

NOTICE OF FILING

Details of Filing

Document Lodged:	Concise Statement
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	20/08/2026 12:21:29 PM AEST
Date Accepted for Filing:	20/08/2026 4:00:14 PM AEST
File Number:	VID943/2026
File Title:	AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v SUBARU (AUST) PTY LTD (ACN 000 312 792)
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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CONCISE STATEMENT

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

NO VID OF 2026

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

SUBARU (AUST) PTY LTD (ACN 000 312 792)

Respondent

A. INTRODUCTION

1. The Applicant (**ACCC**) alleges that between about 1 July 2022 and 31 August 2024 (**Relevant Period**), the Respondent (**Subaru Australia**) contravened various provisions of Pt IVE of the *Competition and Consumer Act 2010* (Cth) (**CCA**) in connection with its offers to Australian repairers and scheme registered training organisations (**RTOS**).
2. Part IVE, which is headed “*Motor vehicle service and repair information sharing scheme*” (**MVIS**), came into effect on 1 July 2022. The objects of the MVIS include promoting competition between Australian repairers of passenger vehicles and establishing a fair playing field by mandating access, on fair and reasonable commercial terms, to information used to diagnose, repair, service, modify or dismantle vehicles.
3. The ACCC alleges that Subaru Australia contravened provisions of Pt IVE of the CCA as set out in Part D below, by failing to offer to supply independent repairers the same scheme information that it supplied to Subaru-affiliated dealers, offering access to software updates on an annual basis only, failing to deliver certain scheme information to two independent repairers within the statutory timeframe (or at all), and requiring independent repairers to acquire additional hardware to access certain scheme information. The alleged contraventions had the effects set out in Part E below, including that independent repairers were unable to compete with Subaru dealers either at all or on a fair playing field, thereby likely reducing competition in respect of services for the diagnosis, service and repair of Subaru vehicles. Further, the restrictions on the offer to independent repairers were such that no independent repairer ultimately obtained the information from Subaru Australia during the Relevant Period.

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

(1) Background

4. During the Relevant Period, Subaru Australia imported Subaru-branded vehicles to Australia from Subaru Corporation, a company incorporated in Japan, and distributed those vehicles to Subaru-affiliated dealers (**Subaru Dealers**). In addition to selling vehicles, some Subaru Dealers serviced vehicles, including diagnosing faults with, servicing, and repairing the Subaru-branded vehicles listed in **Annexure A** (together, **Subaru Cars**). Subaru Dealers providing such services were “Australian repairers” within the meaning of s 57BB of the CCA.
5. During the Relevant Period, Subaru Australia supplied to Subaru Dealers the following software programs: SSM3; SSM4; SSM5R; FlashWrite; and GTS+ (together, the

Software). The Software enabled Subaru Dealers to diagnose faults, service vehicles and carry out software programming and reprogramming of Subaru Cars. SSM3 and SSM4 (together, the **Diagnostic Software**) are diagnostic programs, FlashWrite is a programming application and SSM5R has functions including reprogramming. GTS+ was used only in relation to the Subaru Solterra. **Annexure A** sets out the Subaru Cars in relation to which each software program may be used.

6. The Subaru Cars were “passenger vehicles” within the meaning of a national road vehicle standard made under the *Road Vehicle Standards Act 2018* (Cth), and therefore “scheme vehicles” within the meaning of s 57BA of the CCA.
7. Each of the Software was, or contained, information, being instructional code and associated data and therefore was, or contained, “scheme information” within the meaning of s 57BD of the CCA. None of the Software contained “safety and security information” within the meaning of s 57BF of the CCA.
8. During the Relevant Period, Subaru Australia supplied Subaru Dealers, for a fee, with:
 - 8.1. the Software, by means of a laptop pre-loaded with the Software, and, from time to time, updates to that Software; and
 - 8.2. a vehicle communication interface device (**VCI**) that permitted the laptop to be connected to the on-board diagnostic system in a Subaru Car.
9. Subaru Dealers therefore had ongoing access to the Software as needed to diagnose, repair or program Subaru vehicles.
10. By reason of paragraphs 4–8 above, Subaru Australia was a “data provider” within the meaning of s 57BE of the CCA. By reason of paragraphs 8–9 above, Subaru Australia supplied scheme information (namely, the Software or the information contained therein) to one or more Australian repairers within the meaning of s 57CA(1) of the CCA.
11. During the Relevant Period, repairers not affiliated with Subaru Australia (**Independent Repairers**) also carried on businesses involving diagnosing faults with, servicing and repairing scheme vehicles, including the Subaru Cars, and were therefore “Australian repairers” within the meaning of s 57BB of the CCA.
- (2) Subaru Australia’s offers to Independent Repairers
12. During the Relevant Period, Subaru Australia caused the following offers to Australian repairers (including Independent Repairers) and scheme RTOs to be published on the “Right 2 Repair” (**R2R**) website at <https://www.right-2-repair.com.au/subaru>:
 - 12.1. From on or about 1 July 2022 to on or about 25 October 2022 (the **First Period**), Subaru Australia offered to supply instant access to “service and repair information”, which information was contained in documents, available on subscription for periods of 1 day, 1 month and 1 year (the **instant access offer**).
 - 12.2. From on or about 25 October 2022 to on or about 31 August 2024 (the **Second Period**), Subaru Australia:
 - (a) made the instant access offer; and

- (b) offered to supply “software updates” by “remote assistance install”, which would be available within “10 working days for the first time” and within two working days on each occasion thereafter. The software updates would be supplied on subscription for periods of 1 year. The base cost for the first year was \$2607 for “interface hardware, [l]icence fees and 1 remote install software update”, with each further software update costing \$198. The base cost for each subsequent year was \$1122 for “licence fees and 1 remote install software update”, with each further software update costing \$198 (the **remote assistance offer**).
13. Under the remote assistance offer, software updates were to be provided by remote assistance by appointment with a Subaru Australia technician. The software updates were capable of being supplied for differing lengths of time (for example, over periods of a day, a month or a year). Despite this, the remote assistance offer was available on an annual basis only.
14. The remote assistance offer included a term that an Australian repairer or scheme RTO was required to acquire “interface hardware” from Subaru Australia, namely the Denso DST-010, in order to obtain the software updates. The Denso DST-010 is a VCI.
15. During the Relevant Period, although several Independent Repairers expressed interest in accessing the Software, only two Independent Repairers accepted the remote assistance offer and paid the agreed price of \$2607. Subaru Australia subsequently refunded the amount paid by each Independent Repairer without supplying any software or remote assistance.
- (3) Requests by Independent Repairers
- (A) *O’Brien Glass*
16. During the Relevant Period, O’Brien Glass was an Independent Repairer and “Australian repairer” within the meaning of s 57BB of the CCA and needed to access the Diagnostic Software, including to diagnose vehicle faults and to recalibrate cameras mounted on windscreens when repairing and replacing windscreens for Subaru Cars.
17. On or about 26 October 2022, Roger Tedder, an employee of O’Brien Glass, requested Subaru Australia to supply the Diagnostic Software in relation to a particular make, model and year of scheme vehicle and paid the agreed price of \$2607 via the R2R website. Mr Tedder’s request was forwarded by R2R to Subaru Australia.
18. The Diagnostic Software was in the possession or control of, and therefore readily accessible by, Subaru Australia and able to be provided in the form requested by O’Brien Glass.
19. On 26 October 2022, Subaru Australia told O’Brien Glass that it did not supply “diagnostic tooling”. A Subaru Australia employee told Mr Tedder that he needed to identify the specific software update required. Mr Tedder said that he understood that O’Brien Glass had purchased “the software and hardware”. The Subaru Australia employee responded that: “We don’t supply diagnostic tooling, we supply a remote software update service and the hardware required to do that”.
20. Subaru Australia refunded the price paid by Mr Tedder without supplying any scheme information (including the Diagnostic Software).

(B) *Smart AVR*

21. During the Relevant Period, Smart AVR was an Independent Repairer and “Australian repairer” within the meaning of s 57BB of the CCA and needed to access SSM4, including to diagnose vehicles and to repair and recalibrate components in Subaru Cars.
22. On or about 19 June 2024, Garth Cross, an employee of Smart AVR, requested Subaru Australia to supply SSM4 in relation to a particular make, model and year of scheme vehicle and paid the agreed price of \$2607 via the R2R website. Mr Cross’s request was forwarded by R2R to Subaru Australia.
23. SSM4 was in the possession or control of, and therefore readily accessible by, Subaru Australia and able to be provided in the form requested by Smart AVR.
24. On or around 27 June 2024, a Subaru Australia employee told Mr Cross that the diagnostic tool that Mr Cross wanted was not available and that the software that Subaru Australia had available would not provide the diagnostic and calibration capabilities that he was seeking.
25. Subaru Australia refunded the price paid by Mr Cross without supplying any scheme information (including SSM4).

C. SUMMARY OF RELIEF SOUGHT FROM THE COURT

26. The ACCC seeks the relief set out in the accompanying Originating Application.

D. PRIMARY LEGAL GROUNDS FOR RELIEF SOUGHT

27. In the premises of paragraphs 4–10 above, throughout the Relevant Period Subaru Australia was subject to the requirement under s 57CA(2) of the CCA to make a scheme offer to supply the Software, including the Diagnostic Software, in relation to the Subaru Cars.

(1) The First Period

28. During the First Period, Subaru Australia did not offer to supply the Software to Independent Repairers. Subaru Australia therefore contravened s 57CA(2) of the CCA throughout the First Period.

(2) The Second Period

29. ***No offer to “supply” the Software.*** Subaru Dealers were supplied with a laptop pre-loaded with the Software and, from time to time, updates to that Software, thereby giving them ongoing access to the Software: see paragraphs 8–9 above. The remote assistance offer was an offer for a Subaru Australia technician to update software in a Subaru Car remotely. It therefore was not an offer to “supply”, within the meaning of s 4(1) of the CCA, any scheme information, including the Software, to Independent Repairers. Subaru Australia therefore contravened s 57CA(2) of the CCA throughout the Second Period.
30. ***No offer to supply SSM3 or SSM 4 (excluding FlashWrite).*** In the alternative to paragraph 29 above, if the remote assistance offer was for the “supply” of scheme information to Independent Repairers, it was not an offer to supply all of the Software; in particular, it was not an offer to supply SSM3 or SSM4 (excluding FlashWrite) to Independent Repairers. Subaru Australia therefore contravened s 57CA(2) of the CCA throughout the Second Period.

31. **No offer to supply in the requisite form.** In the alternative to paragraphs 29–30 above, if, by the remote assistance offer, Subaru Australia offered to supply the Software to Independent Repairers, then the remote assistance offer was not for supply “in the same form”, within the meaning of s 57CA(2)(a) of the CCA, as the form in which the Software was supplied to Subaru Dealers. Subaru Dealers were supplied with the Software itself, as updated from time to time, whereas Independent Repairers were offered only software updates installed by remote assistance from a Subaru Australia technician: see paragraphs 8.1, 12.2(b) and 13 above.
 32. The form in which the Software was offered to Independent Repairers included the following limitations and requirements: (1) a limitation that the software could only be applied to a Subaru Car by remote assistance from a Subaru Australia technician; (2) a requirement to wait up to 10 working days for the approved VCI to arrive and then up to two working days for an appointment for remote assistance; and (3) a requirement to purchase a Subaru Australia-approved VCI, which entailed an additional cost to Independent Repairers.
 33. The form in which the Software was offered for supply to Independent Repairers was not a reasonably accessible form by reason of any or all of the limitations and requirements set out in paragraph 32 above. Therefore, even if it was not practicable or accessible to supply the Software to Independent Repairers in the same form as it was supplied to Subaru Dealers, Subaru Australia contravened s 57CA(2) of the CCA throughout the Second Period.
 34. **Offer on an annual basis only.** For the reasons given in paragraph 13 above, the form in which software updates were supplied allowed for variability in the period for which the information contained therein was supplied. Subaru Australia therefore contravened s 57CA(3) of the CCA throughout the Second Period because the remote assistance offer included provision for the supply of the scheme information on an annual basis only, not by day and by month.
 35. **Requirement to purchase a Denso VCI.** The term identified in paragraph 14 above required an Independent Repairer to acquire a product within the meaning of s 57CC(2)(a) of the CCA. Subaru Australia therefore contravened s 57CA(2) of the CCA throughout the Second Period because the offer was not made on terms and conditions that complied with s 57CC.
- (3) Failure to supply scheme information on request
36. In the premises of paragraphs 7, 16–20 and 27 above, Subaru Australia was required under s 57CB(2) of the CCA to supply the Diagnostic Software to O’Brien Glass “immediately” after it was requested: s 57CB(3) (Table, item 1). Subaru Australia did not supply O’Brien Glass with the Diagnostic Software, “immediately” or at all. Subaru Australia therefore contravened s 57CB(2) of the CCA by failing to supply the Diagnostic Software to O’Brien Glass within the period covered by s 57CB(3).
 37. In the premises of paragraphs 7, 21–25 and 27 above, Subaru Australia was required under s 57CB(2) of the CCA to supply SSM4 to Smart AVR “immediately” after it was requested: s 57CB(3) (Table, item 1). Subaru Australia did not supply Smart AVR with SSM4, “immediately” or at all. Subaru Australia therefore contravened s 57CB(2) of the CCA by failing to supply SSM4 to Smart AVR within the period covered by s 57CB(3).

(4) Compliance with supply obligations required despite other obligations

38. By reason of s 57CD(1) of the CCA, Subaru Australia was required to comply with the obligations the subject of paragraphs 27–37 above in relation to scheme information, even if compliance might have constituted or resulted in an infringement of copyright, a breach of contract or a breach of an equitable obligation of confidence.

E. ALLEGED HARM

39. Subaru Australia's failure to provide Independent Repairers with equal access to the same scheme information that was supplied to Subaru Dealers as described above resulted in them being unable to compete with Subaru Dealers either at all or on a fair playing field. As a result, Subaru Australia's conduct is likely to have reduced competition in respect of services for the diagnosis, service and repair of Subaru Cars, and may have led to consumers paying higher prices and receiving a lower quality service.
40. The contraventions alleged in paragraphs 36–37 prevented each of O'Brien Glass and Smart AVR from using the scheme information in relation to a Subaru Car, resulting in direct harm to those businesses and delay for their customers in having their Subaru Cars diagnosed, repaired and serviced.

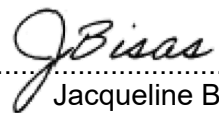
Date: 20 August 2026

This concise statement was prepared by Zoe Maud SC, Shawn Rajanayagam and Katie O'Byrne of counsel.

CERTIFICATE OF LAWYER

I, Jacqueline Bisas, certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 20 August 2026

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Jacqueline Bisas
AGS lawyer
for and on behalf of the Australian Government Solicitor
Solicitor for the Applicant

**ANNEXURE A: SUBARU SOFTWARE PROGRAMS AND THE SUBARU CARS
AND MODEL YEARS TO WHICH EACH PROGRAM APPLIED**

Software	Subaru Cars	Model years
SSM3	BRZ	Model years 2012 to 2015
	Forester	Model years 2002 to 2015
	Impreza	Model years 2002 to 2015
	Liberty	Model years 2002 to 2015
	Outback	Model years 2002 to 2015
	Tribeca	Model years 2008 to 2013
	WRX	Model years 2002 to 2015
	XV	Model years 2012 to 2015
SSM4	BRZ	Model years 2015 to 2024
	Crosstrek	Model years 2022 to 2024
	Forester	Model years 2015 to 2024
	Impreza	Model years 2015 to 2024
	Liberty	Model years 2015 to 2020
	Outback	Model years 2015 to 2024
	WRX	Model years 2015 to 2024
	XV	Model years 2015 to 2022
SSM5R	BRZ	Model years 2022 to 2024
	Crosstrek	Model years 2022 to 2024
	Forester	Model years 2022 to 2024
	Impreza	Model years 2022 to 2024
	Outback	Model years 2022 to 2024
	WRX	Model years 2022 to 2024
	XV	Model year 2022
FlashWrite	BRZ	Model years 2012 to 2024
	Crosstrek	Model years 2022 to 2024
	Forester	Model years 2002 to 2024
	Impreza	Model years 2002 to 2024
	Liberty	Model years 2002 to 2020
	Outback	Model years 2002 to 2024
	Solterra	Model year 2024
	Tribeca	Model years 2008 to 2013
	WRX	Model years 2002 to 2024
	XV	Model years 2012 to 2022
GTS+	Solterra	Model year 2024