

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth)

by Mercedes-Benz Australia/Pacific Pty Ltd ACN 004 411 410

1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Mercedes-Benz Australia/Pacific Pty Ltd (**Mercedes-Benz**), for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**).
- 1.2. Mercedes-Benz is the importer and wholesaler for a range of Mercedes-Benz branded passenger cars and vans.

2. Background

- 2.1. On 27 February 2018, the relevant Minister issued the *Consumer Goods (Motor Vehicles with Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018* (**Recall Notice**), which took effect from 1 March 2018. The Recall Notice imposed on suppliers of motor vehicles in Australia a compulsory recall (**Recall**) of vehicles fitted with defective Takata Affected Takata Airbag Inflators (**ATAls**).
- 2.2. The Explanatory Statement for the Recall Notice states that the purpose of the Recall Notice is to protect Australian vehicle occupants from the serious risk of injury or death if an ATAI in their vehicle ruptures when the airbag system deploys following a vehicle collision.
- 2.3. The Recall Notice required that each vehicle fitted with ATAls be recalled and that the ATAls be replaced. It mandated a different recall process for two kinds of ATAls: Alpha inflators and non-Alpha inflators (also known as Beta inflators). Mercedes-Benz vehicles were fitted with Beta inflators.
- 2.4. Mercedes-Benz was responsible for dealing with issues relating to the Recall Notice for Mercedes-Benz vehicles in Australia.
- 2.5. Section 5(2)(a)(ii) of the Recall Notice required suppliers, including Mercedes-Benz, to initiate the Recall in accordance with the requirements set out in Schedule 1, and a Communication and Engagement Plan (**CEP**) approved by the ACCC in accordance with section 7.
- 2.6. On 3 April 2018, Mercedes-Benz sent the ACCC a proposed CEP for Mercedes-Benz Cars (**MBC**). The MBC CEP was approved by the ACCC on 26 June 2018. The MBC CEP was varied on four occasions, with ACCC approval.
- 2.7. On 13 July 2018, Mercedes-Benz Vans Australia Pacific Pty Ltd sent the ACCC a proposed CEP for Mercedes-Benz Vans (**MBV**). The MBV CEP was approved by the ACCC on 10 August 2018. The MBV CEP was varied on three occasions, with ACCC approval.
- 2.8. Mercedes-Benz established a Takata Call Centre to communicate with consumers about the Recall. The Mercedes-Benz Takata Call Centre operated from July 2018 to March 2020 (**Relevant Period**), and its staff were representatives of Mercedes-Benz. During the Relevant Period, Takata Call Centre staff communicated with consumers in relation to the Recall.

Australian Consumer Law

2.9. Section 127(1) of the Australian Consumer Law (**ACL**), contained in Schedule 2 to the CCA, provides that if a recall notice for consumer goods is in force and the notice requires a person (other than the regulator) to do one or more things, the person must comply with the notice.

Conduct of concern

2.10. In August 2021, the ACCC commenced proceedings against Mercedes-Benz in the Federal Court of Australia for alleged contraventions of section 127(1) of the ACL as a result of statements made to consumers by Mercedes-Benz Takata Call Centre staff during the Relevant Period.

2.11. The ACCC and Mercedes-Benz have agreed to resolve the proceedings by consent with Mercedes-Benz making admissions that it contravened section 127(1) of the ACL by failing to use attention-capturing, high-impact language in communications to consumers in relation to the ATAs:

- a) on 23 occasions between 16 July 2018 and 17 March 2020, by making statements to consumers to the effect that Mercedes was undertaking the Recall as a precaution; and
- b) on 4 occasions between 18 February 2020 and 17 March 2020, by making statements to consumers to the effect that Beta inflators in other manufacturer's vehicles had not had any faults or caused any accidents, injuries or deaths, and in doing so failed to implement its CEP for contacting consumers as required by section 7(1)(a) of the Recall Notice.

2.12. The parties have agreed to make joint submissions to the Court in support of a proposed penalty, declarations and a contribution to the ACCC's costs. In addition, Mercedes-Benz has offered this Undertaking to the ACCC.

3. Commencement of this Undertaking

3.1. This Undertaking comes into effect when:

- a) this Undertaking is executed by Mercedes-Benz, and
- b) this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).

3.2. This undertaking has effect for two (2) years after the Commencement Date (the **Term**).

3.3. Upon the commencement of this Undertaking Mercedes-Benz undertakes to assume the obligations set out in paragraph 4 for the purposes of section 87B of the CCA.

4. Undertaking

4.1. Mercedes-Benz undertakes to:

- a) establish a Product Safety Compliance Program in accordance with the requirements set out in **Attachment A**, being a program designed to minimise Mercedes-Benz's risk of future breaches, and to make Mercedes-Benz aware of its responsibilities and obligations, including under section 127 of the ACL, and
- b) maintain and implement the Compliance Program for a period of 2 years from the Commencement Date.

5. Acknowledgments

5.1. Mercedes-Benz 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 will, from time to time, make public reference to this 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 arising from the alleged conduct.

Executed as an Undertaking

Executed by Mercedes-Benz Australia/Pacific Pty Ltd ACN 004 411 410 pursuant to section 127(1) of the *Corporations Act 2001* by:

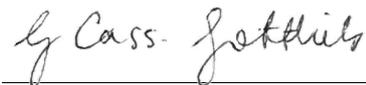
	
Signature of director	Signature of company secretary
Florian Seidler	Sasha Trakilovic
Name of director (print)	Name of company secretary (print)
31 August 2022	31 August 2022
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

1 September 2022

Date

and signed on behalf of the Commission:



Gina Cass-Gottlieb

Chair

1 September 2022

Date

Annexure A

PRODUCT SAFETY COMPLIANCE PROGRAM

Mercedes-Benz will establish a Product Safety Compliance Program (**Compliance Program**) that complies with each of the following requirements:

Recall Processes

1. Within two weeks of judgment being received in the Federal Court proceedings, Mercedes-Benz must communicate the outcome of the Federal Court proceeding commenced by the ACCC against Mercedes-Benz and this Undertaking, to all relevant executives and staff, including call centre staff, and reinforce the importance of Mercedes-Benz's obligations in respect of product safety and in particular product safety recalls.
2. Mercedes-Benz must communicate with all relevant executives and staff at least every 12 months to reinforce the content of, and importance of compliance with, Mercedes-Benz's obligations in respect of product safety, and in particular mandatory and voluntary product safety recalls.
3. Where a product supplied by Mercedes-Benz is subject to a mandatory recall in Australia, Mercedes-Benz must ensure that:
 - 3.1. all relevant executives and staff including call centre staff of Mercedes-Benz are briefed on the content and requirements of the recall notice;
 - 3.2. all call centre materials, including any templates for phone and written communications with consumers, in relation to the recall are reviewed and approved by a senior Mercedes corporate counsel;
 - 3.3. a sample of actual phone and written communications with consumers (by call centre staff or other Mercedes staff or agents) about the recall are reviewed by a senior Mercedes corporate counsel; and
 - 3.4. regular updates are provided to relevant senior managers and senior Mercedes corporate counsel about the recall, including about compliance with the recall notice.

Provision of Compliance Program documents to the ACCC

4. Mercedes-Benz must maintain a record of all documents relating to and constituting the Compliance Program for a period not less than four years, and provide at its own expense, copy of any such document as requested by the ACCC during that period.
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