



## AUTOMOTIVE INDUSTRY GROUP

Regulatory Update

July 2025



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## Introduction

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### 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 new motor vehicle dealers.

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### Headlines

- New Franchising Code introduces new obligations and protections for franchisors and franchisees (see [Part 1.1](#))
- New Mandatory Merger Notification Regime - Further Details Released (see [Part 1.2](#)).
- Australian Government introduced first tranche of privacy reforms to the *Privacy Act 1988* (Cth) (see [Part 1.4](#)).
- Government announces plans to extend Unfair Trading Practices Provisions for Small Businesses (see [Part 2.1](#)).
- New Automated Vehicle Safety Law to commence in 2026 (see [Part 2.2](#)).
- Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct (see [Part 3.1](#)).
- The United States introduces tariffs on imported vehicles (see [Part 3.3](#)).





# 1. Legislation Update

## 1.1 New Franchising Code Introduces New Obligations, and Protections, for Franchisors and Franchisees

From 1 April 2025, all franchisors must follow the new Franchising Code set out in the *Competition and Consumer (Industry Codes - Franchising) Regulations 2024 (Cth) (New Code)*. For franchise agreements entered into before 1 April 2025, the New Code will come into effect once the agreement is renewed, transferred or extended after that date. The New Code has been brought in to more effectively manage regulation, standards, and dispute resolution in the franchising industry. The substantive contents of the code have remained the same.

The key changes contained in the New Code are as follows:

### Definitions

The definition of 'motor vehicle dealership' has been expanded to include any servicing or repairing of motor vehicles by a business or an agent for a business that buys, sells, exchanges or leases motor vehicles.

### Civil penalty provisions

Civil penalties are applicable for many of the substantive provisions of the New Code. The maximum penalty applicable for most contraventions of the New Code, including non-compliance with the good faith obligation, is 600 penalty units (\$198,000). An alternative, and considerably higher, civil penalty has been established in section 17 of the New Code. These higher penalties come into play for specific contraventions, such as a failure to disclose material information. The minimum penalty under this new section for a body corporate is \$10 million.

With specific regard to franchisees, in addition to the existing civil penalties that apply for contraventions of the Code, a civil penalty may apply for a contravention of section 87(2) of the New Code, where the franchisee (and franchisor) must develop and implement a management plan for the winding down of the franchise. The penalty applicable for any such contravention by a franchisee is 600 penalty units.

### Disclosure Documents

Under the New Code, while disclosure documents are still required in a similar way as in the previous code, there are significant changes to the content to be included. A summary of those is as follows:

Disclosure Document Clauses	What is now required to be disclosed
Litigation (Clause 4)	Current proceedings under the <i>Fair Work Act 2009</i> , <i>Independent Contractors Act 2006</i> or a law of a State or Territory that regulates workplace relations or independent contractors now need to be included in the litigation disclosure.
Existing franchises (Clause 6)	Franchisors must now supply a telephone number and email address (in addition to information already required) for a former franchisee if the information is available.  Please note there is a prohibition under the New Code for a franchisor to disclose a former franchisee's personal information to a prospective franchisee unless the franchisor has given notice that the former franchisee can give a written request to prevent this information from being shared.

Franchise site or territory (Clause 9)	Franchisors must now disclose whether the franchisee could face competition from businesses not associated with the franchisor.
Significant capital expenditure (Clause 14)	<p>New information must be provided for whether the franchisee will incur <i>significant capital expenditure</i> during the term of the franchise agreement, including the rationale, the amount, timing and nature, anticipated outcomes and benefits, and expected risks associated with the expenditure. This change ensures that these items are set and referenced in the Disclosure Document with the purpose to ensure that the disclosed details of <i>significant capital expenditure</i> are less broad and more specific to the franchisee.</p> <p><i>This update is subject to a grace period as mentioned below.</i></p>
Specific purpose funds (Clause 15)	<p>Franchisors must specify the information that is required in relation to <i>specified purpose funds</i>, which covers funds known as <i>marketing or cooperative funds</i> under the old Code. The marketing and cooperative funds under the old Code are now identified under a single concept of “specific purpose fund”.</p> <p><i>This update is subject to a grace period as mentioned below.</i></p>

While franchisors should have introduced most of the new information into their disclosure documents by 1 April 2025, disclosure documents are not required to be updated to contain information regarding significant capital expenditure or *specific purpose funds* until 1 November 2025. Also, notably the disclosure documents can no longer be included on the Franchise Disclosure Register.

### Specific Purpose Funds

From 1 November 2025, franchisors will be required to include details of each *specific purpose fund* in their annual statements. The 'details' required will be the same as those currently required for market funds, including the preparation and circulation of annual financial statements and any credits and debits to the fund.

### Restraint of Trade

Franchisors are explicitly prohibited from including a restraint of trade clause in a franchise agreement where the agreement contains an option to renew or extend the agreement, but the franchisor does not renew or extend the agreement despite the franchisee having satisfied the other items in section 42 of the New Code, including:

- having provided written notice to the franchisor seeking to extend the agreement on substantially similar terms as the current agreement; and
- having met all of its obligations under the agreement and is not in breach of the agreement.

This new prohibition is a civil penalty provision.

### Reasonable Opportunity for Return on Investment

The New Code has extended the obligation on franchisors to provide that the term of the franchise agreement is sufficient to enable a reasonable opportunity for franchisees to make a return on any investment required by a franchisor which previously applied only to new motor vehicle franchisees, to apply to all franchise agreements.

## Termination

Under the New Code, where termination rights are set out in the franchise agreement there are certain circumstances in which a franchisor may terminate the agreement with 7 days' notice. Included in these circumstances are instances where the franchisee has breached certain provisions of the *Fair Work Act 2009* (Cth) or *Migration Act 1958* (Cth).

The New Code also extends the concept of compensation for early termination previously applicable only to new motor vehicle franchises to all franchise agreements, but only when the franchise agreement is terminated before it expires due to the franchisor withdrawing from the Australian market, rationalising its networks in Australia, or changing its distribution models in Australia.

## Name and Shame Power

Pursuant to the New Code, the Australian Small Business and Family Enterprise Ombudsman has the power to publish the name of any franchisor who refuses to meaningfully participate in or withdraws from alternative dispute resolution to draw attention to the behaviour of the franchisor. This power does not extend to revealing the outcomes of any specific dispute resolutions.

## Transition Provisions

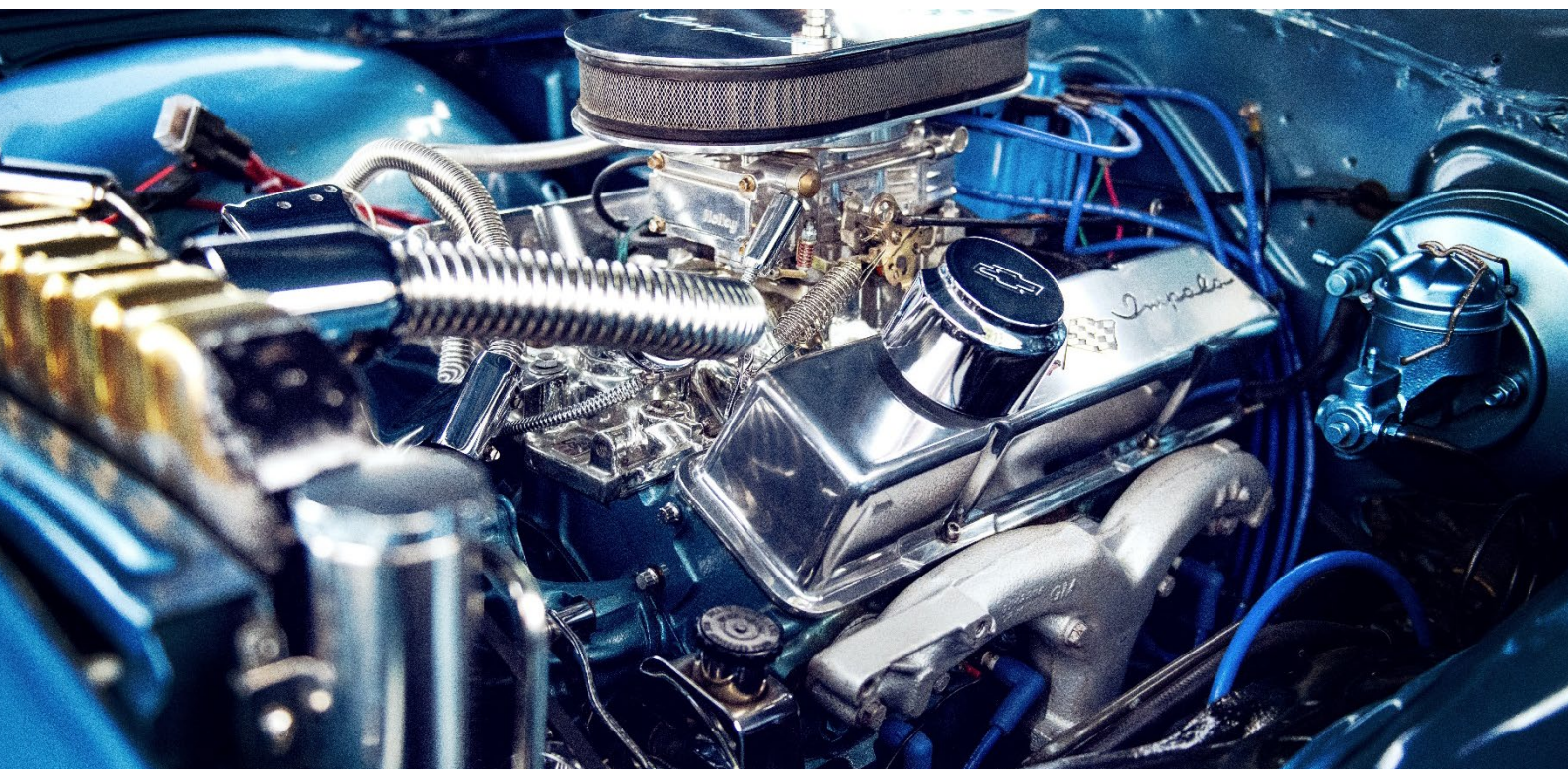
The New Code does not come into full effect until 1 November 2025. However, there is nothing in the New Code preventing parties from updating their franchise agreements to be in accordance with any provision of the New Code prior to 1 November 2025.

## Relevance to the Automotive Industry

Given the extension of provisions previously applicable only to new motor vehicle dealerships which were limited to dealers of new passenger and light commercial vehicles, such as early termination provisions, to all franchisees those motor dealers engaged in truck dealerships, repair services, and car rentals, will now have the benefit of those protections. Further all franchisees and franchisors, may be subject to the civil penalty provisions as stated above in this section 1.1.

Follow the HWL Ebsworth Lawyers article link to read more at: [The New Code is Here...](#)

The New Code is accessible at the link [here](#).





## 1.2 New Mandatory Merger Notification Regime - Further Details Released

The *Treasury Laws Amendment (Mergers and Acquisitions Reform) Act 2024* (Cth) (**Mandatory Notification Regime**) was assented to on 10 December 2024, bringing about the most significant change to Australia's merger notification regime in 50 years. The Mandatory Notification Regime means that any purchase of a business put into effect after 1 January 2026 will need to be notified to the Australian Government and the Australian Competition and Consumer Commission (**ACCC**) and will require ACCC clearance if the value or turnover of the businesses involved exceed the notification thresholds.

The high turnover value of motor vehicle dealerships means that most motor vehicle dealership acquisitions are now likely to require compulsory ACCC clearance - even if they would not otherwise give rise to competition concerns.

The ACCC have recently released further insights into the structure and requirements of the new regime. These updates are set out below.

### Acquisitions that Require Notification

The notification thresholds are yet to be finalised. However, it is likely that acquisitions will need to be notified if they meet any of the following thresholds:

If purchase price for the business will be \$250 million or more;

- If the acquirer and its related entities have a combined turnover of \$150 million or more, and the turnover of the dealerships being acquired is \$50 million or more. If the group making the acquisition has put other acquisitions into effect within the past three years, then ACCC clearance will be required if the combined turnover of those businesses, plus the turnover of the business being purchased exceeds \$50 million; and
- If the acquirer and its related entities have a combined turnover of \$500 million or more, and the turnover of the dealerships being acquired is \$10 million or more. If the group making the acquisition has put other acquisitions into effect within the past three years, then ACCC clearance will be required if the combined turnover of those businesses, plus the turnover of the business being purchased exceeds \$10 million.

Transactions that do not meet any of the thresholds are not subject to mandatory notification, but they will remain subject to the general prohibition on mergers that substantially lessen competition under section 50 of the *Competition and Consumer Act 2010* (Cth).

### Transitional Provisions

The implementation of this new regime for any transactions 'put into effect' from 1 January 2026 means that any transactions that begin in 2025, but are not completed before 1 January 2026, will become subject to the new regime. To aid the transition, parties have the option of voluntarily notifying a transaction under the new regime from 1 July 2025 onwards. Alternatively, the current informal clearance procedure will still be available until 31 December 2025, although the ACCC has warned that informal merger clearance applications lodged after October 2025 are likely not to be able to be considered by the ACCC under the current informal regime prior to the commencement of the Mandatory Notification Regime on 1 January 2026.

Automotive businesses intending to complete mergers within the next 6 months should consider whether they can accelerate their transaction to ensure it will be complete prior to 1 January 2026. Alternatively, they should consider seeking clearance under the current informal ACCC clearance regime (which will be much easier, quicker and cheaper than the new regime) while that regime is still available.

## Merger Process Guidelines

The draft merger process guidelines have provided some clarification on the ACCC's powers and the potential timeline for mandatory notifications, including that:

- The ACCC is encouraging businesses to engage with them prior to lodging a notification. This engagement should occur at least two weeks prior for standard transactions, and much earlier for complex transactions.
- In theory, the ACCC is required to determine the initial phase of a notification process within 30 business days, and for those transactions that raise competition concerns, the ACCC has an additional 90 business days to consider the transaction. However, the ACCC has the power to extend determination timeframes including where parties are required to provide additional information.
- Confidential reviews will only be available for surprise hostile takeovers and voluntary transfers of certain entities. Otherwise, all other notified transactions will be published on the Acquisitions Register.

## Notification Criteria

Draft 'short' and 'long' notification forms have been released providing that parties must disclose to the ACCC:

- For both notification types, information including the parties, the proposed acquisition, acquisitions put into effect in the past 3 years, certain contracts, any goodwill protection provisions and other documents. The forms also note that any other information or documents that a third party may reasonably consider relevant to the ACCC's assessment should be disclosed, creating a very broad disclosure obligation for the parties.
- For long-form notifications further information will be required, such as about the parties, details of the process, alternative proposals from the past 12 months, competitive dynamics and the nature of the acquisition.

The ACCC has indicated that the long form will be required for acquisitions that are seen to create more substantial competition concerns, for example, an acquisition that increases the market share of the merged business to a significant degree.

## Relevance

For the automotive industry, any acquisitions and mergers that meet the thresholds set out in the Mandatory Notification Regime, such as for dealership businesses, will be required to be notified to the ACCC. Given that dealership businesses deal in high value goods, the automotive industry can expect to meet these thresholds more often than not.

As such, automotive companies intending to undertake a merger or acquisition before the end of 2025 should consider whether to continue under the old merger scheme and complete the transaction before 1 January 2025, which may involve obtaining informal clearance, or to opt-in to the new regime now.

Consultation is still open on certain aspects of the merger process, with further guidance and refinement to these new laws expected to be released prior to 1 January 2026, when the new regime becomes compulsory.

Follow the HWL Ebsworth Lawyers article link to read more at: [New Mandatory Merger Notification Regime: Further Details Released.](#)



See also our previous article on the new regime at: [New Mandatory Merger Notification Regime Passed by Parliament.](#)

### 1.3 Australian Design Rule 98/100 Comes into Full Effect

As of 1 March 2025, all new passenger and light goods vehicles are required to have a car-to-car Advanced Emergency Braking (**AEB**) system fitted. This requirement arises as Australian Design Rule (**ADR**) 98/00 comes into full effect. During the first stage of this ADR's implementation, which came into effect on 1 March 2023, only new vehicles models were required to have AEB fitted as a standard.

While vehicles that do not satisfy this ADR but were already stocked prior to 1 March 2025 may continue to be sold until stock runs out, the implementation of this ADR will see manufacturers forced to stop the production of certain vehicle models if they are not updated.

The expansion of this requirement in the second stage to encompass all new cars produced (not just new models) brings the Australian automotive market closer in line with United Nations Regulation No. 152, which attempts to harmonise the global approach to the use of AEBs.

Looking forward, further AEB-related ADRs are intended to be implemented in upcoming years. For example, ADR 98/01, which has been implemented in a similarly staged manner, will require that all passenger and light goods vehicles produced after 1 August 2026 be fitted with car-to-pedestrian AEB. This ADR already applies to all new models produced after 1 August 2024.

Please see the HWL Ebsworth Lawyers [Automotive Regulatory Guide for July 2023](#) for further details regarding the ADR already in force.



## 1.4 Australian Government Introduces First Tranche of Privacy Reforms

On 10 December 2024, the *Privacy and Other Legislation Amendment Bill 2024* (Cth) (**Privacy Amendments**) was assented to. These amendments are the first tranche of reforms to the *Privacy Act 1988* (Cth) (**Privacy Act**) passed in response to the Attorney-General's Privacy Act Review Report (Review Report) and the Government's response to same in 2023.

This tranche of reforms is primarily focused on promoting the protection of individuals personal information and privacy held by entities regulated under the Privacy Act (**Regulated Entities**). A further tranche is expected in 2025 addressing consent reforms, individual rights, small business and employee exemptions, a new 'fair and reasonable' requirement for data collection, and privacy impact assessments for high-risk activities. However, the Privacy Commissioner has not provided any insight as to when the second tranche can be expected.

### New Civil Penalty Regime

Under the Privacy Amendments, the existing civil penalty for interferences with the privacy of an individual has been expanded. Now, a significantly larger range of conventions has been established. The amendments are as follows:

1. the existing civil penalty for 'serious and repeated' interferences with privacy has been amended to remove the requirement for the offence to the "repeated". Repetition of the offence will now only be a factor for the Court to consider when determining the penalty;
2. a new mid-tier penalty has been introduced for interferences with privacy that do not reach the 'serious' threshold; and
3. a new low-tier penalty has been introduced for certain breaches of the Australian Privacy Principles (**APP**) and for non-compliant eligible data breach statements.

The penalties for offences committed under the new civil penalty provisions are set out in the table below:

Breach	Maximum Penalty
Serious interference with privacy	<p>For a body corporate, the greater of:</p> <ul style="list-style-type: none"> <li>▪ \$50 million;</li> <li>▪ three times the value of the benefit obtained by the company (directly or indirectly) from the breach; or</li> <li>▪ 30% of the body corporate's annual turnover for the relevant period.</li> </ul> <p>For any party other than a body corporate, \$2.5 million.</p>
Interference with privacy	<p>For a body corporate, 10,000 penalty units (\$3.3 million).</p> <p>For a party other than a body corporate, 2,000 penalty units (\$660,000).</p>



Breach of APP or non-compliant eligible data breach notification	<p>For a body corporate, 1,000 penalty units (\$330,000).</p> <p>For a party other than a body corporate, 200 penalty units (\$66,000).</p> <p>The Privacy Commissioner and certain staff of the Commissioner have also been granted the power to issue compliance notices where they reasonably believe that this penalty provision has been contravened. Failure to comply with a compliance notice results in a penalty of 1,000 penalty units (\$330,000) for body corporates and 200 penalty units (\$66,000) for an individual.</p>
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The Privacy Commissioner and certain staff of the Commissioner have also been granted the power to issue infringement notices for breaches of the APP, failures to give information, and failure to comply with a compliance notice. The issuing of an infringement notices gives rise to the following maximum penalties:

- 200 penalty units (\$66,000) for listed corporations;
- 60 penalty units (\$19,800) for body corporates; and
- 12 penalty units (\$3,960) for individuals.

These civil penalty provision reforms will not operate retrospectively. As such, they will only apply to acts done or engaged in after the commencement of the Privacy Amendments.





## Automated Decision Making and Privacy Policies

Regulated Entities that use computer programs to make decisions are required to update their privacy policies where automated decision making is used to either make a decision or to do a thing substantially or directly related to making a decision. Regulated Entities must make sure to disclose information regarding any decision that could reasonably be expected to significantly affect the rights or interests of an individual. This includes information regarding the type of information used and the types of decisions made.

This requirement will take effect 24 months from the date of assent. This delay is to allow Regulated Entities sufficient time to update their privacy policies. Failure to adhere to this requirement after the effective date of the section will result in civil penalties under the new low-tier penalties for breaches of the APP.

## Eligible Data Breach Notifications

The Privacy Amendments require Regulated Entities to report eligible data breaches, being breaches that are likely to cause serious harm to those whose information is involved, to certain individuals and the Commissioner. The Minister is also authorised to make eligible data breach declarations permitting personal information to be collected, used and disclosed where it is necessary or appropriate to prevent or reduce the risk of harm to those whom the information relates.

## Overseas Data Flows

To enable the free flow of information across borders, the Governor-General is now empowered to prescribe countries with substantially similar privacy laws to Australia. This mechanism is designed to assist Regulated Entities in deciding which overseas entities to share information with and to reduce the burden currently placed on Regulated Entities. Currently, the Australian Regulated Entity is responsible for ensuring that any overseas entities they share information with do not contravene the APP and are liable for any breaches of the Privacy Act by the overseas entity.

The list of prescribed countries will be set out in regulations made by the Governor-General.

## Statutory Tort for Serious Invasions of Privacy

As of 10 June 2025, the Privacy Amendments have brought into force a new statutory tort for serious invasions of privacy by an individual, business or government institution, against an individual. An action under this tort must be commenced the earlier of 1 year from the day on which the individual became aware of the breach or 3 years from when the breach occurred. To satisfy this cause of action:

- the invasion must have been an invasion on the seclusion of the individual or a misuse of the individual's information;
- the individual must have had a reasonable expectation of privacy, considering the nature, purpose, background and public interest in the invasion;
- the invasion must have been reckless or intentional;
- the invasion must have been serious; and
- the public interest in privacy must have exceeded any other interest.

Defences available for breaches under the new tort include lawful authority, consent, necessity, and existing defamation law defences. Exemptions are provided for journalists, enforcement bodies, an intelligence agency, or a person under 18 years of age.

## Protection of Personal Information Under APP 11

APP 11 refers to the reasonable steps an entity must take to ensure the protection of any personal information it holds and requires that Regulated Entities destroy or de-identify information that they no longer require. The Privacy Amendments provide further clarification regarding what is meant by 'reasonable steps', specifying that such steps include 'technical and organisational measures'. The Explanatory Memorandum to the Privacy Amendments provides definitions for both of these terms:

- 'technical' measures include the physical measures taken to protect information, software and hardware; and
- 'organisational' measures include processes put in place by the entity to protect information, such as employee training and standard policies.

## Doxxing

'Doxxing' involves the release of personal information about a person in a malicious manner via a carriage service. This amendment does not directly amend the *Privacy Act 1988* (Cth) but rather the *Criminal Code 1995* (Cth). The definition of personal information is expanded under this amendment to include any information that allows a person or group member to be identified, contacted or located. The maximum penalty for an offence against an individual is 6 years imprisonment, while an offence against a group or a member of a group can result in 7 years imprisonment.

## Relevance to the Automotive Industry

While these amendments are not directly related to the automotive industry, the Privacy Amendments will have significant impacts on any entity that collects and stores personal information. For companies in the automotive industry, this would include:

- information collected from connected vehicle services;
- data collected by the vehicle (including geolocation and driver behaviour data);
- smartphone information;
- personal information held by the car or company (being any information or opinions that could be used to identify an individual);
- drivers' licences and contact details;
- data in third party databases;
- service histories; and
- workplace surveillance.

Companies in the automotive industry will need to be aware of the information they collect, how they manage access, how they retain information, and how they destroy information when no longer needed.

Most of the amendments have come into effect as at the date of this update, with only the automated decision making and privacy policies sections to come into force 24 months after the date of assent, being 10 December 2026.

Also relevant in the privacy area is the recent emphasis by the Australian court system on the limits of the employee exemption. Under the Privacy Act, the private sector is exempt from complying with many APPs, excluding the APPs regarding the collection of and obtaining consent regarding personal information. Recently, there has been an increasing trend of employers looking at employees conduct outside of employment and social media use. The case of *ALI and ALJ (Privacy)* [2024] ALCmr 131, in which a manager

sent a company-wide email disclosing medical information about an employee, reveals the limits of this extension. Upon returning to work, the employee attempted to resolve the matter through the company's Privacy Officer. When this failed, she made a formal complaint to the Office of the Australian Information Commission (**OAIC**). In its findings, the OAIC identified that:

- the employee records exemption should be narrowly interpreted, meaning that the all-staff email naming the employee and providing health information was not captured; and
- by disseminating information about the employee's health, hospital, and medical event, the company breached APP 6 by using information collected for one purpose for a secondary purpose.

The Review Report included proposals regarding extending privacy protections for employees, including improving transparency, improving information security, preventing misuse and collecting only "reasonably necessary" information. These proposals are still subject to further consultation.

As the use of the technology and integration of internet in new vehicles becomes more prevalent, the personal information of individuals who use these vehicles are exposed to risks more than ever before. Automotive companies should ensure that all personal information held by them is protected from malicious actors with appropriate protection measures put in place aligned with the Privacy Act and APP guidelines. Automotive companies should look to review and update their current privacy policies to ensure compliance with the Privacy Amendments.





## 1.5 Changes to Luxury Car Tax Laws - *Treasury Laws Amendment (Tax Incentives and Integrity) Bill 2024 (Cth)*

Effective on 1 July 2025, the *Treasury Laws Amendment (Tax Incentives and Integrity) Bill 2024 (Cth)* introduces key amendments to the Luxury Car Tax (LCT) regime under section 25-1 of the *Luxury Car Tax Act 1999 (Cth)*. These changes aim to align tax concessions with the Australian Government's broader environmental and transport policy goals under the National Electric Vehicle Strategy (NEVS).

### Key Amendments:

- Redefining a 'fuel-efficient car' by tightening the eligibility threshold from 7.0 litres per 100 kilometres to 3.5 litres per 100 kilometres. This effectively limits LCT concessions to electric vehicles (EV) and PHEV.
- Changing the indexation method for the LCT threshold from the All Groups Consumer Price Index (CPI) to the motor vehicle purchase sub-group of the CPI, making the threshold more responsive to actual vehicle price movements.

### Impact on the Automotive Industry

#### 1. Increased Demand for EVs and Hybrids

The more stringent 3.5L/100km benchmark means that almost all internal combustion engine vehicles will no longer qualify for the fuel-efficient LCT concession. As a result, consumer preferences are expected to shift more decisively toward EVs and PHEVs, which will soon become the only vehicle types eligible for tax relief at higher price points.

#### 2. Pressure on Manufacturers

Manufacturers of traditional petrol and diesel vehicles may face reduced demand, especially in premium market segments where LCT is most relevant. To remain competitive and avoid penalties under the upcoming NEVS automakers may be required to:

- expand electrified vehicle offerings;
- invest in low-emission technologies;
- buy carbon credits from EV-only manufacturers; or
- restructure supply chains to prioritise cleaner vehicles.

Some automakers even increase prices, reduce model availability, or exit the Australian market if compliance becomes commercially unviable.

#### 3. Consistency with Broader Climate Policy

This amendment complements the *NVES Act 2024 (Cth) (NEVS)*, which imposes CO<sub>2</sub> emissions targets on new light vehicles from 1 January 2025. The NEVS introduces credit and penalty mechanisms starting 1 July 2025, which means that automakers that fail to meet fleet-wide emissions targets could incur penalties unless they offset via other compliance pathways.

Together, the NEVS and LCT amendments create a dual pressure mechanism, rewarding low-emission vehicles through tax concessions, while penalising non-compliance with emissions standards.

#### 4. Signalling Long-Term Government Support

The amendment indicates to the industry and investors that the Australian Government is committed to supporting the transition to electric mobility, which will likely:

- boost investment in EV infrastructure (e.g., public charging stations);
- support innovation in low-emissions vehicle technology; and
- enhance Australia's competitiveness in the global automotive market.

### 1.6 New Reporting Obligations for Entities Under the Australian Sustainability Reporting Standards

On 20 September 2024, the Australian Accounting Standards Board (**AASB**) approved the Australian Sustainability Reporting Standards (**ASRS**). These standards have been introduced to bring Australia's reporting standards closer in line with the international standards issued by the International Sustainability Board. The ASRS are split into two distinct frameworks:

1. *AASB S1 General Requirements for Disclosure of Sustainability-related Financial Information* relating to the voluntary disclosure of sustainability-related information about an entity; and
2. *AASB S2 Climate-related Disclosures* mandating that entities with reporting obligations disclose information regarding the entity's climate-related risks and opportunities.

Entities mandated to report are those that meet the prescribed threshold and already have reporting obligations under Chapter 2M of the *Corporations Act 2001* (Cth). Entities captured must disclose information regarding governance procedures, material climate-related risks and opportunities, greenhouse gas emissions, the impacts of cash flow, revenue and assets, and must complete scenario analysis. Mandatory reporting will come into effect from 1 January 2025 for entities with a December year-end, and 30 June 2026 for entities with a June year-end.

With the automotive industry producing emissions during manufacturing, transporting, and developing of vehicles, many companies involved in these processes may find themselves mandated to report under the ASRS. Companies should begin recording and inspecting their emissions reduction strategies, risks and opportunities to ensure they align with the ASRS.

Follow the HWL Ebsworth Lawyers article link to read more about the reporting requirements and Australia's implementation timeline: [ESG UPDATE - Australia's implementation timeline for climate reporting.](#)



## 1.7 Plug-in Hybrid Electric Vehicles Phased Out of FBT Exemption

In May 2024, the *Treasury Laws Amendment (Extending the FBT Exemption for Plug-In Hybrid Electric Vehicles) Bill 2024* (Cth) was introduced to extend the sunset date of the exemption from fringe benefits tax (FBT) for plug-in hybrid electric vehicles (PHEV). This bill was intended to amend the *Treasury Laws Amendment (Electric Car Discount) Act 2022* (Cth), which authorised an FBT exemption for zero or low emission vehicles that were held for the first time after 1 July 2022 and used by an employee or their associate. Under this legislation the FBT exemption was due to expire on 1 April 2025. The bill would have extended the tax exemption for PHEVs until 1 April 2030. Battery electric vehicles and hydrogen fuel cell electric vehicles continue to be captured under the exemption.

However, the bill failed to pass through the Senate prior to the original sunset date. Consequently, from 1 April 2025 PHEV's have been phased out of the tax exemption, meaning employers now bear any tax liability that arises on these PHEVs. An exception is provided for PHEV's subject to a binding financial commitment related to the private use of the car by an employee or associate where the employer entered into the commitment prior to 1 April 2025.

For any employers who have existing PHEVs under the FBT exemption, this exemption ceases where:

- you have an option to extend an agreement, as this is not considered a financially binding commitment;
- there is a break in the novation agreement;
- there is any change to the financial obligations of one of the parties under the lease because of a change to the lease agreement; or
- the employer changes, as this is considered a new commitment, even if the new employer is within the same group of companies.

## 1.8 Minor Amendments to the *Motor Dealers and Repairers Act 2013* (NSW)

The *Motor Dealers and Repairers Act 2013* (NSW) was updated on 20 August 2024 to include amendments from the *Better Regulation Legislation Amendment (Miscellaneous) Act 2024* (NSW). This act was introduced to ensure clarity for motor dealers and remove some regulatory burden. The amendments were as follows:

- Section 5(5), which sets out the definition of a 'motor dealer', has been amended to remove any reference to second-hand boat selling. This amendment was introduced to clarify that the exemption to hold a motor dealer licence extends to persons who sell trailers for the conveyance of both new and second-hand boats.
- Section 150(b) is amended to grant authorised officers the power to investigate both light and heavy written-off vehicles to ensure compliance with Parts 4.5 and 4.5A of the *Road Transport Act 2013* (NSW).

To see the full text of the *Better Regulation Legislation Amendment (Miscellaneous) Act 2024* (NSW), please follow this link: [Click Here](#).

## 1.9 States Introduce New Dimension Limits for Heavy Vehicles

The Heavy Vehicle National Law (HVNL) regulates the use of vehicles with a gross mass of more than 4.5 tonnes. The HVNL has applied nationally since its introduction in 2014, with each state in which it applies implementing legislation to adopt the provisions of the HVNL.



In 2024, four states introduced amendments (together the **HVNL Amendments**) to their heavy vehicle legislation to align with the Federal Government's Australian Design Rules Safe Freight Vehicles package (**ADR Package**) introduced in 2023:

- Queensland introduced the *Heavy Vehicle National Legislation Amendment Regulation 2024* (QLD) on 12 April 2024;
- New South Wales introduced the *Heavy Vehicle National Legislation Amendment Regulation 2024* (NSW) on 12 April 2024;
- South Australia introduced the *Heavy Vehicle National Law (South Australia) (Amendment of Law) Regulations 2024* (SA) on 6 June 2024; and
- The ACT introduced the *Heavy Vehicle National Legislation Amendment Regulation 2024* (ACT) on 12 April 2024.

Tasmania and Victoria are yet to introduce amendments to reflect the ADR Package. Western Australia and the Northern Territory have elected to not be part of the HVNL.

### Key Similarities and Differences Between the State Amendments

The key amendments under the ADR Package are that heavy vehicles must not be more than 4.3 meters high, 2.55 meters wide, or 12.5 meters long. Heavy vehicles are also required to comply with ADR's 14/03, 35/07, 97/00, 99/00, 105/00, 106/00 and 13/00, as amended from time to time. The following table sets out how the four states HVNL Amendments have adopted these requirements into legislation:

Amendment	NSW	QLD	SA	ACT
Maximum height of 4.3 meters	✓	✓	✓	✓
Maximum width of 2.55 meters	✓	✓	Reduced to 2.5 meters	✓
Maximum length of 12.5 meters	✓	✓	Increased to 19 meters	✓
Compliance with ADR's 14/03, 35/07, 97/00 and 99/00	✓	✓	×	✓
Compliance with ADR 105/00 where the heavy vehicle has a gross vehicle mass ( <b>GVM</b> ) of more than 8 tonnes	✓	✓	×	✓
Compliance with ADR's 106/00 and 13/00 where the heavy vehicle is a truck	✓	✓	×	✓
Disregarding of certain devices and systems when measuring length if the device is fitted to the front-end of the vehicle	✓	✓	×	✓
Disregarding of certain devices and systems when measuring width	✓	✓	×	✓
Allowance of a width larger than 2.5 meters where the only part that is wider is a safer freight vehicle and its load	✓	✓	×	✓

## 2. Proposed Legislative Updates

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### 2.1 Extension of Unfair Trading Practices Provision for Small Businesses

#### Extension of Provision

On 14 March 2025, the Federal Government announced plans to extend Unfair Trading Practices protections to small business to address power imbalances and improve fairness in business-to-business relationships. This decision follows the Government's 2023 commitment to prohibit similar conduct in the consumer context, which reflects growing recognition that small businesses face many of the same challenges as individual consumers.

Treasury will consult this year on the design of protections for businesses, including:

- whether a principles-based prohibition on unfair trading practices should apply;
- whether specific commercial practices that harm small businesses should be banned or regulated; and
- how unfair trading practices protections can be used to address practices that harm small businesses.

The Australian Competition and Consumer Commission recently highlighted a number of unfair trading practices small business may face, such as:

- larger businesses using their superior bargaining power to pressure smaller suppliers into accepting unfavourable contract changes;
- larger businesses discouraging small businesses from exercising their legal rights by suggesting possible commercial consequences;
- retailers threatening to de-list suppliers in retaliation for seeking price increases that they may have been contractually entitled to;
- online platforms making significant account changes with limited notice or without transparent process; and
- platforms using complex digital interfaces that may lead small businesses into accepting disadvantageous terms when signing up for essential business services.

#### Consumer Law Reforms

The extension of unfair trading practices protections to small businesses forms part of a broader and coordinated regulatory reform agenda. It complements the Government's October 2024 *Consumer Law Reform* initiative, outlined in the consultation paper *Improving Consumer Guarantees and Supplier Indemnification Provisions under the Australian Consumer Law (Consultation)*.

That initiative proposed major updates to strengthen consumer rights and accountability across the supply chain, including:

- the introduction of civil penalties for breaches of consumer guarantees;
- a prohibition on manufacturers refusing to indemnify suppliers who provide remedies to consumers; and
- protections for suppliers against retaliation when seeking indemnification.

The Consultation found that many consumers, particularly those purchasing high-value goods like motor vehicles, face major difficulties in securing appropriate remedies for product failures. Similarly, small businesses that act as suppliers often bear the burden of consumer disputes, without being adequately supported or reimbursed by manufacturers. Together, these reforms form a cohesive regulatory approach aimed at creating a fair environment, both in business-to-consumer and business-to-business relationships.

### Impact on the Automotive Industry

The automotive sector, including dealers, repairers, and franchised businesses, have strongly welcomed the Government's move to extend protections against unfair trading practices. Automotive businesses frequently encounter challenges such as unilateral changes to supply terms, restrictive contracts, and pressure from insurers regarding pricing, repair methods, and turnaround times. These issues often fall outside the scope of the existing Unfair Contract Terms regime, highlighting the need for broader protections. The Motor Vehicle Insurance and Repair Industry Code of Conduct is also currently being updated to help address these imbalances, while the Australian Automotive Dealer Association (**AADA**) and Motor Trades Association of Australia (**MTAA**) continue to advocate for a mandatory Code of Conduct to better protect car dealers.

Furthermore, as the sector navigates global changes in technology and supply chains, these provisions will help ensure Australian dealers and repairers have a fairer and more balanced commercial environment when dealing with influential business partners.





## 2.2 New National Automated Vehicle Safety Law

Fully automated vehicles (**AV**) are vehicles that are capable of driving on a sustained basis without human input or attention, enabled by an automated driving system made up of hardware and software. Although AV technology is advancing rapidly and has the potential to revolutionise road transport, current Australian laws do not allow for the general use of automated vehicles on our roads. As a result, infrastructure and transport ministers across jurisdictions have agreed to a national, harmonised approach to regulation.

A key outcome of this approach is the proposed Automated Vehicle Safety Law (**AVSL**), expected to commence in 2026. The Public Consultation released in April 2024 emphasised the need for consistent legislation across states and territories to facilitate AV deployment and ensure national regulatory coherence.

### Key Items

The AVSL will be supported by complementary changes to state and territory legislation, as well as existing Commonwealth legislation such as the *Road Vehicle Standards Act 2018* (Cth). Together, these laws will form the end-to-end regulatory framework, including:

- making sure an automated vehicle is safe when it is first supplied in Australia, including that it meets any relevant technical standards for an automated driving system;
- ensuring that there is a corporation (the Automated Driving System Entity (**ADSE**)) with the right skills and capabilities to take responsibility for the safety of the automated driving system for its on-road life;
- keeping the automated driving system safe when it is operating on the road by placing clear safety duties and other obligations on the ADSE; and
- ensuring that people who use and interact with an automated vehicle understand what their roles and responsibilities are.

### Impact on the Automotive Industry

In the automotive sector, AVSL marks a significant regulatory transformation, as the responsibility for vehicle safety while in operation will transfer from the human driver to the ADSE. This new law will place considerable compliance obligations on corporations, who will have to demonstrate the technical, legal, and operational capability to manage automated systems across their life cycle. This development is expected to accelerate investment in AV technology, and encourage stakeholders to reassess product liability, risk allocation, and operational readiness for this emerging transport model.

Considering AV's have the potential to transform Australian transport by improving safety, mobility, accessibility, and environmental performance, without unified laws, Australia risks becoming an unattractive market for AV deployment, which could deter investment, stall innovation, and prevent communities from accessing the full benefits of automated mobility. Therefore, a national legal framework would increase certainty, public confidence, and readiness for the future of transport in Australia.

While consultation has closed, to read the Public Consultation Paper, please follow this link: [Click here](#).

## 2.3 *Treasury Laws Amendment (Responsible Buy Now and Pay Later and Other Measures) Bill 2024 (Cth)*

The *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024 (Cth)*, as originally introduced on 5 June 2024, included Schedule 7, which sought to reinstate the instant asset write-off (**IAWO**) for small businesses. Under this measure, businesses with an aggregated annual turnover of less than \$10 million would have been allowed to immediately deduct the full cost of eligible depreciating assets valued under \$20,000, provided those assets were first used or installed by 30 June 2025.

Although Schedule 7 was removed from the final version of the Bill before it passed Parliament, the government reintroduced the IAWO provision in the *Treasury Laws Amendment (Tax Incentives and Integrity) Act 2025*. This Act received Royal Assent on 28 March 2025.

### Impact on the Automotive Industry

The IAWO will continue to assist in the automotive sector and those that rely on automotive purchases with the immediately deduction of the cost of eligible work-related vehicles up to \$20,000.

#### 1. Marketing and specific purpose funds

Marketing funds are redefined to include "specific purpose funds," such as collections for conferences, which must adhere to the same audit and reporting standards. These changes aim to increase transparency in fund management.

#### 2. Restriction clauses in agreements

A significant change involves section 41 (formerly clause 23), which prohibits the inclusion of a restraint of trade clause in franchise agreements where certain conditions are met, such as the non-renewal of the agreement.

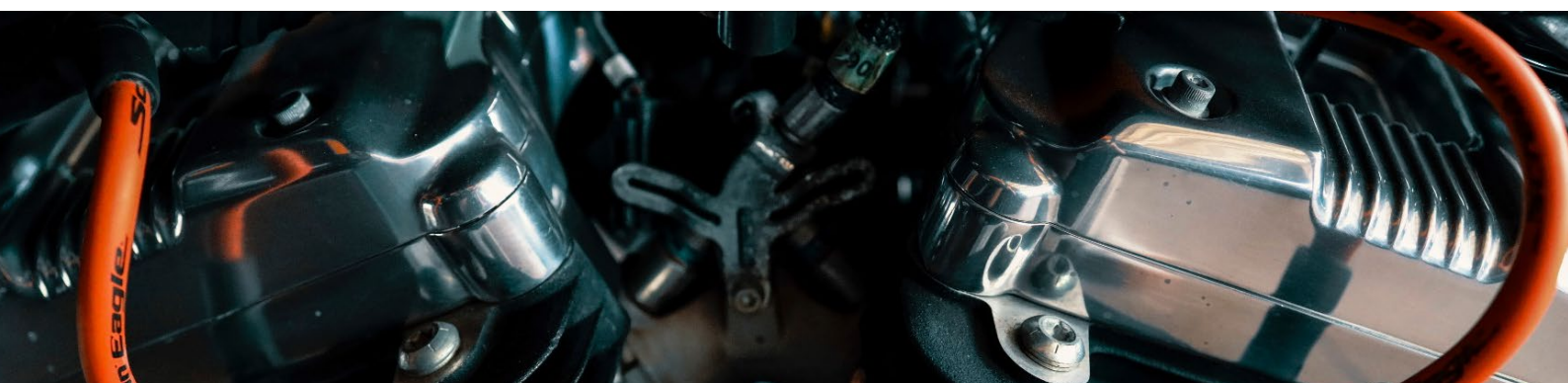
Additionally, section 64 introduces a retrospective element by applying to existing franchise agreements that are not extended. It prevents franchisors from enforcing restraint of trade clauses under the conditions set out in section 41.

#### 3. Streamlined termination processes

Sections 54 and 55 revise the provisions for terminating franchise agreements, simplifying procedures for cases involving serious breaches. The amendments differentiate between terminations based on regulatory findings and those requiring a franchisor's judgement.

You can read the full exposure draft for the proposed amendments to Code in full using the link at: [Exposure Draft - Franchising Code](#), and use the accompanying link at: [Explanatory Statement](#) as a guide to the amendments and new structure.

Follow the HWL Ebsworth Lawyers article link to read more at: The Code will be changing: [Exposure draft of new Code released - HWL Ebsworth Lawyers](#).



## 3. Policy Update

### 3.1 Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct

In December 2024, the MTAA and the Insurance Council of Australia announced a review into the Motor Vehicle Insurance and Repair Industry Code of Conduct (**Industry Code**) with a consultation period ending 23 June 2025.

The Industry Code is a voluntary code that is applicable to insurance companies and motor body repairers. The Industry Code is intended to enforce industry best practices while promoting transparent and cooperative relationships between the entities that subscribe to it.

The review of the Industry Code was developed in response to the 2023 Franchising Code Review conducted by Dr Michael Schaper on behalf of the Federal Government. The review is being conducted by the Code Administration Committee which comprises representatives from the MTAA and the Insurance Council of Australia, in collaboration with industry stakeholders. It is intended that the review will enhance the effectiveness of clarity and fairness of the Industry Code.

The key proposed changes to the Industry Code have been summarised below.

Area	Current Code	Proposed amendments
Governance structure	<ul style="list-style-type: none"> <li>▪ Informal structure governed by Insurance Council of Australia and MTAA.</li> <li>▪ Equal representation in the committee, being 3 representatives from each stakeholder.</li> <li>▪ Consensus model of decision making.</li> <li>▪ Code Administration Committee (<b>Committee</b>) monitors compliance of Code.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Governing body will be an incorporated entity with Australia-wide jurisdiction.</li> <li>▪ New governing body will have a Board, and will appoint an Independent Chairperson to Committee and Board.</li> <li>▪ Governing body will provide annual reports on governance of the new Code, including business plans and Government engagement.</li> </ul>
Sanctions & penalties	<ul style="list-style-type: none"> <li>▪ Committee cannot impose fines or sanctions on breaching parties.</li> <li>▪ Committee can refer alleged breaches to government regulators.</li> </ul>	<p>Committee empowered to impose fines and sanctions on parties who breach the Code.</p> <p>Sanctions include:</p> <ul style="list-style-type: none"> <li>▪ show Cause Notice;</li> <li>▪ written warning;</li> <li>▪ suspending the rights of the breaching party under the Code;</li> <li>▪ requiring the breaching party to pay a sum of money to the Committee; or</li> </ul>



		<ul style="list-style-type: none"> <li>publishing the breach in the Committee's annual report.</li> </ul>
Assessment times	No timelines for the estimation and assessment process for a motor vehicle given to a repairer.	<ul style="list-style-type: none"> <li>Repairer must provide Repair Estimate (quote estimating scope and cost of repairs) to insurer within 5 business days.</li> <li>Insurer must review Repair Estimate and initiate communications with repairer within 5 business days.</li> </ul>
Dispute Resolution Processes	<ul style="list-style-type: none"> <li>Process for dispute management between an insurance company and a body repair business.</li> <li>No certainty on final resolutions or the outcome of dispute processes.</li> </ul>	<p>Process for two types of disputes introduced:</p> <ol style="list-style-type: none"> <li><u>Repair Disputes</u>: emphasis on cost-effective and binding resolutions. Independent adjudicator appointed to make final and enforceable decisions to streamline dispute process.</li> <li><u>General Disputes</u>: mediation process to assist parties in reaching resolution.</li> </ol>



### 3.2 Electric Vehicle Tax Expected to be Introduced by the Federal Government

The Federal Government is expected to introduce an electric vehicle tax, which would require electric vehicle owners Australia-wide to pay a fee per kilometre driven. There is no timeframe disclosed for when this policy is expected to be introduced.

A similar policy was first introduced in Victoria in 2021, whereby drivers were charged 2.8 cents per kilometre driven by pure electric vehicles, and 2.3 cents per kilometre for plug-in hybrid vehicles. However, the policy was removed in 2023 after the High Court found that the road user charge could only be imposed by the Federal Government. New South Wales had announced plans to introduce a similar tax in 2027, which was then made subject to reconsideration following the High Court's decision. It is expected that the policy introduced by the Federal Government will follow a similar model.

This policy initiative is expected to be introduced by the government in an attempt to recover lost revenue from fuel excise. This is particularly relevant given the commencement of the New Vehicle Efficiency Standard which is projected to increase the uptake of electric vehicles.

## International Policy Updates

### 3.3 The United States Introduces Tariffs on Imported Vehicles

As at April 2025, the United States Government introduced a 25% tariff on vehicles imported into the United States. The tariffs apply to goods shipped to the United States from Europe and Asia. Automotive makers in Mexico and Canada are subject to lower tariffs for goods covered under the United States-Mexico-Canada Agreement as the 25% tariff will only apply to the value of the non-US content in their vehicles. Key components such as engines, transmissions and electronics are also subject to the new tariffs.

The tariffs are expected to increase new vehicle costs which will consequently impact the operating costs and bottom line of car manufacturers. This may indirectly impact the Australian market as automotive manufacturing nations such as China and Japan may incur increased costs of restructuring their supply lines and exporting businesses in response to the tariffs.

While the direct impact of the tariffs is likely to be minimal since Australia imports vehicles and no longer produces them domestically, the global supply chain disruption may influence vehicle prices within the Australian market. Whether these tariffs imposed will influence policy in Australia relating to the automotive industry are yet to be seen, but it may likely be a point of contention in the upcoming years.

### 3.4 The European Union Introduces its Industrial Action Plan for the European Automotive Sector

In March 2025, the European Union (EU) introduced its Industrial Action Plan for the European Automotive Sector. The EU is seeking to gain a leadership position to be globally competitive in the transition toward electric vehicles. The policy has been introduced to enhance the competitiveness of the European automotive industry by assisting with the transition to electric vehicles.

The Action Plan focuses on five key pillars to achieve these objectives:



### 1. Innovation and digitalisation

This pillar focuses on regaining a leadership position through the use of software, artificial intelligence and autonomous vehicles. To enhance the market readiness for autonomous vehicles, the EU will establish at least three testbeds in 2026 to enable the new technology to be tested for passenger and goods transport. A regulatory framework for autonomous vehicles will be developed, including harmonised rules for testing automotive driving systems and harmonised rules for the use of autonomous vehicles across the EU.

The EU will launch a European Connected and Autonomous Vehicle Alliance to accelerate cooperation within the European industry on innovation and the use of autonomous driving technologies.

### 2. Clean mobility

The EU has proposed to amend the CO2 emission standards for both cars and vans to allow flexibility in their compliance between 2025 to 2027. This proposal would mean that compliance with the emission standards is assessed over the years between 2025 to 2027, and car manufacturers may compensate an exceedance of the target in one or two of the years by overachievements in other years.

The EU has begun work to support the uptake of zero-emission vehicles by corporate buyers, who make up around 60% of car registrations within the EU. The EU is also accelerating the roll-out of charging infrastructure to assist with the uptake of electric vehicles.

### 3. Competitiveness and supply chain resilience

The Action Plan has introduced a 'Battery Booster' package to support battery manufacturing within the EU. The EU has allocated €1.8 billion to support battery manufacturing. The EU is further exploring action to enhance industry cooperation in the recycling of raw materials.

### 4. Skills and social dimension

The Action Plan addresses the impact on employment within the automotive sector associated with the transition. A European Fair Transition Observatory will be established to collate data on employment trends across the automotive value chain. The risk of unemployment will be addressed by targeted amendments to the European Globalisation Fund and European Social Fund Plus Regulations.

### 5. Boosting market access and ensuring a level playing field

The EU is focused on pursuing its free trade agreements and international partnerships to enhance market access and source opportunities within the automotive industry.





## 4. Case Law Update

### 4.1 *Levy v Mercedes-Benz Australia/Pacific Pty Ltd* [2024] NSWCATAP 110

#### Background

Craig Levy purchased a Mercedes-Benz GLA 250 Matic from a licensed dealer, Mercedes-Benz Wollongong, on 1 March 2021 for over \$80,000. Shortly after the purchase, Levy noticed deterioration in the steering wheel, claiming that the protective coating had begun to peel or delaminate. Levy made a claim under Australian Consumer Law (ACL) and the *Fair Trading Act 1987* (NSW), seeking an order that Mercedes-Benz fix or replace the faulty part, arguing it breached the consumer guarantee of acceptable quality.

#### Issue

The primary legal issue was whether the steering wheel defect in the Mercedes-Benz GLA 250 Matic constituted a breach of the consumer guarantee of acceptable quality under section 54 of the ACL (applied via the *Fair Trading Act 1987* (NSW)).

#### Key Arguments

##### Craig Levy

- Claimed that the protective coating on the steering wheel deteriorated in an unreasonably short time.
- Argued that this defect rendered the vehicle not of acceptable quality, breaching the consumer guarantees under the ACL.
- Sought an order requiring Mercedes-Benz to repair or replace the steering wheel under their manufacturer's warranty and statutory obligations.

##### Mercedes-Benz

- Denied that the defect was caused by a manufacturing fault.
- Argued that the deterioration was due to external factors, such as cleaning products, hand creams, hand sanitiser, sunscreen, excessive water, or other substances that consumers may come into contact with.
- Claimed that the product care instructions and exclusions in their warranty were clear, and that misuse or external exposure was responsible, not a defect.

#### Outcome

The Tribunal stated that the application before it was only against the manufacturer being Mercedes-Benz and not the dealer.

The Tribunal confirmed that consumers may seek remedies directly from manufacturers under the ACL, even when goods are purchased through a dealer. In this case, it was established that the claim relating to the Mercedes-Benz warranty arose from the direct supply of the vehicle to the consumer by Wollongong Mercedes-Benz, in accordance with section 79E(2). Consequently, under section 79N(b) of Part 6A, the

manufacturer may be required to perform specified work to rectify a defect and provide the remedy sought.

However, although Mr Levy was entitled to bring a claim against Mercedes-Benz, he failed to prove that the steering wheel defect was due to a manufacturing fault rather than external influences. The case highlights that manufacturer liability is not automatic, and that consumers must establish a clear link between the defect and a breach of statutory guarantees.

### Significance to the Automotive Industry

This case is significant because it clarifies the evidentiary burden on consumers when alleging a breach of the consumer guarantees under the ACL, particularly when defects may also be consistent with misuse or external influences. For the automotive industry, it reinforces the importance of:

- Educating consumers about proper vehicle maintenance and care;
- Clearly communicating exclusions under manufacturer warranties; and
- Documenting service and complaint records to support or refute claims.

The ruling also offers reassurance to manufacturers and dealerships that not every product issue will result in liability if consumers cannot prove that the problem originates from a manufacturing defect. It highlights the courts' balanced approach in weighing consumer rights with reasonable manufacturer defences, especially in high-value vehicle transactions.



## 4.2 *Williams v Toyota Motor Corporation Australia Ltd* [2024] HCA 38

### Background

A class action was commenced against Toyota Motor Corporation Australia (**Toyota**) after it sold vehicles with defective diesel engines. The vehicles were supplied to consumers during the period from 1 October 2015 to 23 April 2020.

### Summary of Litigation History

*Williams v Toyota Motor Corporation Australia Ltd* [2022] FCA 344

The Federal Court held that the relevant vehicles were not considered to be of an 'acceptable quality' under section 54(2) of the ACL at the time of the supply.

In the determination of damages payable to group members, the primary judge held that an assessment under section 272(1)(a) of the ACL was to be made at the time of the supply of the goods. In calculating the appropriate reduction in value of the relevant vehicles as a result of the breach of guarantee of acceptable quality, the court found that 17.5% of the average purchase price was appropriate.

*Toyota Motor Corporation Australia Ltd v Williams (No 2)* [2023] FCAFC 70

On appeal, the Full Federal Court held that the reduction in value of the vehicles was 10% rather than 17.5%. In reaching this decision, the Full Court held that the assessment of damages under section 272(1)(a) is concerned with compensation for loss or damage, and a departure from the time of supply may be required to avoid 'over-compensation'. The Court therefore held that as the repair of the core defect was available at the time of the trial, the availability and timing of that repair should be considered in assessing damages.

### Issue

Both parties appealed to the High Court concerning the assessment of damages payable under section 272(1)(a) of the ACL.

Williams argued that the 17.5% assessment of the reduction of value should be restored as they believed the assessment should be made by reference to the value of the goods at the time of supply. Therefore, the assessment of the value of the goods will include any defect that exists at the time of purchase.

Conversely, Toyota appealed on the basis that damages for the reduction in value of the vehicles should be assessed at the time of supply, considering what is known at the trial about the capacity to repair the defect, including the time from supply until such a repair would be implemented. Therefore, Toyota argued that a person cannot claim damages for reduction in value of goods if the defect can be remedied free of charge and the value of the goods restored by the time of trial.

### Outcome

The High Court upheld the appeal from Williams and dismissed the appeal from Toyota. It was held that the assessment of damages is of the amount by which the value of goods is reduced at the time of supply, as a result of the failure to comply with the guarantee of acceptable quality at that time. The High Court remitted proceedings to the primary judge for the calculation of damages.



### Significance to the automotive industry

The decision confirms that damages for breaching the guarantee of acceptable quality under the ACL must be assessed at the time the vehicle is supplied, not after any repairs or usage. This increases the legal risk for automakers at the time of sale. The ruling encourages higher product quality standards within the automotive industry.

## 4.3 *Capic v Ford Motor Company of Australia Pty Ltd* [2024] HCA 39

### Background

In 2012, the appellant purchased a Ford Focus with a 6-speed dry dual clutch PowerShift transmission (**DPS6**). The appellant experienced several mechanical issues associated with the transmission.

In 2016, the appellant initiated legal proceedings against Ford Motor Company of Australia Pty Ltd (**Ford**) on behalf of individuals who purchased the Ford vehicles, new or second-hand, fitted with the DPS6 transmission between 1 January 2011 and 29 November 2018 (**Relevant Vehicles**).

### Summary of Litigation History

*Capic v Ford Motor Company of Australia* [2021] FCA 715

The primary judge found that the Relevant Vehicles had at least one of five defects and determined that the vehicles were supplied in circumstances involving a breach of the guarantee of acceptable quality under section 54(1) of the ACL.

Ms Capic was awarded damages under section 272(1)(a) of the ACL on the basis that Ms Capic's vehicle was worth 30% less than the fair market value. The primary judge also awarded Ms Capic damages under section 272(1)(b) of the ACL on the account of excess payments of GST, stamp duty and financing costs. Ms Capic was only awarded interest on the damage under section 272(1)(a).

*Ford Motor Company of Australia Pty Ltd v Capic* [2023] FCAFC 179

Ford appealed the primary judge's finding that there was a breach of the guarantee of acceptable quality in relation to the Relevant Vehicles. Ford contended that in assessing whether a reasonable consumer would regard the relevant vehicles to be of 'acceptable quality', consideration must be given to later acquired knowledge that 'as problems emerged, fixes would be identified and made available'. This appeal was rejected by the Full Federal Court.

The Full Federal Court upheld a cross-appeal by Ms Capic that the primary judge erred in not finding that the issues with the Relevant Vehicles made them more likely to have serious and ongoing issues. The Full Federal Court also upheld a ground of cross-appeal by Ms Capic, finding that there was only one failure to comply with the guarantee in respect of the supply of each relevant vehicle, rather than each defect constituting a separate breach of the guarantee of acceptable quality.

The Full Court held that the primary judge's assessment of damages under section 272(1)(a) of the ACL was inconsistent with the Full Court's approach in *Toyota Motor Corporation Australia Ltd v Williams* (2023) 296 FCR 514. The Full Court remitted the assessment of damages payable under section 272(1)(a) to the primary judge.

## Issue

In February 2024, the High Court granted Ms Capic special leave to appeal. The central issue was the assessment of damages under section 272(1)(a) of the ACL. Ms Capic raised five contentions on appeal, being that the Full Court erred in:

1. following Toyota by finding that an assessment of damages under section 272(1)(a) may require a departure from the time of supply as the time of the assessment or an adjustment to avoid 'over-compensation';
2. remitting the matter to the primary judge on the basis that damages should be assessed on the basis of whether the risks to the functioning of her vehicle posed by the identified defects had materialised;
3. finding that an assessment of damages under section 272(1)(a) requires having regard to what is known about the capacity to repair the various defects by the time of trial;
4. finding that an assessment of damages under section 272(1)(a) requires having regard to Ms Capic's *'use... of [her] vehicle up until the time of trial'*; and
5. concluding that the value of her vehicle at the time of trial was information relevant to the primary judge's assessment of damages under section 272(1)(a) as that *'would have enabled the primary judge to ensure that Ms Capic was not over-compensated'*.



## Outcome

The High Court overturned the Full Federal Court's decision, finding that damages under section 272(1)(a) of the ACL must be assessed based on the value of the vehicle at the time of supply, regardless of subsequent repairs or use.

In relation to the issues listed above, the High Court:

1. upheld this contention - section 272(1)(a) of the ACL provides its own measure of damages, and there is no warrant to depart from the time of supply or adjust the amount awarded to avoid 'over-compensation';
2. upheld this contention - the materialisation of the risks posed by the defects 'does not add anything to a hypothetical reasonable consumer's knowledge of the defect or the goods at the time of supply';
3. rejected this contention - later acquired knowledge of any available repair does not affect a finding that the guarantee was not complied with;
4. upheld this contention - the use of the vehicle after its acquisition does not bear upon an assessment of the reduction in the value of the vehicle at the time of supply; and
5. upheld this contention - the relevant time to assess the reduction in the value of the vehicle was the time it was supplied to Ms Capic.

The High Court remitted proceedings to the primary judge to reassess the damages payable to Ms Capic.

## Significance to the automotive industry

This decision increases the legal risk for automakers at the time of sale. The decision provides consumers with increased confidence as the decision encourages higher standards in production and sale.

### 4.4 *MKG Legal Group Pty Ltd v Austral Pty Ltd t/as Brisbane City Land Rover* [2025] QCAT 232

## Background

The Applicant purchased a 2018 model diesel Land Rover Discovery Sport Auto (**Vehicle**) from the Dealer on 2 October 2018 for \$62,564.10.

On 23 August 2023, nearly five years after purchase and after travelling approximately 60,000 kilometres, the Vehicle experienced a Diesel Particulate Filter (**DPF**) fault. A red warning light activated with the message 'DPF Fault return to dealer' and the car entered 'limp' mode, limiting speed to 40 km/h.

The Vehicle was towed to the Dealer's service centre where diagnosis revealed that the DPF and Exhaust Gas Recirculation (**EGR**) filter required replacement. The initial triage report indicated repair costs of \$14,346.13, though this was later disputed by the Dealer as containing administrative errors, with actual costs claimed to be \$6,976.30.

On 15 September 2023, the Applicant formally rejected the Vehicle pursuant to s 259 of the Australian Consumer Law (**ACL**), seeking a refund of \$75,985.85 (comprising the purchase price, interest paid and



unused registration). The Dealer completed repairs under warranty on 20 September 2023, but the Applicant refused to collect the Vehicle, maintaining its position that the fault constituted a major failure requiring rejection.

### Issue

The primary issues considered in this case were:

- i. What was the fault with the vehicle.
- ii. As a result of the fault was the vehicle of acceptable quality under the ACL.
- iii. By repairing the vehicle against the Applicant's wishes and preventing the Applicant from seeking expert evidence about the fault, did the Respondent accept the rejection of the vehicle or is it estopped from refusing to accept the rejection of the vehicle.

### Outcome

1. the Vehicle had been operating without fault for 5 years and 60,000 kilometres;
2. the vehicle was therefore of acceptable quality as 'at the time of purchase the vehicle was fit for all the purposes for which it was acquired, acceptable in appearance and finish, free from defects, safe and durable'; and
3. there was no 'major failure' for the vehicle in that:
  - a) reasonable consumers must have 'some degree of tolerance for certain types of failure' in complex machinery; and
  - b) the DPF failure was stretching of the timing chain and that the failure was an inherent challenge to diesel technology rather than a manufacturing defect.

### Significance to the automotive industry

The Dealer was Brisbane City Land Rover and the Dealer successfully defended the claim. It is particularly relevant to claims regarding vehicles that display defects after a long period of time after purchase.



## 4.5 Holden Transmission Class Action

### Background

In January 2025, Maurice Blackburn Personal Injury Lawyers filed a class action lawsuit against General Motors Australia and New Zealand Pty Ltd (**GM**), focusing on alleged defects in the transmission systems of certain Holden vehicles sold between 1 January 2011 and 24 December 2024. The affected models include the Holden Commodore VE and VF, Colorado, Trailblazer, and others equipped with GM 6L45, 6L50, or 6L80 transmissions.

### Issue

#### i. Breach of the Consumer Guarantee of Acceptable Quality:

Under Section 54 of the ACL, all goods must be of acceptable quality—meaning they should be safe, durable, and free from defects. The class action alleges that certain Holden vehicles were fitted with faulty transmission systems that caused shuddering, fluid leaks, and rough gear changes. These defects allegedly made the vehicles unfit for regular use and not of acceptable quality.

#### ii. Misleading or Deceptive Conduct:

Section 18 of the ACL prohibits businesses from engaging in conduct that is misleading or deceptive, or likely to mislead or deceive. GM is accused of promoting the affected Holden vehicles as reliable and high quality, despite allegedly being aware of ongoing transmission issues.

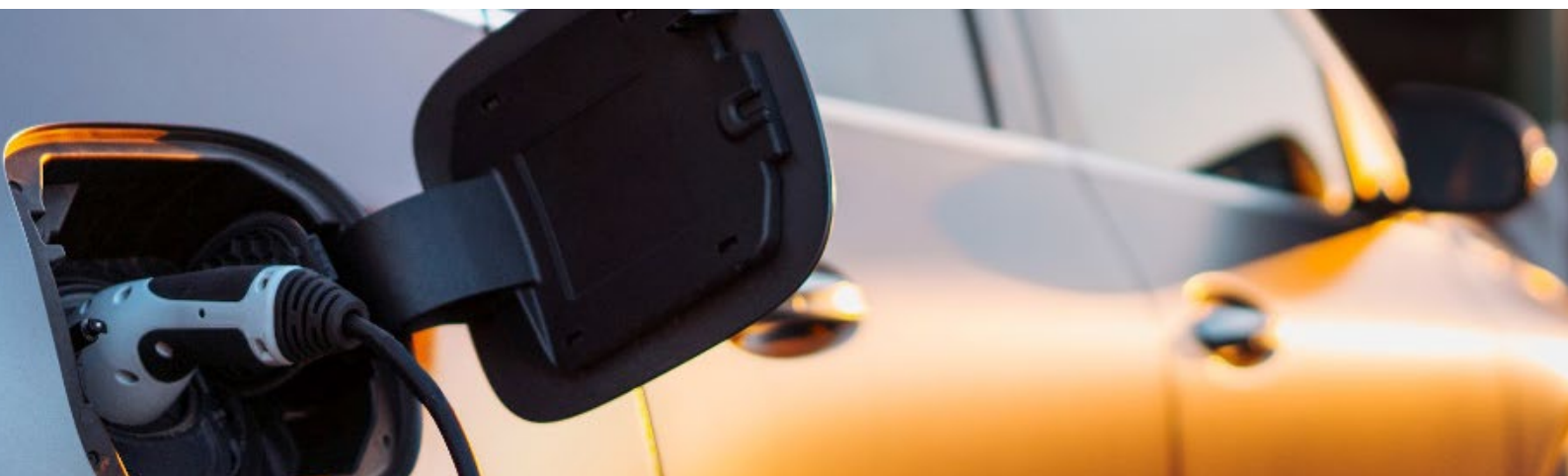
### Outcome

As of May 2025, the class action lawsuit against GM remains ongoing, with no outcome reached. The initial court hearing took place on 20 February 2025, addressing procedural matters, and subsequent case management hearings are scheduled to determine the progression of the case.

### Significance to the automotive industry

This ongoing class action highlights the importance of manufacturer accountability and consumer rights within the automotive sector. It highlights the potential repercussions for manufacturers when vehicles fail to meet acceptable quality standards, reinforcing the necessity for rigorous quality control and transparent communication with consumers.

The case also reflects a broader trend of consumers and legal entities holding automotive companies responsible for product defects, emphasising the need for adherence to consumer protection laws and proactive resolution of product issues.



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