

7 September 2017

To whom it may concern

This submission is made in support of the following recommendations/actions set out in the ACCC New Car Retailing Draft Report dated August 2017:

- Proposal 1 of recommendation 3.1
- ACCC action 3.2
- ACCC action 3.4

I make this submission in my capacity as a recent purchaser of a brand new vehicle that I believe has experienced a major failure under the Australian Consumer Law (**ACL**).

The following is a summary of the immense difficulty I have encountered in attempting to enforce my right to a refund for a major failure under the ACL.

1. I purchased a brand new Skoda Superb 206 (purchase price: \$63,398.80). I engaged a car broker (**Broker**) to source the vehicle. The broker sourced the vehicle from a Skoda dealership in Melbourne (**the Dealer**).
2. I took delivery of the vehicle on 11 October 2016.
3. On 30 October 2016, while driving along Plenty Road, Preston in Melbourne (city bound), I experienced a total and sudden loss of power whereby the engine stopped (ie 0rpms). The vehicle's driver interface prompted me to change gears into park and manually restart the engine. I performed an emergency stop of the vehicle at the side of the road. After several failed attempts to restart the vehicle, the engine did restart.
4. The following day I reported the issue by telephone to the Dealer but took no further action as the car was brand new and I thought it may have been an isolated incident.
5. On 18 December 2016, while driving on the Calder Freeway, Keilor East in Melbourne (outward bound) at approximately 100kmhs, I experienced another total and sudden loss of power whereby the engine stopped (ie 0rpms). I performed an emergency stop of the vehicle into the emergency lane of the freeway and narrowly missed making contact with several other cars. Again only after several failed attempts to restart the vehicle, did the engine restart. This was a traumatic incident for myself and my family (wife and two young children 3 and 6) who were also in the car at the time
6. I reported the engine failure to the Dealer on 19 December 2016 and drove the car to the Dealer on the morning of 20 December 2016.
7. I understand that initially the Dealer could not detect any problems with the vehicle using its standard diagnostic equipment. However, after re-enacting the same drive as I took on 18 December 2016, the same fault occurred for the Dealer technicians. I question whether, if I

did not have notes of my 18 December 2016 drive to provide to the Dealer, the Dealer technicians would have simply relied on its standard diagnostic equipment.

8. The fault occurred a total of three times within 2 months of delivery and the car had travelled less than 900kms.
9. The Dealer's technicians concluded that the engine stopped due to a fault with the turbo and proceeded to replace the turbo.
10. Given the potential consequences of an engine stop at speed, I asked for reassurances that the fault would not reoccur. Both the Dealer and Skoda Australia/VW Group Australia (the **Manufacturer**) rejected this request.
11. On 29 December 2016, I again sought written assurances that the fault would not reoccur, or alternatively, that I receive a refund of the purchase price. I also indicated that:
 - a. I (and a reasonable consumer) would not have purchased the vehicle if it had been contemplated that it might experience a full engine shut down at speed; and
 - b. The vehicle was unsafe and not fit for purpose.
12. On 4 January 2017, the Dealer and the Manufacturer confirmed that:
 - a. it would not provide the written assurances as this was an unrealistic request;
 - b. there were inherent risks with driving; and
 - c. the vehicle had been repaired under warranty and returned to manufacturer's specifications.
13. On 9 January 2017, I rejected the vehicle pursuant to the ACL and requested a refund of the purchase price. The Manufacturer later that day confirmed that no refund would be paid as:
 - a. the fault did not represent a major failure under the ACL; and
 - b. the vehicle had been repaired.
14. Throughout this period the car remained with the Dealer.
15. On 28 January 2017 after several email exchanges and telephone calls between myself and the Manufacturer, the Manufacturer provided a statement advising that:
 - a. the fault giving rise to the engine shut down was resolved on 23 December 2016;
 - b. its technician was able to reproduce engine stalls at 60kmh and 100kmh;
 - c. the engine shut down was caused as a result of a mechanical malfunction of the turbo;
 - d. the turbo was replaced, the vehicle was then tested and no further similar faults occurred; and
 - e. the vehicle was ready for collection.
16. This statement was unsigned and it was not clear who had authored this statement. I did not consider this statement to be an adequate response to my request for assurances that the

major failure the vehicle had experienced would not reoccur and maintained my request for a refund of the purchase price.

17. On 1 February 2017, the Dealer phoned me and informed me that if I did not collect the vehicle from the Dealer's premises by 6pm that day that:
 - a. I would be served with an abandonment notice; and
 - b. the vehicle would be moved to the Manheim auction house to be sold.
18. I did not know what an abandonment notice was nor whether the process that the Dealer was describing was legally open to it.
19. I provided details of this telephone discussion to the Manufacturer who said words to the effect that this was a matter between the Dealer and myself and declined any involvement.
20. On 2 February 2017, the Dealer phoned me again and confirmed that arrangements had been made for the vehicle to be transported to the Manheim auction house at 3.30pm that day for immediate sale. It was still not clear to me whether this process was legally open to the Dealer.
21. On 2 February 2017, I confirmed that I would, under protest, collect the vehicle from the Dealer by 3:30pm that day. Further I confirmed:
 - a. the collection was not to be construed as an acceptance of the vehicle that impacted my rights under the ACL;
 - b. the vehicle remained rejected for the purposes of the ACL; and
 - c. I would continue to seek a full refund of the purchase price under the ACL.
22. At all times the Manufacturer was fully aware of the conduct of the Dealer and of my response.
23. On 2 February 2017, I collected and stored the vehicle (at my own expense) and I have not driven it since. As at 2 February 2017, the vehicle had only travelled a total distance of 950kms.
24. On 3 February 2017, I filed a claim in the Victorian Civil and Administrative Tribunal on the basis of a breach of the ACL. I seek a refund of the purchase price of the vehicle on the basis of the occurrence of a major failure. I can provide further details of my claim at VCAT if necessary.
25. As at 7 September 2017 this claim remains ongoing. Throughout this period I have been without a second vehicle for my family.

Through my specific new car experience with both the Manufacturer and the Dealer, I wanted to bring to the ACCC's attention the extreme difficulty I have encountered in enforcing my rights under the ACL.

If I had known the turbo would fail three times in the space of 2 months since delivery causing a total shut down of the engine while being driven at speed, I would not have purchased the car and nor would a reasonable consumer. The risk to the physical safety of myself, my family and other road users is too great.

I am entitled to either a full replacement or refund under the ACL, but this has been resisted at every turn. I have been forced to pursue legal proceedings and suffered much inconvenience and cost in not being able to use the vehicle. After 10 months, I feel I am no closer to achieving an appropriate resolution.

From my interactions, I have also observed the clear disregard and disdain of the Manufacturer and Dealer with regards to the ACL and the consumer rights contained within it.

My family was incredibly lucky to avoid injury or potentially death as a result of the fault. Serious consequences attach to vehicles that perform in an erratic, unreliable and unpredictable fashion at speed. At no time have the Manufacturer or Dealer acknowledged the potential consequences of this major failure or taken any responsibility for this situation.

I therefore support the following ACCC draft recommendations/actions:

- Proposal 1 of Draft recommendation 3.1 (I experienced the first engine shut down within 19 days of vehicle delivery)
- ACCC action 3.2 (both the Manufacturer and Dealer consider the fault that caused the engine shut down as a minor failure on the basis that the turbo was easy, cheap and quick to replace, and has failed to address how a major failure is defined in the ACL)
- ACCC action 3.4 (Skoda's complaints handling system, policies and practices do not comply with the consumer guarantee requirements of the ACL and should be targeted through action by the ACCC)