



**Jaguar Land Rover**  
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**Director**  
Standards and Policy  
Consumer Product Safety Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

6 October 2017

Dear Sir/Madam

**Proposed Recall Notice: Motor Vehicles with Specified Takata Airbag Inflators and Specified Salvaged Takata Airbag Inflators**

1. I am writing in response to your letter dated 21 September 2017 enclosing a Proposed Recall Notice in respect of Vehicles in which specified Takata airbags are fitted and spare parts.
2. The safety of its vehicles and vehicle occupants is of critical importance to Jaguar Land Rover Australia (JLRA) and I acknowledge the concerns identified in the Proposed Recall Notice by the ACCC and the Minister for Small Business.
3. No Jaguar or Land Rover vehicles supplied in Australia by JLRA are fitted with:
  - (a) Takata frontal airbags installed with an Alpha Inflator, being the airbag types identified as highest risk in investigations conducted by the US National Highway Traffic Safety Administration (NHTSA) and in-depth technical analysis performed by Mr. Harold R. Blomquist, PH.D, a third party technical expert engaged by the NHTSA to identify the root-cause(s) for the Takata airbag ruptures; nor
  - (b) Takata frontal airbags using a phase stabilised ammonium nitrate (PSAN) propellant with a calcium sulphate desiccant.
4. Some vehicles supplied by JLRA in Australia have been fitted with Takata airbag inflators which use PSAN without desiccant.
5. JLRA has not to date undertaken a recall in Australia of Jaguar and Land Rover branded vehicles fitted with these airbags.
6. In response to the Proposed Recall Notice: Motor Vehicles with Specified Takata Airbag Inflators and Specified Salvaged Takata Airbag Inflators, JLRA is already taking steps to enable it to implement as quickly and effectively as possible a recall of Jaguar and Land

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7. Rover branded vehicles in Australia fitted with Takata airbags using PSAN propellant without desiccant, should the s122 Notice be issued by the Minister.<sup>1</sup>
8. Since receiving your letter and the Proposed Recall Notice on 21 September 2017, JLRA has:
  - (a) identified each of the Jaguar and Land Rover models supplied in Australia to which the relevant airbags are fitted;
  - (b) taken steps to secure a supply of replacement airbags from overseas as replacements for those installed in affected vehicles that do not utilise ammonium nitrate technology as their propellant and do not utilise calcium sulphate desiccant, so as to ensure that vehicles supplied by JLRA in Australia will have replacement airbags that do not require further replacement;
  - (c) commenced a review of JLRA database records in order to be ready to initiate contact with the registered owners of affected vehicles;
  - (d) taken steps to identify the approximate last known locations of vehicles with affected airbags in order to estimate the replacement work that will need to be undertaken by the dealer network in various locations nationally.

### Practical implementation of mandatory recall notice

9. Despite having initiated these steps, JLRA holds significant concerns that dealers will be unable, in practice, to meet certain of the specific obligations should a mandatory recall notice be issued in the terms currently proposed.
10. These concerns arise principally as a result of a combination of these factors:
  - (a) a global shortage of replacement airbags, resulting in difficulties securing an immediate supply of airbags in sufficient quantities to cover all affected vehicles;
  - (b) limited dealer network workshop and staff resources, which constrains the throughput volume of replacement airbags that can be installed in vehicles within the limited timeframes stipulated in the draft recall notice;
  - (c) the nature of the consumer communications prescribed in the draft recall notice, which are likely to induce significant consumer concern and prompt most consumers to contact dealers simultaneously, each seeking to have replacement airbags installed in their vehicles immediately to counter the risk of serious harm or death described in the consumer communications.
11. JLRA has supplied a total of [REDACTED] Jaguar and Land Rover vehicles in Australia fitted with one or more Takata frontal airbags using PSAN propellant without desiccant, as follows:



<sup>1</sup> JLRA notes that this includes frontal driver and passenger side airbags only, as no side curtain airbags installed in Jaguar or Land Rover vehicles supplied in Australia use PSAN propellant.

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### Supply of replacement airbags

12. The draft recall notice requires affected Takata airbags to be replaced within one month<sup>2</sup> of a consumer contacting the supplier to request a replacement where five or more years have passed since manufacture or, where less than five years have passed since manufacture, within 6 years of manufacture or 31 December 2020 (whichever is earlier).
13. Of the total number of affected airbags installed in vehicles supplied by JLRA in Australia, [REDACTED] would be required to be replaced within one month of customer notification under the terms of the draft recall notice. JLRA has requested urgent assistance from its parent overseas and anticipates that it can secure approximately [REDACTED] replacement airbags and have those airbags delivered to Australia by [REDACTED]. JLRA understands that it will be unable to source the additional [REDACTED] airbags that it would need to have on hand to install in vehicles potentially within one month of the recall campaign commencing until at least [REDACTED] owing to significant global supply constraints.
14. Commencement of a recall campaign prior to January 2018, in circumstances where JLRA will be required to replace airbags within one month of customer notification in response to the campaign communications, will therefore put JLRA in a position where it will not be able to meet its obligations under the terms of the Notice. Further, unless JLRA is permitted to adopt a phased consumer notification approach (as proposed below), JLRA will not have sufficient stock of replacement airbags for vehicles requiring a replacement within one month of customer notification until at least July 2018.

### Dealer workshop capacity

15. JLRA holds significant concerns that JLRA's dealer network will not have the capacity within the context of other repair and service obligations that dealers are required to meet under law and as part of their warranty and service obligations to customers to be able to undertake the replacement of affected airbags in the timeframes required by the draft recall notice.
16. [REDACTED]
17. Thus, in total, more than [REDACTED] hours, excluding time for peripheral tasks (for example, drive in drive out), would be required to replace all of the [REDACTED] airbags that would need to be replaced under the terms of the draft recall notice within one month of consumer contact, as outlined below:  
[REDACTED]

18. Having regard to dealers' existing service and repair obligations, JLRA estimates that dealers could dedicate approximately [REDACTED] hours per day to additional recall-related airbag installation services.

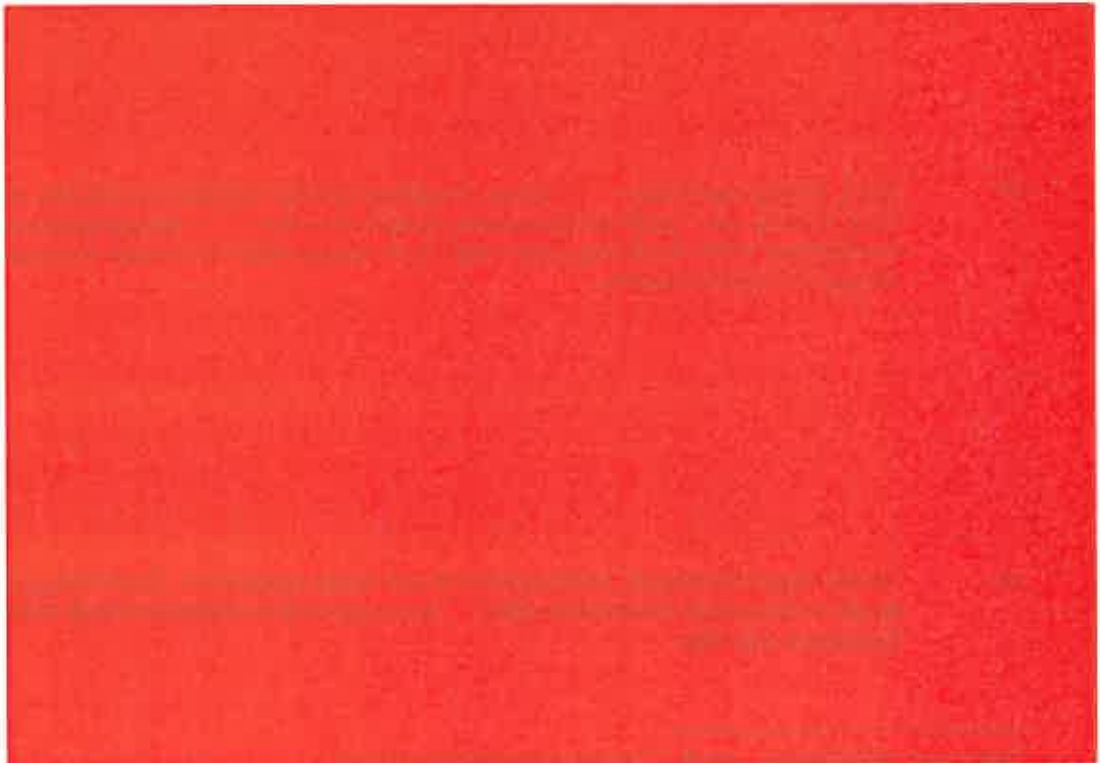
<sup>2</sup> other than Alpha Inflators, which JLRA has not supplied in Australia.

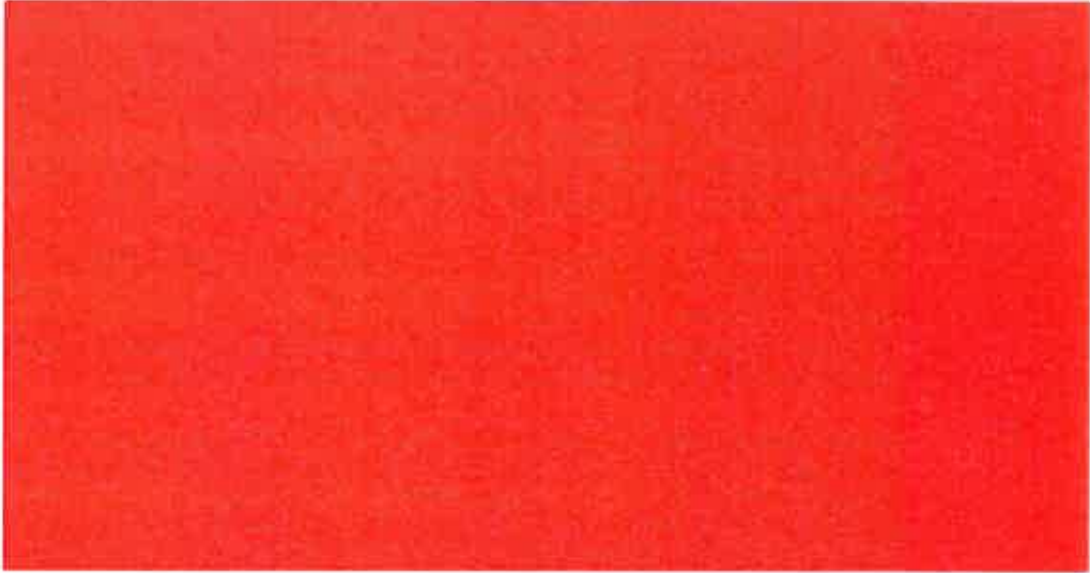
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19. Thus, even if JLRA were able to obtain a sufficient supply of replacement airbags and deploy them to dealer within the time required, JLRA has concerns that it will be extremely difficult, if not impossible, for the dealer network to in fact install those replacement airbags within the required one month timeframe were the majority of consumers to respond at the same time to the direction in the recall notice to contact a dealer to arrange for their airbag to be replaced.
20. In addition to the above, JLRA will need to replace a total of [REDACTED] airbags installed in vehicles where the date of manufacture is less than 5 years.

### Proposed phased notification process

21. Given the above concerns, JLRA submits that, similar to the process deployed in the United States (and published in NHTSA investigations), a phased approach for the commencement of the recall and customer notification by reference to the time since manufacture should be adopted in Australia.
22. This approach to the replacement of affected airbags would address the practical challenges arising as a result of the global shortage of replacement parts and limited capacity of workshop resources to implement the replacement, while at the same time (consistent with the phased approach adopted in the US) ensuring that:
- (a) consumer safety is prioritised for those consumers whose vehicles are equipped with older Takata inflators; and
  - (b) those consumers with older Takata inflators are not delayed in obtaining a replacement due to the high volume of consumers with newer vehicles who would also be responding to the recall notification simultaneously.
23. Having regard to JLRA's current understanding of replacement airbag availability and dealer workshop capacity, and subject to matters outside of JLRA's control that could impact on such product availability and workshop capacity, JLRA proposes a phased notification and replacement process as outlined below:





24. JLRA seeks to engage with the ACCC to determine the most suitable timetable that accommodates for the logistical and practical challenges that the recall places on suppliers and would be willing to meet separately with the ACCC to discuss these matters following the industry conference to be held on 9 October 2017.

**Obligations imposed on Suppliers in respect of Second Hand Consumer Goods and Salvaged Affected Takata Airbag Inflators**

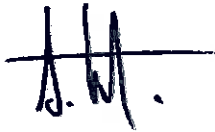
25. The Draft Recall Notice requires a Supplier of Vehicles to develop a plan to maximise the replacement of Affected Takata Airbag Inflators in Vehicles that have been or are being sold second-hand. That plan must be designed to facilitate the distribution of relevant information regarding the recall status of Vehicles in the market for second hand vehicles, including at vehicle auctions, through dealers or independent used car lots, off lease programs and fleets, internet channels (such as Carsales, eBay, buyswapsell fora, Facebook etc); and incentivise replacement of Affected Takata Airbag Inflators.
26. Suppliers are also required to develop and implement a salvage plan to maximise the removal of Affected Takata Airbag Inflators from Vehicles that are scrapped or otherwise unregistered and not in use. This plan requires JLRA to set out a process and provide a financial incentive for all persons to recover and return Affected Takata Airbag Inflators from Vehicles that are in scrapyards or otherwise not in use.
27. JLRA has concerns that any dealings in the relevant inflators may not be possible owing to the operation of s127(2) of the Australian Consumer Law (ACL).
28. Schedule 2 to the Notice requires Suppliers to facilitate broad reaching communications to the general public, including via mass media and social media channels. Those communications will not only have the effect of notifying affected consumers, but will also put third party suppliers and independent repairers on notice of the issues concerning the Takata airbags.
29. JLRA has no visibility concerning the actions of third party suppliers, second-hand dealers, or unauthorised repairers in respect of sourcing and installation of spare parts, including airbags. JLRA believes that it is impractical for Suppliers to assume the obligations of third party repairers and suppliers of scrapped airbags. This is particularly so in the context where Suppliers are required to issue the communications set out in Schedule 2 to the Notice, which have been broadly framed to notify both consumers and third party operators of the issues concerning Takata airbags.



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30. JLRA is able to identify consumers who may be potentially affected by the recall through its own database and dealer network, as well as the NEVDIS database. However, JLRA does not have any commercial arrangement or connection with independent used car lots, off lease programs and fleets or commercial marketplaces such as Carsales, buyswapsell or Facebook that would facilitate the distribution of relevant information regarding the recall status of Vehicles to consumers in these channels nor obligate these independent third party operators to act in accordance with any directions given by JLRA.
31. Assuming all manufacturers are in the same position and unable to directly contact consumers with Second Hand Consumer Goods and Salvaged Affected Takata Airbag Inflators, an advertisement placed in these channels by the Government or the ACCC would be as effective as, and may well have more impact than, multiple overlapping general advertisements of the same kind placed by each manufacturer.
32. Further, having regard to these issues, JLRA is of the view that it is more appropriate for the obligations in respect of Second Hand Consumer Goods and Salvaged Affected Takata Airbag Inflators to be imposed directly on the third party operators sourcing and/or supplying affected goods in those channels. Those parties have already been placed on notice regarding the Takata airbags and would be best placed to maximise the removal of Affected Takata Airbag Inflators from vehicles that are scrapped or otherwise unregistered and not in use, as well as to maximise the replacement of Affected Takata Airbag Inflators in vehicles that have been or are being sold second-hand.

Yours sincerely



**Scott Maynard**

Customer Service Director  
**Jaguar Land Rover Australia**