

# 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 ACN 004 411 410 (Mercedes-Benz), for the purposes of section 87B of the *Competition and Consumer Act 2010* (CCA).

## 2. Background

- 2.1 Mercedes-Benz is the importer and wholesaler for a range of Mercedes-Benz branded passenger cars.
- 2.2 The Australian Consumer Law contained in Schedule 2 to the CCA provides at section 127(1) 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.
- 2.3 The Consumer Goods (Motor Vehicles with Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018 (Recall Notice) requires suppliers of vehicles with Affected Takata Airbag Inflators (ATAIs) to satisfy a number of requirements and ultimately to replace all ATAIs in Australian vehicles by 31 December 2020 (or later in some instances if approved by the ACCC).
- 2.4 Section 5(2) of the Recall Notice requires Mercedes-Benz to initiate the recall of a vehicle with an ATAI that is not an Alpha Inflator, in accordance with the requirements set out in Schedule 1 to the Recall Notice (which relate to Mercedes-Benz's approved Recall Initiation Schedule (RIS)) and a Communication and Engagement Plan (CEP) approved by the ACCC. Under the Recall Notice, "initiate recall action" for the recall of vehicles, means to take steps to contact consumers directly or as otherwise approved under a CEP to commence replacement of ATAIs.
- 2.5 Under Mercedes-Benz's approved RIS its recall initiation dates for C class and E class vehicles were:
  - (a) June 2018, for C Class vehicles, model year 2008 – 2009
  - (b) July 2018, for C Class vehicles, model year 2010-2011
  - (c) August 2018, for C Class vehicles, model year 2012
  - (d) September 2018, for C Class vehicles, model year 2013
  - (e) October 2018, for C Class vehicles, model year 2014 – 2015
  - (f) November 2018, for various E Class vehicles, model years ranging from 2010 – 2017.
- 2.6 The ACCC is concerned that Mercedes-Benz may have contravened section 127 of the Australian Consumer Law by failing to initiate the recall of all affected C Class and E Class vehicles in accordance with the dates in its approved RIS and CEP. The ACCC is particularly concerned about those vehicles that fall within the Priority Factors under the Recall Notice because they are over 6 years of age, are registered in areas of high heat or humidity and/or are fitted with driver side airbags. The ACCC's view is that consumers driving these affected vehicles may be exposed to serious safety hazards.
- 2.7 The ACCC alleges that Mercedes-Benz's conduct was aggravated by incorrect recall initiation dates being displayed on Mercedes-Benz's Recall Database in respect of certain vehicles.
- 2.8 Mercedes-Benz acknowledges the ACCC's concerns set out at paragraphs 2.6 and 2.7 above and has:
  - (a) provided information regarding the steps it has taken to obtain replacement airbag inflators, the steps it has taken to increase qualified repair personnel and facilities, the steps it proposes to take to notify affected consumers and the steps it proposes to take to address the risk of death or injury associated with vehicle use until the ATAI is replaced;
  - (b) submitted an application to the ACCC to vary its RIS and CEP, and
  - (c) 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 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 that where:

- (a) a consumer has a Mercedes-Benz C Class or E Class vehicle that has an ATAI and that vehicle:
  - i. is more than 6 years post manufacture and is registered in Queensland, the Northern Territory, Western Australia and the warm humid climate zone surrounding Coffs Harbour, as identified in the Bureau of Meteorology map at **Attachment A** (or which is known to Mercedes-Benz to have been registered in such a region); or
  - ii. is otherwise more than 9 years post manufacture and registered for road use anywhere in Australia; and
- (b) following the Commencement Date:
  - i. Mercedes-Benz advises the consumer in paragraph 4.1(a) that no replacement part is yet available; or
  - ii. the consumer in 4.1(a) requests that Mercedes-Benz replace the ATAI and Mercedes-Benz is unable to replace the ATAI within 2 weeks from the date of the consumer's request (for reasons other than the consumer failing to make the vehicle available for repair within that period); and
- (c) the consumer requests that Mercedes-Benz provide a loan vehicle or alternative transport, Mercedes-Benz will, at no cost to the consumer, provide to the consumer a loan vehicle or reasonable alternative transport (at Mercedes-Benz's election) until the ATAI is replaced.

#### 4.2 Mercedes-Benz undertakes that it will:

- (a) within 7 days of it becoming aware that it has failed to, or is likely to fail to, initiate recall in accordance with its approved RIS, notify the ACCC of the failure or likely failure. Mercedes-Benz undertakes that any such notification will include details of:
  - i. the nature and circumstances of the failure or likely failure;
  - ii. the vehicles affected by the failure or likely failure;
  - iii. any steps that Mercedes-Benz is taking to mitigate the risks for consumers associated with the failure or likely failure; and
- (b) ensure the Mercedes-Benz Recall Database to the extent reasonably possible reflects the recall status of all vehicles; and
- (c) track and keep records of consumer complaints to Mercedes-Benz and to Mercedes-Benz authorised dealers (to the extent that Mercedes-Benz is aware of such complaints) and the management of those complaints, relating to the recall, and to provide reports to the ACCC in accordance with its reporting obligations under the Recall Notice; and
- (d) communicate directly with affected consumers by letter, where consumer contact details are available attaching the statement in the form at **Attachment B**.

### 5. Acknowledgments

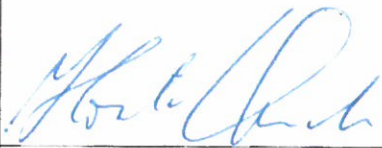





#### 5.1 Mercedes-Benz acknowledges that:

- (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; and
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications;

- (c) this Undertaking in no way derogates from the ACCC's rights to take action (including, but not limited to, legal proceedings seeking the imposition of a penalty) for any future failure by Mercedes-Benz to initiate recall action in accordance with Mercedes-Benz's approved RIS, including any failure notified to the ACCC in accordance with this Undertaking; and
- (d) 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:

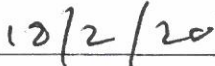
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|---|--|
|    |                            |
| Signature of director   | Signature of a director/company secretary (delete as appropriate, or entire column if sole director company) |
|    |                            |
| Name of director (print)  | Name of director/company secretary (print)   |
|  |                          |
| Date  | Date   |

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

  
 Date

and signed on behalf of the Commission:

Chair

  
 Date



## Attachment A



## Climate classification maps

## At a glance

These climate classification maps show three different methods of classifying the climate of Australia based on three different classification schemes - temperature/humidity, vegetation (Köppen) and seasonal rainfall.

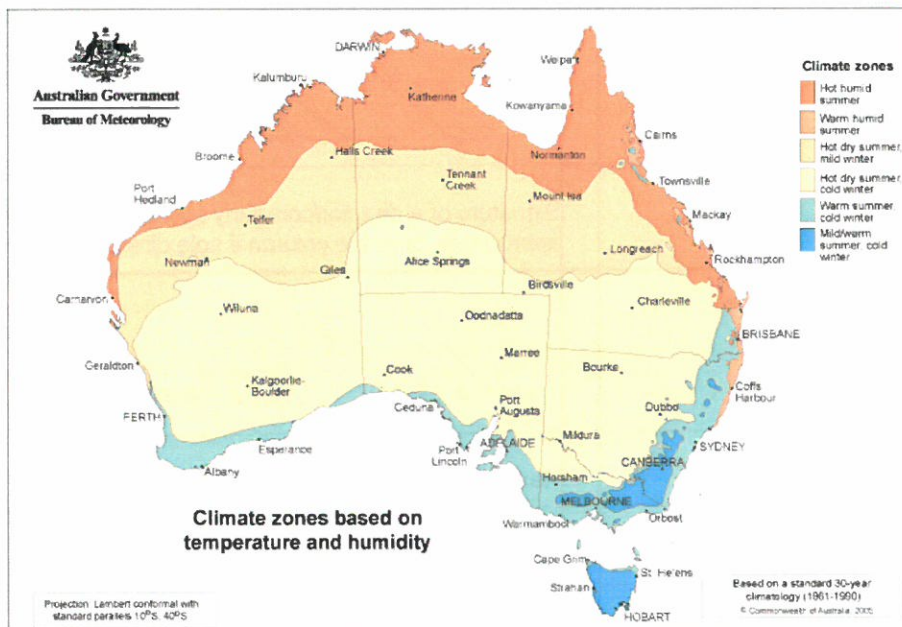
## View the maps

Controls

Map

Temperature/humidity zones

NEXT

Download: [Grid](#)

Product Code: IDCJCM0000

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## What do the maps show?

These climate classification maps show three different methods of classifying the climate of the Australian mainland based on three different classification schemes - temperature/humidity, vegetation (Köppen) and seasonal rainfall. Different methods of classification are used depending on the intended use of the output. For example, if you are designing a building, it would be helpful to classify climate based on temperature and humidity in order to get a better understanding of likely air conditioning requirements for the building.

## Temperature/humidity zones

The temperature and humidity zones map shows the climate of Australia classified according to temperature and humidity properties across the country. These maps are based on temperature and humidity data collected over the period 1961 to 1990.

This method of classification identifies six key zones across Australia, based on a set of definitions relating to summer and winter conditions:

- Hot humid summer
- Warm humid summer
- Hot dry summer, mild winter
- Hot dry summer, cold winter
- Warm summer, cold winter
- Mild/warm summer, cold winter

The distribution of these six zones can be compared to the maps for [temperature](#) and [relative humidity](#) with "hot humid summer" identified for areas of northern Australia, through to "mild/warm summer, cold winter" identified in Tasmania and alpine areas.

## Köppen maps

The Köppen classification maps show six major groups and 27 sub-groups of climate zones across Australia. These climate zones are defined with the climatic limits of native vegetation in mind. This method of classification is based on the concept that native vegetation is the best expression of climate in an area.

The six major classes are identified predominantly on native vegetation type, with the additional sub-groups taking into consideration seasonal distribution of temperature and precipitation:

- Equatorial
- Tropical
- Subtropical
- Desert
- Grassland
- Temperate

## Seasonal rainfall



The seasonal rainfall maps use the differences between summer and winter rainfall across Australia to identify six major climate zones. These maps use the [median](#) annual rainfall (based on the 100 year period from 1900 to 1999) and seasonal incidence (the ratio of the median rainfall over the period November to April to the period May to October) to identify these six major zones. Specific numerical rainfall thresholds are used to identify 16 sub-groups.

- Summer dominant
- Summer
- Uniform
- Winter
- Winter dominant
- Arid

These six classification groups identify the season of highest rainfall in each area, and are similar in distribution to the annual and monthly [rainfall](#) maps.

Page updated: November 2016

This page was created at on

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**TAKATA AIRBAG COMPULSORY RECALL**  
**IMPORTANT CONSUMER SAFETY INFORMATION**



Mercedes-Benz

**Special arrangements for consumers of certain C Class and E Class vehicles**

Mercedes-Benz is subject to a compulsory recall for a range of vehicles with faulty Takata airbag inflators because the inflator may rupture when triggered in even a minor collision, and shoot out sharp metal fragments that can **kill or seriously injure** the driver or passengers in the vehicle.

Mercedes-Benz is putting in place special arrangements for consumers who own certain vehicles affected by the Takata compulsory recall and the vehicle is subject to Priority Factors.

Priority Factors are circumstances that increase risk of rupture and therefore the risk of injury or death. The Priority Factors are:

- age of the vehicle – risk begins at six years post vehicle manufacture for original airbags and increases with age
- vehicle exposure to areas of high heat and humidity
- affected airbag located on the driver's side

If you or a family member own a Mercedes-Benz C Class or E Class vehicle, you can check whether you are affected by the Takata compulsory recall at: <https://recall.mercedes-benz.com.au/>.

For Priority Factor vehicles:

- older than 6 years and located in Queensland, Northern Territory, Western Australia and parts of the coastal area of New South Wales north of Newcastle; or
- older than 9 years located elsewhere in Australia;

if Mercedes-Benz is unable to replace an Affected Takata Airbag Inflator within two weeks from the date requested by a consumer (for reasons other than the consumer not making the vehicle available for repair), Mercedes-Benz will, at the request of the consumer, provide a loan vehicle or reasonable alternative transport (at the election of Mercedes-Benz) until such a time as the replacement can be completed.

Owners can contact Mercedes-Benz's dedicated Takata help line to confirm whether their vehicle is covered by the above arrangements:

- Phone: 1300 659 307
- Email: [takata\\_au@daimler.com](mailto:takata_au@daimler.com)

**Background**

Recall for all C and E Class vehicles was to have been initiated by November 2018. Mercedes-Benz was not able to initiate recall of all C and E Class Mercedes-Benz vehicles in accordance with its approved Recall Initiation Schedule due to a parts shortage. Mercedes-Benz has undertaken to the ACCC to offer these special arrangements and agreed to take other steps to address the ACCC's concerns in a court enforceable undertaking.

For more information on the undertaking, please see: <https://www.accc.gov.au/public-registers/undertakings-registers/s87b-undertakings-register>