



Memorandum of Understanding

Australian Automotive Service and Repair Authority and Australian Competition and Consumer Commission

December 2023

1. Introduction

- 1.1. This Memorandum of Understanding (**MOU**) establishes a framework for cooperation and coordination between the Australian Competition and Consumer Commission (**ACCC**) and the Australian Automotive Service and Repair Authority Pty Ltd (ABN 95 655 606 983) (**AASRA**) in relation to Part IVE of the *Competition and Consumer Act 2010* and the *Competition and Consumer (Motor Vehicle Service and Repair Information Sharing) Rules 2021*.
- 1.2. Nothing in this MOU affects the obligations of either Party to comply with any order or direction of a court or compliance with their legal obligations.
- 1.3. This MOU does not create legally binding obligations between the Parties.

2. Purpose

- 2.1. This MOU sets out the high-level framework within which the Parties will collaborate to support each other.
- 2.2. The purpose of this MOU is to facilitate:
 - a) effective operational liaison and efficient information exchange between the Parties; and
 - b) coordination in relation to public announcements and legislative and administrative changes where necessary or appropriate.
 - c) effective administration of legislative responsibilities – in particular, to promote:
 - i. clarity of roles to minimise duplication of, or gaps understanding by stakeholders;
 - ii. provision of consistent information to data providers, repairers and Scheme Registered Training Organisations (RTOs) to enable them to find the relevant information on the scheme regardless of which Party they first connect with; and
 - iii. facilitation of consistent approaches and best regulatory practice by both Parties.
- 2.3. The Parties recognise that mutual cooperation will contribute significantly to the development and effective operation of the scheme and to the ability of both Parties

to effectively discharge their respective functions. This MOU reflects the Parties' intention to maintain a proactive, open and collaborative relationship.

3. Definitions

3.1. Parties

3.1.1. The **Parties** to the MOU are the Australian Competition and Consumer Commission (**ACCC**) and the Australian Automotive Service and Repair Authority Pty Ltd (ABN 95 655 606 983) (**AASRA**). In this MOU, the term:

- 'Party' means either the ACCC or AASRA.
- 'Parties' mean both the ACCC and AASRA.

3.2. Scheme

The **scheme** in this MOU refers to:

1. Part IVE of the Competition and Consumer Act 2010 (Motor Vehicle Service and Repair Information Sharing Scheme) Act 2021 (the scheme); and
2. Competition and Consumer (Motor Vehicle Service and Repair Information Sharing Scheme) Rules 2021; and
3. Any future scheme rules made under Part IVE of the CCA from time to time.

4. Roles and remit of each Party

ACCC

The ACCC is an independent Commonwealth statutory authority established under the *Competition and Consumer Act 2010 (Cth) (CCA)*, responsible for enforcing consumer protection and fair-trading laws and for promoting competition. The ACCC has a broad oversight, compliance, and enforcement role for the scheme. The ACCC monitors the implementation of and compliance with the scheme to:

- a) ensure data providers understand their obligations under the scheme;
- b) engage with stakeholders and to provide guidance to data providers and the Scheme Adviser;
- c) work collaboratively with the Scheme Adviser on awareness and education; and
- d) take enforcement action, where appropriate.

This includes but is not limited to administrative resolutions, infringement notices, court-enforceable undertakings and court proceedings.

AASRA

AASRA was appointed by the Minister to fulfil the role and function of the Scheme Adviser. The role of the Scheme Adviser has been established to oversee the day-to-day operations of the scheme. AASRA is made up of members from four industry stakeholder groups: the Australian Automotive Aftermarket Association, the Australian Automotive Dealer Association, the Federal Chamber of Automotive Industries and the Motor Trades Association of Australia.

AASRA has the responsibilities of the Scheme Adviser under the scheme, established under section 57FA of the CCA which includes:

- a) the day-to-day operations of the scheme;
- b) providing general advice about the operation of the scheme;

- c) publishing annual reports regarding the operation of the scheme on its website;
- d) facilitating dispute resolution between data providers and Australian repairers by nominating mediators and technical experts;
- e) reporting to the ACCC on systemic regulatory or enforcement issues relating to the scheme;
- f) reporting to the Minister, as specified, on:
 - i. Scheme prices, the terms and conditions of Scheme offers or the availability of Scheme Information (as that term is defined in the scheme);
 - ii. whether particular information is, or should be, Scheme Information;
 - iii. anything else relevant to the operation of the scheme; and
- g) providing information online about the availability of Scheme Information and dispute resolution to data providers, Australian repairers and Scheme RTOs.

5. Development of processes and protocol

- 5.1. The Parties commit to cooperate to develop appropriate processes and protocols to undertake work in connection with the scheme, with a view to ensuring that the Parties will be able to work effectively together. The processes and protocols may cover matters including:
- 5.1.1. regular liaison between the Parties, including liaison between staff and representatives of each Party;
 - 5.1.2. information exchange to facilitate the Parties' duties under the scheme, which can include but is not limited to complaint handling and reporting, and reporting systemic regulatory or enforcement issues under the scheme;
 - 5.1.3. education and training in each Party's respective expertise and functions; and
 - 5.1.4. further opportunities for cooperation, including joint activities and promotion of the scheme.
- 5.2. Process and protocols can be developed outside of this MOU. The Parties understand that the development of these process and protocols are consistent with the intention behind this MOU and should be encouraged.

6. Liaison and meetings

- 6.1. The Parties acknowledge that independent of this MOU a general level of cooperation and communication exists between the Parties (including staff to staff contact for day-to-day matters and attendance at common industry and community forums). The Parties agree these are consistent with the intention behind this MOU and should be encouraged.
- 6.2. The Parties will hold regular liaison meetings and establish direct lines of communication.
- 6.3. The Parties will attend meetings as follows:
- 6.3.1 Regular meetings between the ACCC and AASRA at the project officer (liaison officer) level to facilitate:
 - a) an open exchange of information;
 - b) the identification and discussion of opportunities for joint, education and/or training;
 - c) identification of any issues arising from participants in the scheme;

- d) updates in relation to public announcements, media releases, social media posts, and legislative and administrative changes; and
- e) consistency in approach to providing information to other external participants to the scheme, such as data providers, repairers, RTOs and consumers.

6.3.2 Biannual meetings between the ACCC and AASRA at the General Manager (or higher) and Board level to facilitate:

- a) discussion of issues with overlapping functions;
- b) high level feedback on how the Parties are working together and initiate any changes that need to be made to the relationship; and
- c) discussions of ongoing, efficient operation of the scheme.

6.3.3 Ad-hoc meetings as required at the project officer level to facilitate:

- a) progress and discussion on matters of mutual interest;
- b) improvement on the efficiency of information sharing; and
- c) further discussion brought from other meetings.

These ad-hoc meetings can be held at any time however both Parties will seek to ensure that the appropriate Officers from each Party are present.

7. Parties' Representatives

- 7.1. Each Party to this MOU will ensure that it has a designated liaison officer, known to the other Party, for the purpose of communication and exchange of information between the Parties under this MOU and any other relevant legislation.
- 7.2. The liaison officers for each party will be listed and updated regularly in a separate document kept by each Party.
- 7.3. The Parties' representative liaison officers and senior officers (with overall responsibility for managing the MOU relationship) are specified in Appendix A to this MOU and is also to be used as a contact point to discuss any matter that is not dealt with explicitly in this MOU.
- 7.4. Each Party may change its liaison officers or senior officers, as necessary by written notice to the other Party.

8. Reporting on systemic regulatory or enforcement issues

- 8.1. Where AASRA becomes aware of a potential systemic regulatory or enforcement issue relating to the scheme, it agrees to:
 - a) ensure this information is recorded in its internal system(s);
 - b) report the relevant information to the ACCC via email to the designated ACCC liaison officer under this MOU and to the Motor Vehicle Repair Info inbox motorvehiclerepairinfo@accc.gov.au as soon as practicable; and
 - c) report the information in accordance with any guidance provided by the ACCC on reporting systemic regulatory or enforcement issues.
- 8.2. The ACCC may provide guidance (including templates) and establish processes and procedures regarding AASRA's reporting to the ACCC. The ACCC will consult with AASRA when developing guidance, processes and procedures.
- 8.3. Guidance, processes and procedures provided by the ACCC on reporting systemic regulatory or enforcement issues may be changed at any time. The ACCC will

consult with AASRA on any proposed variations to its guidance, processes and procedures.

- 8.4. Where the ACCC decides to investigate a systemic regulatory or enforcement issue reported by AASRA, AASRA agrees, subject to any privacy or confidentiality concerns, to provide the ACCC with information requested by the ACCC to the best of its ability.

9. Information sharing generally

9.1. Recognising the proactive sharing of information and intelligence between the Parties assists each Party to fulfil its respective functions, the Parties agree to share and exchange information as permitted by law in accordance with this MOU. This includes but is not limited to:

- a) regular reporting of AASRA enquiries and report information, including complaint trends and industry non-compliance with the scheme by data providers;
- b) systemic and emerging issues regarding the scheme (such as those determined from information provided by data providers, repairers or/and RTOs and other participants of the scheme);
- c) issues or matters arising from the Australian Consumer Law, including misrepresentation and unfair, unconscionable or unilateral conduct which causes detriment to consumers or/and small businesses and unfair contract terms provisions;
- d) issues or matters arising in respect of a merger assessment or competition matter arising in relation of the automotive industry under Part IV of the CCA;
- e) mutual assistance to monitor and enforce compliance with relevant legislation;
- f) trend analysis and insights into the experience of users of the scheme from reports and enquiries; and
- g) where not appropriate to discuss in detail, an overview of other matters that may be of interest to the other Party in the performance of their functions.

9.2. In addition to proactive information sharing, either Party will endeavour to respond to specific requests for information from the other Party within a reasonable timeframe. Either Party may direct a written request for information and advice to the other Party's liaison officers, for referral to the appropriate areas of each Party for advice and response.

9.3. Responses to requests from the other Party for information and advice will be considered in the context of:

- a) Any legal obligations including regarding disclosure of information (including any applicable legislative secrecy provisions, obligations under the Privacy Act 1988 and confidentiality obligations);
- b) The ACCC's approach to information use and disclosure as set out in its Information Policy¹;
- c) the AASRA Constitution, and the performance expectations set out by the Treasury; and
- d) Whether it is feasible, having regard to factors such as cost or systems limitations, to provide the information or advice requested.

9.4. Where information provided by one Party is confidential:

<https://www.accc.gov.au/about-us/publications/acccaer-information-policy>

- a) The Party providing the information will identify the relevant part of the information that is confidential, and any conditions attached to its disclosure; and
- b) The receiving Party will comply with any confidentiality conditions and will only use and disclose that information to the extent permitted by law.
- c) Each Party acknowledges that the ACCC seeks to conduct investigations in confidence and so in general the ACCC will not comment on matters it may or may not be investigating.

9.5. In line with the [ACCC's Accountability Framework for Investigations](#)² and [Media Code of Conduct](#)³ the, ACCC will (wherever possible) provide a statement to AASRA regarding the finalisation of matters that AASRA can provide to its members. The ACCC retains discretion regarding the content of statements provided to AASRA under this clause. The ACCC will take into account factors such as legal obligations regarding disclosure of information and the ACCC's Information Policy when deciding on the content of these statements.

10. Use and disclosure of information shared pursuant to this MOU

- 10.1. The Parties will protect information they receive and will only use the information for the purpose of performing their functions and will not further disclose the information without the consent of the Parties who provided the information except where it is permitted, authorised, or required by law.
- 10.2. Each Party acknowledges that disclosure to a third party of information provided pursuant to this MOU may be required, authorised or permitted by law. Where the receiving Party is required by law to disclose information it has been provided pursuant to this MOU to a third party, the receiving Party will notify the Party that provided the information prior to disclosure unless legal requirements or other circumstances make such notifications impractical or impermissible.
- 10.3. The ACCC will exercise discretion when making a decision on whether to investigate any referred issues or activities (including but not limited to systemic regulatory or enforcement issues), and where possible will notify AASRA of the decision within a reasonable time.
- 10.4. Regardless of information received, the ACCC may use its statutory powers to compel the production of documents on specific investigations or matters as necessary.
- 10.5. The recipient Party will take all reasonable measures to protect all information received under this MOU from unauthorised use or disclosure. It will keep the information secure and confidential in accordance with all applicable statutory obligations on either Party or both Parties (including any advised by the providing Party).
- 10.6. Each party will keep accurate records and maintain its own internal record of any information requested and provided under this MOU.
- 10.7. For the avoidance of doubt, except for statements given to AASRA under clause 9.5 of this MOU, information disclosed by the ACCC to AASRA pursuant to this MOU may not be disclosed unless the ACCC consents in writing.
- 10.8. If the recipient Party intends to disclose information received under this MOU to any third party, it will give the providing Party an opportunity to make any submissions on the matter:

²<https://www.accc.gov.au/about-us/publications/the-acccs-accountability-framework-for-investigations>

³<https://www.accc.gov.au/about-us/media/media-code-of-conduct>

- a) in its initial request to the providing Party for the information, where practicable; and
- b) prior to any such disclosure to the third-party.

10.9. If information provided under this MOU becomes subject to a subpoena, Freedom of Information request, or other legal demand for access, where practicable the recipient Party will notify the providing party and endeavour to ensure the providing Party has sufficient time to comment on any intended action relating to the release, disclosure, publication or production of such information.

10.10. If information provided under this MOU becomes subject to any inadvertent or unauthorised disclosure, the recipient Party will as soon as practicable notify the providing Party of the details, in addition to any legal obligations the recipient Party may have in relation to the matter.

11. Avoiding duplication

11.1. In the interest of avoiding duplication of effort and ensuring consistency of advice and complaint resolution outcomes the ACCC and AASRA agree:

- a) the ACCC will direct data providers, repairers and scheme RTOs to AASRA in relation to matters which, in the view of the ACCC, fall within AASRA's role;
- b) AASRA may direct data providers, repairs and scheme RTOs to the ACCC or other relevant agencies in relation to matters which fall outside the scheme but within the CCA or other legislation the ACCC administers;
- c) both Parties will direct any feedback they receive regarding AASRA's performance of its functions under the scheme to AASRA in the first instance, noting this falls outside of the ACCC's functions related to the scheme.

12. Media releases and public statements

12.1. AASRA and the ACCC wherever practical will consult each other on proposed media statements and other public announcements by one that refers to the other.

12.2. Wherever practicable and where permissible by law, AASRA and the ACCC will consult each other on proposed:

- a) correspondence to third parties on matters of overlapping responsibilities;
- b) advocacy work referring to the other party; and

where prior consultation is not practicable, notice of the relevant announcement or change will be given to the other Party as soon as possible.

12.3. AASRA and the ACCC will each be responsible for responding to media inquiries involving matters relevant to them.

13. Legislative and Administrative changes

13.1. Wherever practicable and where permissible by law, the Parties will inform each other of any proposed legislative, policy or procedural changes falling within its responsibility that may affect the operation of this MOU, including the roles and responsibilities of the Parties under this MOU.

14. Resolution of differences

14.1. The Parties will use reasonable endeavours to resolve any differences arising out of the interpretation of this MOU by negotiation between General Manager of the Small Business and Agriculture Branch and Executive Officer.

15. Commencement, termination, variation and review

15.1. This MOU will commence on [the date both Parties execute this MOU] and will remain in force until it is terminated by either Party giving 30 days notice in writing.

15.2. The Parties will meet to review the operation of this MOU and consider the need for any variation to its terms once the MOU has been in effect for 12 months. The Parties will then agree on the next date for a review of this MOU.

15.3. Any variation to this MOU will be made in writing and be approved by authorised representatives of the ACCC or AASRA. The variation will come into effect immediately or on a date agreed upon by both representatives.

16. Cost associated with MOU

16.1. Each Party agrees to bear its own costs in performing its functions under this MOU.

17. Publication and sharing of MOU

17.1. The Parties agree this MOU may be published as each Party considers appropriate including by placing it on the Party's website.

Signatures

Party: the Australian Competition and Consumer Commission Commonwealth Government

ABN: 94 420 483 623

Name: Catriona Lowe

Title: Acting Chair

Signature:



Date: 8 December 2023

Party: Australian Automotive Service and Repair Authority Pty Ltd

ABN: 95 655 606 983

Name: Stuart Charity

Title: Non-Executive Director and Company Secretary

Signature:



Date: 12 December 2023