



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

No. 54, 2021

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

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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[Assented to 24 June 2021]

The Parliament of Australia enacts:

*No. 54, 2021 Competition and Consumer Amendment (Motor Vehicle Service and
Repair Information Sharing Scheme) Act 2021 1*

1 Short title

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

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 June 2021
2. Schedule 1	The later of: (a) 1 July 2022; and (b) the day after this Act receives the Royal Assent.	1 July 2022 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Motor vehicle service and repair information sharing scheme

Part 1—Main amendments

Competition and Consumer Act 2010

1 After Part IVD

Insert:

Part IVE—Motor vehicle service and repair information sharing scheme

Division 1—Objects of Part and simplified outline

57AA Objects of Part

The objects of this Part are to:

- (a) promote competition between Australian repairers of passenger and light goods motor vehicles and establish a fair playing field by mandating access, on fair and reasonable commercial terms, to information used to diagnose, repair, service, modify or dismantle scheme vehicles; and

Note: These vehicles are defined as *scheme vehicles* (see section 57BA).

- (b) enable consumers to have scheme vehicles diagnosed, repaired, serviced, modified or dismantled safely and effectively by an Australian repairer of their choice; and
 - (c) encourage the provision of accessible and affordable information about scheme vehicles to Australian repairers, and to registered training organisations (for training purposes); and
 - (d) protect safety and security information about scheme vehicles to ensure the safety and security of consumers, information users and the general public; and
 - (e) provide for the resolution of disputes about the application of this Part.
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57AB Simplified outline

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

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

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

To protect the safety and security of vehicle owners, individuals working for an Australian repairer or scheme RTO who access scheme information relating to vehicle safety and security must satisfy certain criteria relating to whether they are fit and proper persons to have access to such information.

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

Provision is made for resolving disputes about the application of the Part.

Provision is made for a scheme adviser. The scheme adviser’s functions include facilitating mediation of disputes between data providers and Australian repairers or scheme RTOs, and providing information about the operation of the scheme.

Division 2—Key concepts

57BA Meaning of *scheme vehicle*

A *scheme vehicle* is:

- (a) a light goods vehicle, within the meaning of a national road vehicle standard made under the *Road Vehicle Standards Act 2018* that specifies definitions and vehicle categories for the purposes of that Act, that was manufactured on or after:
 - (i) 1 January 2002; or
 - (ii) a later date prescribed by the scheme rules; or
- (b) a passenger vehicle (other than an omnibus), within the meaning of a national road vehicle standard made under the *Road Vehicle Standards Act 2018* that specifies definitions and vehicle categories for the purposes of that Act, that was manufactured on or after:
 - (i) 1 January 2002; or
 - (ii) a later date prescribed by the scheme rules; or
- (c) another kind of vehicle prescribed by the scheme rules.

57BB Meaning of *Australian repairer*

A person is an *Australian repairer* to the extent that the person carries on or actively seeks to carry on, in Australia, a business that involves diagnosing faults with, servicing, repairing, modifying or dismantling scheme vehicles.

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

57BC Meaning of *scheme RTO* and *RTO course*

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

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

57BD Meaning of *scheme information*

Main definition

- (1) ***Scheme information*** is information in relation to scheme vehicles prepared by or for manufacturers of scheme vehicles (or their related bodies corporate) for use in diagnosing faults with, servicing or repairing those vehicles, as supplied to the market.

Exceptions

- (2) However, ***scheme information*** does not include any of the following:
- (a) a trade secret;
 - (b) the intellectual property of a person, other than intellectual property protected under the *Copyright Act 1968*;
 - (c) a source code version of a program;
 - (d) data automatically generated and transmitted by a scheme vehicle, while it is being driven, regarding driver or vehicle performance;
 - (e) global positioning system data;
 - (f) information supplied, or to be supplied, only to a restricted number of Australian repairers for the purposes of developing solutions to emerging or unexpected faults with a scheme vehicle;
 - (g) information that is commercially sensitive about an agreement between a data provider and another person;
 - (h) information relating to an automated driving system of a scheme vehicle;
 - (i) any other information prescribed by the scheme rules.

Note: Scheme information may include safety and security information (see the definition of ***safety and security information*** in section 57BF). However, for restrictions on the supply of safety and security information to Australian repairers and scheme RTOs: see section 57DB.

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

Note: The Report, as amended to 2021, could in 2021 be viewed on SAE International's website (<https://www.sae.org>).

57BE Meaning of *data provider*

A *data provider* is:

- (a) a corporation carrying on a business that includes supplying, to any extent and whether directly or indirectly, scheme information to one or more Australian repairers or scheme RTOs; or
- (b) any person who carries on such a business in the course of, or in relation to, trade or commerce.

57BF Meaning of *safety and security information*

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

- (a) safety information;
- (b) security information.

Note: Restrictions apply in relation to the supply of scheme information that is safety and security information: see section 57DB.

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

- (a) the hydrogen system;
- (b) the high voltage system;
- (c) the hybrid system;
- (d) the electric propulsion system;
- (e) another system prescribed by the scheme rules for the purposes of this paragraph.

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

- (a) the vehicle's mechanical and electrical security system;
- (b) another system prescribed by the scheme rules for the purposes of this paragraph.

57BG Supply of scheme information between related bodies corporate

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

Division 3—Supply of scheme information

57CA Scheme information—offer to supply to Australian repairers and scheme RTOs

Scope

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

Main obligation

- (2) The data provider must make an offer (a *scheme offer*) to supply, on terms and conditions that comply with section 57CC, the same scheme information in relation to that kind, or those kinds, of vehicle to all Australian repairers and scheme RTOs:
- (a) in the same form in which it is supplied or offered for supply under subsection (1); or
 - (b) if supply in that form is not practicable or accessible—in an electronic form that is reasonably accessible to all Australian repairers and scheme RTOs.

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

Note 2: Restrictions apply in relation to the packaging and supply of scheme information that is safety and security information: see section 57DB.

Choice of supply period in scheme offer

- (3) If the form in which scheme information is supplied allows for variability in the period for which the information is supplied, the

data provider must make the scheme offer on terms and conditions that include provision for the supply of the scheme information:

- (a) for any period nominated by an Australian repairer or scheme RTO; or
- (b) by day, by month and by year.

Civil penalty:

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

Scheme offer not to exceed fair market price

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

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

- (5) For the purposes of subsection (4), this subsection covers the following matters:
 - (a) the price charged to other Australian repairers and scheme RTOs for supplying scheme information (whether under this Part or otherwise) in relation to a scheme vehicle:
 - (i) of that particular make, model and year; or
 - (ii) if pricing is not available for information in relation to a scheme vehicle of that particular make, model and year—pricing for information in relation to a scheme vehicle of a similar make, model and year;
 - (b) the terms and conditions on which such scheme information is offered for supply to Australian repairers and scheme RTOs (whether under this Part or otherwise), including as to the permitted use of the information, the means of access to the information, the number of permitted users, and the frequency or duration of use of the information;
 - (c) the anticipated demand by Australian repairers and scheme RTOs for supply of the scheme information on the basis of the scheme offer;

- (d) the reasonable recovery of costs incurred in creating, producing and providing the scheme information for supply on the basis of the scheme offer;
- (e) the price charged for the supply of information similar to scheme information in overseas markets;
- (f) the amount (if any) payable by the data provider to any person who has a proprietary interest in the scheme information.

Note: A data provider must pay compensation to a person whose copyright is infringed by a supply of scheme information: see subsection 57CD(3).

Publication of scheme offer

- (6) The data provider must publish the scheme offer:
 - (a) in English; and
 - (b) on the internet; and
 - (c) in a form that is accessible free of charge.

Civil penalty:

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

- (7) The data provider must:
 - (a) as soon as reasonably practicable after it publishes a scheme offer under subsection (6)—provide a copy of the scheme offer, in writing, to the scheme adviser; and
 - (b) notify the scheme adviser, in writing, as soon as reasonably practicable after any change to the scheme offer.

Civil penalty:

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

57CB Scheme information—supply on request by Australian repairers or scheme RTOs

Scope

- (1) This section applies if:
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- (a) a data provider makes, or is required to make, a scheme offer to supply scheme information in relation to a particular make, model and year of scheme vehicle; and
- (b) either:
 - (i) an Australian repairer has a need to access the scheme information for that particular make, model and year of scheme vehicle in carrying on the Australian repairer's business; or
 - (ii) a scheme RTO has a need to access the scheme information to provide an RTO course; and
- (c) the Australian repairer or scheme RTO requests, in writing, the data provider to supply the scheme information about that particular make, model and year of scheme vehicle; and
- (d) the Australian repairer or scheme RTO pays, or offers to pay, the scheme price, or another agreed price, for the scheme information.

Note: Restrictions apply in relation to the supply of scheme information that is safety and security information: see section 57DB.

Supply of scheme information

- (2) The data provider must supply the scheme information to the Australian repairer or scheme RTO:
 - (a) in accordance with terms and conditions that comply with section 57CC; and
 - (b) within the period covered by subsection (3).

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

- (3) For the purposes of subsection (2), the period covered by this subsection:
 - (a) starts when (at the *payment or offer time*) the Australian repairer or scheme RTO pays, or offers to pay, the scheme price, or another agreed price, for the scheme information; and
 - (b) in the circumstances described in column 1 of an item of the following table, ends at the time described in column 2 of that item.

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

Period for supply of scheme information		
Item	Column 1	Column 2
	If ...	the period ends ...
1	<p>(a) either:</p> <p>(i) the data provider has previously supplied the scheme information in the form requested to the Australian repairer or scheme RTO, or to any other person; or</p> <p>(ii) the scheme information is readily accessible by the data provider and can be provided in the form requested; and</p> <p>(b) item 2 of this table does not apply</p>	immediately after the payment or offer time.
2	<p>paragraph (a) of item 1 of this table applies to the scheme information, but:</p> <p>(a) the scheme information is, or includes, safety and security information; and</p> <p>(b) the data provider has not been given the information required to determine whether or not the scheme information may be supplied under section 57DB; and</p> <p>(c) as a result, the scheme information cannot be provided immediately after the payment or offer time</p>	at the end of 2 business days after the day on which the Australian repairer or scheme RTO provides the required information to the data provider.
3	items 1 and 2 of this table do not apply	<p>at the later of the following times:</p> <p>(a) at a time agreed by the data provider and the Australian repairer or scheme RTO;</p> <p>(b) at the end of 5 business days after the payment or offer time.</p>

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

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

Civil penalty:

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

57CC Scheme information—terms and conditions of supply and use

Terms and conditions of supply generally

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

Prohibited terms or conditions

- (2) However, a data provider must not enter into a contract for the supply of scheme information under this Part that contains any of the following terms or conditions:
- (a) a term or condition requiring an Australian repairer or scheme RTO to acquire one or more services or products from the data provider or any other person;
- (b) a term or condition allowing an increase, after the contract is made, in the price for the supply of the scheme information under the contract;
- (c) a term or condition prohibited by the scheme rules.

Civil penalty:

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

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

57CD Scheme information—interaction of supply obligations and other rights and obligations

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

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

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

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

Compensation for third party copyright holders

- (2) Subsection (3) applies if:
- (a) a data provider supplies scheme information to an Australian repairer or scheme RTO under this Part; and
 - (b) a person (the ***third party claimant***) holds copyright in relation to some or all of the scheme information that is the subject of the supply; and
 - (c) the supply constitutes or results in an infringement of the copyright of the third party claimant; and

- (d) apart from this section, the infringement would constitute an acquisition of property otherwise than on just terms (within the meaning of paragraph 51(xxxi) of the Constitution).
- (3) The data provider must pay to the third party claimant an amount that represents compensation on just terms (within the meaning of paragraph (xxxix) of the Constitution) for the supply of the scheme information to the Australian repairer or scheme RTO.
- (4) An amount payable by the data provider under subsection (3):
- (a) is a debt due by the data provider to the third party claimant; and
 - (b) may be recovered by action in a court of competent jurisdiction.
- (5) In a civil action by a third party claimant against a data provider for infringement of copyright in relation to scheme information supplied, or offered for supply, under this Part, it is a defence if the data provider proves that:
- (a) the data provider was required to supply the scheme information, or offer to supply the scheme information, under this Part; and
 - (b) the data provider has paid to the third party claimant the compensation required to be paid under subsection (3).

Division 4—Information management

57DA Safety and security information—packaging

A data provider must, in a scheme offer, separate safety and security information from other scheme information to the extent it is reasonably practicable to do so.

Civil penalty:

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

57DB Safety and security information—supply to Australian repairers and scheme RTOs

Supply of safety and security information—restrictions on supply

- (1) A data provider must not supply scheme information under this Part that is, or includes, safety and security information for a scheme vehicle of a particular make, model and year unless:
- (a) there are reasonable grounds, based on information provided by the Australian repairer or scheme RTO, to believe that the requirements covered by subsection (2) are satisfied in relation to the scheme information for that vehicle; and
 - (b) the Australian repairer or scheme RTO has provided the required declaration, or declarations, covered by subsection (3) in relation to that vehicle.

Civil penalty:

- (a) for a body corporate—600 penalty units; and
 - (b) for a person other than a body corporate—120 penalty units.
- (2) The requirements covered by this subsection are that:
- (a) the safety and security information is solely for use by an individual or individuals:
 - (i) in the case of an Australian repairer—for the purposes of the Australian repairer’s business; or
 - (ii) in the case of a scheme RTO—for the purposes of providing an RTO course; and
 - (b) based only on personal information about the individual covered by subsection (6), the individual is a fit and proper person to access and use the safety and security information.
- (3) The required declarations covered by this subsection are that:
- (a) if security information is to be supplied—a declaration:
 - (i) confirming that the Australian repairer or scheme RTO is authorised by the owner of the scheme vehicle to access and use the security information for that vehicle; and
 - (ii) specifying the vehicle identification number of the vehicle; and

- (b) in any case, if the scheme rules prescribe a standard in relation to premises at which work is to be carried out on scheme vehicles of that particular make, model and year—a declaration that the premises used by the Australian repairer or scheme RTO comply with that standard.

Fit and proper persons

- (4) An individual is a ***fit and proper person*** to access and use safety and security information if the individual meets the criteria (the ***prescribed safety and security criteria***) prescribed by the scheme rules.
- (5) For the purposes of subsection (4), different criteria may be prescribed in relation to each of the following:
- (a) safety information;
 - (b) security information.

Personal information

- (6) For the purposes of paragraph (2)(b), the following personal information about an individual is covered by this subsection:
- (a) the individual's name and residential address;
 - (b) information about the individual's relationship to the Australian repairer or scheme RTO (as the case may be);
 - (c) the individual's qualifications for using the safety and security information for the applicable purpose mentioned in paragraph (2)(a);
 - (d) a criminal records check about the individual;
 - (e) any other information (except sensitive information) prescribed by the scheme rules relevant to working out whether the individual is a fit and proper person to access and use the safety and security information.

Note: This section applies despite section 57CB (which deals with the supply of scheme information on request by an Australian repairer or scheme RTO).

- (7) The scheme rules may prescribe matters in relation to the circumstances in which personal information covered by subsection (6) may be sought or given.

57DC Safety and security information—use or disclosure of sensitive information

Scope

- (1) This section applies in relation to sensitive information if:
 - (a) the information is about an individual mentioned in paragraph 57DB(2)(a); and
 - (b) the information is obtained by a data provider for the purpose of determining whether the individual is a fit and proper person to access and use safety and security information; and
 - (c) the data provider is a small business operator within the meaning of the *Privacy Act 1988*; and
 - (d) that Act would not, apart from this section, apply to the data provider in relation to the information about the individual.

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

Application of Privacy Act 1988

- (2) Subject to this Division, the *Privacy Act 1988* applies in relation to the sensitive information as if the data provider were an organisation within the meaning of that Act.
- (3) The administration of this section is a privacy function for the purposes of the *Australian Information Commissioner Act 2010*.

Note: See the definition of **privacy function** in section 9 of the *Australian Information Commissioner Act 2010*.

57DD Safety and security information—storage of, and access to, sensitive information

Scope

- (1) This section applies in relation to sensitive information if:
 - (a) the information is about an individual mentioned in paragraph 57DB(2)(a); and
 - (b) the information is obtained by a data provider for the purposes of determining whether the individual is a fit and
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proper person to access and use safety and security information.

Sensitive information must be stored in Australia

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

Civil penalty:

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

Preventing access to sensitive information outside Australia

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

Civil penalty:

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

57DE Security information—records of access

Scope

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

Note: For restrictions on the supply of such information, see section 57DB.

Record-keeping requirement

- (2) The data provider must keep a record of the supply of the security information for a period of 5 years after the day it is supplied, including the following:
- (a) the time and date of supply;
- (b) the name and contact details of the Australian repairer or scheme RTO;

- (c) any personal information used by the data provider to determine whether an individual is a fit and proper person to access and use the security information;
- (d) the vehicle identification number of each vehicle for which the security information is supplied;
- (e) details of the security information supplied.

Note: For restrictions on the use and disclosure of the information mentioned in paragraph (c), see sections 57DB and 57DC.

Civil penalty:

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

Division 5—Dispute resolution

57EA Scope of Division

This Division applies to a dispute about the operation of this Part.

57EB Resolving disputes

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

57EC Right to bring proceedings unaffected

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

57ED Attempt to resolve dispute before mediation

- (1) If the initiating party wishes to initiate action to resolve the dispute in accordance with this Division, the initiating party must give written notice to the responding party of the following:
 - (a) the nature of the dispute;
 - (b) the matter that is the subject of the dispute;
 - (c) the way in which that matter relates to the application of this Part;

- (d) what outcome the initiating party wants;
 - (e) what action the initiating party thinks will resolve the dispute.
- (2) The parties must then try to resolve the dispute.
- Note: For when a party is taken to have tried to resolve a dispute, see section 57EE.
- (3) If the parties cannot agree how to resolve the dispute within 2 business days, either party may refer the matter to a mediator for mediation under this Division.
- (4) If the parties cannot agree on who should be the mediator, either party may request the scheme adviser to nominate a mediator.
- (5) Within 2 business days after a request is made under subsection (4), the scheme adviser must nominate a mediator for the dispute.

57EE When is a party taken to have tried to resolve a dispute?

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

- (a) attending and participating in meetings at reasonable times;
- (b) responding to communications to the party within a reasonable time;
- (c) if the party has agreed to use a technical expert in resolving the dispute—considering the opinions of the technical expert;
- (d) if a mediation process is being used to try to resolve the dispute—both:
 - (i) making the party’s intention clear, at the beginning of the process, as to what the party is trying to achieve through the process; and
 - (ii) observing any obligations relating to confidentiality that apply during or after the process.

57EF Mediation

- (1) Subject to this section, a mediator appointed by the parties to a dispute may decide the time and place for mediation.
- (2) The mediator may, with the agreement of the parties to the dispute, appoint a technical expert to assist in the resolution of the dispute.
- (3) Unless the mediation is conducted using the technology referred to in subsection (4), the mediation must be conducted in Australia.
- (4) The mediation may be conducted using any technology that allows a person to participate in the mediation without being physically present at the mediation.
- (5) The parties must attend the mediation.

Civil penalty:

- (a) for a body corporate—600 penalty units; and
 - (b) for a person other than a body corporate—120 penalty units.
- (6) For the purposes of subsection (5), a party is taken to attend mediation in the following circumstances:
 - (a) the party is represented at the mediation by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party;
 - (b) the party, or the party's authorised representative mentioned in paragraph (a), participates in the mediation using the technology referred to in subsection (4).
 - (7) The parties must then try to resolve the dispute.

Note: For when a party is taken to have tried to resolve a dispute, see section 57EE.

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

57EG Termination of mediation

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

- (2) The mediator may terminate the mediation at any time unless satisfied that a resolution of the dispute is imminent.
- (3) However, if either party asks the mediator to terminate the mediation, the mediator must do so.
- (4) If the mediator terminates the mediation of a dispute under this section, the mediator must issue a certificate stating the following:
 - (a) the names of the parties;
 - (b) the nature of the dispute;
 - (c) whether the parties attended the mediation;
 - (d) that the mediation has finished;
 - (e) that the dispute has not been resolved.
- (5) The mediator must give a copy of the certificate to:
 - (a) the scheme adviser; and
 - (b) each of the parties to the dispute.

57EH Costs of mediation

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

Division 6—Motor vehicle service and repair information scheme adviser

57FA Scheme adviser—establishment and appointment

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

- (2) The Minister may, by instrument, appoint a person to be the scheme adviser.
- (3) The scheme adviser is not entitled to be paid any remuneration or allowances.

57FB Scheme adviser—functions

- (1) The scheme adviser has the following functions:
 - (a) to nominate mediators or technical experts for the purposes of Division 5 (dispute resolution);
 - (b) to report to the Minister at any time or by a time specified by the Minister:
 - (i) on scheme prices, the terms and conditions of scheme offers or the availability of scheme information; and
 - (ii) about whether or not, in the scheme adviser’s opinion, particular information is, or should be, scheme information; and
 - (iii) about any other matter relevant to the operation of this Part;
 - (c) to report to the Commission about any systemic regulatory or enforcement issues relating to the operation of this Part;
 - (d) to provide general advice in relation to the application of this Part, but excluding any information obtained in confidence;
 - (e) to publish on the scheme adviser’s website annual reports about:
 - (i) the number and type of inquiries and disputes relating to the operation of this Part over the period of a financial year;
 - (ii) the number and type of disputes for which a mediator has been appointed over that period;
 - (iii) resolution rates for disputes for which a mediator has been appointed over that period;
 - (iv) other relevant matters affecting the operation of this Part over the period, including any such matter directed by the Minister in writing;
 - (f) to provide information online to data providers, Australian repairers and scheme RTOs about the availability of scheme

information and dispute resolution under this Part, but excluding any information obtained in confidence.

- (2) Information about the terms and conditions of a contract on which scheme information is supplied under this Part that is notified to the scheme adviser under subsection 57CB(4) is taken not to be information obtained in confidence, except to the extent that it identifies, or enables identification of, the parties to the contract.
- (3) The scheme adviser has all the powers necessary or convenient for the performance of the functions of that office.
- (4) Section 34C of the *Acts Interpretation Act 1901* does not apply in relation to a report mentioned in this section.

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

Division 7—Miscellaneous

57GA Civil penalty provisions

A provision of this Part that is of one of the following kinds and sets out at its foot a pecuniary penalty indicated by the words “civil penalty” is a civil penalty provision for the purposes of this Part and paragraphs 76(1A)(cc) and (1B)(aac):

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

57GB Infringement notices

- (1) Division 2A of Part IVB applies in relation to an alleged contravention of a civil penalty provision mentioned in an item in the table in subsection (2) in the same way in which it applies in relation to an alleged contravention of a civil penalty provision of an industry code (within the meaning of that Part).
- (2) For the purposes of the application of Division 2A of Part IVB under subsection (1), the penalty to be specified in an infringement notice in relation to an alleged contravention of a provision mentioned in columns 1 and 2 of an item of the following table

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must be a penalty equal to the applicable penalty for the contravention mentioned in column 3 or 4 of that item.

Penalties to be specified in infringement notices issued under this Part				
Item	Column 1	Column 2	Column 3	Column 4
	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:	if the alleged contravention is by a person other than a body corporate—the number of penalty units must be:
1	subsection 57CA(3)	the choice of supply period in scheme offer	60	12
2	subsection 57CA(6)	publishing a scheme offer	60	12
3	subsection 57CA(7)	notifying the scheme adviser about scheme information offered	60	12
4	subsection 57CB(2)	failing to supply scheme information within the period covered by paragraph 57CB(2)(b)	600	120
5	subsection 57CB(4)	notifying the scheme adviser of terms and conditions of supply	60	12
6	subsection 57CC(2)	prohibited terms or conditions in contracts of supply	60	12
7	Section 57 DA	packaging of scheme information	60	12
8	subsection 57DB(1)	restrictions on supplying safety and security information	60	12
9	subsection 57DE(2)	requiring a data provider to keep records	60	12

Penalties to be specified in infringement notices issued under this Part				
Item	Column 1	Column 2	Column 3	Column 4
	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:	if the alleged contravention is by a person other than a body corporate—the number of penalty units must be:
10	subsection 57EF(5)	failing to attend mediation	60	12

57GC Concurrent operation of State and Territory laws

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

57GD Acquisition of property

Scope

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

Effect of provision

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

57GE Scheme rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Part to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.

- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act;
 - (f) subject to section 57DB, authorise or require the disclosure of sensitive information.

Part 2—Other amendments

Competition and Consumer Act 2010

2 Subsection 4(1)

Insert:

Australian repairer: see section 57BB.

data provider: see section 57BE.

fit and proper person, in relation to accessing and using safety and security information: see section 57DB.

initiating party: see section 57EB.

prescribed safety and security criteria: see section 57DB.

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

responding party: see section 57EB.

RTO course: see section 57BC.

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

safety and security information: see section 57BF.

safety information: see section 57BF.

scheme adviser means the motor vehicle service and repair information scheme adviser appointed under section 57FA.

scheme information: see section 57BD.

scheme offer: see section 57CA.

scheme price, for scheme information: see section 57CA.

scheme RTO: see section 57BC.

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

scheme rules means rules made by the Minister under section 57GE.

scheme vehicle: see section 57BA.

security information: see section 57BF.

sensitive information has the same meaning as in the *Privacy Act 1988*.

vehicle identification number, in relation to a scheme vehicle, means the number allocated to the vehicle in accordance with the national road vehicle standards as in force from time to time under the *Road Vehicle Standards Act 2018*.

3 Section 4M

Before “This Act”, insert “(1)”.

4 At the end of section 4M

Add:

(2) Paragraph (1)(b) does not apply for the purposes of section 57CD.

5 Before paragraph 5(1)(b)

Insert:

(ab) Part IVE;

6 Paragraph 5(1)(f)

Before “(b)”, insert “(ab),”.

7 Subsection 5(2)

Omit “sections 47 and 48 have by virtue of subsection (1), those sections”, substitute “sections 47 and 48, and Divisions 3 and 4 of Part IVE, have by virtue of subsection (1), those provisions”.

8 Paragraph 29(1A)(a)

Before “VII”, insert “IVE,”.

9 Subsection 75B(1)

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

10 After subparagraph 76(1)(a)(ib)

Insert:

(ic) a provision of Part IVE;

11 After paragraph 76(1A)(cb)

Insert:

(cc) for each act or omission to which this section applies that relates to a civil penalty provision of Part IVE described by section 57GA—the number of penalty units for a body corporate set out at the foot of the provision; and

12 After paragraph 76(1B)(aab)

Insert:

(aac) for each act or omission to which this section applies that relates to a civil penalty provision of Part IVE described by section 57GA—the number of penalty units for a person other than a body corporate set out at the foot of the provision; and

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

Insert:

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

14 Paragraph 82(1)(a)

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

15 Subparagraph 83(1)(b)(i)

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

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

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

17 Subsections 86(1A) and (2)

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

18 Paragraph 86A(1)(b)

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

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

After “or 60K”, insert “or Part IVE”.

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

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

21 Paragraph 86E(1)(a)

After “Part IV”, insert “or IVE”.

22 Subsection 87(1)

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

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

After “Part IVBA”, insert “or IVE”.

24 Subsection 87(1C)

After “Part IVBA”, insert “or IVE”.

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

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

Copyright Act 1968

26 Subparagraph 113P(1)(b)(iii)

Omit “and”, substitute “or”.

27 At the end of paragraph 113P(1)(b)

Add:

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

*[Minister's second reading speech made in—
House of Representatives on 24 March 2021
Senate on 15 June 2021]*

(41/21)

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Repair Information Sharing Scheme) Act 2021 33*