

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B

by

Hyundai Motor Company Australia Pty Ltd

ABN 58 008 995 588

1. Person(s) giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Hyundai Motor Company Australia Pty Ltd (Hyundai) for the purposes of section 87B of the *Competition and Consumer Act 2010 (CCA)*.

2. Background

- 2.1 The Australian Consumer Law (ACL) commenced on 1 January 2011 and contains statutory guarantees in Division 1 of Part 3-2 which provides consumers with a basic, guaranteed level of protection for goods and services which they acquire (**Statutory Consumer Guarantees**). The Statutory Consumer Guarantees cannot be excluded, restricted or modified. Consumers who are supplied with goods or services that fail to meet the Statutory Consumer Guarantees are entitled to remedies under Part 5-4 of the ACL.

ACCC concerns about the new car industry

- 2.2 The ACCC and other consumer protection agencies are contacted by a number of consumers each year about matters relating to motor vehicles. Around 20% of contacts received by the ACCC are about consumer guarantee issues concerning motor vehicles.
- 2.3 Given this, and as set out in the ACCC's 2017 *Compliance and Enforcement Policy*, the ACCC is prioritising its work on consumer issues in new car retailing, including responses by car manufacturers and new car dealers to Statutory Consumer Guarantee claims.
- 2.4 The ACCC's work in this area includes a market study into Australia's new car retailing industry (**ACCC Market Study**).
- 2.5 Most car manufacturers provide consumers with a warranty with the purchase of a new car (**Manufacturer's Warranties**). Manufacturer's Warranties provide specific rights and obligations which are separate from, and in addition to, the Statutory Consumer Guarantees.
- 2.6 The interaction between the Statutory Consumer Guarantees and other consumer rights available under Manufacturer's Warranties can be complex. However, it is clear that consumers have rights under the Statutory Consumer Guarantees where a vehicle is not of "acceptable quality", as that term is defined in the ACL, such as a manufacturing defect. It also is clear that consumers' rights to obtain a remedy are affected where the use of the vehicle is outside the scope of ordinary use and that user action causes or contributes to the problem with the vehicle for which they are seeking a remedy.
- 2.7 The ACCC considers that car manufacturers' policies and procedures, including consumer redress systems and compliance programs, may not provide a balanced focus on consumers' entitlements arising from the Statutory Consumer Guarantees compared to entitlements arising from the Manufacturer's Warranties.

Statutory Consumer Guarantees

- 2.8 The ACCC is concerned that some car manufacturers and new car dealers may make false or misleading representations to consumers about their Statutory Consumer Guarantee rights in relation to:
- (a) the circumstances in which the Statutory Consumer Guarantees apply;
 - (b) the remedies available to consumers when a car is not of "acceptable quality", as that term is defined in the ACL; or
 - (c) the interaction between the Statutory Consumer Guarantees and Manufacturer's Warranties.

Manufacturer's Warranties

- 2.9 The ACCC is also concerned that car manufacturers and dealers may make misleading representations to consumers about the length of coverage provided by Manufacturer's Warranties in circumstances where the sale of a vehicle has been pre-reported.
- 2.10 Pre-reporting refers to the practice of a car being recorded in a car manufacturer's system as sold, registered or otherwise in use before it has been purchased by a consumer. Pre-reporting can cause a vehicle's Manufacturer's Warranty to commence before the vehicle is purchased by a consumer. This may have the effect of reducing the period of the Manufacturer's Warranty available to the consumer who purchases the vehicle which may not be disclosed to the consumer at the time of purchase.

Hyundai

- 2.11 Hyundai is a wholly owned subsidiary of Hyundai Motor Company of South Korea which designs, engineers and manufactures Hyundai vehicles. Hyundai imports, markets, sells and services Hyundai vehicles and related components, parts and accessories in Australia. Hyundai distributes all vehicles via its dealer network which is the retail distribution and servicing channel for Hyundai vehicles, parts and accessories.
- 2.12 With the exception of vehicles used for commercial application, Hyundai new passenger vehicles come with a 5 year unlimited kilometre Manufacturer's Warranty. If there is a discrepancy in Hyundai's internal records about the date of commencement of Hyundai's Manufacturer's Warranty, Hyundai applies a commencement date as the date that the vehicle was delivered to the original retail customer.
- 2.13 Hyundai views compliance with the ACL as being consistent with its commitment to providing the best customer experience and continuously improves its policies and processes to reflect industry best practice.
- 2.14 Hyundai has voluntarily cooperated with the ACCC (including in respect of the ACCC Market Study) to address the ACCC's concerns about the new car industry.
- 2.15 To demonstrate Hyundai's commitment to its customers and to address the ACCC's concerns about the new car industry, Hyundai has offered this Undertaking to the ACCC. Hyundai has offered this Undertaking voluntarily.

3. Commencement of this Undertaking

- 3.1 This Undertaking comes into effect when:
- (a) this Undertaking is executed by Hyundai; and
 - (b) this Undertaking so executed is accepted by the ACCC.
- 3.2 Upon the commencement of this Undertaking, Hyundai undertakes to assume the obligations set out in clause 4 below for the purposes of section 87B of the CCA for a period of 3 years.

4. Undertakings

- 4.1 Hyundai provides the undertakings set out below for the purposes of section 87B of the CCA and undertakes to implement these commitments, including by advising dealers and relevant staff of any changes to processes.

Consumer Law Compliance Program

- 4.2 Hyundai undertakes that within 6 months of the date of this Undertaking, Hyundai will review its existing Consumer Law Compliance Program, having regard to AS ISO 19600: 2015 (Compliance management systems – Guidelines), and make any changes necessary to ensure that appropriate consideration of customers' rights, under and arising from, the Statutory Consumer Guarantees is embedded in all relevant systems, procedures and practices with the objective of ensuring that consumers are not denied any lawful remedies they are entitled to arising from the Statutory Consumer Guarantees.
- 4.3 Hyundai undertakes that within 6 months it will review existing training material for dealers and ensure it includes training on dealers' entitlements arising under the ACL to be reimbursed for

the total cost of repair of any manufacturing defect. Under the ACL, this reimbursement cannot be altered or qualified by Hyundai in any way.

Complaints Handling System

4.4 Hyundai undertakes that within 6 months of the date of this Undertaking, Hyundai will review its existing Complaints Handling System having regard to AS/NZS 10002:2014 (Guidelines for Complaint Management in Organisations). Hyundai will make any changes necessary to ensure that:

- (a) appropriate consideration of customers' rights arising from the Statutory Consumer Guarantees is embedded into the Complaints Handling System with the objective of ensuring that consumers are not denied any lawful remedies they are entitled to arising from the Statutory Consumer Guarantees; and
- (b) as part of the Complaint Handling System, if requested, customers are advised in writing either by Hyundai or a Hyundai dealer, of the reason that a remedy sought by the customer (under the Statutory Consumer Guarantees or the Manufacturer's Warranties, whichever the case may be) has not been agreed by Hyundai or the relevant dealer.

4.5 Hyundai undertakes that within 9 months of the date of this Undertaking, Hyundai will review all relevant policies and practices about the dealer network to identify ways to improve those policies and practices so as to make it as easy as possible for consumers to access appropriate remedies in circumstances where a customer is entitled to a repair, replacement or refund, for example when:

- (a) a consumer's vehicle experiences a fault within a short time period after purchase that causes the vehicle to become immobile and no longer drivable; or
- (b) multiple consecutive minor failures of a customer's vehicle occurring within a short period of time may constitute a major failure.

4.6 Hyundai undertakes that within 3 months of the date of this Undertaking, Hyundai will update its website to contain information about how consumers may make a complaint to Hyundai and how these complaints will be handled and attempted to be resolved by Hyundai.

Letter to consumers

4.7 Hyundai undertakes that within 3 months of the date of this Undertaking, Hyundai will commence writing to consumers who purchase a new Hyundai vehicle, and register their relevant contact details with Hyundai, to advise them of their rights under the ACL and to clearly identify that the purchase date of the vehicle is the date on which the Hyundai Manufacturer's Warranty commenced, unless an alternative start date was clearly communicated to the consumer prior to purchase. These letters will be sent to those consumers within 60 days of the date of purchase of their new Hyundai vehicle.

Manufacturing defects and technical problems

4.8 Hyundai undertakes that within 9 months it will implement a process whereby owners of Hyundai vehicles are able to log into myhyundai.com.au (or an equivalent website) and obtain information electronically relating to any technical and/or safety issues, and any fix available, affecting that type of vehicle that Hyundai is aware of at the time. Hyundai will provide this information to owners of Hyundai vehicles free of charge.

Past complaint review

4.9 Hyundai undertakes that it will:

- (a) identify all complaints it has received in the 12 months prior to the date of this undertaking where:
 - (i) the complaint relates to a new Hyundai vehicle;
 - (ii) the complainant was refused a remedy under the ACL or the remedy provided was less than sought by the complainant; and

- (b) within 9 months of the date of this Undertaking, Hyundai will reassess complaints identified in 4.9(a) to determine whether the complainant was entitled to and given the appropriate remedy under the ACL. If the complainant was properly entitled to a remedy, and the remedy provided in response to the complaint was not consistent with the ACL, Hyundai will contact the complainant and offer the remedy they are entitled to under the ACL.

Monitoring compliance

- 4.10 Hyundai undertakes that within 6 months of the date of this Undertaking it will implement a program to monitor compliance with this Undertaking whereby Hyundai will review a sample of 10 customer complaints received and resolved every month. If the number of customer complaints received and resolved is less than 10 for a particular month, Hyundai will review all the customer complaints received for that month.
- 4.11 Hyundai undertakes that within 9 months of the date of this Undertaking it will update its existing mystery shopping program to monitor compliance with this Undertaking, whereby point of sale information provided by dealers to consumers about entitlements under the ACL (including documents and/or materials provided by the dealer or visible at the dealership) is tested through replicating the consumer experience, without disclosing that the mystery shopping exercise is being carried out.

Independent review

- 4.12 Hyundai undertakes to involve an independent expert or experts in the following:
- (a) the review of its existing Consumer Law Compliance Program and dealer training material referred to in clauses 4.2 – 4.3;
 - (b) the review of its Compliance Handling System referred to in clauses 4.4 – 4.5;
 - (c) the review of past complaints referred to in clause 4.9; and
 - (d) the monitoring of compliance as referred to in clauses 4.10 – 4.11.

Annual review

- 4.13 Hyundai undertakes that for the duration of this Undertaking it will appoint an officer responsible for conducting two reviews, at least a year apart, of the commitments made in this Undertaking and that responsible officer will report to the Board on the effectiveness and implementation of the commitments in ensuring ACL compliance.

ACCC inquiries

- 4.14 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable inquiries with Hyundai in respect of compliance with this Undertaking and Hyundai will respond to such inquiries within a reasonable period of time.

5. Acknowledgments


- 5.1 Hyundai acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- (b) the ACCC may, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person.

Executed by

Hyundai Motor Company Australia Pty Ltd (ABN 58 008 995 588) pursuant to section 127(1) of the Corporations Act 2001 by:


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Signature of director


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Signature of a director/company secretary


JUNGWOOK LEE
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Name of director

DOOJIN SONG
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Name of a director/company secretary

5 FEBRUARY 2018
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Date

5 FEBRUARY 2018
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Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010


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Rodney Graham Sims
Chairman

This ^{6th}..... day of February 2018