

EXPOSURE DRAFT

2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

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

No. , 2020

(Treasury)

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

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1 [^]2 Commencement

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

6

Commencement information

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

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

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

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Schedule 1 Motor vehicle service and repair information sharing scheme

Part 1 Main amendments

1 **Schedule 1—Motor vehicle service and repair**
2 **information sharing scheme**

3 **Part 1—Main amendments**

4 *Competition and Consumer Act 2010*

5 **1 After Part IVD**

6 Insert:

7 **Part IVE—Motor vehicle service and repair**
8 **information sharing scheme**

9 **Division 1—Objects of Part and simplified outline**

10 **@1 Objects of Part**

11 The objects of this Part are to:

- 12 (a) promote competition between Australian repairers of
13 passenger and light goods motor vehicles and establish a fair
14 playing field by mandating access to diagnostic, repair and
15 servicing information on fair and reasonable commercial
16 terms; and
17 (b) enable consumers to have those vehicles repaired by an
18 Australian repairer of their choice who can provide effective
19 and safe services; and
20 (c) encourage the provision of accessible and affordable
21 diagnostic, repair and servicing information to Australian
22 repairers, and to registered training organisations (for training
23 purposes); and
24 (d) protect safety and security information about those vehicles
25 to ensure the safety and security of consumers, information
26 users and the general public; and
27 (e) provide for the resolution of disputes about the terms and
28 conditions of supply or proposed supply of diagnostic, repair

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Motor vehicle service and repair information sharing scheme **Schedule 1**
Main amendments **Part 1**

1 and servicing information for those vehicles and other
2 matters relevant to the requirements of this Part.

3 **@5 Simplified outline**

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

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

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

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

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

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

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

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Schedule 1 Motor vehicle service and repair information sharing scheme
Part 1 Main amendments

1 Division 2—Key concepts

2 @10 Meaning of *scheme vehicle*

3 A *scheme vehicle* is:

- 4 (a) a light goods vehicle, within the meaning of a vehicle
5 standard made under the *Motor Vehicle Standards Act 1989*
6 that specifies definitions and vehicle categories for the
7 purposes of that Act, that was manufactured on or after:
8 (i) 1 January 2002; or
9 (ii) a later date prescribed by the scheme rules; or
10 (b) a passenger vehicle (other than an omnibus), within the
11 meaning of a vehicle standard made under the *Motor Vehicle*
12 *Standards Act 1989* that specifies definitions and vehicle
13 categories for the purposes of that Act, that was
14 manufactured on or after:
15 (i) 1 January 2002; or
16 (ii) a later date prescribed by the scheme rules; or
17 (c) another kind of vehicle prescribed by the scheme rules.

18 @15 Meaning of *Australian repairer*

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

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

25 @20 Meaning of *scheme RTO* and *RTO course*

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

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

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Motor vehicle service and repair information sharing scheme **Schedule 1**
Main amendments **Part 1**

1 **@25 Meaning of *scheme information***

2 *Main definition*

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

7 *Exceptions*

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

- 10 (a) a trade secret;
11 (b) the intellectual property of a person, other than intellectual
12 property protected under the *Copyright Act 1968*;
13 (c) a source code version of a program;
14 (d) telemetry;
15 (e) global positioning system data;
16 (f) information supplied, or to be supplied, only to a restricted
17 number of Australian repairers for the purposes of
18 developing solutions to emerging or unexpected faults with a
19 scheme vehicle;
20 (g) commercially sensitive information about an agreement
21 between a data provider and another person;
22 (h) information relating to an automated driving system of a
23 scheme vehicle.

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

28 (3) An ***automated driving system*** is a system which has a SAE level of
29 3 or greater under the Surface Vehicle Information Report J3016
30 published by SAE International, as amended from time to time.

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

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Main amendments **Part 1**

1 **@40 Supply of scheme information between related bodies**
2 **corporate**

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

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Schedule 1 Motor vehicle service and repair information sharing scheme
Part 1 Main amendments

1 **Division 3—Supply of scheme information**

2 **@45 Scheme information—offer to supply to Australian repairers** 3 **and scheme RTOs**

4 *Scope*

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

9 *Main obligation*

- 10 (2) The data provider must, by a publication in English on the internet
11 that is accessible free of charge, make an offer (a *scheme offer*) to
12 supply, on terms and conditions that comply with section @55, the
13 same scheme information in relation to that kind, or those kinds, of
14 vehicle to all Australian repairers and scheme RTOs:
15 (a) in the same form in which it is supplied or offered for supply
16 under subsection (1); or
17 (b) if supply in that form is not practicable or accessible—in an
18 electronic form that is reasonably accessible to all Australian
19 repairers and scheme RTOs.

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

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

24 *Choice of supply period in scheme offer*

- 25 (3) If the form in which scheme information is supplied allows for
26 variability in the period for which the information is supplied, the
27 data provider must make the scheme offer on terms and conditions
28 that include provision for the supply of the scheme information:
29 (a) for any period nominated by an Australian repairer or scheme
30 RTO; or
31 (b) by day, by month and by year.

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Main amendments **Part 1**

- 1 Civil penalty:
2 (a) for a body corporate—600 penalty units; and
3 (b) for a person other than a body corporate—120 penalty units.

4 *Scheme offer not to exceed fair market price*

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

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

- 12 (5) For the purposes of subsection (4), this subsection covers the
13 following matters:
14 (a) the price charged to other Australian repairers and scheme
15 RTOs for supplying scheme information (whether under this
16 Part or otherwise) in relation to a scheme vehicle:
17 (i) of that particular make, model and year; or
18 (ii) if pricing is not available for information in relation to a
19 scheme vehicle of that particular make, model and
20 year—pricing for information in relation to a scheme
21 vehicle of a similar make, model and year;
22 (b) the terms and conditions on which such scheme information
23 is offered for supply to Australian repairers and scheme
24 RTOs (whether under this Part or otherwise), including as to
25 the permitted use of the information, the means of access to
26 the information, the number of permitted users, and the
27 frequency or duration of use of the information;
28 (c) the anticipated demand by Australian repairers and scheme
29 RTOs for supply of the scheme information on the basis of
30 the scheme offer;
31 (d) the reasonable recovery of costs incurred in creating,
32 producing and providing the scheme information for supply
33 on the basis of the scheme offer;
34 (e) the price charged for the supply of information similar to
35 scheme information in overseas markets;

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

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

7 *Publication of scheme offer*

- 8 (6) The data provider must publish the scheme offer on the data
9 provider's website.

10 Civil penalty:

- 11 (a) for a body corporate—600 penalty units; and
12 (b) for a person other than a body corporate—120 penalty units.

- 13 (7) The data provider must:

- 14 (a) as soon as reasonably practicable after it publishes a scheme
15 offer under subsection (6)—provide a copy of the scheme
16 offer, in writing, to the scheme adviser; and
17 (b) notify the scheme adviser, in writing, as soon as reasonably
18 practicable after any change to the scheme offer.

19 Civil penalty:

- 20 (a) for a body corporate—600 penalty units; and
21 (b) for a person other than a body corporate—120 penalty units.

22 **@50 Scheme information—supply on request by Australian**
23 **repairers or scheme RTOs**

24 *Scope*

- 25 (1) This section applies if:

- 26 (a) a data provider makes, or is required to make, a scheme offer
27 to supply scheme information in relation to a particular make,
28 model and year of scheme vehicle; and
29 (b) either:
30 (i) an Australian repairer has a need to access the scheme
31 information to diagnose faults with, service or repair

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- 1 that particular make, model and year of scheme vehicle
2 in carrying on the Australian repairer’s business; or
3 (ii) a scheme RTO has a need to access the scheme
4 information to provide an RTO course; and
5 (c) the Australian repairer or scheme RTO requests, in writing,
6 the data provider to supply the scheme information about that
7 particular make, model and year of scheme vehicle; and
8 (d) the Australian repairer or scheme RTO pays or offers to pay
9 the scheme price, or another agreed price, for the scheme
10 information.

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

13 *Supply of scheme information*

- 14 (2) Subject to section @65 (which deals with the supply of safety and
15 security information), the data provider must supply the scheme
16 information to the Australian repairer or scheme RTO in
17 accordance with terms and conditions that comply with section
18 @55:
19 (a) within the time agreed with the Australian repairer or scheme
20 RTO; or
21 (b) if the scheme information includes safety and security
22 information—before the end of 2 business days after the later
23 of the following days:
24 (i) the day on which the Australian repairer or scheme
25 RTO pays the scheme price, or another agreed price, for
26 the scheme information;
27 (ii) the day on which the Australian repairer or scheme
28 RTO provides, to the data provider, personal
29 information mentioned in section @65 about individuals
30 who are to access and use the safety and security
31 information that enables the data provider to be
32 reasonably satisfied that the supply of the safety and
33 security information would not be prohibited under that
34 section; or
35 (c) in any other case—before the end of 2 business days after the
36 day on which the Australian repairer or scheme RTO pays

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1 the scheme price, or another agreed price, for the scheme
2 information.

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

5 *Data provider to notify scheme adviser of terms and conditions of*
6 *supply*

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

12 Civil penalty:

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

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

15 @55 Scheme information—terms and conditions of supply and use

16 *Terms and conditions of supply generally*

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

22 *Prohibited terms or conditions*

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

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

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

30 Civil penalty:

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

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- 1 (b) for a person other than a body corporate—120 penalty units.
- 2 (3) A term or condition of a contract for the supply of scheme
3 information under this Part that contravenes subsection (2) is of no
4 effect.

5 **@60 Scheme information—interaction of supply obligations and** 6 **other rights and obligations**

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

- 9 (1) A data provider must comply with an obligation under this Part in
10 relation to scheme information even if such compliance would
11 constitute or result in one or more of the following:
- 12 (a) an infringement of copyright by the data provider or any
13 other person;
 - 14 (b) a breach of contract in relation to the supply of the scheme
15 information;
 - 16 (c) a breach of an equitable obligation of confidence to which
17 the data provider is subject in relation to the supply of the
18 scheme information.

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

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

26 *Compensation for third party copyright holders*

- 27 (2) Subsection (3) applies if:
- 28 (a) a data provider supplies scheme information to an Australian
29 repairer or scheme RTO under this Part; and
 - 30 (b) a person (the *third party claimant*) holds copyright in
31 relation to some or all of the scheme information that is the
32 subject of the supply; and
 - 33 (c) the supply constitutes or results in an infringement of the
34 copyright of the third party claimant; and
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- 1 (d) apart from this section, the infringement would constitute an
2 acquisition of property otherwise than on just terms (within
3 the meaning of paragraph 51(xxxi) of the Constitution).
- 4 (3) The data provider must pay to the third party claimant an amount
5 that represents compensation on just terms (within the meaning of
6 paragraph (xxxix) of the Constitution) for the supply of the scheme
7 information to the Australian repairer or scheme RTO.
- 8 (4) An amount payable by the data provider under subsection (3):
9 (a) is a debt due by the data provider to the third party claimant;
10 and
11 (b) may be recovered by action in a court of competent
12 jurisdiction.
- 13 (5) In a civil action by a third party claimant against a data provider
14 for infringement of copyright in relation to scheme information
15 supplied, or offered for supply, under this Part, it is a defence if the
16 data provider proves that:
17 (a) the data provider was required to supply the scheme
18 information, or offer to supply the scheme information, under
19 this Part; and
20 (b) the data provider has paid to the third party claimant the
21 compensation required to be paid under subsection (3).

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Motor vehicle service and repair information sharing scheme **Schedule 1**
Main amendments **Part 1**

1 **Division 4—Information management**

2 **@65 Safety and security information—supply to Australian** 3 **repairers and scheme RTOs**

4 *Supply of safety and security information*

- 5 (1) A data provider must not supply scheme information under this
6 Part that is safety and security information to an Australian repairer
7 or a scheme RTO for a scheme vehicle of a particular make, model
8 and year unless there are reasonable grounds for the data provider
9 to believe that:
- 10 (a) the safety and security information is solely for use by an
11 individual or individuals in diagnosing faults with, servicing
12 or repairing that kind of vehicle:
 - 13 (i) in the case of an Australian repairer—for the purposes
14 of the Australian repairer's business; or
 - 15 (ii) in the case of a scheme RTO—for the purposes of
16 providing an RTO course; and
 - 17 (b) based on personal information about the individual covered
18 by subsection (4), the individual is a fit and proper person to
19 access and use the safety and security information.

20 *Civil penalty:*

- 21 (a) for a body corporate—600 penalty units; and
- 22 (b) for a person other than a body corporate—120 penalty units.

23 *Fit and proper persons*

- 24 (2) An individual is a ***fit and proper person*** to access and use safety
25 and security information if the individual meets the criteria (the
26 ***prescribed safety and security criteria***) prescribed by the scheme
27 rules.
- 28 (3) For the purposes of subsection (2), different criteria may be
29 prescribed in relation to each of the following:
- 30 (a) safety information;
 - 31 (b) security information.

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Motor vehicle service and repair information sharing scheme **Schedule 1**
Main amendments **Part 1**

1 *Application of Privacy Act 1988*

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

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

7 **@75 Safety and security information—storage of, and access to,**
8 **sensitive information**

9 *Scope*

- 10 (1) This section applies in relation to sensitive information within the
11 meaning of the *Privacy Act 1988*, if:
12 (a) the information is about an individual mentioned in
13 subsection @65(1); and
14 (b) there are reasonable grounds for believing that the
15 information is relevant to the determination by a data
16 provider of whether the individual is a fit and proper person
17 to access and use safety and security information.

18 *Sensitive information must be stored in Australia*

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

21 Civil penalty:

- 22 (a) for a body corporate—1,500 penalty units; and
23 (b) for a person other than a body corporate—300 penalty units.

24 *Preventing access to sensitive information outside Australia*

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

28 Civil penalty:

- 29 (a) for a body corporate—1,500 penalty units; and
30 (b) for a person other than a body corporate—300 penalty units.
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Schedule 1 Motor vehicle service and repair information sharing scheme Part 1 Main amendments

1 **@80 Safety and security information—records of access**

2 *Scope*

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

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

7 *Record-keeping requirement*

- 8 (2) The data provider must keep a record of the supply of the safety
9 and security information for a period of 5 years after the day it is
10 supplied, including the following:
11 (a) the time and date of supply;
12 (b) the name and contact details of the Australian repairer or
13 scheme RTO;
14 (c) any personal information used by the data provider to
15 determine whether an individual is a fit and proper person to
16 access and use safety and security information;
17 (d) details of the scheme vehicle, including the following:
18 (i) the make, model and year of the vehicle;
19 (ii) the vehicle identification number of each vehicle for
20 which the information is supplied;
21 (e) details of the safety and security information supplied.

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

24 *Civil penalty:*

- 25 (a) for a body corporate—600 penalty units; and
26 (b) for a person other than a body corporate—120 penalty units.

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

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Main amendments **Part 1**

1 **Division 5—Dispute resolution**

2 **@85 Application**

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

- 4 (a) whether a person is a data provider;
- 5 (b) whether a person is an Australian repairer;
- 6 (c) whether a registered training organisation is a scheme RTO;
- 7 (d) whether particular information is scheme information,
8 including whether it is safety and security information;
- 9 (e) the application of this Part in relation to particular scheme
10 information;
- 11 (f) any other dispute about the operation of this Part that is
12 prescribed by the scheme rules.

13 **@90 Resolving disputes**

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

17 **@95 Right to bring proceedings unaffected**

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

21 **@100 Attempt to resolve dispute before mediation**

- 22 (1) If the initiating party wishes to initiate action to resolve the dispute
23 in accordance with this Division, the initiating party must give
24 written notice to the responding party of the following:
 - 25 (a) the nature of the dispute;
 - 26 (b) the matter that is the subject of the dispute;
 - 27 (c) the way in which that matter relates to the application of this
28 Part;
 - 29 (d) what outcome the initiating party wants;

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- 1 (e) what action the initiating party thinks will resolve the
2 dispute.
- 3 (2) The parties must then try to resolve the dispute.
- 4 Note: For when a party is taken to have tried to resolve a dispute, see section
5 @105.
- 6 (3) If the parties cannot agree how to resolve the dispute within 2
7 business days, either party may refer the matter to a mediator for
8 mediation under this Division.
- 9 (4) If the parties cannot agree on who should be the mediator, either
10 party may request the scheme adviser to nominate a mediator.
- 11 (5) Within 2 business days after a request is made under
12 subsection (4), the scheme adviser must nominate a mediator for
13 the dispute.

14 **@105 When is a party taken to have tried to resolve a dispute?**

- 15 For the purposes of this Division, a party is taken to have tried to
16 resolve a dispute if the party approaches the resolution of the
17 dispute in a reconciliatory manner, including by doing any of the
18 following:
- 19 (a) attending and participating in meetings at reasonable times;
20 (b) responding to communications to the party within a
21 reasonable time;
- 22 (c) if the party has agreed to use a technical expert in resolving
23 the dispute—considering the opinions of the technical expert;
- 24 (d) if a mediation process is being used to try to resolve the
25 dispute—both:
- 26 (i) making the party’s intention clear, at the beginning of
27 the process, as to what the party is trying to achieve
28 through the process; and
- 29 (ii) observing any obligations relating to confidentiality that
30 apply during or after the process.

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@110 Mediation

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- (1) Subject to this section, a mediator appointed by the parties to a dispute may decide the time and place for mediation.
- (2) The mediator may, with the agreement of the parties to the dispute, appoint a technical expert to assist in the resolution of the dispute.
- (3) Unless the mediation is conducted using the technology referred to in subsection (4), the mediation must be conducted in Australia.
- (4) The mediation may be conducted using any technology that allows a person to participate in the mediation without being physically present at the mediation.
- (5) The parties must attend the mediation.
Civil penalty:
 - (a) for a body corporate—600 penalty units; and
 - (b) for a person other than a body corporate—120 penalty units.
- (6) For the purposes of subsection (5), a party is taken to attend mediation in the following circumstances:
 - (a) the party is represented at the mediation by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party;
 - (b) the party, or the party's authorised representative mentioned in paragraph (a), participates in the mediation using the technology referred to in subsection (4).
- (7) The parties must then try to resolve the dispute.
Note: For when a party is taken to have tried to resolve a dispute, see section @105.
- (8) Within 5 business days after the start of the mediation, the mediator must advise the scheme adviser that the mediation has started.

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Schedule 1 Motor vehicle service and repair information sharing scheme Part 1 Main amendments

1 **@115 Termination of mediation**

- 2 (1) This section applies to the mediation of a dispute if the dispute has
3 not been resolved within 30 days after the day the mediation starts.
- 4 (2) The mediator may terminate the mediation at any time unless
5 satisfied that a resolution of the dispute is imminent.
- 6 (3) However, if either party asks the mediator to terminate the
7 mediation, the mediator must do so.
- 8 (4) If the mediator terminates the mediation of a dispute under this
9 section, the mediator must issue a certificate stating the following:
10 (a) the names of the parties;
11 (b) the nature of the dispute;
12 (c) whether the parties attended the mediation;
13 (d) that the mediation has finished;
14 (e) that the dispute has not been resolved.
- 15 (5) The mediator must give a copy of the certificate to:
16 (a) the scheme adviser; and
17 (b) each of the parties to the dispute.

18 **@120 Costs of mediation**

- 19 (1) The parties are equally liable for the costs of mediation under this
20 Division unless they agree otherwise.
- 21 (2) The parties must pay their own costs of attending the mediation.
- 22 (3) The costs of mediation under this Division under subsection (1)
23 include the following:
24 (a) the cost of the mediator;
25 (b) the cost of any additional input (including from technical
26 experts) agreed by both parties to be necessary to conduct the
27 mediation.

EXPOSURE DRAFT

Motor vehicle service and repair information sharing scheme **Schedule 1**
Main amendments **Part 1**

1 **Division 6—Motor vehicle service and repair information**
2 **scheme adviser**

3 **@125 Scheme adviser—establishment and appointment**

- 4 (1) There is to be a motor vehicle service and repair information
5 scheme adviser for the purposes of this Part.
- 6 (2) The Minister may, by instrument, appoint a person to be the
7 scheme adviser.
- 8 (3) The scheme adviser is not entitled to be paid any remuneration or
9 allowances.

10 **@130 Scheme adviser—functions**

- 11 (1) The scheme adviser has the following functions:
- 12 (a) to nominate mediators or technical experts for the purposes
13 of Division 5 (dispute resolution);
- 14 (b) to report to the Minister:
- 15 (i) on the basis of any advice obtained from technical
16 experts—about whether or not particular information is,
17 or should be, scheme information; and
- 18 (ii) about any other matter relevant to the operation of this
19 Part;
- 20 (c) to report to the Commission about any systemic regulatory or
21 enforcement issues relating to the operation of this Part;
- 22 (d) to provide general advice in relation to the application of this
23 Part, but excluding any information obtained in confidence;
- 24 (e) to publish on the scheme adviser’s website annual reports
25 about:
- 26 (i) the number and type of inquiries and disputes relating to
27 the operation of this Part over the period of a financial
28 year;
- 29 (ii) the number and type of disputes for which a mediator
30 has been appointed over that period;

EXPOSURE DRAFT

Schedule 1 Motor vehicle service and repair information sharing scheme

Part 1 Main amendments

- 1 (iii) resolution rates for disputes for which a mediator has
2 been appointed over that period;
- 3 (iv) other relevant matters affecting the operation of this Part
4 over the period, including any such matter directed by
5 the Minister in writing;
- 6 (f) to provide information online to data providers, Australian
7 repairers and scheme RTOs about the availability of scheme
8 information and dispute resolution under this Part, but
9 excluding any information obtained in confidence.
- 10 (2) Information about the terms and conditions of a contract on which
11 scheme information is supplied under this Part that is notified to
12 the scheme adviser under subsection @50(3) is taken not to be
13 information obtained in confidence, except to the extent that it
14 identifies, or enables identification of, the parties to the contract.
- 15 (3) The scheme adviser has all the powers necessary or convenient for
16 the performance of the functions of that office.
- 17 (4) Section 34C of the *Acts Interpretation Act 1901* does not apply in
18 relation to an annual report mentioned in paragraph (1)(e).
- 19 Note: Section 34C of the *Acts Interpretation Act 1901* would require such
20 periodic reports to be given to the Minister and tabled in Parliament.

EXPOSURE DRAFT

Motor vehicle service and repair information sharing scheme **Schedule 1**
Main amendments **Part 1**

1 **Division 7—Miscellaneous**

2 **@135 Civil penalty provisions**

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

- 7 (a) a subsection;
8 (b) a section that is not divided into subsections.

9 **@140 Infringement notices**

- 10 (1) Division 2A of Part IVB applies in relation to an alleged
11 contravention of a civil penalty provision mentioned in an item in
12 the table in subsection (2) in the same way in which it applies in
13 relation to an alleged contravention of a civil penalty provision of
14 an industry code (within the meaning of that Part).
- 15 (2) For the purposes of the application of Division 2A of Part IVB
16 under subsection (1), the penalty to be specified in an infringement
17 notice in relation to an alleged contravention of a provision
18 mentioned in an item of the following table must be a penalty equal
19 to the following:
20

Penalties to be specified in infringement notices issued under this Part

Item	For an alleged contraven tion 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

EXPOSURE DRAFT

Schedule 1 Motor vehicle service and repair information sharing scheme

Part 1 Main amendments

Penalties to be specified in infringement notices issued under this Part

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

1 **@145 Concurrent operation of State and Territory laws**

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

EXPOSURE DRAFT

Motor vehicle service and repair information sharing scheme **Schedule 1**
Main amendments **Part 1**

1 **@150 Acquisition of property**

2 *Scope*

- 3 (1) This section applies to any of the following provisions:
4 (a) a provision of Division 3;
5 (b) any other provision of this Act, to the extent to which the
6 provision relates to Division 3.

7 *Effect of provision*

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

12 **@155 Scheme rules**

- 13 (1) The Minister may, by legislative instrument, make rules
14 prescribing matters:
15 (a) required or permitted by this Part to be prescribed by the
16 rules; or
17 (b) necessary or convenient to be prescribed for carrying out or
18 giving effect to this Part.
- 19 (2) To avoid doubt, the rules may not do the following:
20 (a) create an offence or civil penalty;
21 (b) provide powers of:
22 (i) arrest or detention; or
23 (ii) entry, search or seizure;
24 (c) impose a tax;
25 (d) set an amount to be appropriated from the Consolidated
26 Revenue Fund under an appropriation in this Act;
27 (e) directly amend the text of this Act;
28 (f) subject to section @65, authorise or require the disclosure of
29 sensitive information (within the meaning of the *Privacy Act*
30 *1988*).

EXPOSURE DRAFT

Schedule 1 Motor vehicle service and repair information sharing scheme
Part 2 Other amendments

1 **Part 2—Other amendments**

2 *Competition and Consumer Act 2010*

3 **2 Subsection 4(1)**

4 Insert:

5 *Australian repairer*: see section @15.

6 *data provider*: see section @30.

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

9 *initiating party*: see section @90.

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

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

13 *responding party*: see section @90.

14 *RTO course*: see section @20.

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

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

17 *safety information*: see section @35.

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

20 *scheme information*: see section @25.

21 *scheme offer*: see section @45.

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

23 *scheme RTO*: see section @20.

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

EXPOSURE DRAFT

Motor vehicle service and repair information sharing scheme **Schedule 1**
Other amendments **Part 2**

1 *scheme rules* means rules made by the Minister under section
2 @155.

3 *scheme vehicle*: see section @10.

4 *security information*: see section @35.

5 **3 Section 4M**

6 Before “This Act”, insert “(1)”.

7 **4 At the end of section 4M**

8 Add:

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

10 **5 Before paragraph 5(1)(b)**

11 Insert:

12 (ab) Part IVE;

13 **6 Paragraph 5(1)(f)**

14 Before “(b)”, insert “(ab)”.

15 **7 Subsection 5(2)**

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

18 **8 Subsection 5(2)**

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

20 **9 Paragraph 29(1A)(a)**

21 Before “VII”, insert “IVE”.

22 **10 Subsection 75B(1)**

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

24 **11 After subparagraph 76(1)(a)(ib)**

25 Insert:

26 (ic) a provision of Part IVE;

EXPOSURE DRAFT

Schedule 1 Motor vehicle service and repair information sharing scheme

Part 2 Other amendments

1 **12 After paragraph 76(1A)(cb)**

2 Insert:

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

7 **13 After paragraph 76(1B)(aab)**

8 Insert:

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

13 **14 After subparagraph 80(1)(a)(iib)**

14 Insert:

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

16 **15 Paragraph 82(1)(a)**

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

18 **16 Subparagraph 83(1)(b)(i)**

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

20 **17 Paragraphs 84(1)(b) and (3)(b)**

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

22 **18 Subsections 86(1A) and (2)**

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

24 **19 Paragraph 86A(1)(b)**

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

26 **20 Paragraphs 86C(2)(a) and (b)**

27 After “or 60K”, insert “or Part IVE”.

EXPOSURE DRAFT

Motor vehicle service and repair information sharing scheme **Schedule 1**
Other amendments **Part 2**

1 **21 Subsection 86C(4) (paragraph (a) of the definition of**
2 ***contravening conduct*)**

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

4 **22 Paragraph 86E(1)(a)**

5 After “Part IV”, insert “or IVE”.

6 **23 Subsection 87(1)**

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

8 **24 Paragraphs 87(1A)(a) and (b)**

9 After “Part IVBA”, insert “or IVE”.

10 **25 Subsection 87(1C)**

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

12 **26 Subsection 155AAA(21) (paragraph (a) of the definition of**
13 ***core statutory provision*)**

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

15 ***Copyright Act 1968***

16 **27 Subparagraph 113P(1)(b)(iii)**

17 Omit “and”.

18 **28 At the end of paragraph 113P(1)(b)**

19 Add:

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

EXPOSURE DRAFT

Schedule 1 Motor vehicle service and repair information sharing scheme

Part 3 Amendments commencing later

1 **Part 3—Amendments commencing later**

2 *Competition and Consumer Act 2010*

3 **29 Section @10 (definition of *scheme vehicle*, paragraphs (a)**
4 **and (b))**

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