified in the legislation and Scheme Rules.

After vetting and checking and the Scheme Adviser approves, an ID number is generated. The approved applicant provides this ID when applying for a subscription or access with a Data Provider. The Data Provider then only has to offer the capacity to recognise this ID number. Such a system gives Data Providers assurance that the credentials and requirements of persons accessing information have been appropriately assessed and approved before signing up to information access portals by the Scheme Adviser.

The second tier is a higher level of credentials and requirements for approval under a Secure Data Release Model (SDRM).

The establishment of a Secure Data Release Model (SDRM) as a function of the Scheme Adviser in Australia mitigates the risks mentioned above. A separate ID number is generated by SDRM and allocated to the approved fit and proper person. International Data Providers can access this ID and approval system without breaching requirements.

Such a system addresses local data storage requirements. The outcome is a streamlined, consistent and transparent system for all stakeholders. It will also greatly assist the Scheme Adviser in gathering information on the Schemes use and operations as part of the reporting requirements outlined in the Bill. It also provides an added convenience to car manufacturers and Data Providers who may choose to use such a service provided by the Scheme Adviser, reducing requirements and costs in developing access options.

MTAA strongly recommends that an alternate pathway is provided in the Bill for this function and be included in the Scheme Adviser's functions. It also addresses concerns and mitigates risks with @65 and @75.



Recommendation 2:

MTAA respectfully recommends Amending Objects Clause (d) or drafting a separate Object to include: *'individuals accessing safety and security information for scheme vehicles will be required to satisfy certain criteria relating to whether they are fit and proper persons to have access to such information'*.

Recommendation 3:

Consideration be given to the inclusion of more specific requirements of the Scheme Adviser to establish appropriate mechanisms / committees to cater for references to RTOs and other matters.

Recommendation 4:

Include an alternate pathway in the Bill for the Scheme Adviser to develop and provide a service to locally check and vet credentials and requirements outlined in the Bill and Scheme Rules for access to Scheme Information and fit and proper assessment for secure data.

Recommendation 5:

Add to the functions of the Scheme Adviser requirements to develop, implement operate, and report on an online system that:

- Provides an initial gateway for those accessing Scheme information to have credentials and requirements pre checked and approved
- Provided an initial gateway for persons accessing Secure Data to have credentials, requirements and fit and proper assessment undertaken and approved.
- For the system to generate an ID on approval that can be uniformly used by Data Providers when approached for access to Scheme Information.
- Is stored securely and safely in Australia and in accordance with Commonwealth Data Security and privacy requirements .
- Includes data in reporting requirements demanded by the Bill.





▪ **Page 6 @10 Meaning of Scheme Vehicle**

MTAA generally supports this section.

However, MTAA suggests the Bill should not preclude other potential vehicle types in the Scheme in the future. MTAA understands the need for consistency with the whole of government policy descriptions of motor vehicles and that incorporating other vehicle types into the legislation could prove cumbersome and a distraction to the Bill's intent at this time.

Nevertheless, MTAA believes the need to access service and repair information is also a demonstrated issue in other automotive industries, including farm equipment and machinery, industrial machinery, heavy vehicles, motorcycles, etc.

MTAA recommends assigning the Scheme Adviser a capacity to accept and consider future applications from industries, organisations or persons to include other vehicle types as Scheme Vehicles. For example, a Technical Committee of the Scheme Adviser independently assesses such applications. It provides advice and a recommendation to the Scheme Adviser, and where appropriate the Minister, for inclusion in Scheme Vehicles or not.

MTAA understands that such a function may necessitate additional scrutiny, including the Regulatory Impact Statement process, as such inclusion is outside the drafted Bills intent.

Recommendation 6:

MTAA recommends assigning the Scheme Adviser a capacity to consider future applications from industries, organisations or persons to include other vehicle types as Scheme Vehicles. For example, a Technical Committee of the Scheme Adviser independently assesses such applications and provides advice and a recommendation to the Scheme Adviser and where appropriate the Minister for inclusion in Scheme Vehicles or not.

▪ **Page 6 @15 Meaning of Australian Repairer**

MTAA respectfully suggests this section requires significant work to improve clarity and intent.

MTAA believes the draft definition of 'Australian Repairer', including terms such as 'servicing', may lack clarity and cause misinterpretation.



MTAA Member Associations



MTAA respectfully suggests a range of industries, businesses and persons have legitimate, verifiable, and in some cases, compliance requirements, to access and use service and repair information.

MTAA notes the EM attempts to qualify further the meaning of repairer where at 1.41 the EM states:

*'The definition of **repairer** includes specialist repairers including auto electricians, transmission, brake, suspension and windscreen technicians and vehicle body or smash repairers.'*

However, there is a real risk that these businesses and individuals may be excluded based on the interpretation of the definition of 'Australian Repairer'.

These include, but are not limited to, businesses and individuals engaged in the provision of:

- Permitted and authorised vehicle modifications to Scheme Vehicles, including vehicles modified for the disabled and specialist and enthusiast and imported Scheme Vehicles.
- Automotive parts suppliers.
- Vehicle dismantlers and recyclers.

National and jurisdiction legislation and regulations permit certain vehicle modifications by law. For example, specific changes to cover some vehicles for use by disabled consumers are allowed and governed by approval regimes. Approved vehicle modifiers will face significant detriment in making necessary changes to Scheme Vehicles without access to service, repair, and vehicle information.

Specific changes and modifications are also permitted under Federal Motor Vehicle Standards (MVS) and required for compliance under schemes including the Specialist & Enthusiast Vehicle Scheme (SEVS) and the Registered Automotive Workshop Scheme (RAWS).

Persons lawfully modifying vehicles should have access to information to achieve Scheme Objects, including competition, safety, and security attributes. Without access, their task of ensuring a specialist or enthusiast or an imported vehicle is compliant with Australian Design Rules, and MVS, may prove difficult if not impossible.

The same applies to compliant and safe decommissioning, dismantling, and recycling scheme vehicles that reach the end of their lives.



Vehicle dismantlers and recyclers generally follow a standardised industry best practice, including strict environmental requirements for the decommissioning and dismantling vehicles. Dismantlers and recyclers need information on vehicle systems and sub-systems to ensure the safe and environmentally compliant decommissioning and dismantling process. An inability to access service, repair and vehicle knowledge increases the risk of poor safety outcomes and increased potential for environmental obligation breaches.

Similarly, MTAA believes Part Suppliers also have valid claims for requiring access to service, repair, and vehicle information including access to manufacturers or OEM Parts Catalogues to ensure supply of the right part and component for the repair identified.

Other specific automotive professions may also require access but may not necessarily have a mechanical technician qualification, including automotive glaziers.

MTAA Members business constituents in all jurisdictions include automotive businesses who are approved vehicle modifiers, dismantlers and recyclers, parts suppliers, and other professions under these schemes. These businesses and individuals may be precluded from the Bill's intent unless the terms used to define Australian Repairer, including 'servicing' is clarified.

Failure to include these businesses and individual professions may result in a portion of independent mechanics or qualified persons, not having access to scheme information. Outside the Scheme, it may also affect increased dishonouring of manufacturer warranties for modified vehicles.

In the opinion of MTAA, inclusion would not pose any additional risk. Clarifying potential scheme participants through the previously mentioned system to assess and approve Scheme participants MTAA suggests mitigates any Scheme inclusion risk.

MTAA recommends the inclusion of the words in the Bill ' modifying', 'dismantling/recycling' parts supplies after the term 'servicing,' as follows: 'involves diagnosing faults with, servicing, modifying, repairing, supply parts, dismantling/recycling scheme vehicles'.

The EM and any subsequent guidance material should also clarify and include these industries and persons.



This matter also affects the following definitions and, as a result, the application of the Scheme, including:

- the meaning of RTO and RTO course (section 20);
- the meaning of scheme information (section 25);
- scheme information – terms and conditions of supply and use (section 55); and
- safety and security information – supply to Australian repairers and scheme RTOs (section 65).

Recommendation 7:

MTAA recommends the inclusion of the words in the Bill ' modifying', 'dismantling/recycling' parts supplies after the term 'servicing,' as follows: 'involves diagnosing faults with, servicing, modifying, repairing, supply parts, dismantling/recycling scheme vehicles'.

The EM and any subsequent guidance material should also clarify and include these industries and persons.

▪ Page 6 @20 Meaning of Scheme RTO and RTO Course

The definition of Australian Repairer would need to be changed in this section to reflect the previous section's matters.

Recommendation 8:

MTAA recommends the inclusion of the words in the Bill ' modifying', 'dismantling/recycling' parts supplies after the term 'servicing,' as follows: 'involves diagnosing faults with, servicing, modifying, repairing, supply parts, dismantling/recycling scheme vehicles'.

The EM and any subsequent guidance material should also clarify and include these industries and persons.



▪ **Page 7 @25 Meaning of Scheme Information**

Disagreement, distractions and semantics on terms and words have, in many cases, caused delays in addressing the provision of full and equitable access to automotive service and repair information. Recent examples include attempts at settling definitions for a voluntary Heads of Agreement and subsequent studies and investigations.

MTAA recognises these complexities and difficulties in determining an appropriate definition for scheme information and has intimate knowledge of the broad views and opinions on this matter and various stakeholders' positions.

MTAA does not underestimate the legal and regulatory complexities in arriving at the draft definition for Scheme Information, the myriad of stakeholder and interested party views, the need to include broad policy and regulatory requirements of multiple portfolios, and constitutional limitations.

Therefore, the following is provided as suggested improvements to remove ambiguity and potentially ease operationalisation of the Bill. However, considering these suggestions and those of other respondents and stakeholders should not delay the Bill's enactment.

If, after consideration of suggestions and recommendations, a decision is to proceed with the Bill's stated definition, MTAA would not necessarily object to such a decision and work with the Scheme Adviser to continually review and improve the definition circumstances operating environments evolve.

Observations and Concerns

MTAA Members constituents include both authorised repair networks such as dealers and independent repairers. All these automotive businesses recognise and agree that quality and safety are paramount for repair services.

With automotive repairers representing approximately 68% of Australia's overall repair businesses, MTAA Members partnered and independent repair business constituents agree a vibrant, competitive automotive repair market in Australia will be enhanced with the Bill's operation. The best way to address quality or safety issues is through fair, equitable access, training, and a level field of competition through the Bill's application.

Nevertheless, MTAA is concerned the definition for scheme information may still be regarded as too broad and open to misinterpretation, which may or may not be advantageous to specific stakeholders and could also be a future source of dispute notification.



MTAA Member Associations



While MTAA notes detail and examples to assist with clarity in the Bill are included in the EM, MTAA is concerned 'pass-through' technology, connectivity, and programming information is not explicitly covered. For instance, under the current definition, matters such as electronic parts catalogues, and access to appropriate OEM tools are also not covered.

Similarly, listed exceptions are also of concern. Telematics or Telemetry and Automated Driving Systems described in the Bill and EM, MTAA, believe could also be inappropriately used to deny legitimate access to the necessary information to diagnose, service, repair, and recycle scheme vehicles.

Simplistically, motor vehicle technicians are not computer programmers or coders. Therefore, they should have no reason to require information that concerns the algorithms underpinning computer programs or the programs themselves that deliver vehicle capabilities.

However, data essential for these programs, derived from hardware such as sensors, cameras, and other vehicle components is critical in diagnosing faults, repairing those faults, and re-initialising parts and systems to complete repairs. This cannot be withheld under some inappropriate exception for telemetry or lack of critical role recognition, including pass-through tools and technology.

Exceptions are dealt with in greater detail in the next section.

Recommendation 9:

MTAA recommends consideration be given to the recognition of and access to parts catalogues and access to OEM and aftermarket tools designed and intended for the use of service, modification, repair and dismantling recycling.

Recommendation 10:

Further consideration be given to additional information and examples on what specific information is included and excluded and that can be updated as necessary by processes outlined in the Bill.

Recommendation 11:

After consideration of input from the Draft Bill consultation process, adjust meaning if required,



Lack of Manufacturer definition

MTAA is also concerned that car manufacturers are undefined in the Bill. The Bill's statement that if the information is not prepared 'by or for manufacturers of scheme vehicles', it will not be considered scheme information amplifying the risks associated with the omission of a manufacturer definition.

While MTAA understands the definition of Data Providers captures manufacturers, MTAA believes this does not adequately recognise manufacturers' pivotal role in the Scheme.

The lack of a definition for manufacturers creates a 'loophole' risk by placing all the onus on Data Providers. A Scheme Vehicle manufacturer or a third party contracted by a car manufacturer in the view of MTAA are the 'originators' of the information. In contrast, in many cases, Data Providers may only be 'conduits' or suppliers of the information.

While the MTAA notes the Competition and Consumer Act defines 'corporation' broadly, including holding companies, it may not capture all corporate structures impacted by the Bill.

There may be a corporate or supply structure that the Scheme does not capture. For example, the car manufacturer hires a third party, subsidiary, or other more elaborate corporate structure, to assemble, produce and design the vehicle. The deployment of such structures could be to avoid all or part of what would otherwise be considered scheme information.

For example, MTAA is aware that some manufacturers may exit the Australian market themselves (as an Australian subsidiary company) and enter into agreements with another company that imports and distributes their product. While MTAA understands this structure, the Bill must be explicit regarding the manufacturers' ongoing obligations. If these are part of another contractual arrangement, this does not preclude the manufacturer from responsibilities to provide Scheme Information.

It is not unreasonable to suggest without increased clarity a situation could arise where a distributor in Australia of a manufacturer's Scheme Vehicles does not believe they are a Data Provider and nor do they have the accountability to make information accessible. Meanwhile, the internationally headquartered car manufacturer does not think it to be their responsibility but for their chosen distributor or subsidiary to address.



MTAA considers this could create the unintended consequence of a 'loophole' as the meaning of Data Provider does not adequately reflect the manufacturer's real accountability and responsibility as an information originator or licensee of the information. Suppose only a Data Provider must provide 'scheme information and a manufacturer role as a Data Provider is undefined. There is a risk such information may fall outside of the meaning of 'scheme information'. In that case, the risk is information will not be captured by the Scheme and make the Bill's intent redundant.

Recommendation 12:

MTAA recommends the inclusion of a definition for a 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).

Exceptions

MTAA suggests unintended consequences may arise because of the inclusion of some exceptions or the wording of detailed exceptions in the Bill. Again MTAA recognises the EM tries to clarify the need for exceptions. However, MTAA suggests there are enough inconsistency and differing views of what constitutes the meaning of some of the exceptions' areas.

MTAA's view is current exceptions may be exploited through a loophole and preclude access to information necessary for service or repair and Bill's intent.

Clause 2 (d) Telemetry

There may be different understandings of telemetry and its application and role in the draft Bill. MTAA suggests clarity is required so that the intent of the exception is clear and understood by all stakeholders.

Simplistically, MTAA understands telemetry in the automotive context is not vastly different from its broader meaning which is automated communication processes from multiple data sources.





Telemetry in a modern Scheme Vehicle is better known as telematics. Telematics provides real-time and recent historical data on the vehicles and drivers' performance by combining a GPS with onboard data sources, including systems and sub-systems such as brakes, steering, engine performance, and Advanced Driver Assistance Systems, etc. fed by sensors, cameras etc.

Telemetry is critical to OEMs monitoring and analysis of product performance, driver interface, and potential early identification of problems or issues.

Accessing this data is also critical in identifying and diagnosing faults and resetting codes, etc.

Therefore, telematics, connectivity and 'pass-through' tools and technology, whether by a hardware point of contact or remotely by wireless technologies, is a critical component of diagnostic, repair, and re-initialisation of a motor vehicle's components and systems. Exception from the Scheme as detailed might suggest that this latter function is not Scheme Information.

MTAA notes movement by some manufacturers in international jurisdictions to remove the hard point of connection with a vehicle for an OEM or aftermarket scan tool critical to diagnostics, service, repair. MTAA understands the rationale to remove unnecessary components, parts, seizing current and emerging technology, and maximising the use of wireless remote interpretation, intervention, fault code diagnosis and rectification/re-initialisation. While such a move some suggest is inevitable, MTAA points out the draft legislation must explicitly clarify that access to service and repair information must be available, including remotely by wireless or other technologies to all approved Scheme participants.

MTAA also notes concerns regarding cyber-security threats, but points out that those businesses or persons approved for servicing and repairing motor vehicles are concerned with this task, not illegally 'hacking' into a system. Scheme Information participants shouldn't be universally and unfairly singled out for such a threat. The method of identifying legitimate users of Scheme Information will play a large role in mitigating this risk. MTAA is unaware of any cases where this has occurred except in demonstrations to highlight the dangers and potential solutions.

MTAA also points Australian legislators to recent advances in this area in the United States jurisdiction of Massachusetts that will likely influence automotive information access regimes.



MTAA Member Associations



Massachusetts' legislature recently passed enhanced right to repair law requiring manufacturers selling vehicles with telematics systems in that jurisdiction, to outfit them with a standardised, open-source data platform. With this legislation, vehicle owners and their repairer of choice can directly access vehicle data for all model years from 2022. MTAA understands that some manufacturers are pursuing legal avenues in opposition to this law.

Nevertheless and as it stands today, given the Bill's operational date is July 2022, MTAA suggests this area will require further attention either in the draft Australian Bill or slated for a determined solution later. It is unacceptable that telematics is not dealt with for another 5 to 10 years, given its critical role in the Bill's intent and the use of accessed information.

As mentioned earlier, MTAA is concerned about the role of connectivity, pass-through tools and technology' has not been defined or adequately dealt with in the Bill or the EM.

Suppose the exception is provided as a temporary measure until further work and review, potentially by the Scheme Adviser, taking into account developments globally. In that case, this needs to be made clear.

As the exception is currently detailed, MTAA does not support the inclusion of Telemetry as an exception.

Recommendation 13:

MTAA recommends that pass through technology including hardware such as scan tools or remote wireless access, be recognised in the Bill and EM as a critical component in the use of accessed information. Consideration of the Massachusetts legislation terminology may be of assistance.

Recommendation 14:

MTAA respectfully recommends Telemetry be removed as an exception or redrafted to address expressed concerns.



Clause 2 (h) information relating to an Automated Driving System (ADS) of a scheme vehicle.

MTAA considers this matter critical to the proper application of the proposed legislation and respectfully suggests that it should be removed in its current form.

Given the interconnectedness of vehicle systems, the current wording would make it too easy for an OEM to demonstrate that the automated driving system is part of exceptions for the supply of information and vehicle systems that include brakes, steering, suspension etc.

Technicians need to access information on these systems to ensure safe operation and proper calibration of hardware and components core to a vehicle's operation. In its current form Clause, 2 (h) could be used by OEM's as a barrier to information provision. It is the view of MTAA based on known vehicle production plans that the majority of 2022 plated vehicles will have some form of automated systems included.

These vehicles must be kept and maintained in a roadworthy condition, including accessing ADS systems to ensure calibration of sensors and other components.

The fact current and future Scheme Vehicles have autonomous technology makes it even more critical for technicians to have the ability to diagnose, service, modify, repair and dismantle/recycle Scheme Vehicles.

The National Transport Commission is currently proposing a national in-service safety law for automated vehicles. MTAA recommends this matter is not included as an exception. The Scheme Adviser is requested to provide additional advice to the Minister on this matter within a reasonable timeframe after activating the Scheme.

Also, see section Clause 3.

Recommendation 15:

MTAA recommends Clause 2 (h) be removed or replaced with
.....'information relating to an automated driving system of a scheme vehicle is excluded unless it relates to diagnostic, service and repair or for training purposes'



Recommendation 16:

MTAA recommends the inclusion of the words in the Bill 'modifying', 'dismantling/recycling' parts supplies after the term 'servicing,' as follows: 'involves diagnosing faults with, servicing, modifying, repairing, supply parts, dismantling/recycling scheme vehicles'.

The EM and any subsequent guidance material should also clarify and include these industries and persons.

Clause 2 (f)

MTAA is concerned about the application of section 25(2)(f) because the fault itself may fall within the information classified as an exception to scheme information in section 25(2)(f). If not addressed the exception as presented will likely impact the repairer's ability to do their work effectively, and result in safety concerns and unnecessary costs for consumers and businesses.

Recommendation 17:

MTAA respectfully recommends 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 a more permanent solution is developed'.

Clause (3) An Automated driving system (ADS)

As previously mentioned, MTAA estimates most vehicles, and indeed, all-electric vehicles will have significant level three automated driving systems by 2022. If an ADS definition remains too broad, then much of the vehicle data will not be available, and the Bill's intent made redundant.

Clause (3). An Automated Driving System is a system which has an SAE level of 3 or more significant under the Surface Vehicle Information Report J3016 published by SAE International, as amended from time to time.





SAE J3016™ LEVELS OF DRIVING AUTOMATION

	SAE LEVEL 0	SAE LEVEL 1	SAE LEVEL 2	SAE LEVEL 3	SAE LEVEL 4	SAE LEVEL 5
What does the human in the driver's seat have to do?	You are driving whenever these driver support features are engaged – even if your feet are off the pedals and you are not steering			You are not driving when these automated driving features are engaged – even if you are seated in "the driver's seat"		
	You must constantly supervise these support features; you must steer, brake or accelerate as needed to maintain safety			When the feature requests, you must drive	These automated driving features will not require you to take over driving	
What do these features do?	These are driver support features			These are automated driving features		
	These features are limited to providing warnings and momentary assistance	These features provide steering OR brake/acceleration support to the driver	These features provide steering AND brake/acceleration support to the driver	These features can drive the vehicle under limited conditions and will not operate unless all required conditions are met	This feature can drive the vehicle under all conditions	
Example Features	<ul style="list-style-type: none"> • automatic emergency braking • blind spot warning • lane departure warning 	<ul style="list-style-type: none"> • lane centering OR • adaptive cruise control 	<ul style="list-style-type: none"> • lane centering AND • adaptive cruise control at the same time 	<ul style="list-style-type: none"> • traffic jam chauffeur 	<ul style="list-style-type: none"> • local driverless taxi • pedals/steering wheel may or may not be installed 	<ul style="list-style-type: none"> • same as level 4, but feature can drive everywhere in all conditions

MTAA is concerned that the line separating driver support features and automated driving systems will become less clear. Irrespective of the feature operation will still interface with other vehicle systems and sub-systems to work correctly and require servicing and repair.

MTAA suggests further assessment is required to determine how many vehicles are currently fitted with level 3 autonomous technology or are likely to enter the market in the next five years with level 3 or above systems.

MTAA's concerns centre again on clarity and that this exception could similarly be used by OEM's to restrict the sharing of information and therefore should be removed or significantly redrafted to address this concern.

Recommendation 18:

MTAA recommends Clause 2 (h) be removed or significantly redrafted.



MTAA Member Associations



Electronic Log Books

The EM 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 crucial for safety reasons that logbook servicing is recorded in the electronic logbook. This way, the vehicle owner and a potential purchaser of the vehicle can confirm whether a service was or completed or not. It also assists Australian Repairers in ascertaining if service items were actually undertaken and discussing 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, impacting safety or incurring unnecessary costs.

Recommendation 19:

MTAA respectfully recommends Include a new section (or subsection), providing that Australian repairers must be able to record services in electronic logbooks.

Additional Recommendations for the Section

Recommendation 20:

MTAA respectfully recommends consideration of 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 or recycling 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, repair or recycling activities, then this information should also be provided to other Australian repairers and scheme RTOs.

Recommendation 21:

MTAA respectfully recommends consideration of a definitive list of service and repair information and exceptions be included in the Scheme Rules to remove any ambiguity.



- **Page 7 @30 Meaning of Data Provider**

MTAA recommends the inclusion of the definition contained in the EM for the Bill to avoid any misinterpretation.

Recommendation 22:

MTAA recommends the inclusion of the EM descriptor in the Bill as a definition qualification.

EM 1.18 to be included in the Bill Definition

'A Data Provider may be a vehicle manufacturer, data owner, or licensee. This could include an Australian subsidiary of an overseas vehicle manufacturer, an affiliated car dealership, or a data aggregator who sells service and repair information in its own right.'

- **@35 Meaning of safety and security information**

MTAA suggests further consideration be given to the meaning of Safety and Security Information to remove ambiguity.

For example, the incorporation of *'high voltage, hybrid, electric propulsion, systems'* could be argued are not safety systems but core Scheme information. There is an Australian Standard for electric vehicles maintenance and repair (AS5732 2015) and courses/ qualifications for electric vehicle technicians.

Also, Australian Repairers must have access to Scheme Information that details processes and procedures for shutting down or disconnecting such systems to perform required service, repair, or dismantle and recycle work.

It seems inappropriate to classify such systems as Safety Information given this information and that the determination of Safety Information will be a critical task of the Scheme Adviser.

MTAA notes paragraph 1.104 of the EM, 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".

MTAA suggests this statement needs to be described as a Scheme Adviser's function and include in the section of Scheme Adviser role and functions.



Recommendation 23:

MTAA recommends first consideration be given to the appropriateness of including propulsion systems as Safety information as opposed to scheme information.

Recommendation 24:

MTAA recommends the inclusion of:

'The Minister will take advice from industry stakeholders on what scheme information should be considered safety and security information and the corresponding access criteria'.

as a function of the Scheme Adviser and included in the Functions of the Scheme Adviser in the Bill.

- **@40 Supply of scheme information between related bodies corporate**

Concern:

MTAA notes that the EM states that Data Providers' definition captures information sharing within vertically integrated structures and related bodies corporate.

However, section 40 only mentions Data Providers that are related to Australian repairers and does not include a reference to Scheme RTOs.

While it may be less common for a Data Provider to be related to a scheme RTO, the potential should be addressed

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.'

Recommendation 25:

MTAA respectfully recommends consideration of altering 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.'



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

At the core of establishing an improved competitive environment is that all Australian Repairers access the same service and repair information. MTAA understands that at a minimum, Australian Repairers and Scheme RTOs can access the same information provided to car dealership networks and manufacturer preferred repairers. It appears not explicit in the meaning.

The obligation is on the Data Provider, not the car manufacturer. While it acknowledged that some car manufacturers outsource diagnostic, service, and repair information, it must be explicit that the car manufacturer cannot obfuscate provision in satisfying the Bills intent and requirements.

Unless there is clarity, MTAA envisages situations where the manufacturer (the information originator) could lay the accountability for any lack of provision to the third-party provider. However, the third-party provider may have never received the information in the first place.

MTAA suggests with section 45(5)(f), there is potential for the Data Provider to inflate the price to be paid a related company with a proprietary interest in the scheme information. Such inflation in price may be a factor used to determine the scheme price's fair market value.

To address this concern, in section 45(5)(f), after the words 'interest in the scheme information', it is suggested to insert words to the effect 'however, if the amount payable is unreasonably high in the circumstances, a fair and reasonable amount must prevail'.

Recommendation 26:

MTAA recommends inserting words after '*interest in the scheme information*' '*however, if the amount payable is unreasonably high in the circumstances, a fair and reasonable amount must prevail*'.



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

MTAA suggests improvements to this section to improve clarity, expectation, and minimise disputation potential.

MTAA is concerned that **two days** for a response to access Scheme Information will become the default position of Data Providers. MTAA believes that if approved Australian Repairers have met criteria and credential checks and afforded approval to access Scheme information, it must be provided in real-time when requesting standard general service and repair information outlined in the scheme rules.

A two-day delay for standard information will be detrimental to the Australian Repairer and the consumer. For example, if an Australian Repairer has diagnosed and conducted a common repair and wants to access available Scheme Information to re-initialise the vehicle systems for completion; a two-day timeframe is considered inappropriate and unnecessary.

MTAA recognises situations where the service or repair question may be complicated or not within the scope of standard information. A previously unknown fault or issue or a multifaceted problem may require time, and this is where a more extended period is acceptable.

The EM is also unclear. MTAA is concerned that a process where the parties 'negotiate' an agreement on time after access approved, and payment made and accepted, is fraught with danger (EM 1.76, Page 18).

MTAA respectfully suggests that if a Scheme Adviser credential check/approval process is permitted, and given that payment for accessing a Scheme information portal is practically automatic online, then the service should be available real-time.

If this section is designed to consider that the Data Provider undertakes approval processes and payment clearance, then two days for this initial process is reasonable.

However, It is not appropriate to suggest either a 'negotiated timeframe' or a two-day default turnaround for any subsequent access, especially where a subscription paid for days, months or years access.

MTAA believes the current Bill wording and that of the EM is unacceptable in the current form.

As outlined earlier in this submission, the definition of Australian Repairer is also relevant to this section.



Recommendation 27:

MTAA recommends consideration of improving the clarity of timeframes described in Section @50. In order to address concerns, it is further suggested:

- Remove reference to 'agreement on timeframes'
- The Scheme Adviser be tasked with determining standard scheme information based on information already provided to dealers.
- Prescribe real time access for standard information.
- Prescribe two-days maximum for the processing of fit and proper and credential checks and approval, payment clearance for access.
- Prescribe extended timeframes for highly complex or unique matters that have not been previously identified.

MTAA also refers to @5 Simplified Outcome and MTAA's recommendations for an alternative pathway where the Scheme Adviser undertakes the actions for credential and fit and proper assessment and clearance.

Recommendation 28:

MTAA recommends the inclusion of the words in the Bill 'modifying', 'dismantling/recycling' parts supplies after the term 'servicing,' as follows: 'involves diagnosing faults with, servicing, modifying, repairing, supply parts, dismantling/recycling scheme vehicles'.

The EM and any subsequent guidance material should also clarify and include these industries and persons.

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

MTAA notes Data Providers can set reasonable terms and conditions, and the EM provides some clarity by way of examples, including some prohibitions. However, approved Australian Repairers of the Scheme are likely to be varied with differing levels of IT capability and capacity. Consider further examples, including:

- Detailed copyright explanations and expectations.
- Prohibitions on printing scheme information by an approved user who may wish to use it in the actual workshop where computers or tablets are not available.
- Examples of potentially unfair contract terms



Recommendation 29:

MTAA recommends consideration of further examples of prohibitions and restrictions with additional clarity on Terms and Conditions.

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

MTAA is concerned while the Data Provider may have a defence available under section 60(5). It is unclear to what extent the Australian Repairer or Scheme RTO is also protected/indemnified for their permitted use of the Scheme Information.

Recommendation 30:

MTAA respectfully recommend Amend section 60(3) to include any compensation recoverable in relation to the use of the scheme information by Australian Repairers or scheme RTOs. Amend section 60(5) to cover any claims made against the Independent Repairer or scheme RTO.

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

MTAA refers to @5 Simplified Outcome and the recommendation that the Scheme Adviser provides a service to check, vet, and assess fit and proper persons.

By having the Scheme Adviser perform this function as a service, processes are centralised, streamlined, more straightforward, efficient, and cost-effective. Data Providers, engaged by the Scheme Adviser, provide approval for systems dedicated to the process and other industry stakeholders. As stated in @5, such a service is successful, welcomed, and effective in the **United States**.

It overcomes concerns about gathering and storing data and minimises the risks and problems MTAA has with this section.



Namely, there is no explicit prohibition on requesting more personal or sensitive information than specified in section 65 ((1) in particular), or the Scheme Rules. Nor is there any prohibition to limit requests for the information above and beyond what is reasonably necessary to determine a person is fit and proper.

Irrespective of any future role for the Scheme Adviser, there should be a requirement that Data Providers do not request more sensitive or personal information than reasonably required.

There is also a significant risk that there may be many variables and individual interpretations on the level of information required, making the entire Scheme cumbersome and frustrating without such a requirement and be the cause of significant disputes.

MTAA notes the EM at paragraph 1.110, notes that the criteria for determining if a person is a fit and proper person will be "identified in consultation with industry". MTAA suggests further consideration of these concerns when choosing the assessment of fit and proper.

Recommendation 31:

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 relevant to determining whether a person is a fit and proper person,

Recommendation 32:

Draft a provision that limits information sought cannot exceed that specified in section 65 or the Scheme Rules.

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

As detailed previously, Data Providers operating in international jurisdictions are excluded from collecting and storing sensitive information under the draft legislation.

Again, MTAA points out that providing the Scheme Adviser with the capacity to provides this service overcomes this potential problem.



Any personal information should be gathered and stored by a Scheme Adviser system similar to the described Secure Data Release Model (SDRM). The Data Provider can keep any transaction records.

MTAA suggests the scope and intent of section 75 is unclear and create a loophole, in the handling and storing sensitive information.

MTAA believes the Sections intent 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 75(1)(b). Also, section 80(2) requires the Data Provider to retain the information used to determine whether a person is a fit and proper person. MTAA cannot envisage a system by an overseas-based Data Provider who may cause themselves a breach. How is an assessment of fit and proper undertaken without sensitive and personal information? MTAA suggests not all sensitive information may be subject to sections 75(2) and 75(3).

Recommendation 33:

MTAA respectfully recommends 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).

▪ @85 Application

MTAA is concerned because of the lack of a manufacturer definition that obfuscation of accountability could occur.

As previously mentioned, nothing in this section ties the car manufacturer and the originator of the information for their product to the dispute resolution process - only the Data Provider who will most likely be contracted. This must be addressed as previously recommended.

MTAA also suggests the following areas should be included in the dispute resolution process:

- Access to safety and security information, including whether a person is a fit and proper person;
- Issues including potentially unfair with terms and conditions, including fair price and discrepancies in format
- Information searchability between various Australian repairers and RTO.

Recommendation 34:

MTAA respectfully recommends an amendment to Section 85 by including the following:

- whether a determination on access to safety and security information,
 - whether a person is a fit and proper person was correctly made (an independent review body may be better suited for this)
 - 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.
-

▪ @90 Resolving disputes

MTAA suggests exploration by the Scheme Adviser of using established dispute resolution mechanisms provided by the Commonwealth Small Business and Family Enterprises Ombudsman and the potential to create an 'Automotive Ombudsman' within this office. The Scheme Adviser would have a robust dispute resolution system that draws on established protocols and practices deployed by the office.

▪ @95 Right to bring proceedings unaffected

MTAA has no concerns or comments on the section.

▪ @100 Attempt to resolve dispute before mediation

MTAA has no concerns or comments on the section.

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

MTAA has no concerns or comments on the section.





- **@110 Mediation**

MTAA suggests that rather than either party electing to apply for mediation if the parties cannot resolve the dispute, either party should notify the Scheme Adviser.

The Scheme Adviser then identifies a mediator and provides details of the mediator to both parties.

- **@115 Termination of mediation**

MTAA is concerned that if mediation fails, then there is no other recourse for either party. MTAA suggests that in the event of failed mediation, either party has the option of seeking to have the dispute determined by another independent party assigned by the Scheme Adviser within strict timeframes.

If both parties agree, the determination process is binding on both parties.

Each party bears any costs in proceeding to a determination phase.

Recommendation 35:

MTAA recommends consideration be given to the addition of a determination phase in the event of failed mediation.

- **@120 Costs of mediation**

MTAA has no concerns or comments on the section.

- **@125 Scheme adviser—establishment and appointment**

MTAA suggests clarity is required in this section. While the EM states that the Scheme Adviser can be a person or an organisation the Bill does not, describing only a person. MTAA queries whether the Bill also need to state that an organisation can be a person?

- **@130 Scheme adviser—functions**

MTAA is concerned that potential functions of the Scheme Adviser are missed. For example, if the Scheme Adviser were to have prescribed roles to provide a service to check, vet, and assess those wishing to access Scheme Information, this should be included.



MTAA Member Associations



MTAA also assumes there will be functions and requirements emanating from Scheme Rules' further development, and these should also be clarified.

MTAA recommends a more comprehensive schedule of functions are included.

Recommendation 36:

MTAA recommends consideration be given to the addition of a detailed list of functions of the Scheme Adviser in addition to those highlighted in the Bill and EM.

- **@135 Civil penalty provisions**

MTAA welcomes the quantum of the penalties proposed.

- **140 Infringement notices**

MTAA has no concerns or comments on the section.

- **@145 Concurrent operation of State and Territory laws**

MTAA has no concerns or comments on the section.

- **@150 Acquisition of property**

MTAA has no concerns or comments on the section.

- **@155 Scheme rules**

MTAA respectfully suggests strengthening the linkages between the Scheme Adviser, Scheme Rules, and other parts of the Bill.

In part, it is unclear the interdependence and connection between Scheme Rules and the functions of the Scheme Adviser and other stakeholders, some sections of the Bill as outlined in this submission, and the Scheme's operation.



Recommendation 37:

Review linkages between Scheme Rules Scheme Adviser and the Bill in considering submissions to the draft legislation.

- **Part 2 and Part 3**

MTAA has no concerns or comments on the section.

End of Submission

