

EXPOSURE DRAFT



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Competition and Consumer (Motor Vehicle Service and Repair Information Sharing Scheme) Rules 2021

I, Michael Sukkar, Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing, make the following rules.

Dated 2021

Michael Sukkar [**DRAFT ONLY—NOT FOR SIGNATURE**]
Assistant Treasurer, Minister for Housing and Minister for Homelessness, Social and Community Housing

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Preliminary **Part 1**

Section 1

Part 1—Preliminary

1 Name

This instrument is the *Competition and Consumer (Motor Vehicle Service and Repair Information Sharing Scheme) Rules 2021*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2022.	1 July 2022

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under section 57GE of the *Competition and Consumer Act 2010*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) scheme information;
- (b) scheme vehicle.

In this instrument:

ACIC means the agency established by the *Australian Crime Commission Act 2002* that is known as the Australian Criminal Intelligence Commission.

Act means the *Competition and Consumer Act 2010*.

motor vehicle component includes:

- (a) a vehicle identification number; and
- (b) a number plate of a motor vehicle.

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Part 1 Preliminary

Section 4

national police check means a criminal records check that is:

- (a) a national police check undertaken by the Australian Federal Police; or
- (b) a nationally coordinated criminal history check provided by the ACIC.

national police check report means:

- (a) a National Police Certificate issued by the Australian Federal Police; or
- (b) a nationally coordinated criminal history check results report issued by the ACIC or an accredited body (within the meaning of the *Australian Crime Commission Act 2002*).

repairer licence, of an individual, means a licence or registration that:

- (a) authorises the individual:
 - (i) to diagnose, repair, service, modify or dismantle a scheme vehicle; or
 - (ii) to operate a business that diagnoses, repairs, services, modifies or dismantles a scheme vehicle; and
- (b) was issued or renewed under a law of a State or Territory requiring:
 - (i) the individual's fitness to hold the licence or registration to be assessed; and
 - (ii) the assessment to take into account a recent national police check report about the individual.

Part 2—Safety and security information

5 Meaning of *safety information*

Kind of information relating to a system that is safety information for a scheme vehicle

- (1) For the purposes of subsection 57BF(2) of the Act, the kind of information prescribed for a system covered by that subsection is all scheme information relating to that system.

Note: The systems covered by subsection 57BF(2) of the Act are the hydrogen system, the high voltage system, the hybrid system, the electric propulsion system and any other prescribed system (see subsection (2) of this section).

Additional prescribed systems

- (2) For the purposes of paragraph 57BF(2)(e) of the Act, each system connected to any of the following systems is prescribed:
 - (a) the hydrogen system;
 - (b) the high voltage system;
 - (c) the hybrid system;
 - (d) the electric propulsion system.

6 Meaning of *security information*

For the purposes of subsection 57BF(3) of the Act, the kind of information prescribed for the mechanical and electrical security system installed in a scheme vehicle is all scheme information:

- (a) that relates to the security of the vehicle (including the locking and immobilising of the vehicle); and
- (b) that is either or both of the following:
 - (i) unique to the vehicle;
 - (ii) only usable for a limited period of time.

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Part 3 Information management

Section 7

Part 3—Information management

7 Prescribed safety and security criteria for an individual to be a fit and proper person

- (1) For the purposes of subsection 57DB(4) of the Act, the following criteria are prescribed for an individual to be a fit and proper person to access and use safety and security information:
 - (a) the individual's relationship to the Australian repairer or scheme RTO (as the case may be) is appropriate for the purposes of ensuring that the safety and security information is solely used for the applicable purpose mentioned in paragraph 57DB(2)(a) of the Act;
 - (b) if the information to be supplied is or includes safety information—the criteria in subsection (2);
 - (c) if the information to be supplied is or includes security information—the criteria in subsection (3).

Safety information criteria

- (2) The criteria for accessing and using safety information are the following:
 - (a) if the information is or includes safety information related to the hydrogen system, or to a system connected to the hydrogen system, installed in a scheme vehicle—the individual has successfully completed training that:
 - (i) teaches competency in safely working on a scheme vehicle of that kind with that hydrogen system installed; and
 - (ii) is provided by, or on behalf of, a manufacturer of that kind of scheme vehicle or that system;
 - (b) if the information is or includes safety information related to the high voltage system, hybrid system or electric propulsion system, or to a system connected to one of those systems, installed in a scheme vehicle—the individual has successfully completed training that:
 - (i) teaches competency in safely depowering, isolating and re-initialising a high voltage battery installed in a scheme vehicle; and
 - (ii) is provided by a scheme RTO or provided by, or on behalf of, a manufacturer of one of those systems or a scheme vehicle in which one of those systems is installed.

Security information criteria

- (3) The criteria for accessing and using security information are either:
 - (a) the individual:
 - (i) has a national police check report about the individual that is dated no earlier than 2 years before the information is requested and that does not show a conviction of the individual for an offence covered by subsection (4); and

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- (ii) has declared in writing that the individual has not been convicted of an offence since the date of the report; or
- (b) the individual:
 - (i) holds a repairer licence that was issued or renewed no earlier than 2 years before the information is requested; and
 - (ii) has declared in writing that the individual has not been convicted of an offence since the date of the national police check report about the individual that was taken into account when the repairer licence was issued or renewed (as the case may be).

Note: If the individual has been convicted of an offence since the date of the relevant national police check report, the individual will not be able to give the declaration required by subparagraph (a)(ii) or (b)(ii) of this subsection. If the individual does not give one of those declarations, a new national police check about the individual may be sought, see subsections 9(5) and (6).

If the individual has not been convicted of an offence since the date of the new national police check report about the individual, the individual may satisfy the criterion in paragraph (a) of this subsection by giving the declaration in subparagraph (a)(ii). The individual will not be able to satisfy the criterion in paragraph (b) in this case.

Relevant offences for security information criteria

- (4) For the purposes of subparagraph (3)(a)(i), a conviction of the individual for an offence is covered by this subsection if:
 - (a) the offence (however described) involved theft, and a custodial sentence was imposed; or
 - (b) the offence (however described) involved theft of a motor vehicle, or of a component of a motor vehicle, and no custodial sentence was imposed; or
 - (c) the offence (however described) is not covered by paragraph (a) or (b) of this subsection but involved:
 - (i) deception, fraud or dishonesty; or
 - (ii) tampering with a motor vehicle or a component of a motor vehicle; whether or not a custodial sentence was imposed.

Spent convictions scheme not affected

- (5) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

8 Personal information relevant to working out whether an individual is a fit and proper person

For the purposes of paragraph 57DB(6)(e) of the Act, information relating to a repairer licence of an individual is prescribed.

Note: Personal information about an individual covered by subsection 57DB(6) of the Act may be used to satisfy the requirement that the individual is a fit and proper person to access and use safety and security information.

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Part 3 Information management

Section 9

9 Circumstances in which personal information may be sought

- (1) For the purposes of subsection 57DB(7) of the Act, this section sets out circumstances in which personal information about an individual covered by subsection 57DB(6) of the Act may be sought. Personal information of that kind may not be sought otherwise than as provided for in this section.

Note 1: The entity seeking personal information may not be the data provider. For example, the data provider may provide scheme information for use by the individual through a third party.

Note 2: The collection, use and disclosure of the personal information covered by this section must also be in accordance with the *Privacy Act 1988*. The data provider must also comply with sections 57DC to 57DE (about use, disclosure, storage etc.) of the Act if the information is sensitive information.

Name, residential address and Australian repairer/RTO relationship

- (2) The following personal information about an individual may be sought in the form of a written declaration each time safety and security information is requested for use by the individual:
- (a) the individual's name and residential address;
 - (b) information about the individual's relationship to the Australian repairer or scheme RTO (as the case may be).

Qualifications

- (3) The qualifications of an individual referred to in paragraph 7(2)(a) or (b) (about safety training) may be sought each time safety information is requested for use by the individual. This information may be sought in the form of a written declaration.
- (4) Evidence of the qualifications may be sought if evidence of the qualifications has not previously been provided to the entity from which the information is sought or a representative of the entity.

Criminal records check

- (5) A criminal records check about an individual may be sought when security information is requested for use by the individual if the check is a national police check.
- (6) However, a national police check about the individual may not be sought if:
- (a) the entity from whom the information is sought or a representative of the entity:
 - (i) is, or has previously been, provided with a national police check report about the individual dated no earlier than 2 years before the request; or
 - (ii) is, or has previously been, provided with evidence that the individual holds a repairer licence that was issued or renewed no earlier than 2 years before the request; and

- (b) the entity or representative is provided with a written declaration made by the individual for the purposes of satisfying the applicable paragraph in subsection 7(3).

Repairer licence

- (7) Details of a repairer licence held by an individual may be sought each time security information is requested for use by the individual. The details may be sought in the form of a written declaration.
- (8) Evidence of the repairer licence may be sought if evidence of the repairer licence has not previously been provided to the entity from which the information is sought or a representative of the entity.

Giving of personal information

- (9) This section does not limit the circumstances in which personal information covered by subsection 57DB(6) of the Act may be given.

Note: The collection, use and disclosure of personal information covered by that subsection must be in accordance with the *Privacy Act 1988*.

10 Circumstances in which other information may be sought

The following information may be sought in the form of a written declaration each time safety and security information is requested for use by an individual:

- (a) where the information is to be used for the purposes of an Australian repairer—the name and ABN of the repairer;
- (b) where the information is to be used for the purposes of providing an RTO course—the name and ABN of the RTO.