Law Council
OF AUSTRALIA

Business Law Section

Improving and expanding Australia's first Right to Repair law

The Treasury

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Executive summary

1. The Competition and Consumer Committee of the Business Law Section of the Law Council of Australia (the **Committee**) makes this submission to Treasury in response to its discussion paper on *Improving and Expanding Australia's First Right to Repair Law* (**Discussion Paper**).

2. The Committee is broadly supportive of the proposals to expand the scheme to agricultural machinery and to improve the existing scheme, but considers that numerous matters require careful design to ensure the reforms achieve their competition and consumer objectives without unintended consequences. The Committee's key positions are summarised below.

    (a) **Scope of agricultural machinery:** The Committee supports a targeted, evidence-based expansion of the definition of "scheme vehicle" to agricultural machinery and supports the exclusion of cross-sector vehicles that are not designed specifically to perform agricultural tasks. The Committee encourages Treasury to articulate the evidentiary threshold for the inclusion of machinery categories and to consider adopting the definitions in the Heavy Vehicle National Law (Proposal 1).

    (b) **Access to scheme information:** The Committee supports limiting access to appropriately qualified repairers, subject to declarations and licensing checks, but notes that this is narrower than the Australian Competition and Consumer Committee (**ACCC**)'s 2021 recommendations and encourages Treasury to consider whether the scheme's access arrangements adequately address owner repair of minor, non-critical faults (Proposal 2).

    (c) **Unauthorised modifications:** The Committee supports enabling data providers to impose terms and conditions limiting certain prescribed unauthorised modifications and to exclude separable information whose sole purpose is to enable such modifications, having regard to the risk profile of the modification, the extent to which the risk is addressed by other legislative frameworks, and the likely impact on competition (Proposal 3).

    (d) **Additional Scheme Adviser:** The Committee strongly supports the appointment of an additional Scheme Adviser with sector-specific agricultural expertise, appointed through a merit-based process, with a national presence, sufficient independence from regulatory bodies (including the ACCC), and the capabilities and resourcing necessary to perform the expanded functions contemplated by Proposals 13 and 14.

    (e) **Safety information:** The Committee supports Option 1 of Proposal 4 in preference to Option 2, but considers that any new offence prohibiting the unreasonable suspension of supply must be clearly and unambiguously framed—for example, through a statutory "whitelist" of circumstances in which a suspension would not be regarded as unreasonable (Proposal 4).

(f) **Intermediaries:** The Committee supports improving the accessibility and affordability of repair information through intermediaries but submits that the terms and conditions prescribed for the intermediary context should include robust intellectual property protections, confidentiality obligations, clear limitations on permitted uses and audit rights (Proposal 5).

(g) **Electronic logbooks:** The Committee recognises the potential benefits of access to electronic logbook information but considers that disclosure may give rise to privacy concerns and that the disclosure of any electronic logbook information should be subject to the consent of the relevant consumer (Proposal 6).

(h) **Scheme pricing and fair market value:** The Committee supports mandating that scheme offers be quoted in Australian dollars, while noting that this may transfer foreign-exchange risk to repairers, and considers Proposal 8 to be unnecessary as drafted or, if retained, in need of refinement so that overseas prices are excluded only where there is evidence they do not reflect fair market value (Proposals 7 and 8).

(i) **Access to security information:** The Committee supports reducing the frequency of security declarations to quarterly, subject to safeguards enabling data providers to require a fresh declaration where a technician's eligibility materially changes, and a positive obligation on repairers to notify data providers of any change in their eligibility (Proposal 12).

(j) **Reporting arrangements and additional vehicle classes:** The Committee supports replacing transaction-by-transaction post-supply notification with periodic reporting and immediate notification of system outages, subject to the adequate resourcing of the Scheme Adviser, and considers that any future expansion of scheme coverage to additional vehicle classes must remain evidence-based and not automatic or presumptive (Proposals 13 and 14).

(k) **Prohibited terms and conditions:** The Committee supports extending the prohibition on certain terms and conditions to scheme offers but cautions that the categories of prohibited terms must be clearly delineated so that the scheme does not invalidate terms that legitimately address safety, security, warranty or liability risks (Proposal 15).

3. The Committee's specific observations and recommendations in support of each of these points are set out in the submission below.

Submission

Introduction

4. The Committee welcomes the opportunity to comment on the Discussion Paper, as part of the consultation on expanding the Motor Vehicle Service and Repair Information Sharing scheme (**scheme**) to agricultural machinery, and making improvements to the existing scheme.

5. This submission addresses the proposals contained in Part A and Part B of the Discussion Paper. The comments in this submission have also been informed by the findings of the ACCC's *Agricultural Machinery Market Study* (**2021 Market Study**),[1] the Productivity Commission's *2021 Right to Repair Inquiry,*[2] and the 2025 Treasury review of the scheme.[3]

Part A: Agricultural Machinery and the Right to Repair— General observations

6. In summary, the Committee is broadly supportive of extending the scheme to agricultural machinery in a targeted and evidence-based manner, consistent with the ACCC's recommendations. The Committee acknowledges the 2021 Market Study has informed the policy concerns around information-access barriers in agricultural repair markets; which in turn provided the impetus for the Proposals in the Discussion Paper, while the 2025 Review demonstrates that the scheme has been relatively successful in the automotive sector.

7. However, the expansion of the scheme to agricultural machinery must be approached with care. Agricultural machinery markets have distinct characteristics, including higher capital values, greater technical complexity, seasonal demand patterns, geographical dispersion and a less uniform regulatory environment. These characteristics require sector-specific design choices, particularly in relation to access controls, safety and security safeguards, the treatment of modifications and the governance arrangements that will oversee the scheme's operation in the agricultural sector.

8. In this regard, the Committee seeks to draw Treasury's attention to several matters where careful design is required to ensure the expansion of the scheme does not produce unintended consequences or sub-optimal market outcomes for manufacturers, dealers, repairers, farmers and other operators.

9. The Committee emphasises the importance of using an evidence-based approach to the definition and scope of machinery covered by the scheme. For example, the Committee acknowledges that the ACCC's 2021 Market Study identified "structural barriers to competition in after-sales markets for agricultural machinery, including restrictions on access to diagnostic software tools, technical information and service manuals". However, the Committee understands that this study was conducted

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1 ACCC *Agricultural Machinery Market Study – Final Report* (May 2021)
2 Productivity Commission 2021, *Right to Repair*, Inquiry Report no. 97, Canberra
3 Treasury, *Review of the Motor Vehicle Service and Repair Information Sharing Scheme* Final Report, February 2026

without compulsory information-gathering powers, and its observations regarding specific product and geographic markets were necessarily general in nature.

10. The Discussion Paper observes that agricultural machinery differs significantly from passenger and light goods vehicles, representing a substantially larger capital investment and operating in a distinct regulatory environment. Given these differences, Treasury should ensure that the boundaries of the scheme's coverage are drawn by reference to clear evidence of market failure in each category of machinery proposed for inclusion, rather than by analogy with the motor vehicle sector alone.

11. The Committee considers that a targeted, evidence-based approach to the scheme's scope will reduce the risk of imposing unnecessary regulatory burdens on manufacturers of machinery types where information-access barriers have not been demonstrated to be a material impediment to competition. The Committee considers this is important in the interests of not imposing unnecessary additional costs to the industry, especially as those costs may ultimately be borne by end users.

Proposal 1—Scope of "agricultural machinery"

12. Proposal 1 seeks to expand the existing scope of the scheme to agricultural machinery. Based on commentary in the footnotes to the Discussion Paper, the Committee assumes that the proposal would involve amendments to the definition of "scheme vehicle", which is set out in section 57BA of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

13. Further, the Committee assumes the effect of the changes to the definition would be, as recommended, that scheme vehicles will include:

    (a) agricultural vehicles with their own automotive power; and

    (b) agricultural implements which attach to a vehicle, where those items are built to perform agricultural tasks and manufactured after a prescribed date.

14. However, the Committee understands that the definition of scheme vehicle will not include motorcycles, all-terrain vehicles, earthmoving equipment, tip trucks, forklifts or livestock trucks, all of which are commonly used vehicles in many agricultural enterprises.

15. The Committee broadly agrees with the approach proposed by the Discussion Paper, noting that any vehicle which comes within the definition of "scheme vehicle" would automatically be captured by the full scope of the scheme. Accordingly, and taking into account the policy objectives of this expansion of the scheme, to avoid inadvertent over-capture the Committee recommends ensuring any changes to the definition of scheme vehicle are appropriately drawn to ensure only agricultural vehicles and other machinery are incorporated into the scheme.

16. In this regard, the Committee supports the Discussion Paper's proposal to exclude cross-sector vehicles that are not designed specifically to perform agricultural tasks, but encourages Treasury to articulate the evidentiary threshold that will be applied to determine inclusion of specific machinery categories at the scheme's commencement and at any future expansion. To this end, the Committee notes that definitions

applied under the *Heavy Vehicle National Laws* may be appropriate to incorporate into the drafting of the scheme in order to assist in clarifying the types of vehicles that will be included in the expanded definition of 'scheme vehicle'.

Proposal 2—Access to scheme information

17. Proposal 2 would grant access to scheme information for agricultural machinery to appropriately qualified independent Australian repairers carrying on, or actively seeking to carry on, a repair business, and to appropriately qualified repairers who are engaged as part of broader agricultural operations. The access right would be conferred on the qualified individual repairer rather than on the agricultural business itself.

18. The Committee notes that this proposal may give rise to legitimate concerns that some independent repairers may lack the skills or training to repair complex agricultural vehicles, devices or equipment reliably, safely or securely. As acknowledged in the Discussion Paper and the ACCC's previous market study report, agricultural machinery is often highly sophisticated and increasingly reliant on embedded software, GPS guidance, image sensors and telematics.

19. Manufacturers have invested substantially in research and development, and their authorised dealer networks are required to meet high minimum performance standards in terms of servicing, repair and compliance with quality and safety regulations. The risks associated with sub-standard repair work on agricultural machinery can include safety hazards, environmental non-compliance and significant consequential loss during peak production periods.

20. For these reasons, the Committee supports Treasury's proposal to limit access to appropriately qualified repairers and to require declarations and licensing checks as conditions of access. These safeguards are necessary to ensure that the expansion of the scheme does not expose end users to poor-quality repair work by parties whose qualifications and competence cannot be verified, or manufacturers to liability for that work. The Committee considers that a requirement that agricultural businesses provide a declaration confirming the repairer's engagement, and that repairers provide updated credentials on an annual basis, is an appropriate control mechanism.

21. The Committee further observes that Proposal 2 would not confer access on machinery owners (including farmers). Instead, access is conferred on appropriately qualified repairers, including repairers engaged within agricultural operations. The Committee notes that this measure is narrower than the recommendations from the ACCC's 2021 report, which observed that owner repair may be appropriate in some circumstances, particularly for minor or non-critical issues such as the replacement of inexpensive parts like lights and sensors and the ability to override non-critical errors without recourse to an authorised dealer.[4]

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[4] 2021 Market Study (above note 1) Recommendation 2, pp 49

22. While it is acknowledged that the scheme is principally an information-sharing framework rather than a comprehensive right-to-repair regime, the Committee considers that it would be appropriate to consider whether the scheme's access arrangements will adequately address the concerns identified by the ACCC in relation to owner repair of minor faults.

Proposal 3—Unauthorised modifications

23. The Committee agrees with the proposed approach in Proposal 3 on the basis that manufacturers have legitimate reasons for restricting repair access where safety, security, quality or environmental standards may be affected. The ACCC's 2021 Market Study specifically acknowledged manufacturer concerns about software modification and its potential impact on the reliability, safety and environmental credentials of machinery.[5] The Committee considers these concerns remain well-founded.

24. It is noted specifically that for goods with complex or proprietary technology, the use of unauthorised or unqualified repairers or parts may reduce product life or functionality and may in some cases cause a major failure of the equipment or implements. Some independent repairers advertise that they can modify engines beyond their standard design specifications, including engine control unit remapping that increases the horsepower of tractors and combine harvesters.[6]

25. While the ACCC's 2021 Market Study found no evidence that this practice was widespread or a significant motivation for independent repairers seeking access to diagnostic software tools, the Committee considers that potential consequences of such modifications for safety, emissions compliance and machine longevity are material.

26. In addition, manufacturers have legitimate grounds for wanting to control the prevalence of such after-market practices to ensure that manufacturers are not held liable for poor-quality or unauthorised modifications which is beyond their control. While the Committee would expect manufacturers will seek to retain certain contractual protections to be able to exclude liability under the manufacturer's warranty for unauthorised work or modifications, these activities impose additional risk and costs on manufacturers to detect and also determine where such modifications have been deployed (and whether it has caused or contributed to vehicle defects). The risks of these costs can be mitigated - to some extent - by ensuring data providers retain the right to restrict the use of scheme information for unauthorised modifications.

27. As a corollary, the Committee considers that if Proposal 3 is not implemented in an appropriately broad and effective way, the impact of manufacturers being unable to prevent scheme information being used or accessed for inappropriate modifications could include fundamentally changing the cost profile which manufacturers' warranties and/or product prices are based, which in turn could result in higher prices for consumers or less generous terms in the manufacturer's warranty.

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5 2021 Market Study (above note 1) at section 4.3.2, pp 42

6 A practice sometimes referred to colloquially as "chipping" – see, e.g., 2021 Market Study (above note 1) at section 4.3.3, pp 44.

28. Taking this into account, the Committee supports the proposal to enable data providers to impose terms and conditions limiting certain prescribed modifications, and to exclude from the scheme information that is separable and has the sole purpose of enabling an unauthorised modification. In determining what modifications should be prescribed as unauthorised, Treasury should have regard to the risk profile of the modification, the extent to which the risk is addressed by other legislative frameworks, and the likely impact on independent repairers' ability to compete. This approach appropriately distinguishes ordinary repair from higher-risk modifications.

Additional Scheme Adviser

29. The Committee strongly supports the appointment of an additional Scheme Adviser with sector-specific agricultural expertise to oversee the day-to-day operation of the expanded scheme in relation to agricultural machinery. As noted, the current Scheme Adviser, the Australian Automotive Service and Repair Authority (**AASRA**), is an automotive industry-led body which would naturally have a focus on passenger vehicles. The agricultural sector presents distinct characteristics, including the nature of the vehicles and implements, the geographical dispersion of repairers and purchasers, seasonal repair demands, the diversity of business arrangements through which repair services are engaged, as well as a number of sector-specific regulatory arrangements for agricultural machinery (including aspects such as safety regimes).

30. An agricultural Scheme Adviser with appropriate industry knowledge and relationships with relevant national and state-based stakeholders would be better placed to facilitate dispute resolution, report on the operation of the scheme and identify systemic issues specific to the agricultural sector.

31. The Committee does not have specific views on entities or individuals that would be appropriate to appoint as an additional Scheme Adviser, but strongly encourages Treasury to ensure that the appointment process is merit-based and draws on the expertise of organisations with deep knowledge of agricultural machinery markets, repair practices and the interests of farmers and independent repairers. As with the AASRA, the Committee considers that it would be appropriate for the agricultural Scheme Adviser to have a national presence, and sufficient independence from any regulatory bodies (including the ACCC).

32. In addition to the matters above, the Committee notes that the proposed reforms to the scheme canvassed in the Discussion Paper include the potential for expansion of the reporting to the Scheme Adviser (**Proposal 13**), and an expansion of the Scheme Adviser's functions to include reporting to the Minister on whether additional classes of vehicles should be incorporated into the scheme's definition of 'scheme vehicle' (**Proposal 14**). With these proposals in mind, in developing the process for appointing an additional Scheme Adviser for agricultural machinery under the scheme, the Committee recommends that the criteria for the Scheme Adviser include verification that the potential adviser has the capabilities—including in respect of policy development—necessary to fulfil these additional functions.

Part B: The Motor Vehicle Information Sharing scheme

Proposal 4—Safety information

33. The Committee supports Option 1 of Proposal 4 in preference to Option 2. In particular, the Committee considers that the fit and proper person test is an appropriate safeguard for manufacturers. In contrast, the effect of Option 2 to rely solely on access rights while removing the concept of safety information entirely without retaining scheme-based safeguards, could present safety risks, particularly in relation to agricultural machinery.

34. The ACCC's 2021 Market Study noted submissions from the manufacturing and retailing sectors that restrictions on access to diagnostic software tools and technical information are necessary to maintain safety standards.[7] The Discussion Paper acknowledges that the consequences of faulty or non-compliant machinery may be significant in the case of agricultural machinery, both in terms of loss of income and safety, along with environmental concerns. In this context, the Committee considers that a framework which requires safety information to be used by fit and proper persons, while removing the impracticable obligation to separate that information from other scheme information, strikes an appropriate balance.

35. Under Option 1, the implied term requiring Australian repairers to ensure safety information is used by fit and proper persons provides a meaningful safeguard. The ability for data providers to temporarily suspend supply where there is a serious breach creates an appropriate enforcement mechanism.

36. The Committee believes this approach to be preferable to Option 2, which would rely entirely on enhanced regulatory guidance and existing work health and safety obligations. Whilst acknowledging the regulatory overlap between WHS laws and the scheme's current safety-information requirements, the Committee is not satisfied that guidance alone would provide an equivalent level of protection, particularly in the early stages of the scheme's expansion to agricultural machinery where compliance norms are yet to be established.

37. However, the Committee has hesitation about the proposal to establish a new 'offence' under the scheme prohibiting a data provider from unreasonably suspending the supply of scheme information. No further information about framing of this proposed offence is provided in the Discussion Paper, but the Committee considers that data providers must have certainty about the extent of their regulatory obligations, and that any additional measures must therefore not include any overly subjective elements or requirements. Absent unambiguous guidance as to the scope and operation of this offence, the risk of criminal liability attaching to a suspension of scheme information may cause data providers to err on the side of supplying scheme information, even where there is a genuine safety concern.

38. In this regard, the Committee considers that the provisions of any additional prohibition to be included in the scheme should provide a clear and unambiguous framework for data providers to understand when a decision to suspend access to scheme information would be regarded as 'unreasonable'. Options to achieve such a

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[7] 2021 Market Study (above note 1) at section 4.3.3, pp 44

framework could include a statutory 'whitelist' of circumstances in which the decision to suspend access would not be regarded as unreasonable (or there is a statutory presumption that such a decision in those circumstances would ***not*** be unreasonable). While the Committee's preference would be for such a framework to be included in the statutory scheme itself, an alternative option would be to develop additional guidelines similar to those which already exist for the scheme,[8] which give data providers an appropriate level of detail and guidance on the circumstances in which a decision to suspend access will not be considered unreasonable.

Proposal 5 - Intermediaries

39. The Committee draws attention to concerns that arise from granting intermediary access to scheme information. Whilst there are potential benefits for data aggregators and tool manufacturers in improving the accessibility and affordability of repair information for agricultural machinery repairers, the disclosure of repair manuals and other repair information to intermediaries may reveal trade secrets and other intellectual property, reducing manufacturers' incentives to invest in research and product development.

40. Unlike individual repairers, the Committee considers that intermediaries may be incentivised to use scheme information for broader purposes such as tool design, analytical functions and onward provision to third parties. The breadth of these uses increases the risk that proprietary information will be disseminated beyond the controlled environment in which scheme information is intended to be used.

41. In this respect, the Committee submits that the terms and conditions prescribed for the intermediary context should include robust intellectual property protections, confidentiality obligations and clear limitations on permitted uses. Consideration could also be given as to whether licensing arrangements between data providers and intermediaries should include provisions enabling data providers to audit the use of their information by intermediaries.

Proposal 6—Electronic logbooks

42. The Committee recognises in principle the potential benefits associated with the provision of information in electronic logbooks to Australian repairers.

43. Notwithstanding the above, the Committee observes that there are privacy concerns associated with the disclosure of this information, even allowing for the safeguards described in Proposal 6. For example, the disclosure of 'service provider business details' may enable the approximate location of a vehicle's operator to be identified, creating risks for (for example) victims of domestic violence who would prefer their location not to be known.

44. At a minimum, the Committee considers that any disclosure of electronic logbook information (not merely personal information) should be subject to the consent of the relevant consumer. However, the Committee cautions that this is not a perfect solution, and there may be instances where the owner of a vehicle differs from the

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[8] See: *Motor Vehicle Service and Repair Information Sharing scheme Guidance for data providers* (June 2025)

operator of a vehicle, or instances where a data provider's records of the owner of a vehicle are inaccurate.

Proposal 7—AUD pricing

45. The Committee supports Proposal 7. However, the Committee observes that the effect of Proposal 7 may be to transfer foreign exchange risk from the data provider to the Australian repairer. This may, in turn, result in data providers increasing their prices to account for this foreign exchange risk.

Proposal 8—Fair market value

46. The Committee considers that Proposal 8 as drafted is unnecessary.

47. The price charged in overseas markets is one of only a number of non-exhaustive matters that may be considered when determining the fair market value of scheme information. If a price charged in an overseas market is not an appropriate comparator because of the exercise of market power in that market, nothing prevents this from being taken into account, even though it is not specifically identified in section 57CA(5).

48. In addition to the above, Proposal 8 appears to assume that, in the absence of a similar scheme applying, data supplied overseas will never reflect the fair market price (when, in fact, this will turn on factors such as the competitiveness of the overseas market). The blanket exclusion of prices charged for information overseas where that information is not provided under a similar scheme may result in a legitimate input into the consideration of the fair market value for the supply of scheme information in Australia being excluded from consideration (distorting the price charged for the supply of the scheme information).

49. If Proposal 8 were to be retained, it could be refined by enabling consideration of the price charged for the supply of information in overseas markets except where there is evidence that the price charged in those overseas markets does not itself reflect the fair market value for the supply of that information.

Proposal 12—Access to security information

50. Proposal 12 would reduce the frequency of security declarations from one per access request to quarterly declarations, with security information required to be provided immediately where a valid and up-to-date declaration is held by a data provider. The Committee acknowledges the benefits of reforming the current per-request declaration regime, which does impose additional administrative burden - particularly for established technicians who access security information on a recurring basis.

51. However, the Committee considers that any change in this regard to quarterly declarations should be designed with appropriate safeguards for changes in eligibility, technician status or emerging security concerns. The Committee recommends that the scheme include a mechanism by which data providers can require a fresh declaration where they become aware of a material change in a technician's circumstances, notwithstanding that the quarterly period has not expired. To further reduce the risks for providers, the scheme could be augmented to impose a positive obligation on repairers to notify data providers of any change in their

eligibility to access security information. The Committee considers that including these safeguards would ensure that the reduced frequency of declarations does not create a gap in security controls, during the interval between quarterly renewals.

Proposal 13—Reporting arrangements

52. The Committee supports the principle underlying Proposal 13, which would replace transaction-by-transaction post-supply notification requirements with periodic reporting. Regulatory mechanisms of this kind should be subject to cost-benefit analysis and adequate resourcing, and the Committee understands that the current post-supply notification arrangements have been identified as imposing a substantial regulatory burden on data providers, contributing to a degree of non-compliance. Periodic reporting would reduce this burden while providing the Scheme Adviser with a more comprehensive understanding of how the scheme is being used.

53. At the same time, the Committee supports regulatory design that preserves effective enforcement and prioritisation. The requirement for immediate notification of system outages is appropriate and would assist the Scheme Adviser in monitoring access issues that could affect agricultural repairers, particularly in regional and remote areas where alternative access to repair information may be limited. As part of introducing these proposed changes, the Committee encourages Treasury to ensure that the Scheme Adviser(s) are adequately resourced to process, analyse and act upon the periodic reports received from data providers under the expanded scheme.

Proposal 14—Additional vehicle classes

54. The Committee understands that the object of Proposal 14 would be to enable the Scheme Adviser to provide reports to the Minister about whether additional classes of vehicles should be included under the scheme.

55. The Committee reiterates the comments above in respect of the support for the introduction of an additional Scheme Adviser for agricultural machinery under Proposal 3, and the importance of ensuring any Scheme Adviser is appropriately resourced to effectively discharge such a role. In addition to ensuring the Scheme Adviser is appropriately qualified, the Committee considers that the Scheme Adviser should only be permitted to recommend additional classes of vehicles for inclusion where there is strong market-by-market evidence supporting such an expansion.

56. In respect of agricultural machinery specifically, the Discussion Paper has excluded from the agricultural expansion a range of vehicles used in agribusiness, including motorcycles, all-terrain vehicles and earthmoving equipment. For the reasons outlined above in response to **Proposal 1**, the Committee considers these to be appropriate exclusions from any expansion of the definition of ‘scheme vehicle’.

57. Whilst the Committee acknowledges that the Scheme Adviser’s reporting function may create a useful pathway for evidence-based future consideration of additional vehicle classes, any future expansion should not be automatic or presumptive. The Scheme Adviser’s reports should be required to address the specific evidence of market failure in the relevant vehicle class, the anticipated regulatory burden on affected manufacturers, and the likely impact on competition in the relevant after-

sales market. The existence of a reporting function should not lower the evidentiary threshold for intervention.

Proposal 15—Prohibited terms and conditions

58. The Committee has concerns that Proposal 15, which would extend the prohibition on certain terms and conditions to scheme offers in addition to concluded contracts, could have unintended consequences if the definition of prohibited terms is drawn too broadly. As noted above and previously, manufacturers will have legitimate reasons for including terms in scheme offers that relate to the management of safety, security, warranty and liability risks. For example, manufacturers may wish to limit their exposure to liability for poor-quality repair work performed by parties using scheme information, or to impose reasonable conditions on the use of information relating to emissions control systems.

59. The Committee considers that if prohibited terms are to extend to scheme offers, these should be carefully defined so that the scheme does not invalidate terms that legitimately address safety, security, warranty or liability risks. A blanket prohibition risks discouraging manufacturers from publishing scheme offers at all, or encouraging the use of less transparent mechanisms to manage legitimate commercial risks. Treasury should ensure that the categories of prohibited terms are clearly delineated and strike and appropriate balance, in order to ensure that consumers benefit from the omission of unnecessary terms while manufacturers retain the ability to include terms that are genuinely necessary to protect safety, manage liability and ensure compliance with applicable laws and standards.

Recommendations

That Treasury:

- **adopt a targeted, evidence-based approach to the scope of agricultural machinery, maintain the proposed exclusion of cross-sector vehicles, and articulate the evidentiary threshold for including machinery categories, having regard to the definitions in the Heavy Vehicle National Law (Proposal 1);**
- **retain the limitation of access to appropriately qualified repairers, subject to declarations and licensing checks, while considering whether the scheme's access arrangements adequately address the ACCC's concerns regarding owner repair of minor, non-critical faults (Proposal 2);**
- **enable data providers to impose terms and conditions limiting certain prescribed unauthorised modifications and to exclude separable information whose sole purpose is to enable such modifications, having regard to the risk profile of the modification, the extent to which the risk is addressed by other legislative frameworks, and the likely impact on competition (Proposal 3);**
- **appoint an additional agricultural Scheme Adviser through a merit-based process, with a national presence, sufficient independence from regulatory bodies (including the ACCC), and the capabilities and resourcing necessary to perform the expanded functions under Proposals 13 and 14;**
- **adopt Option 1 of Proposal 4 and, if a new offence for unreasonably suspending the supply of scheme information is introduced, provide a clear and unambiguous framework (such as a statutory "whitelist") defining when a suspension would not be regarded as unreasonable (Proposal 4);**
- **prescribe robust intellectual property, confidentiality, permitted-use and audit protections for the supply of scheme information to intermediaries (Proposal 5);**
- **require the consent of the relevant consumer for the disclosure of electronic logbook information (Proposal 6);**
- **retain the requirement to quote scheme prices in Australian dollars, while recognising the potential transfer of foreign-exchange risk to repairers (Proposal 7);**
- **not proceed with Proposal 8 as drafted, or refine it so that the price of information supplied overseas is considered except where there is evidence that it does not reflect fair market value (Proposal 8);**
- **reduce the frequency of security declarations to quarterly, subject to safeguards permitting a fresh declaration where a technician's eligibility materially changes and a positive obligation on repairers to notify data providers of any change in their eligibility (Proposal 12);**

- **replace transaction-by-transaction post-supply notification with periodic reporting and immediate notification of system outages, ensure the Scheme Adviser(s) are adequately resourced, and ensure that any future expansion of scheme coverage to additional vehicle classes remains evidence-based (Proposals 13 and 14); and**
- **ensure that any extension of prohibited terms and conditions to scheme offers is clearly delineated so as not to invalidate terms that legitimately address safety, security, warranty or liability risks (Proposal 15).**

About the Business Law Section

The Business Law Section of the Law Council of Australia provides a forum through which lawyers and others interested in all matters pertaining to business law can discuss current issues, debate and contribute to the process of law reform in Australia, and enhance their professional skills.

The Section:

- prepares almost half of the Law Council's submissions each year, putting the views of the business community and the legal profession directly to the Federal Government and its agencies, and Federal Parliamentary Committees;
- provides a forum for debate of current issues, and assists lawyers to develop and maintain their professional skills and knowledge, through a schedule of regular conferences, workshops and seminars;
- represents the Law Council on a number of bodies—for example, the National Taxation Liaison Group and its sub-committees, the Customs and Border Protection National Consultative Committee and its sub-committees and the ASX Corporate Governance Council; and
- gives its members the opportunity to develop a network of professional contacts in their fields of practice.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

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