



Mercedes-Benz

Mercedes-Benz  
Australia/Pacific Pty Ltd.  
A Daimler Company  
ABN 23 004 411 410

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Mr Glenn Probyn  
Director  
Standards and Policy  
Consumer Product Safety Branch  
Australian Competition & Consumer Commission  
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Dear Mr Probyn,

**Proposed recall notice: Motor vehicles with specified Takata airbag inflators and specified salvaged Takata airbag inflators**

We refer to the proposed recall notice issued by The Hon. Michael McCormack, Minister for Small Business dated 21 September 2017 (the "Notice") and the Supplier Conference on 9 October 2017 at which we, along with other OEMs, made submissions in relation to the Notice.

Mercedes-Benz Australia/Pacific Pty Ltd and Mercedes-Benz Vans Australia Pacific Pty Ltd (together "MBA") make this submission in response to the Notice.

We understand that the Notice is not intended to cover commercial vehicles, and accordingly MBA makes this submission on the basis that its large and medium-sized commercial vans (known as Mercedes-Benz Sprinters and Vitos respectively) and other commercial vehicles such as trucks and buses will not be subject to the Notice.

**1. Safety history**

MBA are the distributors of Mercedes-Benz cars and vans in Australia and are indirectly wholly owned subsidiaries of Daimler AG, Germany ("Daimler") which is the manufacturer of Mercedes-Benz motor vehicles.

Daimler and Mercedes-Benz have a long history of safety and innovation in the automotive industry. In addition to inventing the modern-day motor vehicle in 1886, Daimler has invented many safety-related innovations which are present and have become standard in many of today's vehicles. Some of those examples are the invention of crumple zones, ABS, ESP and airbags to name just a few. Mercedes-Benz was the pioneer of the introduction of airbags in series-production vehicles. Daimler is a market leader in safety and that is why many of its pioneering safety-related innovations are even licensed to competitors to encourage automotive safety improvements for all vehicle drivers, passengers and other road users.

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Mercedes-Benz has a comprehensive product safety regime and has a long history of cooperating with the Federal Chamber of Automotive Industries Code of Practice for Conduct of an Automotive Safety Recall.

## **2. Takata airbags used in Mercedes-Benz vehicles**

### 2.1 Overview:

MBA and Daimler have been working closely with the ACCC and the Department of Infrastructure and Regional Development (“DIRD”) over the past 18 months in relation to the issues affecting certain Takata airbags which are subject to worldwide recalls.

- a. Mercedes-Benz does not currently consider any Takata airbag inflators in its vehicles to pose a safety risk. This assessment is based on comprehensive inflator and propellant level ballistic testing.
- b. Using several testing methods, Daimler has tested a significant number of inflators with an emphasis on the oldest inflators in the field (including inflators up to 12 years of age) sourced from the worst-case high absolute humidity (HAH) climate zones and to date has not discovered any abnormalities in the inflators’ chamber pressures. All measured pressures are well below defined hydro-burst thresholds; and
- c. There have not been any reports of ruptures of inflators in Mercedes-Benz vehicles either in the field or in laboratory testing.

Based on the inflators’ chamber pressures , there is no evidence currently available to Daimler that the Takata airbags installed in Mercedes-Benz vehicles pose a safety risk such that a mandatory recall of Mercedes-Benz vehicles is necessary.

### 2.2 Comprehensive Testing Strategy:

Central to Daimler’s response to the issues reported by Takata as affecting certain Phase Stabilized Ammonium Nitrate (“PSAN”) inflators has been the development of a comprehensive testing program for field return parts from vehicles in the US, Japan and South Korea. This program pursues a range of testing, including: Inflator level ballistic testing; CT scanning; live dissection with propellant analysis; and closed vessel propellant ballistic testing.

Moreover, the testing program incorporates four testing facilities. Through the involvement of various, world-renowned test institutes, Daimler has decided to not only let Takata test the behaviour of our inflators, but has determined to take a wider, scientific approach and have an independent institute assess inflator characteristics.

Further, Daimler AG’s current test program covers a representative range of climatic conditions. In particular, inflators sourced from vehicles in specific states in the US are considered to present a “worst case” mix of high temperatures, high levels of humidity and regular temperature cycling, similar to those which might be expected to occur in northern parts of Australia.

Importantly, the test results show no pattern that indicates a change of the ballistic qualities of the inflators. Based on these results, as well as the fact that there have no inflator ruptures in any Mercedes-Benz vehicles worldwide, we do not currently consider Takata airbag inflators in Mercedes-Benz vehicles to pose a safety risk.

### **3. Proposed alternative plan for Mercedes-Benz vehicles**

Although Daimler does not currently consider that inflators used in Mercedes-Benz vehicles pose a risk of injury to any person, we understand the public concern based on issues with PSAN inflators in other vehicle brands. We have set up a comprehensive testing program and are working closely with suppliers and regulators in several other jurisdictions in order to ensure the ongoing safety of Mercedes-Benz vehicles. It is Daimler's intention to progressively replace all Affected Takata Airbags with a superior PSAN-free technical solution.

To achieve this, MBA and Daimler propose to conduct a voluntary recall of all Affected Takata Airbag Inflators used in Mercedes-Benz vehicles in Australia to reassure our customers of the ongoing safety of our vehicles. The proposed voluntary recall would utilise the experience gained by Daimler in working closely with the National Highway Traffic Safety Administration ("NHTSA") on the Coordinated Remedy Program in the US.

Key points to be considered in Mercedes-Benz' response to the Notice and its proposed voluntary approach include:

- No Mercedes-Benz vehicles are fitted with alpha inflators, according to the ACCC's definition. The PSAN inflators in Mercedes-Benz vehicles were sourced from production facilities where a high level of automation in respect to manufacture and production processes was assured.
- It is Daimler's intention to progressively replace all Affected Takata Airbags Inflators with a PSAN-free airbag inflator strategy.
- Daimler proposes to implement a phased recall similar to that provided for in the Priority Groups set out in NHTSA's Coordinated Remedy Order. According to this phased-approach, parts would be allocated according to priority with earlier model year vehicles to be recalled first. All vehicles with non-desiccated PSAN inflators in the Australian market would be included in "Zone A", the highest priority category based on climatic conditions.
- All non-desiccated PSAN frontal airbags would be replaced during a single workshop visit. This will maximise recall completion rates by avoiding multiple recall repairs to single vehicles, thereby minimising customer confusion and inconvenience. Daimler considers this approach to be in the best interest of all involved parties, especially its customers.
- Although Daimler has expedited its development process significantly, the replacement inflators for Mercedes-Benz passenger vehicles and vans are still under development and will be available starting January 2018.
- The extended timetable will have no impact on the safety of Mercedes-Benz customers, as based on ballistic testing of a significant number of inflators returned from the field, we do not currently consider that ammonium-nitrate inflators used in our vehicles pose a risk of injury to any person.

### **4. Applicability of the Notice to commercial vehicles:**

We understand that the Notice is not intended to apply to commercial vehicles such as ambulance and other emergency response services. Accordingly, we propose that the Notice is amended to expressly exclude vehicles which are not in fact used for personal, domestic or household use.

Despite the request for a specific exclusion from the Notice, MBA and Daimler confirm that all affected Mercedes-Benz vans vehicles, regardless of whether they are used for personal or commercial use, will be included in the PSAN-free strategy for the future and would be included in the voluntary recall measure which will be conducted in Australia in respect of Affected Takata Airbag Inflators.

## **5. Compliance with the proposed timetable in the Notice**

The proposed timetable in the Notice is linked to the definition of Commencement Date which is not defined at this stage, therefore it is difficult for MBA to provide reasonably accurate responses in relation to the timeframes. However, in the interest of providing information for the ACCC to consider, MBA has assumed that the Commencement Date would be defined as a date prior to the end of 2017.

MBA has been informed by Daimler that it would be impossible for it to comply with the proposed timetable in the Notice due to the worldwide shortage of replacement parts as a result of the inability of Takata to manufacture and supply sufficient parts for the unprecedented magnitude of this global motor vehicle recall. In addition, Daimler has committed all available internal and supplier resources to a timely rollout of a superior solution. In order to implement this superior solution, the roll-out timeline must allow for significant development and certification milestones to be fulfilled.

MBA has provided the ACCC with information as to the number of Mercedes-Benz vehicles in Australia that have airbags installed which use non-desiccated PSAN inflators where five years have passed since vehicle manufacture. In accordance with the proposed timetable in the Notice, MBA would be expected to immediately initiate a recall for these parts upon commencement of the Recall Notice. Once contacted by a Consumer, MBA would be expected to replace the Affected Takata Airbag Inflator within one month from the date of contact. If the Minister mandates the recall of more than one million additional vehicles in Australia which from a technical perspective do not need to be recalled in the proposed timeframes, this will have the effect of increasing the parts and technician shortage and diverting those resources away from vehicles which actually need to be recalled, resulting in a worsened safety outcome.

MBA has an existing network of authorised dealerships and service centres across Australia that have the technical capability to carry out the recall measure. Having regard to the number of vehicles that would be subject to the recall, even if sufficient parts were immediately available, which they are not, the entire service network would not have the capacity to comply with the timetable proposed in the Notice. These workshops also service other recall measures and conduct general servicing and maintenance of vehicles. If the normal service capability is in a large part diverted to the proposed mandatory recall, then this has the potential to create safety issues in non-affected vehicles, again resulting in a worsened safety outcome.

MBA submits that an all-encompassing mandatory recall has a negative safety outcome for the general public in Australia. MBA and Daimler maintain that there are no known safety concerns regarding Mercedes-Benz vehicles and given the worldwide parts shortage, it is not in the best interest of the public to redirect the supply of replacement parts from where they are needed the most by capturing vehicles which do not have a safety concern at this time.

MBA submits that the Minister's and ACCC's immediate and primary focus should be to resolve concerns for vehicles which have a known defect and will pose a risk of injury or death to Consumers. Rather than continue with the proposed approach, the Minister should develop a timeframe which focusses on the vehicles most at risk, with a staged yearly approach to rolling out the recall with longer repair times so that parts and technician resources are directed to where they are most needed.

## **6. Salvage parts recovery plan**

As a general principle, MBA strongly opposes the resale of safety-related parts and components on the second-hand market. In MBA's view, for safety reasons airbags should never be re-sold on the second hand market and MBA would fully support the Minister issuing a ban on the sale of second hand airbags.

MBA as a vehicle distributor is not able to track parts which have been removed from written-off or scrapped vehicles. In any event, it would be very difficult to identify Affected Takata Airbag Inflators which have been removed from vehicles and are no longer associated with a particular VIN.

MBA submits that a formal salvage plan should not be an obligation on Suppliers, as Suppliers have no influence, knowledge or control over the second hand parts market. Any salvage plans should be the responsibility of the traders in the second hand market, as in MBA's view, they should not be selling second-hand safety-related parts in the first place.

## **7. Communication and engagement plan**

MBA agrees in principle that a communication and engagement plan should be implemented by all Suppliers. Below are MBA's concerns regarding the proposed requirements as well as some alternative suggestions that could further enhance Consumer awareness of this issue:

- a. In order to maintain a consistent message to Consumers and the effective use of resources, a general industry communication plan should be developed, rather than each Supplier creating their own;
- b. State road authorities could include a recall message to affected vehicles as part of the registration renewal process, and refuse to renew the registration of a vehicle unless proof that the recall has been carried out is provided by the owner;
- c. Checking and replacement of Affected Takata Airbag Inflators where necessary could be added as a condition of roadworthiness testing for vehicles; and
- d. A blanket statement as prescribed in Schedule 2 of the Notice is not supported by MBA, as it is technically and factually incorrect in respect of Mercedes-Benz vehicles. This is discussed in further detail below.

## **8. Prescribed language**

MBA and Daimler reiterate that there have been no known ruptures, neither in the field nor in laboratory testing of airbag inflators used in Mercedes-Benz vehicles. Detailed information has been provided to DIRD and ACCC previously, outlining the design specifications and manufacture of airbags used in Mercedes-Benz vehicles.

As such, MBA does not support the use of blanket prescribed statements which would have the effect of stating that airbags in Mercedes-Benz vehicles are defective, as such a statement, based on current information, is technically and factually incorrect.

MBA is concerned with the potential impact such a statement may have in respect of remedies that may be claimed by to Consumers under the Australian Consumer Law. Although the ACCC's position is that the fact that a vehicle is included in a recall campaign does not necessarily deem the vehicle to have a major failure for the purpose of the Australian Consumer Law (as stated in the ACCC's *Motor vehicle sales and repairs: an industry guide to the Australian Consumer Law*), inclusion of such a statement however could be interpreted by a Consumer that the Supplier has admitted that the vehicle is unsafe, or deems the vehicle to be unsafe, resulting

in unjustified claims to refunds for a major failure. This is an unacceptable risk for MBA in circumstances where the mandatory statement is simply untrue in respect of Mercedes-Benz vehicles.

The prescribed wording should be amended to:

“Your vehicle’s airbag may be defective and may pose a risk of serious injury and death to you and other people in your vehicle.”

## **9. Effect on sale of used vehicles**

Section 127(2) of the Australian Consumer Law prohibits any person from supplying goods of a kind that are subject to a compulsory recall notice. MBA submits that the Notice will have the effect to prohibit car dealers from selling new and/or used vehicles which may contain Affected Takata Airbag Inflators. This may also include vehicles which have already previously had airbag inflators replaced with like-for-like parts.

Given that there is a global shortage of replacement parts, this prohibition could potentially further reduce the supply of parts as all used car dealers are likely to immediately try to replace the Affected Takata Airbag Inflators in vehicles that may be in their possession in order to ensure they have a saleable product. This would put a further strain on the potential supply of replacement parts to Consumers that are using their vehicles on a daily basis which actually need the recall carried out.

In addition, dealerships may refuse trade-in of vehicles from Consumers which may not have had their inflators replaced.

The overall impact on the motor vehicle retail industry as a result of the operation of this section of the Australian Consumer Law may have a substantial financial impact on the second hand vehicle market.

## **10. Variation of the Notice**

We kindly request the ACCC to take into account the concerns raised during the Supplier Conference and in this submission when advising the Minister of the effect of the Notice in its current form, particularly in regards to expressly excluding vehicles used for commercial purposes.

If the Minister proceeds with the proposed timetable in Schedule 1 of the Notice, then we give notice that we will request the ACCC to vary the timetable to give effect to our proposal in section 3 of this submission to allow us to implement a superior solution in an orderly manner. This will contribute to a responsible and controlled approach that will improve the expected completion rate of the recall and which will assist to avoid the overall worsening of the safety situation for vehicle occupants and the public at large by not diverting scarce resources to vehicles which do not currently pose a risk to safety.

As noted above, we have developed a timetable for a voluntary recall to implement our PSAN-free solution for Australia which we expect to be in a position to commence at the beginning of 2018.

MBA and Daimler are committed to compliance with the law and achieving the best safety outcomes for our customers. We appreciate the opportunity to consult directly with the ACCC and intend to maintain our cooperative and consultative approach. If at any time the ACCC would like additional information from us, please let us know and we will be pleased to assist.

Yours sincerely,



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