

AUTOMOTIVE INDUSTRY GROUP

Regulatory Update

July 2023



Table of Contents

Introduction.....	4
1. Legislation Update	5
1.1 Repeal of EV Levy in South Australia.....	5
1.2 New Australian Design Rules Come into Effect	6
1.3 Increased Penalties for Serious or Repeated Privacy Breaches	7
1.4 Changes to NSW Road Rules and EV Charging Spaces	8
1.5 Update on Legislation and Proposed Legislation discussed in the December 2022 Edition of the Regulation Update.....	8
1.5.1 <i>Occupational Licensing (Automatic Mutual Consequential Amendments) Act 2022 (Tas)</i>	8
1.5.2 <i>Treasury Laws Amendment (Electric Car Discount) Act 2022 (Cth)</i>	9
1.5.3 <i>Treasury Laws Amendment (More Competition, Better Prices) Act 2022 (Cth)</i>	9
2. Proposed Legislation	10
2.1 Maximum Sulphur Limit of 10ppm in Petrol from 2024	10
2.2 Automated Vehicle Safety Law expected in 2026	10
2.3 Changes to Instant Asset Write-off and End of Temporary Full Expensing	11
3. Policy Update.....	12
3.1 National Electric Vehicle Strategy	12
3.1.1 <i>EV Supply</i>	13
3.1.2 <i>EV Infrastructure</i>	13
3.1.3 <i>EV Demand</i>	14
3.2 Driving the Nation Fund.....	14
3.2.1 <i>Establishing a National Electric Vehicle Charging Network</i>	14
3.2.2 <i>Creating a National Hydrogen Highways Refuelling Network</i>	14
3.2.3 <i>Committing to a Low Emission Vehicle Target for the Commonwealth Fleet</i>	15
3.3 Electric Fast Charging Grants (NSW).....	15
3.3.1 <i>EV Destination Charging Grants</i>	16
3.3.2 <i>EV Super Highways and Commuter Corridors</i>	16
3.4 Western Australia's Grant Program to Expand Electric Vehicle Charging Infrastructure.....	17
3.5 ACT Registration System.....	18
3.6 ATO Announces Changes to Car Threshold Amounts	18
3.7 ACCC Designated Complaints function.....	18
4. Case Law Update.....	20
4.1 Current Litigation.....	20
4.1.1 <i>AHG WA (2015) Pty Ltd T/A Mercedes-Benz Perth & Westpoint Star Mercedes-Benz & Ors v Mercedes-Benz Australia/Pacific Pty Ltd</i>	20
4.1.2 <i>Vanderstock & Anor v. The State of Victoria</i> (High Court of Australia, M61/2021, commenced 16 September 2021)	21
4.2 Breaches of Consumer Guarantees	22
4.2.1 <i>Beauchamp v Toyota Motor Corporation Australia Limited [2022] NSWCATCD 146 (5 September 2022)</i>	22
4.2.2 <i>Hoskin & Anor v Hinterland Outdoors Pty Ltd t/as Hinterland Motorhomes GC [2022] QCAT 373 (11 October 2022)</i>	23
4.2.3 <i>Ulmer v Volkswagen Group Australia Pty Ltd [2022] NSWCATCD 179 (15 September 2022)</i>	23

4.3	<i>Class Actions</i>	24
4.3.1	<i>Crystal Carol Torley v Hyundai Motor Company Australia Limited & Anor; David Joseph Schleeauf & Anor v Kia Australia Pty Ltd & Anor</i>	24
	Our National Automotive Team	25



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Introduction

Welcome to the HWL Ebsworth Automotive Industry Group - Regulatory Update

HWL Ebsworth Lawyers seeks to keep you updated with the changing automotive industry environment across new legislation, developing policy and pertinent case law developments.

Through our Regulatory Updates we provide essential information for those wanting to stay abreast of the challenges and issues facing the automotive industry, especially those affecting dealers.

This Regulatory Update has been published with the assistance of Evan Stents (Partner), Maria Townsend (Partner), Douglas Brown (Senior Associate) and Peter Pertsoulis (Solicitor) who are members of the HWL Ebsworth Automotive Industry Group.

Headlines

- Increased Penalties under the Privacy Act and Australian Consumer Law (see Parts [1.3](#) and [1.4](#))
- Albanese Government releases the National Electric Vehicle Strategy (see Part [3.1](#))
- Judgments expected soon in the Mercedes-Benz litigation and the challenge to Victorian's Electric Vehicle levy (see Part [4.1](#))



1. Legislation Update

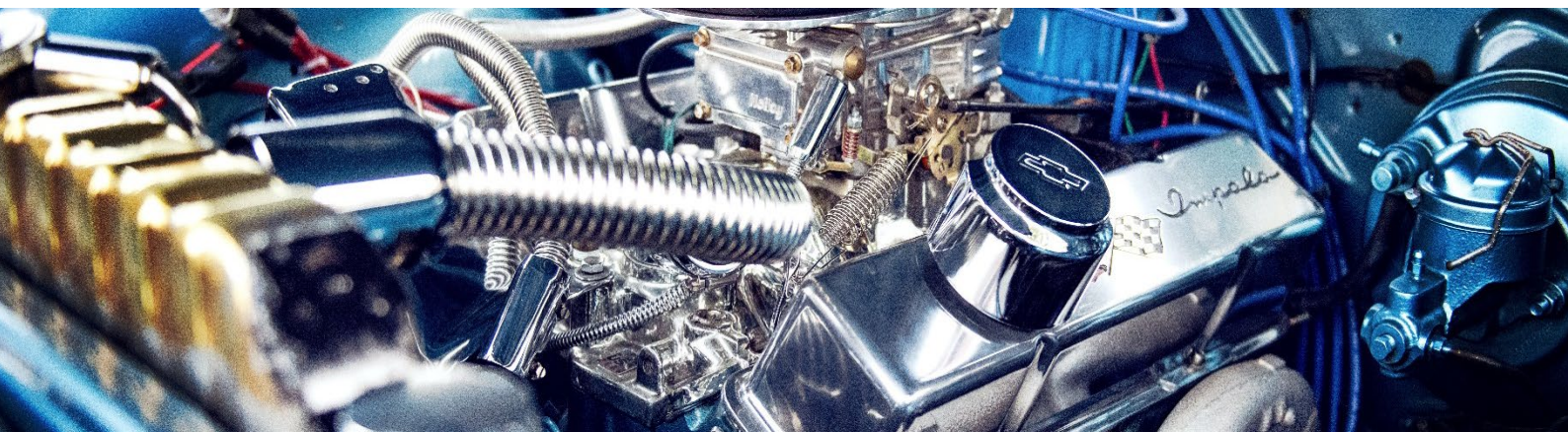
1.1 Repeal of EV Levy in South Australia

The *Motor Vehicles (Electric Vehicle Levy) Amendment Repeal Act 2023 (SA)* (**Repeal Act**) came into effect in South Australia on 23 February 2023. The Act repealed the *Motor Vehicles (Electric Vehicle Levy) Amendment Act 2021 (SA)* (**Amendment Act**), which had introduced a new tax (levy) on electric vehicles (EVs). The Amendment Act would have seen EV users in South Australia paying a levy of 2 cents per kilometre for driving a plug-in hybrid vehicle or 2.5 cents per kilometre for driving any other EV, with the levy set to be indexed annually by CPI. These provisions would have come into force on the earlier of 1 July 2027, or when the sale of battery EVs in South Australia reached 30% of new motor vehicle sales in the State.

When the Amendment Act was passed in 2021, the general community consensus was that the levy would significantly reduce EV uptake in South Australia. The Australia Institute published survey data from 2021 which showed that 7 out of 10 South Australians would be less likely to purchase an EV following the Amendment Act.¹ As a result, the opposition Labor Party promised to repeal the Amendment Act if they won the election (which they did in the 2022 South Australian state election).

The Amendment Act was consistent with other legislation passed in Victoria, New South Wales, and Western Australia. Victoria's EV levy has been in force since 2021 and was recently increased in July 2022 to a range of 2 to 2.6 cents per kilometre, depending on the type of EV. Western Australia's levy is set to commence on 1 July 2027, and the New South Wales levy will also begin on the earlier of 1 July 2027 or when EVs make up 30% of all new vehicle sold in New South Wales. Both the New South Wales and Western Australian levies will be charged at similar rates to the Victorian levy when they come into force.

The rationale for EV levies is to compensate the Federal and State Governments for lost fuel excise and GST revenue. However, they have proven unpopular with EV drivers and consumers, and there is a current High Court challenge to the Victorian EV levy. The judgment of the High Court in *Vanderstock & Anor v The State of Victoria* (please see [4.2](#) below for our full commentary), expected to be handed down later this year, will determine whether State Governments have the capacity to impose EV levies on drivers.



¹ <https://australiainstitute.org.au/wp-content/uploads/2021/08/Polling-August-2021-Electric-vehicles-in-SA-WEB.pdf>



1.2 New Australian Design Rules Come into Effect

Certain provisions of the Australian Design Rules 98/00, 98/01, 97/00 and 35/07² commence this year. As of 1 March 2023, all new models of passenger and light-goods vehicles must have an advanced emergency braking (**AEB**) system capable of detecting impending collisions with other vehicles. By 1 November 2023, all new models of omnibuses and medium and heavy goods vehicles must be fitted with AEB systems and commercial vehicles with electronic stability control (**ECS**) systems (automatic braking systems which assist drivers to maintain control in difficult driving situations).

The table below sets out the commencement dates of the various provisions.

	Date applied to new models of vehicles	Date applied to all new vehicles	Date applied to all new buses sold
Passenger and light-goods vehicles			
AEB systems capable of detecting impending collisions with other vehicles.	1 March 2023	1 March 2025	N/A
AEB systems capable of detecting impending collisions with other vehicles and pedestrians.	1 August 2024	1 August 2026	N/A
All categories of heavy vehicles			
AEB systems	1 November 2023	1 February 2025	1 November 2024
ECS systems	1 November 2023	1 February 2025	1 November 2024

These new Rules are expected to have beneficial impacts in terms of reducing vehicle crashes and saving lives. The Australasian New Car Assessment Program (**ANCAP**) estimates that AEB technology reduces police-reported crashes by 55%, rear-end collisions by 40% and occupant trauma by 28%. The Office of Impact Analysis has forecast that the mandated AEB systems for passenger and light goods vehicles will save over 580 lives per year on Australian roads. Moreover, in a press release announcing the new Rules, then Assistant Minister Kevin Hogan stated that the technology is expected to assist medium/heavy goods vehicles and omnibuses avoid 2,300 serious injuries and save around 100 lives over the next 40 years, in addition to an anticipated reduction of loss of control and rollover crashes of up to 30% and rear-end collisions of up to 57%.

² Vehicle Standard (Australian Design Rule 98/00 - Advanced Emergency Braking for Passenger Vehicles and Light Goods Vehicles) 2021; Vehicle Standard (Australian Design Rule 98/01 - Advanced Emergency Braking for Passenger Vehicles and Light Goods Vehicles) 2021; Vehicle Standard (Australian Design Rule 97/00 - Advanced Emergency Braking for Omnibuses, and Medium and Heavy Goods Vehicles) 2022; Vehicle Standard (Australian Design Rule 35/07 - Commercial Vehicle Brake Systems) 2022.

1.3 Increased Penalties for Serious or Repeated Privacy Breaches

The *Privacy Legislation Amendment (Enforcement and Other Measures) Act 2022* (Cth) commenced in December 2022. The Act amends the *Privacy Act 1988* (Cth) by:

- significantly increasing the penalties applicable for serious privacy breaches;
- increasing the powers of the Office of the Australian Information Commissioner (**OAIC**) to gather information and conduct assessments of relevant entities' compliance with the notifiable data breaches regime (which requires entities to notify affected individuals and the OAIC about data breaches that are likely to result in serious harm to the individual);
- enhancing the OAIC's enforcement powers by requiring entities to conduct external reviews of their procedures and providing new infringement notice powers for the OAIC, which will allow the OAIC to immediately penalise entities that fail to provide the requisite information; and
- increasing cooperation and information sharing between the OAIC and the Australian Communications and Media Authority (**ACMA**).

Under the new changes, the maximum penalty for a body corporate for serious or repeated interferences with privacy is the greater of:

- \$50 million;
- if a court can determine the value of the benefit that the body corporate (and its related bodies corporate) directly or indirectly obtained from the contravention, three (3) times the value of that benefit; or
- if a court cannot determine the value of that benefit, 30% of the adjusted turnover of the body corporate during the breach turnover period (with a minimum of 12 months) for the contravention.

Motor dealers and manufacturers should be cognisant of their responsibilities under the Privacy Act and the massively increased penalties for breaches. Modern motor vehicles are equipped with GPS devices and enable Bluetooth connectivity to driver's and passenger's mobile phones, allowing for a tremendous amount of personal information to be collected and stored. The amount of personal data collected and stored by motor vehicles is only going to increase in the future with technological advances and the rise of autonomous vehicles (possibly utilising biometric data such as facial recognition or fingerprint verification technology).



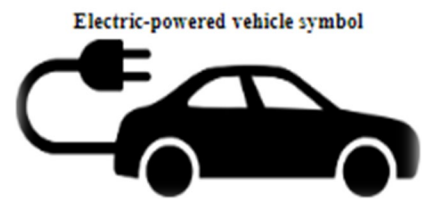
1.4 Changes to NSW Road Rules and EV Charging Spaces

Sections 203B and 203C of the *NSW Road Rules 2014* came into effect on 24 March 2023. The new sections provide that:

- non-EV drivers must not stop in parking areas reserved for EVs; and
- non-EV drivers, and EV drivers who are not charging their vehicles, must not stop in parking areas reserved for the charging of EVs.

Parking areas reserved for EVs and EV charging are defined as a length or area of road:

- to which a *permissive parking sign* displaying an electric-powered vehicle symbol (and/or the words “while charging”) applies;
- to which an *electric-powered vehicle parking sign* or *electric-powered vehicle charging parking sign* applies; or
- indicated by a road marking that consists of, or includes, an electric-powered vehicle symbol (and/or the words “while charging”).



The EV charging sign is displayed inset.

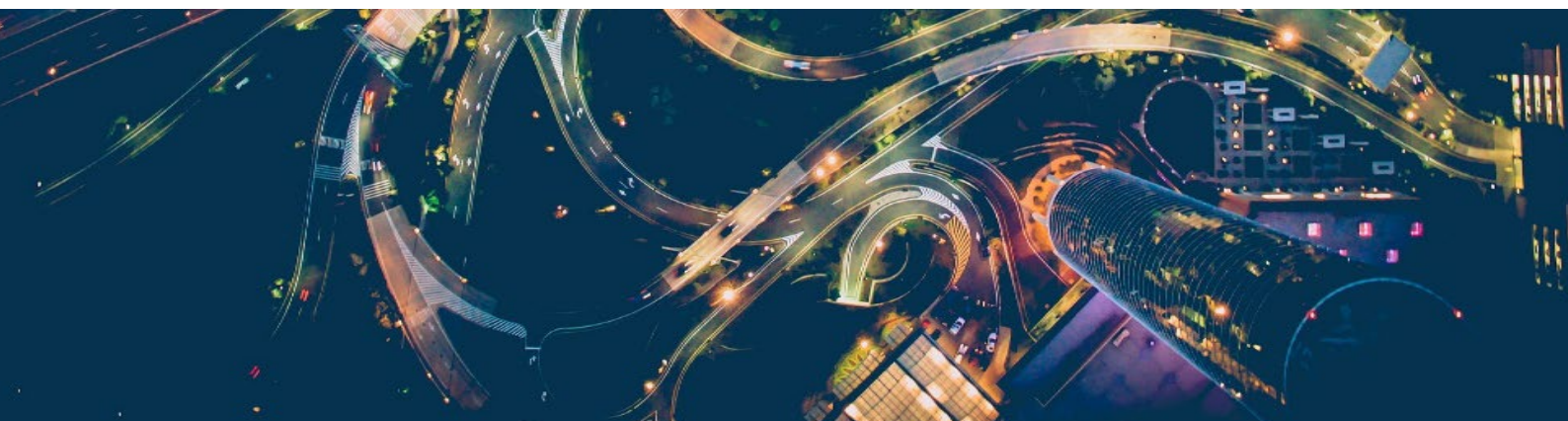
The penalty for breaching these new road rules is 20 penalty units (currently \$2,200) in NSW.

We expect further road rule changes in the future to account for the rise of EVs and, especially, autonomous vehicles.

1.5 Update on Legislation and Proposed Legislation discussed in the December 2022 Edition of the Regulation Update

1.5.1 *Occupational Licensing (Automatic Mutual Consequential Amendments) Act 2022 (Tas)*

The *Occupational Licensing (Automatic Mutual Consequential Amendments) Act 2022 (Tas)* commenced on 14 December 2022 and had the effect of implementing the federal Automatic Mutual Recognition (**AMR**) Scheme in Tasmania. Motor vehicle dealers licenced under the AMR scheme in another State or Territory can now work in Tasmania without requiring a Tasmanian motor dealer licence. There are reciprocal arrangements for Tasmanian motor dealers looking to work in other States and Territories which has implemented the AMR scheme. Queensland is now the only State which does not participate in the scheme, due to its stated concerns over the lack of consistency between different state licences.



1.5.2 *Treasury Laws Amendment (Electric Car Discount) Act 2022 (Cth)*

The *Treasury Laws Amendment (Electric Car Discount) Act 2022 (Cth)* came into force on 1 January 2023. It inserted new section 8A into the *Fringe Benefits Tax Assessment Act 1986 (Cth)*. The new section provides an exemption from fringe benefits tax for battery electric vehicles, hydrogen fuel cell electric vehicles and plug-in hybrid electric vehicles. The exemption will be applied retrospectively to eligible EVs first used on or after 1 July 2022.

1.5.3 *Treasury Laws Amendment (More Competition, Better Prices) Act 2022 (Cth)*

The *Treasury Laws Amendment (More Competition, Better Prices) Act 2022 (Cth)*, enacted on 27 October 2022, amended Schedule 1 of the *Competition and Consumer Act 2010 (Cth)* (Australian Consumer Law or **ACL**) by increasing penalties for businesses that include unfair contract terms in their standard form contracts. The new maximum penalty for companies is the greater of:

- \$50 million;
- if a court can determine the value of the benefit that the body corporate (and its related bodies corporate) directly or indirectly obtained from the contravention, three (3) times the value of that benefit; or
- if a court cannot determine the value of that benefit, 30% of the adjusted turnover of the body corporate during the breach turnover period (with a minimum of 12 months) for the contravention.

The new maximum penalty for individuals \$2.5 million.

The new maximum penalties come into force on 9 November 2023 and apply to businesses which enter into, apply, rely or purport to rely on an unfair contract term in a standard form consumer or small business contract. The penalties will apply to all new consumer or small business contracts entered into, and any existing contracts renewed or varied, on or after 9 November 2023.

Dealers are advised to promptly review and, where necessary, amend their standard form consumer or small business contracts before 9 November 2023 to ensure they are compliant with the new unfair contract terms regime.



2. Proposed Legislation

2.1 Maximum Sulphur Limit of 10ppm in Petrol from 2024

The Federal Government has introduced new fuel standards (the Fuel Quality Standards (Petrol) Amendment Determination 2022 and the Fuel Quality Standards (Ethanol E85) Amendment Determination 2022) which will lower the maximum sulphur level in 91 RON, 95 RON, 98 RON and E85 petrol sold at Australian service stations to 10 parts per million (**ppm**) by 15 December 2024.

The new standards will bring Australia into line with the EU, China, India, Canada, New Zealand and the United States.

Currently, the maximum sulphur limits for 95 RON and 98 RON petrol is 50 ppm, while for 91 RON it is 150 ppm. Diesel fuel has been limited to 10 ppm since 2009.

The mandated reduction in sulphur levels in petrol is expected to result in slightly higher prices for Australian motorists of approximately 0.6-1.0 cents per litre of fuel. This equates to a modest additional cost of \$8 per household over three years. Moreover, according to modelling announced by the Federal Government, the health savings from these new measures will exceed the hip pocket cost to motorists by approximately \$750 million.

Improved fuel quality standards will also make the Australian automotive market more competitive as manufacturers introduce vehicles with greater fuel-efficiency, environmentally friendly engines and better emission control technologies. The current poor fuel standards have resulted in Australian motorists being denied access to the more fuel-efficient models seen overseas. Thus, introducing these standards will better align Australia with international automotive standards and ensure that Australia has access to the technologies it needs to take the country closer to achieving its goal of reducing CO2 emissions and achieving net zero by 2050.

2.2 Automated Vehicle Safety Law expected in 2026

The Federal Government has announced that it will work with the National Transport Commission (**NTC**) and state and territory governments to prepare an Automated Vehicle Safety Law to commence in 2026. The intention is to create a nationally consistent regulatory approach to ensure the safety of autonomous vehicles on Australian roads.

The proposed regulations will address the following issues:

- Monitoring safety risks, including technological errors that could cause accidents and fatalities;
- Ensuring that autonomous vehicles have high maintenance standards, especially in terms of programming, to ensure the vehicles remain safe throughout their lifecycles;
- Defining police powers in terms of retrieving data from self-driving vehicles when they are stopped by police;

- Supporting states and territories to examine emerging systematic issues regarding automated vehicles that may assist in investigating crashes involving automated vehicles;
- Considering implications for insurance; and
- Considering the issue of liability for car suppliers and manufacturers.

The NTC has stated that 'our goal is end-to-end regulation to support the safe commercial deployment and operation of automated vehicles at all levels of automation in Australia.' The focus on safety is paramount as automation is intended to reduce crashes caused by driver error. However, the NTC also recognises that regulation should not be so strict that it stifles technological advances and disincentivises companies from bringing their most advanced automated technologies to the Australian market.

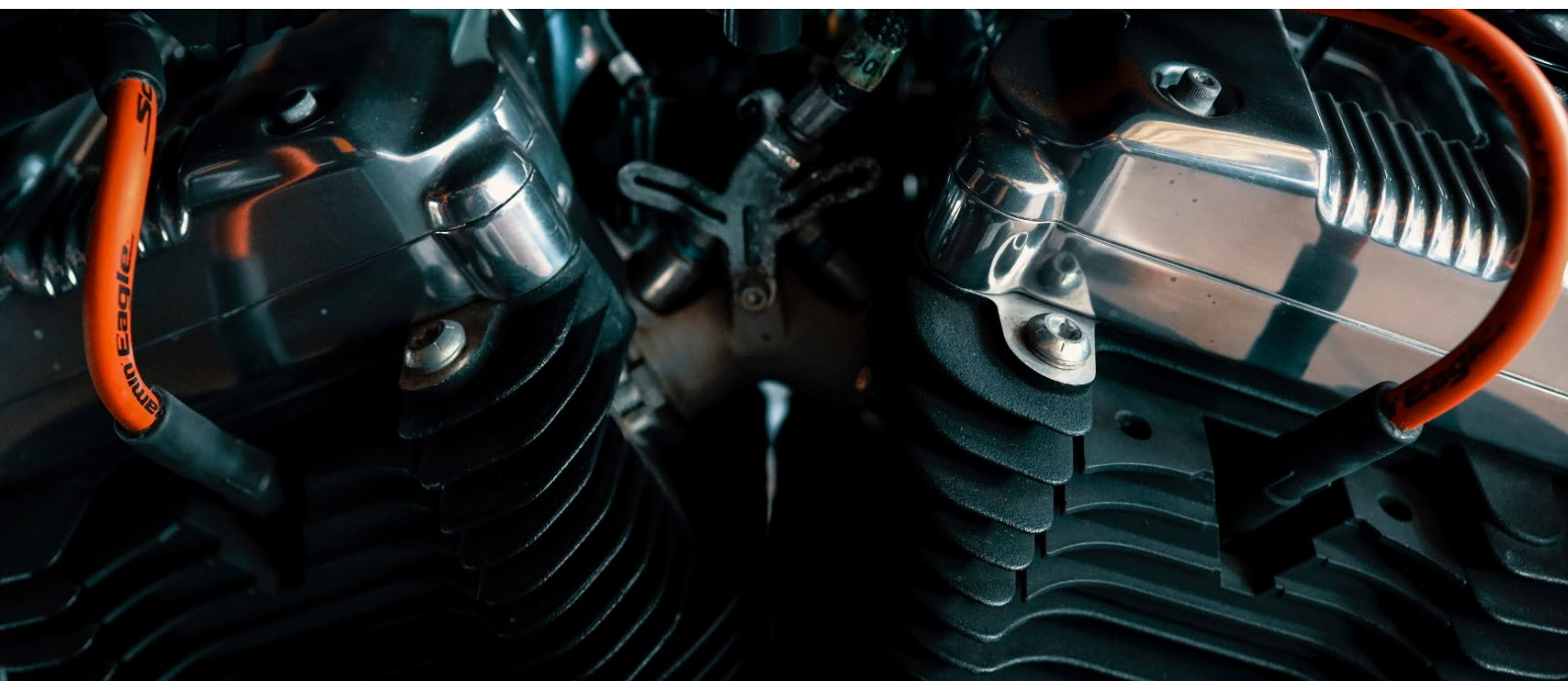
It is hoped that with the correct regulatory balance, autonomous vehicles could:

- reduce pressure on emergency services and the costs to the health care system;
- result in more efficient traffic flow in our cities; and
- result in fewer accidents and fatalities due to the elimination of driver error.

2.3 Changes to Instant Asset Write-off and End of Temporary Full Expensing

The ATO has announced a limited extension to the instant asset write-off scheme. The threshold for asset purchases has been lowered to \$20,000 and will apply to all small business entities with an aggregated turnover of less than \$10 million during the period 1 July 2023 to 30 June 2024. The \$20,000 threshold applies on a per asset basis which allows small businesses to write-off multiple assets. To be eligible, the asset must first be used or installed and ready for use between 1 July 2023 and 30 June 2024. The \$20,000 threshold means that many new vehicles on dealers' lots will be excluded from the scheme due to their value.

Further, the temporary full expensing measures that have been in place since 6 October 2020 expired on 30 June 2023. Therefore, with respect to dealers, the temporary full expensing rules will only apply to a vehicle purchase if delivery occurred prior to 30 June 2023. Any vehicles delivered after this date will not qualify for the temporary full expensing measures, regardless of when they were ordered.



3. Policy Update

3.1 National Electric Vehicle Strategy

The Federal Government has announced Australia's first National Electric Vehicle Strategy (**Strategy**) with the aim of reducing emissions by increasing the uptake of EVs. The anticipated outcomes of the Strategy are to:

- ensure greater affordability, availability and variety of EVs;
- make charging EVs easier;
- increase local EV-related manufacturing and recycling; and
- consequently reduce road transport emissions.

The Strategy aims to incorporate new EV-related initiatives with the existing initiatives featured in the Powering Australia Plan to aid Australia's transition to a decarbonised transport system.

The key objectives of the Strategy will be discussed in further detail below, and include:

- increasing the supply of affordable and accessible EVs;
- establishing the resources, systems and infrastructure required to enable rapid EV uptake; and
- encouraging increased EV demand.

The Strategy introduces a national framework, structured around the 3 key objectives, and developed through ongoing government consultation with states, territories, industries, unions, businesses and communities, in addition to supplementary private and public sector research and investment. The ongoing consultation will be bolstered by annual reviews on the progress of the objectives, with a comprehensive review expected to be completed in 2026.

Importantly, the Strategy does not include any specific targets for the phasing out of petrol and diesel vehicles or for the uptake of EVs generally. Additionally, there is industry concern that not enough consideration has been given to the reduction in fuel excise due to predicted increases in EV purchases. The Strategy states that the decrease in fuel excise and the impact it has on the budget will continue to be monitored. However, Michael Bradley, the managing director of the Australian Automobile Association, expressed a level of apprehension over the Strategy's reluctance to bring EVs into the tax system, and stated that it is important to consider 'a serious plan to secure solid funding streams for road construction and maintenance into the future'.³

³ <https://www.aaa.asn.au/newsroom/electric-vehicle-strategy-will-boost-take-up/>

3.1.1 *EV Supply*

The first key objective of the Strategy is to increase the supply of affordable and accessible EVs in Australia. One way the Strategy aims to increase EV supply is to foster collaboration between the Federal, State and Territory Governments, as well as with the New Zealand Government, to purchase more low emissions vehicles for government and public service fleets. For example, the Commonwealth Government's Net Zero Australian Public Service initiative aims to see low emissions vehicles comprise 75% of all new passenger vehicle acquisitions for the Commonwealth's fleet by 2050. It is anticipated that these government fleet procurement plans will instil greater confidence in manufacturers and encourage them to supply greater numbers of EVs to the Australian consumer market.

Additionally, the Strategy ensures the national consistency of EV accessibility standards, such as appropriate signage and accessible and safe EVs and charging infrastructure. For example, the Strategy proposes consultation and research into mandatory Acoustic Vehicle Alerting Systems for light EVs. These regulations would impose minimum requirements for external collision alarm systems, with the aim of reducing collisions with low vision pedestrians.

The Strategy also outlines the government's intention to introduce a Fuel Efficiency Standard (**Standard**) which will set an average carbon emissions limit on all new light vehicles sold, with plans for the limit to fall over time. The Standard will help reduce fuel costs and improve the supply and variety of EVs entering the Australian market. The absence of such a standard has been cited as a key reason why EVs are not being supplied to Australia and are instead being sold in more advanced markets with higher standards. A consultation paper, 'The Fuel Efficiency Standard - Cleaner Cars for Australia', has been published requesting input from the public on how the Standard should be implemented.

The strategies outlined above will supplement government initiatives such as the Australian Made Battery Plan, National Reconstruction Fund and the Critical Minerals Strategy to promote and facilitate the involvement of Australian manufacturers and industries in the global EV supply chain.

3.1.2 *EV Infrastructure*

The Strategy aims to establish key resources, systems, and infrastructure to support a rapid increase in EV purchases. This objective includes undertaking research in relation to EV charging in multi-residential buildings with the aim of ensuring all types of residences can benefit from EVs. The Strategy also calls for a partnership with states and territories to facilitate data sharing of popular EV charging locations and areas where EVs are commonly driven, to ensure these locations have sufficient charging facilities. In addition, a national mapping tool will be established to give EV drivers access to information on public charging locations. The Strategy will entail investments in remote and regional EV charging infrastructure as part of a planned Australia-wide EV charging network.

The Strategy also outlines how the Federal Chamber of Automotive Industries and the Motor Trades Association of Australia will design a collective vehicle stewardship scheme, with the purpose of managing end-of-life vehicle waste in Australia. The scheme will include investigations into methods of recycling or repurposing batteries where possible.

These infrastructure and knowledge strategies will supplement government initiatives such as the recent update to the National Construction Code, which ensures new buildings are built with EV charging in mind, and the government's Driving the Nation Fund (discussed in detail below at [3.2](#)).

3.1.3 EV Demand

Lastly, the Strategy aims to increase demand for EVs in Australia by reducing costs and increasing affordability by supplementing current initiatives such as the Electric Car Discount, which reduces import tariffs and provides an exemption from fringe benefits tax for eligible EVs. Additionally, the Clean Energy Finance Corporation has invested \$20.5 million into green car loans available for those purchasing new EVs under \$90,000. These loans apply a concessional interest rate. The Strategy also outlines the government's commitment to increasing the general education and awareness levels of Australian households and businesses about the benefits of EVs and how to make informed purchasing decisions.

3.2 Driving the Nation Fund

The Driving the Nation Fund (**Fund**) is an initiative to help reduce vehicle emissions. The Albanese Government will invest an additional \$275.4 million over the next six years into the Fund, which will increase the size of the Fund to \$500 million.

The Fund will assist in the attainment of Australia's Net Zero targets by:

3.2.1 Establishing a National Electric Vehicle Charging Network

Approximately \$39.8 million will be invested in the National EV Charging Network over the next 5 years. The charging network will provide EV charging stations on major roads at an average interval of 150km. This will involve developing EV charging infrastructure at 117 highway sites across Australia. This initiative is a collaboration between the Government and NRMA.

3.2.2 Creating a National Hydrogen Highways Refuelling Network

The Hydrogen Highway is a project undertaken by the Hydrogen Society of Australia. The Hydrogen Highway will involve the establishment of new infrastructure including roads equipped with hydrogen refilling stations. This will encourage and facilitate the use of hydrogen fuel cell vehicles and contribute to lower transport emissions and costs of fuel. The program also aims to eliminate the necessity to import diesel fuel by establishing a secure and sustainable fuel supply chain. This initiative is focused on heavy vehicles rather than passenger vehicles as the former are significant contributors to CO2 emissions, and hydrogen is considered the ideal fuel for long-haul vehicles. Phase 1 is expected to commence in Western Australia before spreading to other parts of the country.

3.2.3 Committing to a Low Emission Vehicle Target for the Commonwealth Fleet

The Federal Government has committed to ensuring that 75% of all leased and purchased vehicles for the Commonwealth fleet of vehicles are low emission or EVs by 2025. This will have the secondary effect of boosting the used EV market and make such vehicles more affordable and accessible.

The policy aims to reduce transport emissions by ensuring that each vehicle procured by the Commonwealth Government:

- *Is a Low Emission Vehicle (LEV) for passenger vehicles, with a preference for a Zero Emission Vehicle (ZEV):* LEVs are defined as battery electric vehicles (BEV), hydrogen fuel cell vehicles (FCEV) or plug-in hybrid vehicles (PHEV). However, this policy excludes vehicles used for operational law enforcement, covert, defence, or national security functions.
- *Has a five-star rating on the Australasian New Car Assessment Program (ANCAP):* Vehicles must perform to the highest level on all crash tests and assessments.
- *Meets the minimum requirements to be 'fit for purpose':* The 'fit for purpose' criteria prioritises the minimum requirements for operational needs over personal preference. This requirement can only be overlooked if the selection policy for the remaining fleet vehicles is unimpacted.
- *Provides value for money:* Section 4 of the Commonwealth Procurement Rules (CPRs) outlines the 'value for money' assessment and states that consideration must be given to the use of public resources in a manner not inconsistent with the policies of the Commonwealth and the whole life of costs over the term of lease or ownership.
- *Considers environmental and climate change impacts:* This is outlined in the CPRs and is consistent with the Government's commitment to reduce carbon emissions.

The Department of Finance will aid transparency by reporting on the fleet's composition, average age, and current LEVs and comparing it against the target.

3.3 Electric Fast Charging Grants (NSW)

Applications for round 2 of the Electric Vehicle Fast Charging Grants program closed on 14 March 2023. The program is a key component of the NSW Electric Vehicle Strategy (NSW EVS) first announced in 2021. The grants scheme will invest \$149 million in the development of a 'world-class fast charging network' to make NSW the premier state for buying and using EVs. The NSW Government will co-invest with privately owned charge point operators (CPOs) to construct, install and operate EV charging stations. The program also includes on-site renewable energy generation and EV battery storage.

There are two streams of funding offered under the program. The first stream, the standard stream, allows up to \$490,000 in co-funding per station, with government funding not to exceed 50% of total construction costs. The second stream, the fast-track stream, is targeted at building new charging stations in metropolitan Greater Sydney with high urban density. Co-funding is up to \$900,000, with government funding not to exceed \$900,000 of total construction costs. Applicants will be judged on criteria including value for money, merit, innovation in station design, and diversity of locations. Other features of the program include:

3.3.1 EV Destination Charging Grants

The NSW Government will invest \$20 million in co-funding the construction of EV charging stations in eligible regional areas to promote tourism and ensure that regional communities benefit equally from EV policies. Round 1 applications for the grants have closed, with round 2 applications expected to open in mid-2023.

3.3.2 EV Super Highways and Commuter Corridors

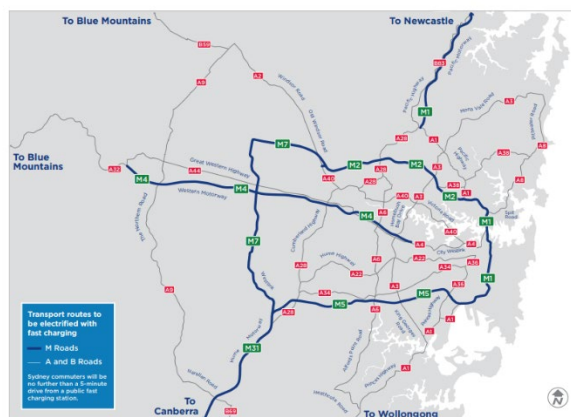
Ultra-fast chargers will be established at 100km intervals on major NSW highways to create an 'EV Super Highway'.⁴ This policy complements the Destination Charging Grants scheme and will encourage city-based motorists to travel to regional NSW, and thus increase tourism and economic activity in regional areas. For metropolitan users, ultra-fast charging stations will be set-up every 5km on major Sydney roads.

Figures A below shows the highways which will comprise the 'EV Super Highway' (with a charging station every 100 km), and Figure B shows the major metropolitan roads which will comprise the 'Commuter Corridors' (with a charging station every 5 km).⁵

Figure A: Indicative map of NSW EV Super Highways.



Figure B: Indicative map of Sydney EV Commuter Corridors.



⁴ <https://www.energy.nsw.gov.au/sites/default/files/2022-09/nsw-electric-vehicle-strategy-210225.pdf>

⁵ <https://www.energy.nsw.gov.au/sites/default/files/2022-09/nsw-electric-vehicle-strategy-210225.pdf>

3.4 Western Australia's Grant Program to Expand Electric Vehicle Charging Infrastructure

Applications for round 1 of the WA Government's Charge Up Workplace Grant Program (**Grant Program**) close on 31 July 2023. The \$15 million grants program is part of a suite of policies (budgeted at \$60 million in the 2022-23 WA state budget) which are aimed at increasing the uptake of EVs, reducing carbon emissions, and allowing WA to reach its carbon pollution reduction targets.

The Grant Program is available to not for-profit organisations, small and medium businesses and local government authorities in WA, and includes funding for:

- 50% of the cost of up to 4 Level-Two (7 to 22kW AC) EV chargers per site, for up to five sites;
- 50% of the EV charger installation costs, with a cap of \$5,000 per site in metropolitan areas and \$10,000 per site in regional and remote areas; and
- 75% of a 2-year smart charging software subscription.

The maximum grant value for round 1 is \$50,000 for approved applicants from metropolitan areas, and \$75,000 for approved remote and regional applicants. Total funding for round 1 is up to \$3.75 million.

The goals of the Grant Program are to:

- *Make it easier to install charging stations:* the Grant Program aims to make it cost-effective and accessible for WA small-medium businesses, not-for-profits and local governments to install charging stations.
- *Maximise opportunities for daytime charging:* carbon emissions can be reduced by charging EVs during the day as the electricity grid is powered by the highest amount of clean solar energy during the day.
- *Promote off-peak charging:* this will ensure greater stability of the electric system as the number of EVs grows.
- *Encourage organisation fleets to convert to EVs:* the program will fund EV chargers in workplaces and dense areas, which will encourage organisations to take up EVs and allow employees and visitors to charge their vehicles.
- *Stimulate a second-hand EV market:* fleet vehicle uptake will, in turn, generate a second-hand market for EVs making it cheaper and more accessible for lower income households.



3.5 ACT Registration System

On 1 February 2023, the ACT's Chief Minister and Minister for Climate Action, Andrew Barr, and the Minister for Energy and Emissions Reduction, Shane Rattenbury, announced changes to the Territory's motor vehicle registration concession scheme and the weight-based registration system. ACT Service Access card holders and Australian Low Income Health Care Card holders are eligible to receive a 100% concession on motor vehicle registrations in the ACT, from 1 July 2023 onwards.

Additionally, the ACT Government has announced that it will gradually transition to an emissions-based vehicle registration system from the current weight-based system. The changes mean lower fees will be charged for the registration of low-emissions vehicles. New and used ZEVs will transition to the lowest fee category from 25 May 2023, followed by the remainder of light vehicles transitioning to the new system from 1 July 2024. It is expected that 96% of all private passenger vehicles will be either unaffected by the change or will start paying less for registration.

The ACT Government has also announced 12 months of registration discounts for plug-in hybrid EVs (**PHEVs**) and hybrid electric vehicles (**HEVs**), in addition to extending the stamp duty waiver to second-hand PHEVs and HEVs, from 1 July 2023. It is estimated that these changes will save motorists \$6.6 million over the next four years.

3.6 ATO Announces Changes to Car Threshold Amounts

The ATO has announced the following changes to car threshold amounts from 1 July 2023:

- (a) The threshold limit for motor vehicles has been changed to \$68,108 for financial year 2023-24. For tax purposes, this is the maximum value that can be used for calculating depreciation on the business use of a car first used or leased in the 2023-24 financial year.
- (b) If a motor vehicle is purchased and the price is greater than the threshold limit, the maximum GST credit that can be claimed is one eleventh of the threshold limit, which is \$6,191 in 2023-24.
- (c) The LCT threshold is \$89,332 for fuel-efficient vehicles and \$76,950 for all other luxury vehicles. Moreover, GST credit cannot be claimed for luxury car tax (**LCT**) payable when a luxury car is purchased. LCT is levied on the sale of luxury motor vehicles by dealers (among others).

3.7 ACCC Designated Complaints function

On 12 May 2023 the Hon Dr Andrew Leigh, Assistant Minister for Competition, Charities and Treasury announced the introduction of a Designated Complaints function for the ACCC in July 2024. Currently, there is no formal mechanism for consumer or small business advocacy groups to lodge complaints where the ACCC is obligated to respond. The Designated Complaints function will enable consumer and small business advocacy groups to submit a complaint to the ACCC where they have strong evidence of systemic market issues under the Australian Consumer Law. These complaints will be lodged with the responsible minister. The announcement noted that a similar mechanism has operated in the UK since 2012.

The UK mechanism is called a 'super complaint' process whereby a designated consumer body can make a complaint to the Competitions Markets Authority (CMA) so long as the complaint meets certain criteria. The main criteria of the 'super complaint' must be that it significantly harms the interest of consumers. Within 90 days the CMA will publish a response on how it will deal with the complaint, whether action will be taken and if so, what the action will be. The UK process has been widely regarded as having been effective in raising complaints that affect economy/industry wide practices.



4. Case Law Update

4.1 Current Litigation

4.1.1 *AHG WA (2015) Pty Ltd T/A Mercedes-Benz Perth & Westpoint Star Mercedes-Benz & Ors v Mercedes-Benz Australia/Pacific Pty Ltd*

Background

A group of 38 Mercedes-Benz franchisees are seeking \$650 million in compensation from Mercedes-Benz Australia (the franchisor) due to alleged breaches of the Australian Consumer Law and the good faith provisions under the Australia Franchising Code of Conduct. The claim arises from Mercedes-Benz Australia unilaterally changing the franchise dealership model to an agency sales model from January 2022. Under the new arrangements, Mercedes-Benz vehicles are sold by the dealers (as agents for Mercedes-Benz Australia) at a price and for a commission as determined by the franchisor, with dealers no longer owning any of their showroom stock or having much control over their business. The dealers claim that the circumstances of the changes (passed through without consultation and approval from the dealers) was unconscionable and in bad faith.

Issue

1. Whether Mercedes-Benz Australia has engaged in unconscionable conduct in contravention of the Australian Consumer Law; and
2. Whether Mercedes-Benz Australia has failed to act in good faith in contravention of the Franchising Code of Conduct.

Outcome

The Court's Judgment is expected in the last 2 weeks of July 2023.

NOTE: For further information about this case, check out the Federal Court of Australia Portal [here](#). To read our previous case law update from when proceedings were about to commence, click [here](#) and navigate to page 18.

Significance to the automotive industry

The decision in this case will have significant ramifications for franchising and consumer laws in Australia.

Whilst it is illegal for independent dealers to collude and fix prices for the sale of goods due to anti-trust provisions in the *Competition and Consumer Act 2010* (Cth), Mercedes-Benz Australia would be able to side-step these laws under an agency structure. This could lead to reduced competition and higher prices for consumers, in addition to lower profitability for dealers as they are now merely agents receiving a commission.

Moreover, this decision will be a test case for the interpretation of the good faith provisions of the Franchising Code and the law relating to unconscionable conduct. The Court will determine the extent to which the goodwill developed by dealer in their dealership business can effectively be appropriated by a distributor by compelling a dealer to sign an agency agreement without paying any compensation to the dealer.

4.1.2 *Vanderstock & Anor v. The State of Victoria* (High Court of Australia, M61/2021, commenced 16 September 2021)

Background

A claim was brought against the State of Victoria in the High Court of Australia to challenge the *Zero and Low Emission Vehicle Distance-based Charge Act 2021* (Vic) (**ZLEV Act**) by the plaintiffs Christopher Vanderstock and Kathleen Davis, who are registered owners of electric vehicles. The ZLEV Act requires registered owners of an electric, plug-in hybrid electric or hydrogen vehicle (**ZLEV**) to submit annual odometer readings and pay charges of between 2 and 3.5 cents for every kilometre driven by the ZLEV.

The plaintiffs, together with supportive submissions from the Commonwealth of Australia, claim that there is no constitutional authority for the ZLEV charge as it is a duty of excise under section 90 of the Constitution and therefore exclusively within the powers of the Commonwealth Parliament. In its defence filed with the court, the State of Victoria submitted that the levy is a tax on the 'activity' of driving an EV on a particular road and therefore is not a duty of excise within the meaning of section 90. Submissions by the other States and Territories unsurprisingly supported Victoria's position (as those other States and Territories are planning to introduce their own EV levies - see Part 1.1 of this Update). The Australian Trucking Association (ATA) also sought leave to provide written submissions as an *amicus curiae* ('friend of the court') in support of the plaintiffs' position. The ATA argues that should the ZLEV Act be upheld, Victoria may widen the scope of the ZLEV Act to include heavy vehicles, which would have a significant financial impact on members of the Australian Trucking Association.

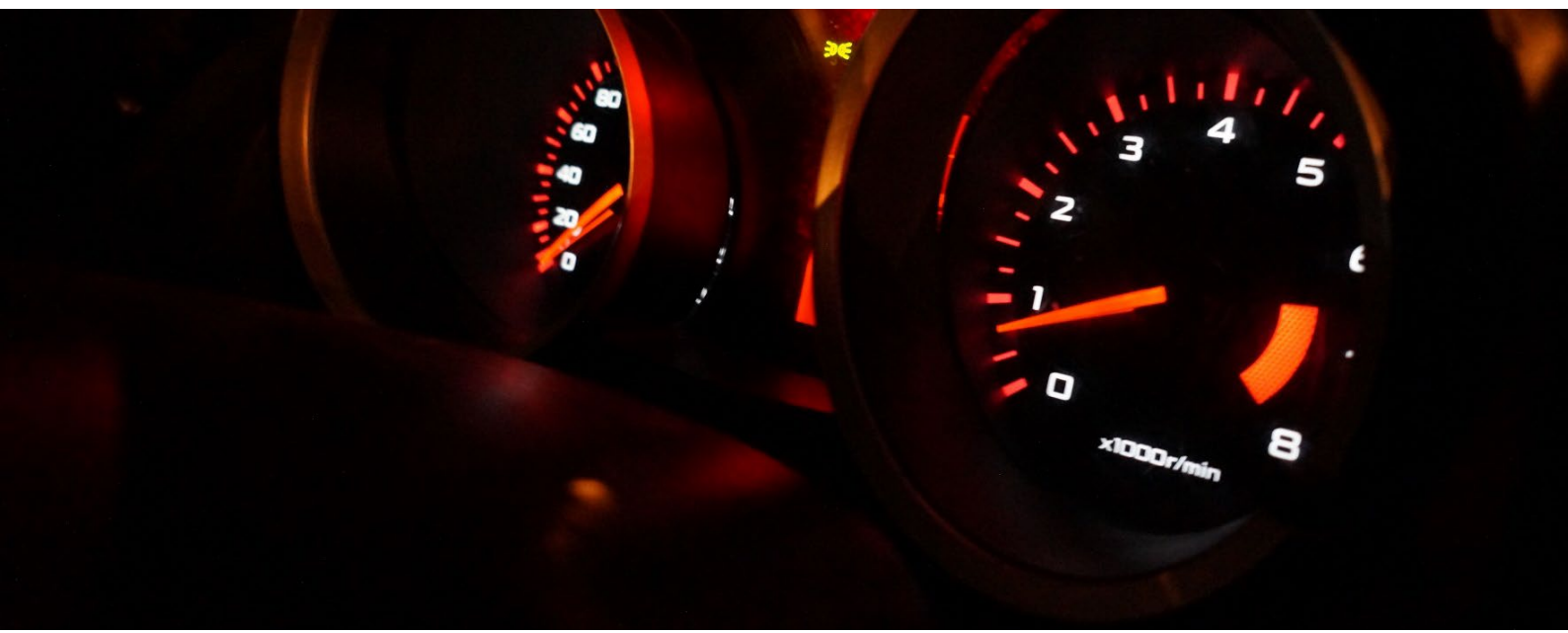
Issue

1. Whether a State Parliament has the power to impose a charge on registered operators of ZLEVs for the use of ZLEVs on specified roads; and
2. Whether the Victorian ZLEV charge is a consumption tax or a duty of excise and therefore constitutionally invalid under section 90 of the Constitution.

Significance to the automotive industry

This case will determine how ZLEVs are taxed in Australia. If the ZLEV Act is declared unconstitutional, other States and Territories (namely New South Wales and Western Australia) may not proceed with their own planned EV levies or may need to substantially amend their laws to make them constitutionally valid. This case also has broader implications for EV taxation and consumption charges for the use of public roads.

The Court is expected to hand down its decision in late 2023.



4.2 Breaches of Consumer Guarantees

The below cases are decisions from State tribunals in relation to the sale of motor vehicles which were found to be of unacceptable quality and, therefore, in breach of the consumer guarantees of acceptable quality under section 54 of the Australian Consumer Law (ACL).

4.2.1 *Beauchamp v Toyota Motor Corporation Australia Limited [2022] NSWCATCD 146 (5 September 2022)*

Background

The applicant (Beauchamp) bought her Toyota Yaris in 2017. The applicant subsequently discovered on or around early 2020 that the vehicle's coat of paint was delaminated. She sought \$9,495.02 from Toyota due to Toyota's failure to comply with the guarantee of acceptable quality as required by section 54 of the ACL. Toyota claimed that the delamination was due to the applicant's failure to maintain, clean and polish the vehicle and was not a manufacturing defect. In response, the applicant submitted evidence of 17 occasions when she had the car professionally cleaned and polished during the period 2017 to 2020.

Toyota also tried to have the claim statute-barred on the basis that the cause of action giving rise to the claim accrued on the date the vehicle was supplied to the applicant (ie six years and eight months before she made her claim), and thus the limitation period for making a consumer claim (which is three years pursuant to section 79L(1)(a) of the *Fair Trading Act 1987* (NSW)) had expired. In response, the applicant argued that she filed her application to NCAT within three years of her becoming aware of the defective coat of paint, and therefore her claim was filed within the limitation period.

Issue

1. Whether a 'reasonable consumer' would consider the vehicle to be of acceptable quality in terms of appearance, finish and durability; and
2. Whether the cause of action accrues from the date of supply of the motor vehicle or from the time the applicant becomes aware of the defect.

Outcome

The Tribunal found that there was a breach of the consumer guarantee of acceptable quality due to the defective paint work initially done on the motor vehicle. The delamination was so extensive that it could not be considered normal wear and tear. In addition, the delamination did not occur due to any misuse of the vehicle by the applicant, as the evidence showed that the applicant had the vehicle professionally washed every month or almost every month following the purchase.

Additionally, the Tribunal found that the cause of action accrued from the time the defect became apparent - that is, when the motor vehicle's delamination began to occur in early 2020. Accordingly, the claim was filed within the three-year statutory limitation period prescribed by the *Fair Trading Act*.

The Tribunal ordered Toyota to pay the applicant compensation in the amount of \$9,495.02, being the amount quoted by a licenced motor vehicle (smash) repairer to strip the existing paintwork and re-paint the Yaris.

4.2.2 *Hoskin & Anor v Hinterland Outdoors Pty Ltd t/as Hinterland Motorhomes GC [2022] QCAT 373 (11 October 2022)*

Background

The applicants (the Hoskins) purchased a caravan from the respondent (Hinterland Motorhomes) in 2016 for the sum of \$94,989.99. The caravan experienced water leakage within a few weeks of usage, so the applicants had the caravan serviced to fix the problem. However, the water leakage issue continued for the period 2017 to 2021, despite the applicants continually returning the caravan to the respondent and requesting the issues be fixed. In August 2021, the applicants requested a refund of the purchase price, which the respondent refused. Consequently, the applicants commenced proceedings in QCAT seeking reimbursement of the purchase price due to the respondent's failure to comply with the consumer guarantee of acceptable quality.

Issue

1. Whether the caravan supplied to the applicants was of unacceptable quality; and,
2. Whether the caravan's failure to be of acceptable quality was a major failure.

Outcome

The Tribunal found that as the water leak fault existed at the time of sale of the caravan and that the fault was of such a nature that a reasonable consumer would not have made such a purchase had they been fully acquainted with the defect, the product was not of acceptable quality. The sale of the faulty caravan to the applicants was also found to be a significant failure to comply with a consumer guarantee. As no repairs could be made to fix the defects with the caravan, the respondent was ordered to refund the purchase price of \$94,989.99 to the applicants, and the applicants were ordered to return the caravan to the respondents.

4.2.3 *Ulmer v Volkswagen Group Australia Pty Ltd [2022] NSWCATCD 179 (15 September 2022)*

Background

The applicant (Ulmer) purchased a Volkswagen Polo in 2014, which ran smoothly until about June 2019, when the vehicle started sputtering and stopping on the road. The applicant arranged for the vehicle to be inspected and serviced by a mechanic. In October 2019, the car was the subject of a recall notice due to a production fault. There was a resulting dispute between the parties about whether the vehicle's performance issues were related to the same issues that were the subject of the recall notice. This dispute was not resolved. In July 2020, the vehicle was subject to a second recall notice. In January 2022, the applicants experienced further problems with the auto-transmission of the vehicle. When the applicant arranged for the vehicle to be inspected and serviced again by a mechanic, it was found that there were no longer any forward or reverse gears due to the vehicle's faults. To enable the vehicle to be roadworthy, the mechanic supplied and fitted a new transmission mechatronics unit and reconditioned the electrical transmission. Altogether, the applicant spent \$8,400 on repairs to the vehicle.

Issue

Whether Volkswagen breached the consumer guarantees in section 54 of the ACL (guarantee as to acceptable quality) by supplying a faulty vehicle to the applicant.

Outcome

Volkswagen was ordered to pay the applicant's repair costs of \$8,400. The evidence demonstrated that the significant mechanical issues experienced by the applicant were not reasonable "wear and tear", and therefore the supply of the motor vehicle was in breach of the consumer guarantee as to acceptable quality under section 54 of the ACL.

4.3 Class Actions

4.3.1 *Crystal Carol Torley v Hyundai Motor Company Australia Limited & Anor; David Joseph Schleeauf & Anor v Kia Australia Pty Ltd & Anor*

Background

A class action claim was filed in the Federal Court of Australia on 15 February 2023 against Hyundai and Kia (the respondents). It is alleged that the companies supplied motor vehicles in Australia with defective engines from 2011 to the present date, posing a risk to consumers including engine failure, sudden loss of power and fires. It is also claimed that Hyundai and Kia were aware of the engine defects since at least 2015, but nevertheless continued to sell vehicles with defective engines. The applicants allege that the defective vehicles failed to comply with express warranties in their advertising material and also breached the consumer guarantee of acceptable quality in section 54 of the ACL.

The matter is in the early stages of interlocutory applications and hearings.

Issue

1. Whether Hyundai and Kia supplied defective motor vehicles to consumers during the period 2011 to the present date.

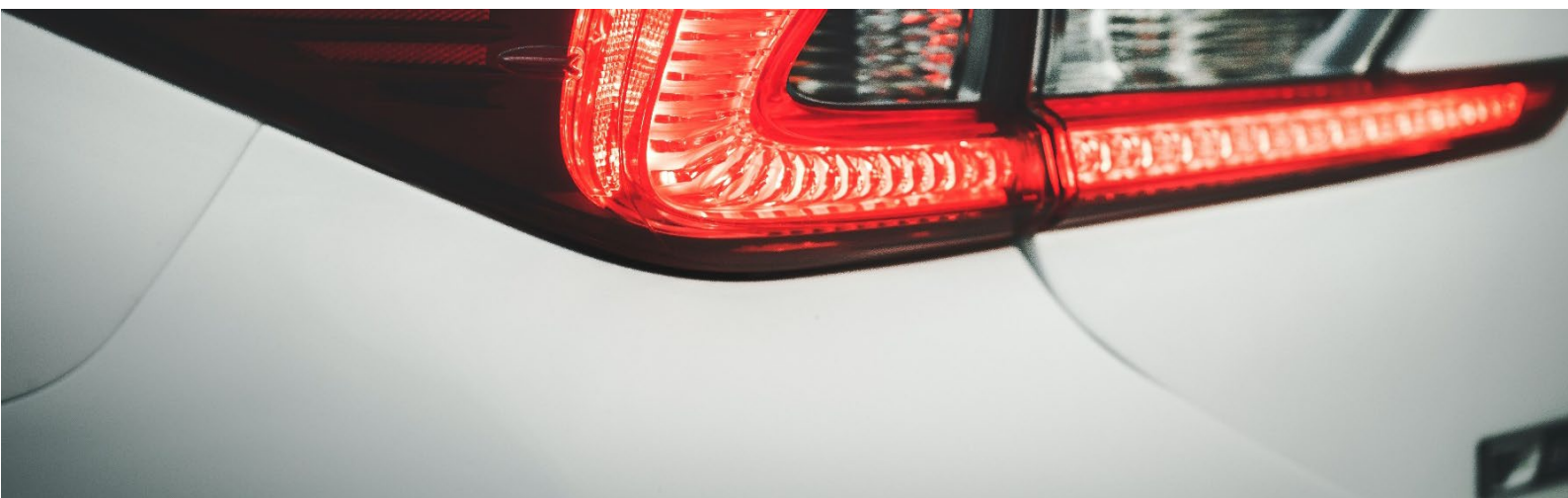
Significance to the automotive industry

The defects are said to affect around 500,000 vehicles.

This case may establish a standard of care for manufacturers in complying with the ACL, in particular section 18 (misleading or deceptive conduct) and section 54 (consumer guarantee of acceptable quality).

Manufacturers should be cognisant of the significant penalties that can arise from the supply of defective goods including motor vehicles.

There has been a substantial increase in the number of class action lawsuits filed in Australia in recent years (no doubt due to the greater availability of third party litigation funding), so we expect to see more product liability claims against manufacturers and suppliers in the future.



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