

# DRAFT FOR CONSULTATION

## Commerce (Motor Vehicle Information Scheme) Amendment Bill

Member's Bill

### Explanatory note

#### General policy statement

The Bill introduces a mandatory motor vehicle information scheme into the Commerce Act 1986. Under the Bill, motor vehicle service and repair information must be made available to all New Zealand motor vehicle repairers and registered training organisations to buy at a price that does not exceed the fair market value. The scheme would increase competition and choice for consumers and provide repairers and registered training organisations with access to service and repair information. This information includes:

- information needed to service and repair cars or provide training;
- software updates that help to connect a new spare part with a car;
- information and codes for computerised systems from a car manufacturer.

The scheme is intended to mirror the Australian scheme provided for in Part IVE of the Competition and Consumer Act 2010 (Aust).

#### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause and provides for this Bill to come into force on the day that is 6 months after Royal assent.

*Clause 3* states that the Bill amends the Commerce Act 1986.

*Clause 4* inserts a *new Part 4B* into the Act to establish a motor vehicle information scheme. The scheme requires scheme information to be offered for supply to repairers and training organisations at a price that does not exceed fair market value.

*Clause 5* provides for pecuniary penalties for breaching any of the requirements specified in *new Part 4B*.

*Dan Bidois*

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Commerce (Motor Vehicle Information Scheme) Amendment Act **2025**.

**2 Commencement**

This Act comes into force on the day that is 6 months after Royal assent.

**3 Principal Act**

This Act amends the Commerce Act 1986.

**4 New Part 4B inserted (Motor vehicle information scheme)**

After Part 4A, insert:

<b>Part 4B</b>
<b>Motor vehicle information scheme</b>
<b>57ZL Purpose of Part</b>
The purpose of this Part is to—

- (a) ensure access, on fair terms, to information used to diagnose, repair, service, modify, or dismantle motor vehicles; and
- (b) enable consumers to have their vehicles diagnosed, repaired, serviced, modified, or dismantled safely and effectively by an repairer of their choice.

### 57ZM Interpretation

In this Part,—

**information provider** means a person carrying on business that includes supplying, to any extent and directly or indirectly, scheme information to 1 or more repairers or training organisations

**repairer** means a person that carries on, or seeks to carry on, in New Zealand, a business that involves diagnosing faults with, servicing, repairing, modifying, or dismantling scheme vehicles

**training organisation** means an organisation that—

- (a) provides, or seeks to provide, training in diagnosing faults with, servicing, repairing or modifying, or dismantling scheme vehicles; and
- (b) receives funding from the Tertiary Education Commission to provide training

**safety information**, for a scheme vehicle, means information relating to any of the following systems installed in the vehicle:

- (a) the hydrogen system:
- (b) the high voltage system:
- (c) the hybrid system:
- (d) the electronic propulsion system:
- (e) another system prescribed for the purposes of this paragraph

**scheme information** means—

- (a) information relating to scheme vehicles that is prepared by or for a manufacturer of vehicles (or an interconnected body corporate) for use in diagnosing faults with, servicing, or repairing those vehicles, as supplied to the market; but
- (b) does not include—
  - (i) a trade secret:
  - (ii) intellectual property of a person, other than intellectual property protected under the Copyright Act 1994:
  - (iii) a source code version of a program:
  - (iv) data automatically generated and transmitted by a motor vehicle, which it is being driven, regarding driver or motor vehicle performance:

- (v) global positioning system data:
- (vi) information that is commercially sensitive about an agreement between an information provider and another person

**scheme vehicle** means—

- (a) a vehicle that was manufactured on or after 1 January 2002, that is—
  - (i) included in the scheme; and
  - (ii) used on a road or drawn or propelled by mechanical power; and
  - (iii) of a kind ordinarily acquired by consumers for personal, domestic, or household use; but
- (b) does not include the following:
  - (i) a trailer:
  - (ii) a tractor or farm machinery:
  - (iii) a vehicle that has been declared not to be a motor vehicle under section 168A of the Land Transport Act 1998:
  - (iv) a mobility device

**security information**, for a scheme vehicle, is information relating to any of the following systems installed in the vehicle:

- (a) the vehicle’s mechanical and electrical security system:
- (b) another system prescribed for the purposes of this paragraph.

*Functions of Commission under this Part*

**57ZN Functions of Commission under this Part**

- (1) The Commission has the following functions under this Part:
  - (a) to nominate mediators or technical experts for dispute resolution purposes:
  - (b) to report to the Minister at any time or by a time specified by the Minister—
    - (i) on terms (including price) of scheme offers, or the availability of scheme information:
    - (ii) about whether or not, in the Commission’s opinion, particular information is, or should be, scheme information:
    - (iii) about any systemic regulatory or enforcement issues relating to the operation of this Part:
    - (iv) about any other matter relevant to the operation of this Part.
- (2) The Commission has all the powers necessary or convenient for the performance of the functions.

**57ZO Reporting on scheme**

In its annual report, the Commission must report on the use and operation of the scheme during the period covered by the report, and must specify—

- (a) the number of training organisations who access the scheme; and
- (b) the number of repairers who access the scheme; and
- (c) the number of disputes that occurred relating to the scheme.

*Supply of scheme information*

**57ZP Requirement to supply scheme offer**

- (1) An information provider must supply, or offer to supply, scheme information in a form that is reasonably accessible to repairers and training organisation (a **scheme offer**).
- (2) The scheme offer must—
  - (a) provide for supply of scheme information—
    - (i) for any period nominated by a repairer or training organisation; or
    - (ii) by day, by month, and by year; and
  - (b) cover scheme information that is, in relation to a particular make, model, or year of scheme vehicle, at a price that does not exceed the fair market value of the information, as determined by reference to any relevant factor.
- (3) The following factors may be used to determine fair market value:
  - (a) the price payable by other repairers and training organisations for supplying scheme information (under this Part or otherwise) in relation to a scheme vehicle;
  - (b) the terms on which such scheme information is offered for supply to repairers or training organisations (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 repairers and training organisations for supply of the scheme information;
  - (d) the reasonable recovery of costs incurred in creating, producing, and supplying the scheme information;
  - (e) the price charged for the supply of information that is similar to scheme information outside of New Zealand;
  - (f) the amount (if any) payable by the information provider to any person who had a proprietary interest in the scheme information.
- (4) If applicable, the supply of scheme information must comply with SAE J2534, ISO 22900, or any successor standard.

**57ZQ Publication and distribution of scheme offer**

- (1) The information 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.
- (2) The information provider must as soon as reasonably practicable after it publishes a scheme offer or makes a change to a scheme offer, provide a copy of the scheme offer to the Commission.

**57ZR Requirement to provide scheme information based on scheme offer**

- (1) An information provider must supply scheme information in accordance with its scheme offer to repairers and training organisations.
- (2) If the information provider supplies scheme information to a repairer or training organisation under this Part, the information provider must, within 2 business days after the supply, notify the Commission, in writing, of the terms and conditions of the supply, including the price.

**57ZS Terms and conditions of supply and use of scheme information**

- (1) Subject to this section, nothing in this Part prevents an information provider from supplying scheme information subject to reasonable terms and conditions that do not prevent, restrict, or limit access to, or use of, the information for the purposes of diagnosing faults with, servicing, repairing, modifying, or dismantling scheme vehicles.
- (2) However, an information provider must not enter into a contract for the supply of scheme information that contains any of the following:
  - (a) a term or condition requiring a repairer or training organisation to acquire 1 or more services or products from the information provider or any other person;
  - (b) a term or condition allowing an increase, after the contract is entered into, in the price for the supply of the scheme information under the contract;
  - (c) a term or condition prohibited by the scheme.
- (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.

**57ZT Interaction of supply obligations and other rights and obligations**

- (1) An information provider must comply with an obligation under this Part in relation to scheme information even if compliance would constitute or result in 1 or more of the following:
  - (a) an infringement of copyright by the information provider or any other person;

- (b) a breach of contract relating to the supply of the scheme information:
  - (c) a breach of confidentiality to which the information provider is subject to relating to the supply of scheme information.
- (2) **Subsection (3)** applies if—
- (a) an information provider supplies scheme information to a repairer or training organisation 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.
- (3) The information provider must pay to the third party claimant an amount that represents fair compensation for the supply of the scheme information to the repairer or training organisation.
- (4) An amount payable by the information provider under **subsection (3)**—
- (a) is a debt owed by the information provider to the third party claimant; and
  - (b) may be recovered by action in a New Zealand court of competent jurisdiction.

### *Information management*

#### **57ZU Requirement to exclude safety and security information from other scheme information in scheme offer**

An information 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.

#### **57ZV Requirement to exclude safety and security information from other scheme information in supply of scheme offer**

- (1) An information 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 repairer or training organisation, to believe that the requirements specified in **subsection (2)** are satisfied in relation to the scheme information for that vehicle; and
  - (b) in the case of security information only, the repairer or training organisation has provided the required declaration, or declarations, specified in **subsection (3)** in relation to that vehicle.
- (2) The requirements are—

- (a) the safety and security information is solely for use by an individual or individuals—
    - (i) in the case of a repairer, for the purposes of the repairer’s business; or
    - (ii) in the case of a training organisation, for the purposes of providing a training course; and
  - (b) based only on personal information about the individual specified in **subsection (6)**, the individual is a fit and proper person to access and use the safety and security information.
- (3) If security information is to be supplied, the required declarations are—
- (a) a declaration confirming that the repairer or training organisation is authorised by the owner of the scheme vehicle to access and use the security information for that vehicle; and
  - (b) a declaration specifying the vehicle identification number of the vehicle.
- (4) An individual is a fit and proper person to access and use safety and security information if the individual meets the criteria prescribed.
- (5) For the purposes of **subsection (4)**, different criteria may be prescribed for—
- (a) safety information; or
  - (b) security information.
- (6) For the purposes of **subsection (2)(b)**, only the following personal information about an individual may be used:
- (a) the individual’s name and residential address;
  - (b) information about the individual’s relationship to the repairer or training organisation (as the case may be);
  - (c) the individual’s qualifications for using the safety and security information for a purpose specified in **subsection (2)(a)**;
  - (d) a criminal records check about the individual;
  - (e) any other information prescribed that is relevant to the information provider assessing whether it is satisfied that the individual is a fit and proper person to access and use the safety and security information.

#### **57ZW Personal information**

The Privacy Act 2020 applies to any personal information supplied to an information provider for the purpose of **section 57ZV(2)(b)** (including, in relation to use and storage of, and access to, the information).

#### **57ZX Requirement to keep records**

An information provider must keep a record of each 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 repairer or training organisation;
- (c) any personal information used by the information 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.

*Use of scheme information*

**57ZY Use of scheme information by approved persons**

- (1) A repairer must ensure that scheme information supplied through the scheme can be accessed by an approved persons only.
- (2) For the purpose of **subsection (1)**, an **approved person** is a person who—
  - (a) is employed, contracted, or otherwise engaged by the repairer to diagnose and repair faults in mechanical, electrical and electronic components on vehicles; and
  - (b) holds a automotive qualification obtained from the New Zealand Qualifications Authority or an equivalent educational entity.

**57ZZ Use of scheme information for legal purposes**

Scheme information made available under the scheme may only be used—

- (a) by retailers for diagnosing faults with, servicing, repairing, modifying, or dismantling scheme vehicles; and
- (b) by training organisations for training in diagnosing faults with, servicing, repairing or modifying, or dismantling scheme vehicles.

*Dispute resolution*

**57ZZA Resolving disputes**

- (1) In the event of any dispute, difference, or question arising out of, or in connection with, this Part (a **dispute**) a party to the dispute (**initiating party**) may initiate action to resolve the dispute against another party (the **responding party**) in accordance with this section.
- (2) If the initiating party wishes to initiate action to resolve the dispute in accordance with this section, the initiating party must give written notice to the responding party of the following:
  - (a) that the notice is given under this section;
  - (b) the nature of the dispute;
  - (c) the matter that is the subject of the dispute:

- (d) the way in which that matter relates to the application of this Part:
  - (e) the outcome the initiating party wants:
  - (f) the action the initiating party thinks will resolve the dispute.
- (3) The parties must then try to resolve the dispute.
  - (4) If the parties cannot agree how to resolve the dispute within 2 working days, either party may refer the matter to a mediator for mediation.
  - (5) If the parties cannot agree who should be the mediator, either party may request the Commission to nominate a mediator.
  - (6) Within 2 working days after a request is made under **subsection (5)**, the Commission must nominate a mediator for the dispute.

#### **57ZZB 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) The mediation may be conducted using technology that allows a person to participate in the mediation without being physically present at the mediation.
- (4) The parties must attend the mediation.
- (5) For the purposes of **subsection (4)**, a party is taken to attend mediation if—
  - (a) the party is represented at the mediation by a person who has authority to enter into an agreement to settle the dispute on behalf of the party (an **authorised representative**):
  - (b) the party, or authorised representative, participates in the mediation as outlined in **subsection (3)**.
- (6) The parties must then try to resolve the dispute.
- (7) Within 5 working days after the start of the mediation, the mediator must advise the Commission that the mediation has started.

#### **57ZZC Termination of mediation**

- (1) This section applies to the mediation of a dispute if the dispute has not been resolved within 30 working 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 starting 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 Commission; and
  - (b) each of the parties to the dispute.

**57ZZD Cost of mediation**

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

**57ZZE Urgent relief**

Nothing in this Part precludes any party from taking immediate steps to seek urgent interim relief before a New Zealand court.

**5 New cross-heading and sections inserted**

After section 87C, insert:

*Motor vehicle information scheme*

**87D Pecuniary penalties relating to motor vehicle information scheme**

- (1) The court may, on the application of the Commission, order a person to pay a pecuniary penalty to the Crown if the court is satisfied that the person—
  - (a) has contravened any of the following sections:
    - (i) **section 57ZP** (requirement to supply scheme offer):
    - (ii) **section 57ZQ** (publication and distribution of scheme offer):
    - (iii) **section 57ZR** (requirement to provide scheme information based on scheme offer):
    - (iv) **section 57ZS** (terms and conditions of supply and use of scheme information):
    - (v) **section 57ZV** (requirement to exclude safety and security information from other scheme information in supply of scheme offer):
    - (vi) **section 57ZX** (failure to keep records); or

- (b) has attempted to contravene any of those sections; or
  - (c) has aided, abetted, counselled, or procured any other person to contravene any of those sections; or
  - (d) has induced, or attempted to induce, any other person, whether by threats or promises or otherwise, to contravene any of those sections; or
  - (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of any of those sections; or
  - (f) has conspired with any other person to contravene any of those sections.
- (2) In determining an appropriate penalty under this section, the court must have regard to all relevant matters, including—
- (a) the nature and extent of the act or omission:
  - (b) the nature and extent of any loss or damage suffered by any person as a result of the act or omission:
  - (c) the circumstances in which the act or omission took place:
  - (d) whether or not the person has previously been found by the court in proceedings under **Part 4B** to have engaged in any similar conduct.
- (3) Proceedings under this section may be commenced within 3 years after the matter giving rise to the contravention arose.

**87E Maximum amount of pecuniary penalty**

The amount of any pecuniary penalty must not, in respect of each act or omission, exceed \$30,000 in the case of an individual, or \$60,000 in any other case.

**87F Injunction and other orders relating to motor vehicle information scheme**

- (1) If the court is satisfied that scheme information is not being supplied, is being supplied, or is likely to be supplied, in contravention of any provision specified in **section 87D(1)(a)**, the court may do either or both of the following:
- (a) grant an injunction restraining any person from supplying the scheme information in contravention of any provision specified in **section 87D(1)(a)**:
  - (b) make an order requiring the person to supply the scheme information in accordance with any provision specified in **section 87D(1)(a)**.
- (2) An application for an injunction or an order under this section may be made by any person.