



# Statutory Review of the *Motor Dealers and Repairers Act 2013*

Discussion Paper – July 2020

## Published by

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## Table of contents

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<b>MINISTER’S MESSAGE.....</b>	<b>5</b>
<b>HOW TO GET INVOLVED.....</b>	<b>6</b>
MAKE A SUBMISSION.....	6
HOW TO LODGE YOUR SUBMISSION .....	6
NEXT STEPS .....	6
IMPORTANT NOTE: PUBLICATION OF SUBMISSIONS .....	7
<b>INTRODUCTION .....</b>	<b>8</b>
<b>CHAPTER 1 – REGULATORY ENVIRONMENT.....</b>	<b>9</b>
COMMONWEALTH.....	9
STATES AND TERRITORIES .....	10
NEW SOUTH WALES .....	10
<b>CHAPTER 2 – SCOPE OF THE ACT .....</b>	<b>12</b>
OBJECTS.....	12
<b>A) CONSUMER PROTECTIONS AND REMEDIES .....</b>	<b>12</b>
WHAT AND WHO SHOULD BE REGULATED? .....	15
LICENSING CRITERIA.....	17
<b>CHAPTER 3 – MOTOR DEALERS AND MOTOR VEHICLE RECYCLERS.....</b>	<b>19</b>
BACKGROUND.....	19
MOTOR DEALERS .....	19
NEW BUSINESS MODELS AND WAYS OF WORKING .....	24
MOTOR VEHICLE RECYCLERS .....	24
OTHER ISSUES.....	26
<b>CHAPTER 4 – MOTOR VEHICLE REPAIRERS AND TRADESPERSONS .....</b>	<b>27</b>
BACKGROUND.....	27
LICENSING REGIME .....	27
CLASSES OF REPAIR WORK .....	29
QUALIFICATIONS FOR TRADESPERSONS.....	30
OBLIGATIONS OF MOTOR VEHICLE REPAIRERS .....	33
NEW BUSINESS MODELS AND WAYS OF WORKING .....	34
OTHER ISSUES.....	36
<b>APPENDIX A – LIST OF DISCUSSION PAPER QUESTIONS.....</b>	<b>37</b>
<b>APPENDIX B – CLASSES OF REPAIR WORK &amp; “LOW SCOPE WORK” .....</b>	<b>40</b>
CLASSES OF REPAIR WORK.....	40
NEW CLASSES OF REPAIR WORK REQUIRING A CERTIFICATE II QUALIFICATION.....	41
“LOW SCOPE WORK”.....	41

**APPENDIX C – INTERJURISDICTIONAL ANALYSIS OF LICENSING..... 43**

**APPENDIX D – INTERJURISDICTIONAL ANALYSIS OF LICENSING FOR GAS AND ELECTRICAL  
WORK IN CARAVANS AND RECREATIONAL VEHICLES..... 44**

## Minister's Message

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I am proud to present this discussion paper for public consultation on the statutory review of the *Motor Dealers and Repairers Act 2013* (the Act). This paper represents an important first step in reviewing the law regulating motor dealers, recyclers, repairers and tradespersons in NSW.

The regulation of the automotive industry is important because it affects almost everyone in the NSW community. This includes employees and business operators working directly in the industry through to consumers, extending to vehicle owners, drivers and passengers, both privately and on public transport. For this reason, the Government is keen to hear the perspectives of all stakeholders as part of this review.



NSW residents are heavily reliant on motor vehicles in their daily lives. In our population of 8 million people, there are nearly 7 million registered vehicles and more than 6 million who hold a driver licence. For most, buying a vehicle continues to be the second biggest purchase they make after buying a home and maintaining and repairing vehicles is also costly.

The automotive industry in Australia is estimated to contribute \$37 billion to the Australian economy, employing over 356,000 people as at May 2018. NSW has the largest automotive industry in the nation, with almost 30 per cent of the nation's enterprises based here.

The Government is committed to delivering a strong economy, well connected communities and putting customers at the centre of everything we do. The Government regulates the automotive industry to ensure there are adequate protections for consumers and to encourage industry operation and growth. This review provides opportunities to improve and modernise regulation of the industry, to achieve better outcomes for industry participants and consumers.

There are exciting innovations occurring in the automotive industry. Electric, hybrid and automated vehicles, and newer business models in point to point transport such as ridesharing and carpooling, are just a few examples. These have the ability to transform industry operations and provide consumers with greater choice, but also represent challenges for the regulatory regime to remain relevant and be flexible and robust enough for industry to respond and adapt to future changes.

I encourage you to take part in this consultation process and have your say on the review.

**Kevin Anderson MP**

# How to get involved

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## Make a submission

You are invited to read this discussion paper and comment on the matters that interest you or all the issues raised. We prefer to receive submissions by email and ask that any documents are provided in an 'accessible' format. Accessibility is about making documents easily available to all members of the public, including those who have an impairment (such as visual, physical or cognitive). Further information on how you can make your submission accessible is contained at

<http://webaim.org/techniques/word/>

## How to lodge your submission

You can provide a submission in one of three ways:

- using the online form for this consultation at <https://www.fairtrading.nsw.gov.au/consultation-tool>
- by email to [motordealersandrepairersact@customerservice.nsw.gov.au](mailto:motordealersandrepairersact@customerservice.nsw.gov.au)
- by post to 'Motor Dealers and Repairers Act Statutory Review Discussion Paper', Policy & Strategy, BRD Department of Customer Service, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150.

### **Submissions close at midnight on 14 August 2020.**

The NSW Government's Guide to Better Regulation, which sets out how to apply the seven Better Regulation Principles to regulatory proposals, may assist you in considering the issues and preparing a submission. The Guide is available at: [http://productivity.nsw.gov.au/sites/default/files/2018-05/Guide to Better Regulation-October 2016.pdf](http://productivity.nsw.gov.au/sites/default/files/2018-05/Guide%20to%20Better%20Regulation-October%202016.pdf)

## Next steps

After the consultation period has closed:

- all comments and submissions will be considered
- there will be targeted consultation on specific issues
- a report on the review and its findings will be submitted to the Minister for Better Regulation and Innovation
- the final report will be tabled in both Houses of Parliament by 1 December 2020.



## **Important note: publication of submissions**

The consultation process is public and open. Submissions will be published on the NSW Fair Trading website. If you do not wish for your submission or any part of your submission to be published, please indicate this clearly in your submission together with reasons. However, be aware that there may be circumstances in which the NSW Government is required by law to release the information, for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*.

# Introduction

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The *Motor Dealers and Repairers Act 2013* (the Act) establishes a scheme for the licensing and regulation of motor dealers, motor vehicle recyclers, motor vehicle repairers and tradespersons. It provides for the safety and protection of consumers buying motor vehicles, having them serviced or repaired and all passengers who ride in these vehicles. Industry protections also exist for motor dealers against motor vehicle manufacturers.

The Act and supporting regulation are administered by the Minister for Better Regulation and Innovation. Section 191 of the Act requires the Minister to conduct a review to determine whether the Act's policy objectives remain valid and its terms are appropriate for securing those objectives. A report on the outcome of the review must be tabled in both Houses of the NSW Parliament within 12 months of the commencement of the review, that is, by 1 December 2020.

The guiding principle underpinning this review is to ensure fit for purpose legislation that is practical and can be implemented and enforced. In applying the principle, this discussion paper focusses on who should be regulated, how they should be regulated, and how to implement and enforce the legislative scheme.

This discussion paper is the first step in the review of the Act and aims to encourage and facilitate public discussion on the regulation of the NSW automotive industry.

The current regulatory regime is examined and feedback is sought on how the automotive industry should be regulated going forward, in particular:

- the objectives of the Act and if they are still relevant;
- who should be regulated and how;
- consumer and industry safety and protections; and
- the changing environment and challenges faced by industry.

As the leader of the NSW Government's customer-centric reform agenda, the Department of Customer Service is keen to ensure changes to the existing regulatory regime arising out of this review deliver customer satisfaction for consumers, industry and the community.

We encourage submissions from those working in the industry, and consumers and members of the public who interact with the industry.

The issues and questions identified in this discussion paper are not exhaustive and are intended to facilitate discussion as part of the review. Further comments are welcome on any other matters that are relevant to improving the regulatory framework established by the Act.



# Chapter 1 – Regulatory environment

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The automotive industry is regulated under Commonwealth, State and Territory legislation. Commonwealth legislation provides a national framework for motor vehicle standards, the regulation of the heavy vehicle industry and consumer guarantees. States and Territories regulate motor dealers, recyclers<sup>1</sup>, and repairers. However, there are inconsistencies in the way each State and Territory regulates the automotive industry.

## Commonwealth

At a national level the Commonwealth regulate the automotive industry through three main legislative schemes relevant to the *Motor Dealers and Repairers Act 2013* (the Act). They are:

- The *Motor Vehicle Standards Act 1989* (Cth), which provides for uniform vehicle standards for new vehicles and regulates the first supply to the market of imported used vehicles nationally.
- The Australian Consumer Law (ACL) (*Competition and Consumer Act 2010* (Cth)), which provides for consumer guarantees on motor vehicle sales and repair work.
- The Heavy Vehicle National Law (the HVNL), which from early 2014 introduced laws for heavy vehicles over 4.5 tonnes and established the industry's Heavy Vehicle National Regulator.

### Motor vehicle standards

The Motor Vehicle Standards Act requires new or used imported vehicles to meet national standards in order to be sold in Australia. There are offences for importing, selling or presenting imported vehicles to the Australian market, if they do not meet these national standards. This is regulated nationally through the Administrator of Vehicle Standards with each jurisdiction managing the registration of vehicles.

### Australian Consumer Law

The ACL applies to motor dealers, motor vehicle repairers, importers and distributors. It sets out the industry obligations to provide consumer guarantees on new and used vehicles from suppliers and manufacturers, and on services provided. Servicing of vehicles must be undertaken with due care, be fit for any specified purpose and be undertaken within a reasonable timeframe. Businesses also have certain consumer rights under the ACL, when they purchase products or services for example, vehicles purchased for business operations.

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<sup>1</sup> Note in other jurisdictions recyclers are referred to as wreckers or dismantlers.

## Heavy Vehicle National Law

The Heavy Vehicle National Law (HVNL) was introduced to:

- reduce the burden on national operators to comply with different requirements across Australia;
- ensure consistent rules and requirements; and
- increase Australia's international competitiveness in this sector.

The HVNL prescribes requirements about the standard of heavy vehicles, the chain of responsibility, driver fatigue and nationally consistent penalties.

## States and Territories

Each State and Territory has its own regulatory requirements for sectors in the automotive industry. As such, there are some inconsistencies in regulation of the industry at a State and Territory level. Some jurisdictions licence individuals and organisations, while some only licence organisations and others do not licence either. For example, motor vehicle repairers are only required to hold a licence in NSW, Western Australia and the Australian Capital Territory. **Appendix C** provides further information on the licensing and regulation of motor dealers, recyclers and repairers in each State and Territory.

To complement the HVNL regulatory framework, States and Territories are responsible for the licensing of heavy vehicle drivers, safety and traffic management, bus driver authorities and bus operator accreditation.

## New South Wales

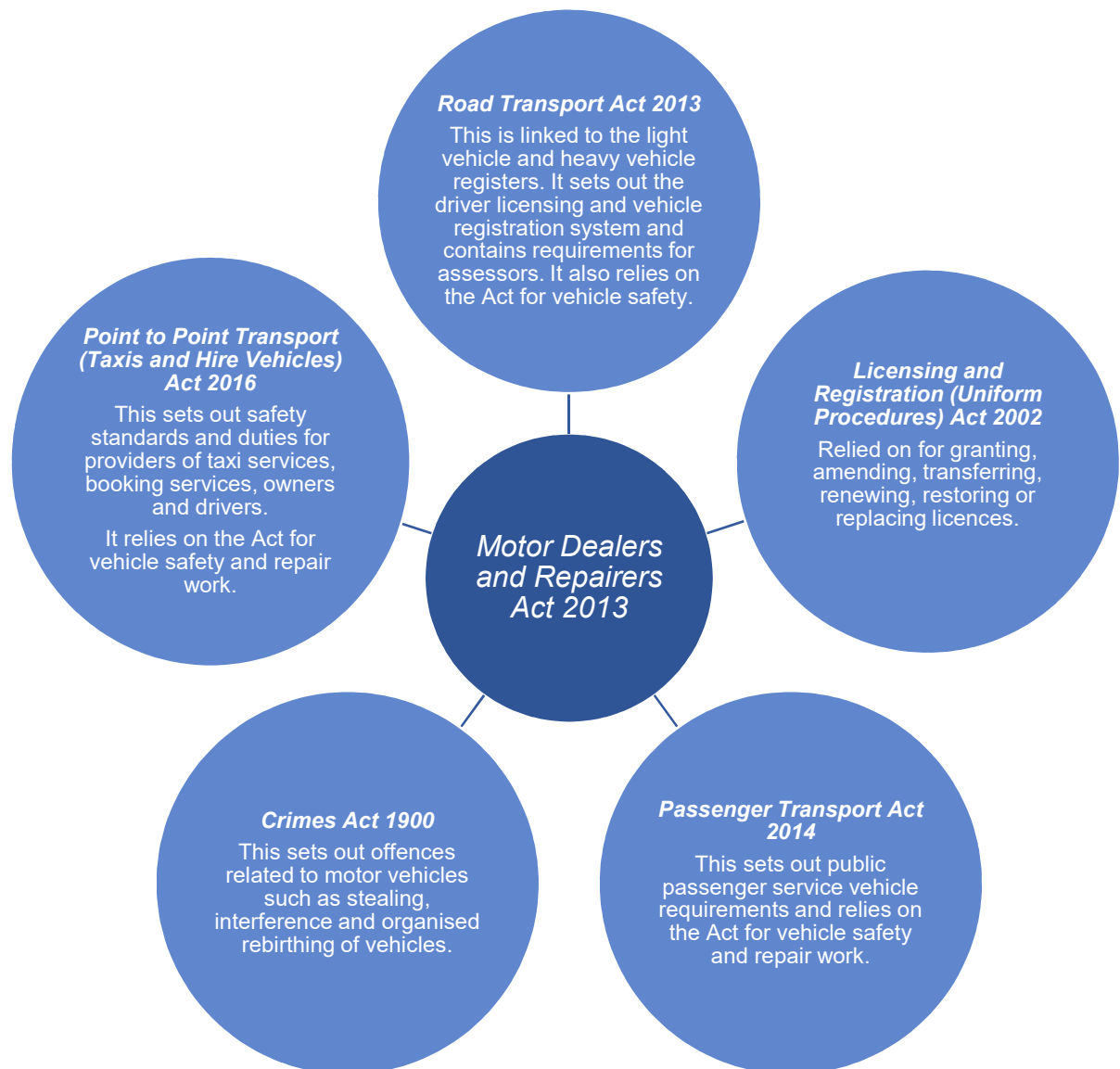
The current Act was introduced to the NSW Parliament in 2013. It combined the *Motor Dealers Act 1974* and the *Motor Vehicle Repairs Act 1980* into a single piece of legislation and reinforced the connection between motor dealers and motor vehicle repairers in the automotive industry. This consolidation led to the streamlined licensing of the industry. The Act reduced the licence types to three; motor dealer, motor vehicle recycler and motor vehicle repairer and maintained occupational licensing of repair tradespersons through a tradesperson's certificate. Prior to this, there were six motor dealer and sixteen motor vehicle repairer licence types. However, the scope of the Act also widened the remit of the previous Acts, which increased regulatory challenges.

### Other related NSW regulatory schemes

The Act intersects with other NSW laws that regulate the automotive industry including the *Road Transport Act 2013* (the Road Transport Act), the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*, the *Passenger Transport Act 2014*, the *Crimes Act 1900* and the *Licensing and Registration*

*(Uniform Procedures) Act 2002* . For example, road transport laws rely on vehicle safety through the Act's standards and methods of repair. In turn, the Act relies on certain provisions in the Road Transport Act including competency of assessors, requirements for registers for written off light and heavy vehicles and on definitions including 'motor vehicle,' and 'heavy vehicle'. Similarly, the *Passenger Transport (General) Regulation 2017* includes requirements for bus operators that are based on requirements in the Act.

**Figure 1** outlines the linkages of the Act to other key legislation.



**Figure 1: Linkages of the *Motor Dealers and Repairers Act 2013* to other key NSW legislation.**

## Chapter 2 – Scope of the Act

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### Objects

The Act aims to balance necessary safety and protective measures with flexible and modern regulatory practices, as well as appropriate penalties and deterrents to ensure compliance and to minimise unlawful conduct and behaviour within the NSW automotive industry.

The objects of the Act provided in section 3 of the Act are:

- a) to provide consumer protections and remedies for consumers who purchase motor vehicles from motor dealers or obtain motor vehicle repair services,
- b) to establish appropriate standards of conduct and transparency for motor dealers, motor vehicle repairers and motor vehicle recyclers,
- c) to provide enforcement mechanisms to prevent misleading or dishonest conduct and illegal dealings with motor vehicles and parts,
- d) to provide protection for motor dealers against unfair contract dealings by motor vehicle manufacturers.

#### **a) consumer protections and remedies**

The protection of consumers is a fundamental aspect of the legislative scheme. The consumer profile of this industry is large. On average, there are 1.7 motor vehicles per dwelling, and there are over 3 million private dwellings in NSW.<sup>2</sup> Of Australia's 19.5 million registered motor vehicles<sup>3</sup>, there are nearly 7 million registered in NSW.<sup>4</sup>

The regulatory scheme provides consumer protection and safety from the moment a vehicle is advertised for sale and extends after purchase to its servicing and repair. The automotive industry affects everyone who is an owner or driver of, or passenger in, a vehicle, including public transport and private or ride-share vehicles. Accordingly, the consumer protections under the Act not only apply to the owner and driver of a vehicle, but also extend to passengers and other road users.

Key consumer protections and remedies currently provided for in the Act include dealer guarantees on vehicle purchases, rectification orders for dealers and repairers, and claims through the Motor Dealers and Repairers Compensation Fund (the Compensation Fund). Consumer protections are discussed in

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<sup>2</sup> Australian Bureau of Statistics, 2020, *2016 Census Quick Stats, NSW*  
[https://quickstats.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/1](https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/1)

<sup>3</sup> Australian Bureau of Statistics (ABS), 29 July 2019, <https://www.abs.gov.au/ausstats/abs@.nsf/mf/9309.0>

<sup>4</sup> Transport for NSW, 2020, <https://www.rms.nsw.gov.au/about/corporate-publications/statistics/registrationandlicensing/tables/table111.html>

greater detail in **chapter 3** in relation to motor dealers and motor vehicle recyclers and in **chapter 4** for motor vehicle repairers.

### **b) appropriate standards of conduct and transparency**

The Act imposes appropriate standards of conduct and transparency on the automotive industry through obligations on motor dealers, motor vehicle recyclers, motor vehicle repairers and tradespersons. Specifically, Part 4 of the Act sets out requirements for operating at licensed premises, inspection report and number-plates, dealer guarantees, consignment sales and for particular accessories and parts.

Record keeping, including registers relating to the operation of a business, is another key obligation for licence holders and a mechanism through which appropriate standards of conduct and transparency are achieved. Through this review, opportunities exist to improve and streamline the existing record keeping requirements, particularly when considering technological innovations. Consideration may be given to improving transparency of information, while minimising the burden on businesses to keep extensive records and information. For example, how cashless transactions, which provide an electronic record of sale, could be a way to maintain records. This would align with provisions under the *Scrap Metal Act 2016*, which provides for cashless transactions and prohibits cash transactions.

To ensure that there are appropriate standards of conduct for repair work, the *Motor Dealers and Repairers Regulation 2014* (the Regulation) sets out the classes of repair work, and the qualifications required for tradespersons to perform work in each class.

These obligations are discussed in greater detail in **chapter 3** in relation to motor dealers and motor vehicle recyclers and in **chapter 4** for motor vehicle repairers.

### **c) enforcement mechanisms**

The NSW automotive industry is subject to compliance and enforcement by three regulators, who are authorised under the Act – Fair Trading, under the Department of Customer Service, the NSW Police Force and Transport for NSW. Each regulator is recognised as an authorised officer under the Act. Authorised officers have the power to:

- determine whether the provisions of the Act or regulations are being complied with or have been contravened;
- ascertain whether Part 4.5 of the *Road Transport Act 2013* is being complied with or have been contravened;
- investigate a complaint made under the Act; and
- obtain evidence, records or information on these matters.

For example, an authorised officer may enter and inspect any premises they believe is used for a business or trade that requires a licence under the Act. This provides officers with the ability to ensure compliance.

The Act provides important enforcement tools, designed to prevent misleading or dishonest conduct and illegal dealings with motor vehicles and parts. Enforcement tools for the Secretary include:

- issuing a show cause notice if there are reasonable grounds to take disciplinary action;
- suspending a licence, for example if a licence holder is suspected of receiving or dealing in stolen goods;
- issuing a rectification order to a motor dealer to ensure work is complete, or the rectify a defect;
- issuing a rectification order to a motor vehicle repairer to make good defective or incomplete repair work.

In addition, the Act provides penalties and offence provisions for breaches of the Act and regulations. In this review, penalties will be assessed for consistency and whether they are a sufficiently high to act as a deterrent to committing an offence. It is in the public interest for the Act to have adequate compliance and enforcement powers and appropriate penalties to discourage illegal activity. Feedback is sought about the adequacy of the existing penalties and offence provisions and suggestions for additional tools to ensure compliance.

#### **d) protection of motor dealers against unfair contract dealings**

The Act contains measures designed to protect motor dealers against unfair contract dealings by motor vehicle manufacturers. Part 6 contains provisions that outline when a term of a supply contract is unfair and when the conduct of a manufacturer is unjust. A term of a supply contract is unfair if it:

- would cause significant imbalance in the parties' rights and obligations;
- is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged; and
- would cause detriment to a party if it were to be relied on.

For example, where a term in the contract permits only one party to terminate the contract.

Part 6 provides a dispute resolution mechanism for motor dealers who are in dispute with vehicle manufacturers, about unfair contracts and unjust conduct. In this circumstance, a motor dealer or industry group can engage with the Small Business Commissioner for assistance in resolving disputes via mediation. All parties, including the Small Business Commissioner, can also apply to the Civil and Administrative Tribunal for a declaration that a contract is unfair, or conduct is unjust. The Tribunal can make orders in response, including voiding or varying the contract or directing a party to pay compensation.

Feedback is sought on how the rights of all stakeholders, including consumers and licence holders can be protected through mechanisms in the Act.

### **Objects**

1. Are the current objects of the Act still valid? Do the terms of the Act remain appropriate for securing those objects?
2. Does the Act appropriately balance the interests of consumers and licence holders with the broader objects? Please provide comments.
3. Are there other objects that should be included? If so, please identify what these should be and explain why. What are the complementary measures that need to be included in the Act to give effect to these objects?

## **What and who should be regulated?**

What and who should be regulated is a key consideration for this review. The definition of a 'motor vehicle' is central to the application of the Act, as it impacts on who must be licensed and what obligations are needed to safeguard consumers. The current scope of the Act may need to be modified to meet the needs of an ever-changing regulatory landscape and be flexible enough to accommodate new and emerging technologies.

### **Definitions**

Contemporary definitions that fit present needs and are flexible enough to accommodate future needs, enable effective regulation. Significantly, the current definition of 'motor vehicle' needs to be reviewed to ensure that it is appropriate, having regard to the purposes and objects of the Act. It should also be sufficiently flexible to accommodate new and emerging technologies, for example, electric vehicles and driverless cars.

The Act imports the following definition of 'motor vehicle' from the Road Transport Act: "a vehicle of the following kind that is built to be propelled by a motor that forms part of the vehicle, and includes a trailer—

- a) any description of vehicle on wheels, other than a vehicle used on a railway or tramway or an aircraft,
- b) any description of tracked vehicle, or any description of vehicle that moves on revolving runners inside endless tracks, that is not used exclusively on a railway or tramway."

The legislation exempts the following vehicles from that definition:



- vehicles that do not transport goods or passengers on public roads (for example, agricultural equipment); and
- vehicles that are not capable of being registered in NSW (for example, quad bikes, segways, motorised wheelchairs and battery powered bikes).

Other significant definitions in the Act which could be considered as part of the review include **repair work**, **carrying on a business**, **dealer's notice** and **failure to account** in relation to the Compensation Fund.

### Who should be regulated?

The following entities may be involved in the automotive industry:

- motor vehicle manufacturers
- motor dealers, wholesale and otherwise
- motor vehicle recyclers
- motor vehicle repairers
- motor vehicle tradespersons
- individuals
- directors of companies
- financiers
- brokers
- consignee
- auctioneers
- motor vehicle insurers
- assessors.

The Act does not necessarily regulate all of these entities, as other Acts set out their obligations. For example, under the Road Transport Act and the ACL motor vehicle insurers and assessors have legal obligations they must comply with.

**Chapter 3** discusses the regulation of motor dealers and motor vehicle recyclers and **chapter 4** discusses the regulation of motor vehicle repairers in more detail. This includes a discussion on the regulatory regime within the framework of technologies and industry challenges.

### What and who should be regulated?

4. Are the definitions in the Act appropriate? If not, how could the definitions be changed?
5. Who should be regulated or hold a licence under the Act? Please provide comments.

## Licensing criteria

The Act sets out eligibility requirements and assessment criteria for those entities who can be granted a licence. It also sets out the fees for those licences and requirements for payments to the Compensation Fund.

The types of licences under the Act are:

- motor dealers' licence
- motor vehicle recyclers licence
- motor vehicle repairers' licence
- tradesperson's certificate.

Licences are available for businesses and individuals. The obligations and challenges of licensing motor dealers and motor vehicle recyclers are explored in **chapter 3** and for licensing motor vehicle repairers and tradesperson's in **chapter 4**.

To be eligible for a licence, there are a number of criteria that must be met. The Secretary of the Department of Customer Service can refuse to grant a licence if the applicant does not meet the criteria. This includes if the person is a member of a declared organisation or does not have the appropriate qualifications to hold a particular class of tradespersons' certificate, or they are not 'a fit and proper person'.

The 'fit and proper person' criteria applies to individuals and businesses, alike. Examples where a person would not meet the criteria are, if the person was involved in fraud or dishonesty, or convicted of an offence under other legislation, or have not made a payment as required to the Compensation Fund. Similar criteria exist in other jurisdictions. For example, a person must be considered a 'suitable person' to hold a licence in Queensland and 'a fit and proper person' in Victoria and Western Australia.

### Licence fees and duration

Licences are available for 1, 3 or 5 years under the Act. This marked a change from licensing requirements under the former regulatory schemes. The change to 1, 3 or 5 year licences enabled consistency across Fair Trading legislation and the costs from processing applications to be recovered. The application fee for motor dealers and motor vehicle repairers also includes a contribution to the Compensation Fund for each notified premises, or place of business of the licence

holder. This contribution varies for the 1, 3 or 5 year licence and is determined by the number of notified premises.

In 2018, changes were made to the Act through the NSW Government's Better Business Reforms package to make it easier to do business in NSW.<sup>5</sup> The reforms reduced red tape and allowed licence holders flexibility when conducting their business. Motor dealers, recyclers or repairers can now add more than one business premises to their licence, without paying a processing fee. Additionally, NSW motor vehicle dealers can now complete sales at trade shows, rather than completing transactions at the notified premise on their licence.

### **Licensing criteria**

6. Is the licensing criteria, including licence fees and duration, appropriate? Why or why not? If you think there should be changes, please provide details.

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<sup>5</sup> See the *Fair Trading Legislation Amendment (Reform) Act 2018*.

## Chapter 3 – Motor dealers and motor vehicle recyclers

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### Background

More than 980 individuals and 2,500 organisations are licensed as motor dealers and or recyclers under the Act, the majority being motor dealers. Licence holders can hold more than one licence under the Act with some holding both a motor vehicle recycler and motor dealers' licence.

The Act sets out a licensing framework, provides regulatory tools for compliance and enforcement and protections for consumers. Technological changes have paved the way for new ways of doing business for the sale of motor vehicles, which need to be captured by the licensing framework.

### Motor dealers

A licensing regime, regulating any person dealing in new and used motor vehicles, was introduced in NSW in 1974 via the *Motor Dealers Act 1974*. The purpose was to prevent dishonest people working in the automotive industry and deceptive sale practices, in order to provide essential protections for consumers when buying a vehicle. Consumer protections included a cooling off period, disclosure of certain facts, provisions preventing misleading or deceptive conduct and odometer tampering, and provision of statutory warranties. These protections are maintained today and the licensing regime includes further protections for the sale of motor vehicles by consignment. Fair Trading has a range of regulatory tools to oversee and regulate the regime. There are penalties under the Act for motor dealers which offer consumer protections, such as penalties for failing to disclose information to consumers about vehicles for purchase or for odometer tampering.

### Licensing framework

In NSW, individuals or corporations are required to hold a motor dealer's licence if their business involves buying, selling or exchanging motor vehicles as a retailer or a wholesaler. The Act puts beyond doubt that a financier and a motor vehicle broker do not require a licence. In addition, a manufacturer or assembler of motor vehicles is not required to be licensed if they sell motor vehicles to a motor dealer or financier.

There are new business models for motor dealers that have emerged, often as a result of technology, which may or may not be captured under the current licensing framework. These are discussed later in this chapter.

Every State and Territory have a different definition for a 'motor dealer', depending on the scope of their regulation of the automotive industry, namely whether it applies to new cars, used cars, or both. For example, in Queensland and South Australia, motor dealers are regulated for the sale of used

motor vehicles only. See **Appendix C** for further information on the licensing requirements across Australia.

Feedback is sought as to the current licensing framework and who should hold a motor dealer licence, as discussed in chapter 2.

### **Consignment sales**

Consignment sales, where a licensed motor dealer agrees to sell a vehicle on behalf of the owner are a popular way to sell a vehicle. The motor dealer pays the owner the agreed sale proceeds and takes any agreed commission. Giving a licensed motor dealer the responsibility of selling the vehicle provides an easy option for the owner. Such transactions are currently provided for under the Act.

The main obligations in consignment sales are that a licensed motor dealer must have a written agreement that details specific information relating to the consignor (owner) and consignee (licensed motor dealer) and the vehicle. Consignees must also maintain a trust account at an authorised deposit-taking institution in NSW for any money they receive for the vehicle.

There are penalties under the Act for if a motor dealer fails to comply, such as for if a trust account is not established and maintained for amounts received for vehicles sold on consignment.

### **Regulatory tools**

Fair Trading plays an important role in receiving and investigating complaints on a range of motor vehicle issues and provides a dispute resolution service to mediate disagreements on vehicle warranty and repairs. It has a range of regulatory tools available to it, to assist in this role. Feedback is sought as to whether the regulatory tools, discussed below, are adequate or whether there are changes that could be made.

### **Dispute resolution and rectification orders**

In 2019, Fair Trading received more than 6,300 complaints. The most common complaints were about vehicle quality including misrepresentations about quality, followed by issues with warranties, cooling off periods and cancellations, rights and remedies, product safety and delay in supply. Complaints were mostly related to used motor cars.

Disputes can arise from a motor dealer not carrying out an obligation owed to the purchaser or the owner, such as a dealer guarantee. The parties (owner of the vehicle and the licence holder) are encouraged to try to resolve the dispute themselves, before requesting Fair Trading to mediate the matter.

Fair Trading offers a dispute resolution service to mediate and assist in resolving disputes if the parties are unable to reach an agreement. Fair Trading can also issue rectification orders to resolve disputes between consumers and licensed dealers or repairers under the Act.

Similar dispute resolution options exist for consumers and industry in other legislative schemes, such as the *Home Building Act 1989*. Rectification orders can be enforced and disciplinary action can be taken against a licensed dealer or a former holder of a licence if they do not follow an order.

Rectification orders and dispute resolution is also discussed in chapter 4 for motor vehicle repairers.

### **Rescission orders**

A rescission order is made at the application of the Secretary of the Department of Customer Service by a Court. The rescission notice is designed as an added layer of oversight for motor dealers in meeting their obligations.

The reasons for making a rescission order include that an inspection report, receipt or declaration was not attached at all material times when the motor vehicle was offered or displayed for sale by the motor dealer, or that the dealer's notice was not given to the purchaser or the dealer's notice contained false or misleading information

An order may be made that requires the sale of a motor vehicle by a motor dealer is rescinded and the motor vehicle must be returned to the motor dealer, and any amount paid subject to adjustments should be made.

### **Consumer protections**

The Act contains a range of provisions to ensure consumer protections, as discussed below.

Feedback is sought on whether the consumer protections and the obligations on motor dealers are sufficient, or whether there are additional protections that could be considered.

### **Dealer guarantees**

Consumer guarantees offer protections to consumers when purchasing a vehicle. Under the Act, warranties are mostly consistent with consumer guarantees in the ACL, providing the consumer with the choice to make a claim under the dealer guarantee provisions of the Act or the ACL.

The ACL requires that goods supplied by businesses to consumers are of an acceptable quality. This means goods must be safe, durable, look acceptable, and perform as one would normally expect. In the context of a vehicle, considerations include driveability, performance and costs.

Dealer guarantees under the Act are available to the purchaser of a motor vehicle from the motor dealer. The guarantee also applies to any subsequent owner of that vehicle for all new vehicles only. The guarantees that extend beyond the ACL, require a motor dealer to fix a vehicle they sold at their own expense, if it is found to be defective within the warranty period.

Under the Act, limitation periods exist for a dealer guarantee and are either restricted to a period of time or the distance travelled by a vehicle. Limitation periods are different for new and second-hand vehicles. For example, for second-hand motor vehicles, the statutory warranty of three months or 5,000 km from the date of sale (whichever occurs first) applies for vehicles that have travelled less

than 160,000 km and are less than 10 years old. Motor cycles have separate time and distance requirements.

Dealer guarantees in the Act do not apply in particular scenarios. This includes if the motor vehicle is sold at auction and the dealer notice specifies that the dealer guarantee does not apply and is attached to the motor vehicle at the time of sale or if damage occurred after the sale of the vehicle due to driver misuse or negligence, or for incidental or accidental damage.

### **Dealer-financed purchases**

As one-off expenses, vehicles can be quite expensive for a lot of consumers. As such, loans or dealer-financed purchases are common for purchases on new and used vehicles. Dealer-financed purchases are where the consumer obtains credit to finance the purchase from the dealer or a credit provider of the motor dealer. There can be higher interest rates, or pressure on purchasers to borrow from the dealer. To make purchasing a vehicle more affordable, a common practice of consumers is to exchange their current vehicle as part of a dealer-financed purchase.

Cooling off periods provide consumer protections for vehicles purchased as part of dealer-financed purchases under the Act, recognising that the purchase of a vehicle is significant. A one day cooling off period for new and used vehicle applies at the time a vehicle is purchased. The purchaser is able to terminate the contract if a written notice is provided to the motor dealer during the cooling off period. If a sale was made as part of a trade-in, the motor dealer cannot dispose, sell or give in exchange the trade-in vehicle, until after the cooling off period.

### **Disclosure requirements**

Dealers are required to provide information to consumers that could impact their decision to buy a vehicle or affect the price they are willing to pay. This ensures that consumers are informed about the condition of a vehicle prior to purchase. Disclosure of information can also reduce the risk of disputes between dealers and consumers.

New vehicles that have known damages, are not able to be sold unless the motor dealer and purchaser sign a dealer's notice, which contains information about the damage and a copy is provided to the purchaser.

A dealer's notice is also required for second-hand vehicles. The notice is attached to the vehicle, which includes information on major modifications or repairs, water damage and if the vehicle was previously written-off. This disclosure requirement seeks to assist the customer in their decision to purchase a vehicle by providing adequate information.



## Motor Dealers and Repairers Compensation Fund

The Compensation Fund provides important protections for consumers for loss if a licensed motor dealer or vehicle repairer fails to comply with a requirement under the Act or Regulation. Consumers must make a claim within 12 months after either, the loss is incurred or the consumer becomes aware of the loss.

Consumers can make claims when a dealer:

- fails to meet a warranty obligation
- sells an encumbered vehicle, such as a stolen vehicle
- fails to repay or return a deposit
- fails to pass on proceeds for a vehicle sold on the customer's behalf.

For example, when a licensed motor dealer becomes insolvent, they would be unable to fulfil their obligations and a consumer can apply to the Compensation Fund.

The most common reason for claims being made to the Compensation Fund include:

- loss of proceeds under consignment sales
- failure to account for money paid by the consumer
- non-delivering of a vehicle
- defective repair work.

Fair Trading assess all claims that are lodged and determine the outcome of the claim. The maximum payment that can be received from the Compensation Fund is \$40,000, as prescribed by the Act.

The Compensation Fund is also discussed in **chapter 4** in relation to motor vehicle repairers.

### Motor dealers

7. What activities should be captured in a motor dealer's licence?
8. Do the current obligations for motor dealers adequately ensure consumer safety and protection? Please provide comments.
9. Are there other regulatory tools that could be considered to help enforce compliance with the Act? If so, please provide examples.
10. Should the dealer guarantees under the Act remain the same, or rely on the consumer guarantees under the ACL? Explain why.

## New business models and ways of working

New business models for motor dealers have emerged, often as a result of technology. This includes online only dealerships, particularly for second-hand cars, buying vehicles from overseas, integrated businesses, or a one-stop shop for servicing and mobile mechanics. Technological innovations provide consumers with greater choice about the types of vehicles they use and how they travel. They also provide industry the scope to trial and introduce new ways of working. In response, the Act should be agile enough to be able to regulate and accommodate newer business models that fall within its remit.

Other regulatory regimes have responded to technological innovations within the automotive industry. An example of this is *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* which responded to the emergence of ride sharing companies. The Act created a regulatory framework for ridesharing and allowed flexibility in point to point transport. This is part of mobility as a service, or MaaS which departs from traditional private vehicle use through personalised services that are integrated into the existing network.<sup>6</sup> Similar innovations for the sale, recycling and repair of vehicles exist and will continue to emerge.

There is still a demand for owning a vehicle. People will continue to rely on light and heavy vehicles for transport and deliveries. In the next 40 years, the population in NSW is expected to grow by 50 per cent and freight volumes are predicted to triple to meet demand.<sup>7</sup>

### New business models and ways of working

11. How could the Act capture future innovations and developments such as new business models and emerging technologies?

## Motor vehicle recyclers

### Licensing framework

In NSW, motor vehicle recyclers are required to hold a licence if their business involves:

- buying or obtaining, and demolishing or dismantling motor vehicles or parts or accessories of motor vehicles
- buying and selling major body and mechanical components of motor vehicles, major car accessories, and prescribed parts or accessories of motor vehicles.

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<sup>6</sup> Intelligent Transport Systems, 2020, <https://www.its-australia.com.au/maasreport/>

<sup>7</sup> Transport for NSW, 2020, <https://future.transport.nsw.gov.au/designing-future/state-insights#/>

Motor vehicle recyclers are licensed, to limit backyard recycling and to ensure records are kept for vehicles, parts and accessories that are recycled. Similarly, individuals dealing with scrap metal are regulated in NSW.

Motor vehicle recyclers or wreckers and dismantlers, as referred to in other jurisdictions, do not need a licence in the Australian Capital Territory, the Northern Territory or Tasmania. In all other jurisdictions, a licence is required to carry on the business of a recycler. See **Appendix C** for further information on the licensing requirements across Australia.

### **Record keeping obligations**

Obligations for motor vehicle recyclers in NSW broadly relate to record keeping of number plates, the sale of motor vehicles and the marking of prescribed parts or accessories. If a motor vehicle has to be demolished or dismantled, the motor vehicle recycler must surrender the numberplate to Transport for NSW. Recyclers are unable to sell the motor vehicle if a numberplate is attached to the vehicle.

Motor vehicle recyclers are also required to keep a register of parts and accessories which are the same prescribed parts and accessories as motor vehicle repairers. The following are the prescribed parts and accessories and are listed in the regulation:

- a) chassis,
- b) major body section,
- c) bonnet,
- d) right side door (front),
- e) left side door (front),
- f) right side door (back),
- g) left side door (back),
- h) hatchback door,
- i) boot lid,
- j) right front guard,
- k) left front guard,
- l) front bumper bar,
- m) rear bumper bar,
- n) engine or engine block,
- o) gearbox, transmission or transaxle (front wheel drive vehicles),
- p) instrument cluster, odometer or hour gauge,

- q) car radio, tape or compact disc (CD) equipment,
- r) electronic navigation equipment,
- s) multimedia equipment,
- t) airbags and air curtains (side impact airbags),
- u) alloy wheels,
- v) seats,
- w) finaldrive (differential for rear wheel drive vehicles),
- x) headlights.

An issue to consider is whether the above parts should be listed in the Regulation. The list could quickly become out of date, given the everchanging environment and new technologies in the industry. A potential alternative is to grant the Secretary of the Department of Customer Service the authority to list the parts and accessories on the Fair Trading website which would enable them to be updated regularly.

### **Motor vehicle recyclers**

- 12. What activities should be captured in a motor vehicle recyclers licence?
- 13. Are the current obligations for motor vehicle recyclers fit for purpose? For example, requirements for record keeping and provision of information to consumers. Please provide comments.
- 14. Are there other regulatory tools that could be considered to help enforce compliance with the Act? If so, please provide examples.

## **Other issues**

You are welcome to raise additional issues in relation to the regulation of motor dealers and motor vehicle recyclers and to make suggestions for improvements to the legislation. Please include the reasons behind your suggestions to assist in our understanding and consideration.

### **Other issues**

- 15. Are there other issues in relation to the regulation of motor dealers or motor vehicle recyclers that should be considered as part of this review? What evidence is there of a problem? How do you think the issue or problem can be resolved?

## Chapter 4 – Motor vehicle repairers and tradespersons

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### Background

Under the Act, individuals and organisations are required to hold a licence if their business involves carrying out repair work on motor vehicles in NSW. In addition, repair work can only be carried out by an individual holding a tradesperson's certificate for a particular class of repair work, for example, panelbeater, motor mechanic and vehicle painter.

At present, the Department of Customer Service licences over 5,200 individuals and over 6,100 organisations as repair businesses, and over 45,000 tradespersons for particular classes of repair work under the Act.

### Licensing regime

The purpose of regulating motor vehicle repairers and tradespersons in NSW is to limit backyard repairer operations thus reducing safety risks to the public, by ensuring that motor vehicle repair work is only carried out by those who are appropriately qualified to perform it.

It should be noted however, that apart from NSW, motor vehicle repairers are only regulated in Western Australia and the Australian Capital Territory. Western Australia has a similar licensing regime to NSW, requiring licences for those persons carrying on business as a repairer and requiring any person carrying out repair work to hold a repairer's certificate. The Australian Capital Territory only requires licences for motor vehicle repair businesses. See **Appendix C** for further information on the licensing requirements across Australia. Despite these differences, the regulatory environment across Australia provides for consistent vehicle standards.

### Repairers

In 2009, the NSW Better Regulation Office reviewed the need to continue licensing motor vehicle repairers, noting that at the time licensing only existed in NSW and Western Australia. The Office concluded that the licensing scheme should be retained as it imposed a low-level regulatory burden on motor vehicle repairers which was outweighed by the benefits. The benefits identified were:

- consumer protection – ensuring that repair work is performed by appropriately qualified tradespersons and there is a minimum standard of repair work across the industry. Further, consumers are protected from undesirable persons operating in the industry (through eligibility criteria such as fit and proper persons and financial viability);
- vehicle fleet safety – licensing protects the safety and roadworthiness of the NSW vehicle fleet by requiring that all work be carried out by appropriately certified tradespersons;

- law enforcement – the licensing scheme attempts to prevent criminals from establishing repair businesses by restricting who may be granted a licence. It also helps detect illegal activities by requiring licensees to make a report if they suspect that vehicles, parts or accessories may be stolen. Further, the powers given to the police to enter premises and inspect records are important crime prevention tools.

In considering the need to continue licensing motor vehicle repairers the number of complaints received and investigated by Fair Trading is also relevant. In 2019, there were nearly 1,600 complaints from consumers about motor car repairs and maintenance, and over 130 complaints about motorcycle, trailer, boat, caravan and other mechanical repairs and maintenance. Other complaints related to overcharging or the addition of charges above the quote received, loss or damage to customers property, unsafe products or services, unsolicited goods and supply of incorrect goods. Comparatively, automotive complaints received by Fair Trading are less than complaints received about building, but greater than complaints about property. Automotive complaints are the second largest received by Fair Trading.

### **Tradespersons**

The Better Regulation Office also considered the licensing of tradespersons and concluded that specifying certification is a cost-effective way to signal the skills of a tradesperson. The tradesperson is required to submit their qualifications to the regulator (rather than the employer) and must pay a relatively small fee. This cost is balanced by the need to be certified only once, rather than providing information each time they commence work with a new employer. Certification removes the need for employer to check the validity of an employee's qualifications, which would be more burdensome than simply checking that they are certified. The centralisation of the process by Government, ensures that a consistent approach is implemented. Tradesperson's certificates also provide consumers with the confidence that the repair work has been carried out by someone who is qualified to do it.

### **Supervisors**

In some jurisdictions those persons who own motor vehicle repair businesses and supervise staff are licensed. These legislative schemes recognise a higher level of responsibility for those who supervise work. For example, in Western Australia, repairers (individuals) are required to hold a motor vehicle repairer's certificate, if own a repair business and supervise staff. The licence permits them to undertake repair work unsupervised repair work and to supervise staff undertaking repair work. Similarly, under the *Home Building Act 1989* (NSW), supervisor certificates are available for individuals to supervise others carrying out residential building, and building trade and specialist work.

The inclusion of a supervisor category in the Act, could ensure additional consumer protections by increasing accountability and enable people to work under supervision for classes of repair work. In

addition, it could provide a skills pathway for experienced industry professionals, by providing a higher class of licence.

### **Licensing regime**

16. Should licensing of motor vehicle repair businesses and tradespersons be retained in NSW? Why or why not?
17. Are there other options for regulating the motor vehicle repair industry that would be appropriate for NSW?
18. What would be the potential benefits and costs or risks from changing the requirements for regulating the motor vehicle repair industry?
19. Should a supervisor certificate be introduced for motor vehicle repairers to supervise different classes of repair work?

## **Classes of repair work**

The scope of the regulatory framework for motor vehicle repairers and tradespersons is dependent on what is 'repair work'. Under the Act, 'repair work' means work of a class or classes prescribed by the regulations. There are 12 classes of repair work prescribed in the Regulation; a list of the classes is provided in **Appendix B**.

Certain work is not considered repair work under the Regulation. This is commonly referred to as "low scope work". To carry out "low scope work", a licence or tradesperson's certificate is not required under the Act. A list of "low scope work" is also provided in **Appendix B**.

### **Classes of repair work**

20. Do you support the existing classes of repair work in the Regulation? Why or why not?
21. Do you think there should be more or less classes of repair work? If so, which classes should be added and which should be removed?
22. Should any of the existing classes of repair work be amalgamated? Why or why not?



## Qualifications for tradespersons

A person is granted a tradesperson's certificate for a particular class of repair work, if they meet the requirements for that class. The classes and qualifications required are provided in the Regulation. Prescribing the qualifications required for a tradesperson's certificate in the Regulation can impact on Fair Trading's ability to ensure that the qualifications listed are currently being offered. Qualifications are regulated Australia-wide and other Government departments and providers are responsible for the qualifications available to the public. Ensuring that new qualifications are included in the Regulation particularly those for new technologies such as hybrid, electric and automated vehicles, is vital for consumer safety and industry demand. Alternative approaches to address this issue, could include:

- continuing to prescribe the required qualifications in the Regulation, but providing the Secretary with discretion to approve additional qualifications by publishing them on the Fair Trading website; or
- listing the required qualifications in a Secretary Order, which is published in the NSW Government Gazette; or
- authorising the Secretary to publish the required qualifications on the Fair Trading website.

### Upskilling required for changes in vehicle design and technology

Technology used in modern cars has become increasingly complex, resulting in a need for greater skills, training and specialised equipment. The four major trends in automotive technologies are electrification, automation, connectivity and sharing.<sup>8</sup> These provide greater choice for consumers and also transform industry operations. They present both challenges and opportunities for skills, techniques, materials, qualifications, ways of working and safety requirements.

Work that was simple is becoming more complex requiring a higher skill set. Qualifications are continuously evolving to ensure the best training outcomes are delivered for present and future needs. This is particularly important, as emerging technologies gain greater traction with consumers and the industry. For example, motor vehicle repairers are required to code and recalibrate vehicle sensors.

The previous choice between petrol and diesel engines extends now to hybrid, electric and hydrogen fuel cells. Most registered vehicles are fuelled by petrol, 24.6 per cent by diesel and only 1.8 per cent fuelled by other means. However, numbers for other means are on the rise, as NSW is offering a lower rate of motor vehicle tax for hybrid and electric vehicles.<sup>9</sup>

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<sup>8</sup> Transport for NSW, *NSW Electric and Hybrid Vehicle Plan*, January 2019, p8.

<sup>9</sup> Australian Bureau of Statistics (ABS), 29 July 2019, <https://www.abs.gov.au/ausstats/abs@.nsf/mf/9309.0>

The increase in electric and hybrid vehicles is expected to generate economic and environmental benefits. The Future Transport 2056 Strategy sets out the vision, direction and outcomes framework for mobility in NSW for the next 40 years and is delivered through a series of plans.<sup>10</sup> The NSW Electric and Hybrid Vehicle Plan sets out commitments in three areas: vehicle availability, charging points and customer information. Initiatives include facilitating ride-share trials using electric vehicles and committing to 10 per cent of new government fleet vehicles being electric or hybrid from 2020.<sup>11</sup> The NSW Government has also committed to a \$3 million co-investment in fast charging points for electric and hybrid vehicles on major regional corridors.<sup>12</sup>

The automotive industry is already adapting to the emergence of electric and hybrid vehicles, with new qualifications and businesses available nationally. It is important that motor vehicle repairers working on high voltage electric cars are adequately trained and this is considered in the regulation of industry.

Automated vehicles, much like other automated technology is a growing industry. There are different established levels of automation for vehicles, varying from partial automation at levels 1 and 2, to full automation or driverless at level 5. At present, vehicles with a higher level of automation are not commercially available in Australia. The Connected and Automated Vehicles Plan, as part of the Future Transport 2056 Strategy outlines the NSW strategic directions and actions to support and accelerate uptake of these vehicles in NSW. Automated vehicles are being trialled across Australia. In NSW there are trials in Armidale, Coffs Harbour, Wollongong and various places in Sydney. South Australia introduced new legislation in 2016 to facilitate on-road trials, testing and development of driverless vehicles and other advanced automotive technology.<sup>13</sup>

### **Reforms to address skills shortages**

There has been an increase in demand for minor repairs and an overall decrease in demand for repair work generally. The fill rate of open positions and the attractiveness of apprenticeships in the repair industry is also decreasing, representing a significant resourcing issue for businesses.

The Better Business Reforms package contains reforms for the automotive industry, as well as other industries. The reforms aim to reduce costs and complexities for businesses without reducing consumer protections.

Recent changes to the legislation introduced new specialised licence classes for specific types of motor vehicle repair work that can be undertaken with a relevant certificate II qualification,

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<sup>10</sup> Transport for NSW, 2020, <https://future.transport.nsw.gov.au/plans/future-transport-strategy>

<sup>11</sup> Transport for NSW, *NSW Electric and Hybrid Vehicle Plan*, January 2019, p6-7.

<sup>12</sup> Transport for NSW, *Electric Vehicles: They're multiplying – it's electrifying*, 21 January 2019, <https://www.transport.nsw.gov.au/news-and-events/media-releases/electric-vehicles-theyre-multiplying-its-electrifying>

<sup>13</sup> Government of South Australia, 2020, <https://www.dpti.sa.gov.au/driverlessvehicles>

unsupervised. From 1 September 2020, the following classes will require a Certificate II qualification to perform repair work unsupervised:

- electrical accessory fitting
- exhaust repair
- glazing
- radiator repair
- steering suspension and wheel alignment.

These reforms aim to address the skills shortage currently faced by the industry. For further detail on these new classes of repair work see **Appendix B**.

Feedback is welcome on other reforms that could be considered to address skill shortages in the motor vehicle repair industry.

### **Qualifications for caravans and recreational vehicles**

As part of the Better Business Reforms package the NSW Government considered a proposal to introduce a specialised licence class for electrical and liquefied petroleum (LP) gas repair work on caravans and other recreational vehicles (RVs).

Currently any electrical installation or repair work on caravans and RVs must be completed by a fully qualified electrician under the *Home Building Regulation 2014*. Similarly, any LP gas installation or repair work on caravans and RVs must be completed by a fully qualified gasfitter. Qualifications are required for persons doing electrical and gas work done on caravans and RVs in other jurisdictions, see **Appendix D** for further details. Caravans can be used as both a recreational vehicle and as a home, and are subject to wear and tear due to vibrations with movement on and off roads. It is imperative that electrical and gas work is done properly. Caravans and RVs can also be transported across jurisdictions. The safety implications of electrical and LP gas installation or repair work being carried out by people who may not be licensed electricians or gas fitters, should be considered.

Considerations should include:

- consumer safety
- worker mobility across jurisdictions and to other industries
- work health and safety standards
- competitive advantage for NSW businesses.

We are seeking feedback on the approach for this reform going forward.

### **Qualifications for tradespersons**

23. Do you support the required qualifications continuing to be prescribed in the Regulations? If not, what alternative method do you think should be adopted? Explain why.
24. What changes to the current classes of repair work and required qualifications are needed to address upskilling in response to changing technology?
25. Are there other reforms that could be considered to address skill shortages in the motor vehicle repair industry? The safety implications of electrical and LP gas installation or repair work being carried out by people who may not be licensed electricians or gas fitters, should be considered.
26. Should there be new categories of licenses for electrical and LP gas installation or repair work on caravans and recreational vehicles or should work be completed by fully qualified licence holders? If so, why or why not?

## **Obligations of motor vehicle repairers**

A motor vehicle repairer is required to comply with a number of obligations under the Act designed to protect consumers and provide accountability. These obligations include displaying licence details onsite through adequate signage, reporting stolen or unlawfully obtained goods, and complying with the ACL.

Some of the same requirements that apply to motor dealer recyclers, applies to motor vehicle repairers. This includes keeping a register of prescribed parts and accessories, and contributing to the Compensation Fund. Fair Trading can use the same powers and regulatory tools, such as rectification orders and dispute resolution. These were discussed in **Chapter 3**.

### **Recording keeping and provision of information**

The Act requires motor vehicle repairers to keep and maintain records during and after the servicing, warranty and repair of vehicles. The purpose of this obligation is to provide a record that can be used by industry as to the type of work that was carried out on a vehicle.

To ensure adequate consumer protections, record keeping could extend to the type and form of information provided to the consumer at the time the repair work is undertaken. For example, if a person is getting their tyres replaced but the motor vehicle repairer determines there are more repairs to be done, then it is important that the repairer identifies this additional work and informs the

consumer. A potential way to improve this process could be legislating a requirement for the repairer to document the scope of the repair work to be undertaken on a job card.

Recent changes introduced 'approved forms', which are published on the NSW Fair Trading website. Examples include Dealer Notices and Auction Notices. This mirrors other regulatory regimes in NSW and can make it easier for Fair Trading to modify the forms if required.

Other forms, including the registers for motor dealers, motor vehicle recyclers and motor vehicle repairers are prescribed in the Regulation. Currently, if a change is required, an amendment to the Regulation is necessary. Alternatively, consideration could be given to allowing the Secretary to approve the forms and publish them on the website as discussed above. This would increase flexibility when new ways of record keeping and other innovations are introduced by enabling forms to be updated quickly in response to feedback from stakeholders.

### **The Motor Vehicle Insurance and Repair Industry Code of Conduct**

Another mechanism outside of the Act, which aims to establish appropriate standards of conduct and transparency for motor vehicle repairers and the insurance industry is the Motor Vehicle Insurance and Repair Industry Code of Conduct (the Code). The Code is intended to promote transparent, informed, effective and co-operative relationships between insurance companies and smash repairers. In NSW, the Code is mandatory, whereas it is only voluntary in other Australian jurisdictions.

The Code was mandated in NSW from 1 May 2017 as part of the Government's response to the Select Committee on the Motor Vehicle Repair Industry recommendations. The Committee was established in 2014 to report on the motor vehicle repair industry and the impact of smash repair work, insurance and consumer choice.<sup>14</sup>

#### **Obligations of motor vehicle repairers**

27. Are the current obligations for motor vehicle repairers fit for purpose? For example, record keeping and provision of information to consumers. Please provide comments.
28. Have relationships between insurance companies and smash repairers been improved through mandating the Motor Vehicle Insurance and Repair Industry Code of Conduct? Why or why not?

## **New business models and ways of working**

New business models for motor vehicle repairers are emerging as result of new technologies. Franchise car dealerships offer after-sales services such as servicing and repairs, or a one-stop shop.

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<sup>14</sup> NSW Parliament, Select Committee on the Motor Vehicle Repair Industry, *Motor Vehicle Repair Industry*, July 2014, piv.

Repairs are tailored for the make and model of the vehicle, with diagnostic tools reading a car's computer system. These diagnostic tools and software readers allow mechanics to pinpoint problems and make the right repairs. There are also scan tools that have their own software capable to read data. However, the software that reads the data from a car's computer often requires a payment for a subscription. Subscriptions for these scanning tools are updated annually. This can make it expensive and sometimes unfeasible for smaller businesses to offer subscription-based services.

### **Accountability and protection for industry**

Repairers are also adapting models to suit their customer's lifestyles. Examples include mobile servicing where services or repairs on the customer's car is provided at a time and place that is convenient for them. Protection and safety of industry remains a key issue.

Other important issues include consumer choice and protection of smaller businesses. When a consumer is in an accident, if their vehicle is insured, it is assessed by an insurance agency who determines the extent of the damages and what repair work is required. The terms of the insurance policy may state that repairs must be done by the insurer's nominated repairer. This results in less choice for the consumer. It can negatively impact on smaller businesses as they have less opportunities to gain business, as the repairer is determined by the insurance company. Some business models have a repair shop owned by an insurance company, rather than being independently owned. This means that the insurance company has a larger reach in the industry. The responsibility of repairing the vehicle falls to the repairer, while the scope of the repair work is determined by the assessor. Consideration of these types of models could be valuable for the implications on the types of obligations that insurance agencies have under the law. Balancing these responsibilities and roles is important for the safety and protection of industry, consumers and the community.

As part of new ways of working, the Commonwealth Government have committed to designing a mandatory information sharing scheme for motor vehicle service and repair information. This commitment has come about in part due to feedback that the voluntary arrangements for accessing information had limited success.<sup>15</sup>

The scheme will mandate that all service and repair information car manufacturers share with their dealership networks, must also be made available for independent repairers to purchase. The scheme aims to level the playing field in the repair industry and ensure consumers can have their vehicles safely repaired by the repairer of their choice. It will also remove grey areas by explicitly setting out a list of safety, security and environmental information that must only be released to appropriate businesses, as well as clear criteria for access.

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<sup>15</sup> Australian Competition and Consumer Commission, *New Car Retailing Industry: a market study by the ACCC*, December 2017, p92.

### **New business models and ways of working**

29. How could the Act capture future innovations and developments such as new business models and emerging technologies?

## **Other issues**

You are welcome to raise additional issues in relation to the regulation of motor vehicle repairers and tradespersons and to make suggestions for improvements to the legislation. Please include the reasons behind your suggestions to assist in our understanding and consideration.

### **Other issues**

30. Are there other issues in relation to the regulation of motor vehicle repairers that should be considered as part of this review? What evidence is there of a problem? How do you think the issue or problem can be resolved?



## Appendix A – List of discussion paper questions

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1. Are the current objects of the Act still valid? Do the terms of the Act remain appropriate for securing those objects?
2. Does the Act appropriately balance the interests of consumers and licence holders with the broader objects? Please provide comments.
3. Are there other objects that should be included? If so, please identify what these should be and explain why. What are the complementary measures that need to be included in the Act to give effect to these objects?
4. Are the definitions in the Act appropriate? If not, how could the definitions be changed?
5. Who should be regulated or hold a licence under the Act? Please provide comments.
6. Is the licensing criteria, including licence fees and duration, appropriate? Why or why not? If you think there should be changes, please provide details.
7. What activities should be captured in a motor dealer's licence?
8. Do the current obligations for motor dealers adequately ensure consumer safety and protection? Please provide comments.
9. Are there other regulatory tools that could be considered to help enforce compliance with the Act? If so, please provide examples.
10. Should the dealer guarantees under the Act remain the same, or rely on the consumer guarantees under the ACL? Explain why.
11. How could the Act capture future innovations and developments such as new business models and emerging technologies?
12. What activities should be captured in a motor vehicle recyclers licence?
13. Are the current obligations for motor vehicle recyclers fit for purpose? For example, requirements for record keeping and provision of information to consumers. Please provide comments.
14. Are there other regulatory tools that could be considered to help enforce compliance with the Act? If so, please provide examples.
15. Are there other issues in relation to the regulation of motor dealers or motor vehicle recyclers that should be considered as part of this review? What evidence is there of a problem? How do you think the issue or problem can be resolved?

16. Should licensing of motor vehicle repair businesses and tradespersons be retained in NSW? Why or why not?
17. Are there other options for regulating the motor vehicle repair industry that would be appropriate for NSW?
18. What would be the potential benefits and costs or risks from changing the requirements for regulating the motor vehicle repair industry?
19. Should a supervisor certificate be introduced for motor vehicle repairers to supervise different classes of repair work?
20. Do you support the existing classes of repair work in the Regulation? Why or why not?
21. Do you think there should be more or less classes of repair work? If so, which classes should be added and which should be removed?
22. Should any of the existing classes of repair work be amalgamated? Why or why not?
23. Do you support the required qualifications continuing to be prescribed in the Regulations? If not, what alternative method do you think should be adopted? Explain why.
24. What changes to the current classes of repair work and required qualifications are needed to address upskilling in response to changing technology?
25. Are there other reforms that could be considered to address skill shortages in the motor vehicle repair industry? The safety implications of electrical and LP gas installation or repair work being carried out by people who may not be licensed electricians or gas fitters, should be considered.
26. Should there be new categories of licenses for electrical and LP gas installation or repair work on caravans and recreational vehicles or should work be completed by fully qualified licence holders? If so, why or why not?
27. Are the current obligations for motor vehicle repairers fit for purpose? For example, record keeping and provision of information to consumers. Please provide comments.
28. Have relationships between insurance companies and smash repairers been improved through mandating the Motor Vehicle Insurance and Repair Industry Code of Conduct? Why or why not?
29. How could the Act capture future innovations and developments such as new business models and emerging technologies?
30. Are there other issues in relation to the regulation of motor vehicle repairers that should be considered as part of this review? What evidence is there of a problem? How do you think the issue or problem can be resolved?

31. What could be done to ensure that industry are supported when legislative changes are proposed and implemented?
32. Do you have any other general comments on the Motor Dealers and Repairers regulatory regime? Please provide further detail.

## Appendix B – Classes of repair work & “low scope work”

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### Classes of repair work

For the purposes of section 6(2) of the Act, the Motor Dealers and Repairers Regulation prescribes the following classes of repair work:

- (a) **automotive electrician**—being the work carried out by persons who install or repair electrical equipment, systems or circuits in motor vehicles,
- (b) **body maker**—being the work carried out by persons who make motor vehicle bodies (otherwise than in the course of manufacturing new motor vehicles) or who repair motor vehicle bodies,
- (c) **compressed natural gas mechanic**—being the work carried out by persons who install or repair compressed natural gas equipment in motor vehicles,
- (d) **liquefied natural gas mechanic**—being the work carried on by persons who install or repair liquefied natural gas equipment in motor vehicles,
- (e) **liquefied petroleum gas mechanic**—being the work carried out by persons who install or repair liquefied petroleum gas equipment in motor vehicles,
- (f) **motorcycle mechanic**—being the work carried out by persons who repair the engines or transmissions or the fuel, induction, exhaust, electrical, steering, suspension, cooling or braking systems, or remove or replace wheels or tyres, of motor cycles only,
- (g) **motor mechanic**—being the work carried out by persons who repair the engines or transmissions or the fuel, induction, exhaust, electrical, steering, suspension, cooling or braking systems of motor vehicles,
- (h) **panelbeater**—being the work carried out by persons who repair the structural components, frames or panels of motor vehicles,
- (i) **trailer and caravan mechanic**—being the work carried out by persons who repair the underbody of a trailer or towable recreation vehicle,
- (j) **transmission specialist**—being the work carried out by persons who repair the gears, clutches, drive shafts and differentials of motor vehicles,
- (k) **underbody work**—being the work carried out by persons who repair underbody systems of motor vehicles, including brake equipment or systems, exhaust systems or steering or suspension systems, but does not include mechanical systems or electrical equipment, systems or circuits,
- (l) **vehicle painter**—being the work carried out by persons who paint motor vehicles.

## New classes of repair work requiring a certificate II qualification

From 1 September 2020, the following classes of repair work will be available under clause 34 Motor Dealers and Repairers Regulation:

- (c1) **electrical accessory fitting work**—being the work carried out by persons who install or remove electrical accessories in or from motor vehicles, but does not include— (i) work that involves cutting, splicing or altering wiring harnesses, or (ii) work carried out on hybrid or electrically powered motor vehicles,
- (c2) **exhaust repair work**—being the work carried out by persons who fabricate, modify, service or repair the exhaust systems of motor vehicles, but does not include— (i) work on the chassis of motor vehicles, or (ii) work carried out on hybrid or electrically powered motor vehicles,
- (c3) **glazing work**—being the work carried out by persons who install, repair or remove windscreens or other glass in or from the bodies of motor vehicles, but does not include work carried out on hybrid or electrically powered motor vehicles,
- (h1) **radiator repair work**—being the work carried out by persons who repair the radiators, heating equipment, thermostats or fuel tanks of motor vehicles, but does not include work carried out on hybrid or electrically powered motor vehicles,
- (h2) **steering, suspension and wheel alignment work**—being the work carried out by persons to—
  - (i) service or repair the steering or suspension systems of motor vehicles, or (ii) balance or align the wheels of motor vehicles, but does not include work carried out on hybrid or electrically powered motor vehicles.

### “Low scope work”

Clause 35 Motor Dealers and Repairers Regulation prescribes the following as certain work that is not repair work (often termed “low scope work”):

- (a) work carried out on a trailer or towable recreation vehicle, other than the underbody,
- (b) work carried out on a recreational motor vehicle with a living space, living facilities, or both, other than work in the following classes of repair work—
  - (i) underbody work,
  - (ii) motor mechanic,
- (c) replacement or installation of an accessory that does not alter the performance, handling or safety of the vehicle, if the accessory was replaced or installed for one or more of the following purposes—

- (i) cosmetic customisation of the vehicle,
  - (ii) providing enhanced entertainment options,
  - (iii) informing the driver of vehicle functions or performance,
  - (iv) assisting the driver in navigation or communication,
  - (v) equipping the vehicle for occupational tasks,
- (c1) minor works or repairs that do not affect the mechanical operation of the vehicle, the structure of the vehicle or vehicle safety features (such as impact sensors and airbags), including the following—
- (i) the installation or replacement of the battery,
  - (ii) the removal or replacement of wheels (but not including the replacement of tyres, wheel alignment or work requiring the disassembly of braking or suspension systems or the removal or replacement of wheels or tyres on motorcycles),
  - (iii) the repair and restoration of headlights,
  - (iv) the repair of chips and minor scratches (including filling and repainting),
  - (v) repair of dents (but only repairs using techniques that do not involve cracking or damaging the existing paintwork),
  - (vi) removing parts of a vehicle in preparation for repair work or for the assessment of damage to the vehicle,
- (d) emergency breakdown repairs provided by a membership organisation to a member of the organisation, but only if the work is carried out by an employee of, or contractor with, the membership organisation,
- (e) work carried out by an authorised examiner, within the meaning of the *Road Transport (Vehicle Registration) Regulation 2017*, in the course of exercising the functions of an authorised examiner under that Regulation.

## Appendix C – Interjurisdictional analysis of licensing

**Table 1:** Licensing requirements across Australian jurisdictions

Jurisdiction	Legislation	Licensed dealers	Licensed recyclers	Licensed repairers
NSW	<i>Motor Dealers and Repairers Act 2013</i>	✓ New and used motor vehicles	✓	✓ Businesses and tradespeople
QLD	<i>Motor Dealer and Chattels Auctioneer Act 2014</i>	✓ Used motor vehicles only	✓	✗
VIC	<i>Motor Car Traders Act 1986</i>	✓ New and used motor vehicles	✓	✗
ACT	<i>Sale of Motor Vehicles Act 1977</i> <i>Traders (Licensing) Act 2016</i> <i>Fair Trading (Motor Vehicle Repair Industry) Act 2010</i>	✓ New and used motor vehicles	✗	✓ Businesses
WA	<i>Motor Vehicle Dealers Act 1973</i> <i>Motor Dealer Repairers Act 2002</i>	✓ New and used motor vehicles	✓	✓ Businesses and tradespeople
SA	<i>Second-hand Vehicle Dealers Act 1995</i>	✓ Used motor vehicles only	✓	✗
NT	<i>Consumer Affairs and Fair Trading Act 1900</i>	✓ New and used motor vehicles	✗	✗
TAS	<i>Motor Vehicle Traders Act 2011</i>	✓ New and used motor vehicles	✗	✗

## Appendix D – Interjurisdictional analysis of licensing for gas and electrical work in caravans and recreational vehicles

**Table 2:** Licencing requirements for electrical work in caravans and recreational vehicles across Australian jurisdictions

Jurisdiction	Legislation	Electrical work	Qualification
<b>NSW</b>	<i>Home Building Act 1989</i>  <i>Gas and Electricity (Consumer Safety) Act 2017</i>	An individual must not do any electrical wiring work except: <ul style="list-style-type: none"> <li>• as a qualified supervisor in respect of the work, or</li> <li>• as the holder of a tradesperson certificate authorising the holder to do that work under supervision, or</li> <li>• where the person is not a qualified supervisor or holder, but a qualified supervisor is present and available at all times to be consulted and give directions to the individual.</li> </ul>	Certificate III in Electrotechnology Electrician
<b>QLD</b>	<i>Electrical Safety Act 2002</i>  <i>Electrical Safety Regulation 2013</i>	An individual must not perform or supervise electrical work unless they hold an appropriate electrical work licence.  An electrical licence may include conditions or restrictions the regulator considers necessary or desirable for the proper performance of electrical work.  To be issued with an electrical mechanic, linesperson, fitter or jointer licence, the applicant must have finished an apprenticeship and a course of instruction decided by the regulator.	Certificate III in Electrotechnology Electrician
<b>VIC</b>	<i>Electrical Safety Act 1998</i>	An individual must not carry out any class of electrical work that is prescribed under the regulations unless they are licensed under a relevant class as an: <ul style="list-style-type: none"> <li>• electrical installation worker;</li> <li>• electrical inspector;</li> <li>• electrical connection worker;</li> <li>• electrical connection worker;</li> <li>• electrical equipment worker;</li> </ul>	Certificate III in Electrotechnology Electrician



		<ul style="list-style-type: none"> <li>authorised under an accepted ESMS in respect of electrical work of that class.</li> </ul>	
<b>ACT</b>	<i>Construction Occupations (Licensing) Act 2004</i>	<p>An individual, corporation or partnership may apply to be licensed in a construction occupation (electrician). The regulations may prescribe the requirements for applications.</p> <p>The regulations may prescribe when an entity is eligible, or not eligible, to be licensed in a construction occupation, including the qualifications the entity must have to be eligible to be licensed in the occupation.</p>	Certificate III in Electrotechnology Electrician
<b>WA</b>	<i>Electricity (Licensing) Regulations 1991</i>	<p>An individual must be authorised by a licence or permit to carry out any electrical work, except for work that is exempted under this subregulation (2).</p> <p>An electrical worker's licence will be issued according to the degree of qualifications of the person met under this Regulation, as either:</p> <ul style="list-style-type: none"> <li>Electrician's licence;</li> <li>Electrician's training licence; or</li> <li>Restricted licence.</li> </ul>	Certificate III in Electrotechnology Electrician
<b>SA</b>	<p><i>Plumbers, Gas Fitters and Electricians Act 1995</i></p> <p><i>Plumbers, Gas Fitters and Electricians Regulations 2010</i></p>	<p>Electrical workers must be registered.</p> <p>To register as an electrical worker, a person must hold a Certificate in Electrical Stream 3212, and an additional Certificate of Competency identified under the Regulation.</p>	Certificate III in Electrotechnology Electrician
<b>NT</b>	<p><i>Electrical Workers and Contractors Act 1983</i></p> <p><i>Electrical Workers and Contractors Regulations 1984</i></p>	<p>The Regulations prescribe the qualifications required to grant each trade classification of an electrical worker's licence. The Board may issue an electrical worker's licence, and can endorse restrictions, requirements and conditions on the licence as it thinks fit</p> <p>The Regulation identifies the qualifications required to grant the 8 classes of electrical worker's licences:</p> <ul style="list-style-type: none"> <li>electrical mechanic grade A and grade B,</li> <li>electrical fitter grade A and grade B,</li> <li>electrical linesman grade A,</li> <li>electrical cable jointer grade A,</li> <li>refrigeration mechanic grade R, and</li> </ul>	Certificate III in Electrotechnology Electrician

		<ul style="list-style-type: none"> <li>instrument fitter grade R.</li> </ul>	
<b>TAS</b>	<i>Occupational Licensing Act 2005</i>	An individual performing electrical work must be licensed.	Certificate III in Electrotechnology Electrician

**Table 3:** Licencing requirements for gas work in caravans and recreational vehicles across Australian jurisdictions

<b>Jurisdiction</b>	<b>Legislation</b>	<b>Gas work</b>	<b>Qualification</b>
<b>NSW</b>	<i>Gas and Electricity (Consumer Safety) Act 2017</i>	<p>An individual must not carry out gasfitting work, or employ a person to carry out gasfitting work unless the person is working under:</p> <ul style="list-style-type: none"> <li>(a) the authority of an appropriate supervisor certificate; or</li> <li>(b) the authority of a tradesperson certificate under general supervision of a holder of an appropriate supervisor certificate; or</li> <li>(c) the immediate supervision of the holder of an appropriate supervisor certificate</li> </ul>	Certificate III in Plumbing or Certificate III in Gasfitting
<b>QLD</b>	<i>Petroleum and Gas (Production and Safety) Act 2004</i>	<p>An individual must not carry out gas work in relation to a gas device (type A) or a fuel gas refrigeration device unless the person holds a gas work licence that allows them to carry out the work.</p> <p>Gas work includes installing, removing, altering, repairing, servicing, testing or certifying the gas system of a gas device.</p>	Certificate III in Plumbing or Certificate III in Gasfitting
<b>VIC</b>	<i>Building Act 1993</i> <i>Plumbing Regulations 2018</i>	<p>Plumbing work is only to be carried out by a licensed or registered plumber.</p> <p>Plumbing work includes gasfitting work (including in caravans or vessels), type A appliance conversion and servicing work and type B gasfitting and gasfitting advanced work.</p>	Certificate III in Gas Supply Industry Operations
<b>ACT</b>	<i>Construction Occupations (Licensing) Act 2004</i>	An individual may apply to be licensed in a construction occupation (gasfitter).	Certificate III in Plumbing for a journey person gasfitter licence

			(employee), plus five additional units of competency from the Certificate IV in Plumbing and Services qualification for a general gasfitter licence.
<b>WA</b>	<i>Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999</i>	<p>An individual may apply for an authorisation to carry out gasfitting work (definition does not include the replacement of LPG cylinders). There are four classes of gasfitting work licences:</p> <ul style="list-style-type: none"> <li>• Class G – includes general gasfitting for natural and LP gas, and installation and servicing of Domestic, Commercial, Caravan and Marine craft);</li> <li>• Class I – Type B appliances;</li> <li>• Class E – mobile engine; and</li> <li>• Class P – motor vehicle.</li> </ul>	Certificate III in Gasfitting
<b>SA</b>	<p><i>Plumbers, Gas Fitters and Electricians Act 1995</i></p> <p><i>Plumbers, Gas Fitters and Electricians Regulations 2010</i></p>	<p>Gas fitting workers must be registered.</p> <p>Applicants must hold the appropriate certificate of competency.</p>	Certificate III in Gasfitting
<b>NT</b>	<i>Dangerous Goods Regulations 1985</i>	A gasfitter must hold a certificate to carry out gasfitting work.	Certificate III in Gasfitting; Certificate of Competency in Gas Fitting
<b>TAS</b>	<i>Occupational Licensing Act 2005</i>	An individual performing gasfitting work must be licensed	Certificate III in Gasfitting, Plumbing or Mechanical Services