



MITSUBISHI MOTORS AUSTRALIA LIMITED

ABN 53 007 870 395

Head Office

1284 South Road Clovelly Park, S.A. 5042

PO Box 8, Melrose Park South Australia 5039

Ph: +61 1300 13 12 11 Fax: +61 1300 55 33 19

CRCD17-066

5th October 2017

The General Manager
Consumer Product Safety Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra, 2601
AUSTRALIAN CAPITAL TERRITORY

Sent by email to: takata@accc.gov.au

Dear Sir,

Further to the Proposed Recall Notice: Motor Vehicles with Specified Takata Airbag Inflators and Specified Salvaged Takata Airbag Inflators, Mitsubishi Motors Australia Ltd (MMAL), as a supplier of affected consumer goods, wishes to provide the following comment.

Please don't hesitate to contact the undersigned if you have any questions or concerns.

Yours sincerely,
MITSUBISHI MOTORS AUSTRALIA LTD

A handwritten signature in blue ink, appearing to read "A Sanders".

A Sanders, Manager
Certification & Regulation Compliance Dept.



MITSUBISHI MOTORS AUSTRALIA LIMITED

ABN 53 007 870 395

Head Office

1284 South Road Clovelly Park, S.A. 5042

PO Box 8, Melrose Park South Australia 5039

Ph: +61 1300 13 12 11 Fax: +61 1300 55 33 19

Mitsubishi Motors Australia Limited (MMAL), as a *Supplier* under the *Draft Recall Notice*, is already conducting voluntary recalls of *Affected Takata Airbag Inflators* in accordance with (global) schedules stipulated by the United States National Highway Traffic Safety Administration (NHTSA) and the Japanese Ministry of Land, Infrastructure, Transport and Tourism (MLIT). The voluntary recalls being undertaken in Australia are being conducted in accordance with the Federal Chamber of Automotive Industries (FCAI) Code of Practice for the Conduct of an Automotive Safety Recall.

MMAL has been working collaboratively with the Commonwealth Department of Infrastructure and Regional Development (DIRD) and the Australian Competition and Consumer Commission (ACCC) and other *Suppliers* since becoming aware of safety concerns associated with Takata airbags. MMAL believes that the actions taken by *Suppliers* to date have been appropriate and that voluntary actions are achieving essentially the same outcomes that the ACCC now seeks to achieve under the *Draft Recall Notice*.

MMAL notes that, pursuant to section 122 of the *Australian Consumer Law (ACL)*, the Minister may only issue the *Draft Recall Notice* where it appears to the Minister that one or more *Suppliers* have not taken satisfactory action to prevent *Vehicles* from causing injury to any person. Ordinarily, this would occur where *Suppliers* have been asked to voluntarily recall *Vehicles*, but have refused to do so (or have not undertaken a voluntary recall in a competent manner). As above, MMAL and other *Suppliers* have undertaken voluntary recalls with the full knowledge and cooperation of regulators. As such, MMAL believes that there is no power for the Minister to issue the *Draft Recall Notice*.

Given the global nature of the problem (and the large number of *Affected Takata Airbag Inflators*), the supply of replacement airbag inflators has historically been an issue for *Suppliers*, but is now gradually being overcome. MMAL, along with other *Suppliers*, is managing the supply to ensure that the *Affected Takata Airbag Inflators* at highest risk are prioritised and rectified as quickly and efficiently as possible. MMAL and its parent company Mitsubishi Motors Corporation (MMC) has designated all *Affected Takata Airbag Inflators* supplied to the market in Australia as being the highest priority (NHTSA Zone A) and has negotiated the supply of replacement inflators on that basis. MMAL/MMC's current orders and forecasts indicate adequate supply to rectify affected vehicles in Australia in accordance with NHTSA/MLIT schedules, provided affected consumers continue to present their vehicles for rectification when notified of the availability of replacement inflators.

Assuming that the supply of replacement airbag inflators is therefore not a limiting factor, MMAL considers that the most difficult issue facing *Suppliers* is identifying, locating and contacting consumers, and persuading them to present their vehicles for rectification. On this matter, MMAL observes that the *Draft Recall Notice* imposes significant and onerous conditions upon *Suppliers* to expand already significant efforts to contact consumers. MMAL is ready, and will continue, to diligently investigate and pursue alternative methods of contact (including both those in the *Draft Recall Notice* and those identified by other *Suppliers* as being successful).



MITSUBISHI MOTORS AUSTRALIA LIMITED

ABN 53 007 870 395

Head Office

1284 South Road Clovelly Park, S.A. 5042

PO Box 8, Melrose Park South Australia 5039

Ph: +61 1300 13 12 11 Fax: +61 1300 55 33 19

There is one potential method that has been repeatedly raised at the Takata Stakeholders meetings, but which is not identified in the *Draft Recall Notice* – denial of registration to owners who fail to reasonably action a recall letter. MMAL believes that this method has the greatest possibility of success. MMAL suggests that the ACCC require State and Territory Registration Authorities (STRAs) to take a more proactive role in this recall by denying registration of vehicles fitted with *Affected Takata Airbag Inflators* or, at the very least, providing those consumers with communications of a similar nature to those required of *Suppliers* when notice of registration is issued. STRA's have, to date, refused to accept this as a efficient and timely way to ensure consumers take appropriate action.

Further to this suggestion, MMAL has some comments relating to specific requirements in the *Draft Recall Notice*. These comments are set out below (by reference to particular provisions of the *Draft Recall Notice*).



Section 5: Recall

MMAL is presently conducting a voluntary recall of *Affected Takata Airbag Inflators* in accordance with in accordance with (global) schedules stipulated by NHTSA and MLIT. MMAL's completion rates are largely within the schedule proposed in the Draft Recall Notice and it is MMAL's absolute intention to continue to work diligently towards this schedule in good faith utilising all means within its control.

To date, the ACCC and DIRD have been comfortable with MMAL's conduct, and have been kept updated about this conduct through regular Takata stakeholder meetings.

Section 1 of the *Draft Recall Notice* now sets out an express timetable for conducting the recall of *Affected Takata Airbag Inflators*:

Schedule 1—Recall timetable

Note: See sections 5 and 6.

For the purposes of sections 5 and 6 of this Recall Notice, a Supplier must recall the Consumer Goods, and replace the Affected Takata Airbag Inflators in Vehicles, by reference to the type of inflator the Consumer Good or Vehicle contains by the time specified for each in the table below.

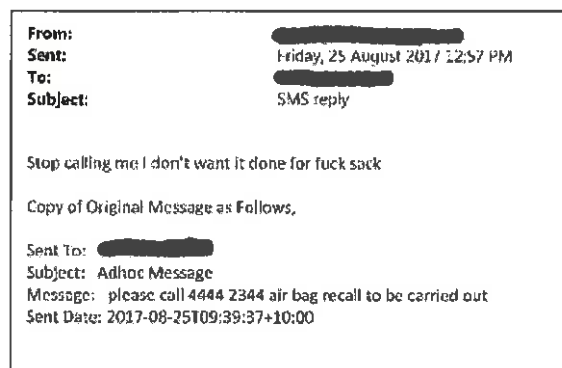
Type of Airbag Inflator	Time by which Recall Action Initiated	Time by which Affected Takata Airbag Inflators must be replaced
Alpha Inflator	Immediately upon commencement of this Recall Notice	A Vehicle must have its Affected Takata Airbag Inflator replaced the following business day after being contacted by the Consumer or such other date as requested by the Consumer.
Takata Inflators using PSAN with no desiccant or using PSAN with calcium sulphate desiccant where five years have passed since manufacture	Immediately upon the commencement of this Recall Notice	A Vehicle must have its Affected Takata Airbag Inflator replaced as soon as practicable, and in any case within one month of being contacted by the Consumer.
Takata Inflators using PSAN with no desiccant or using PSAN with calcium Sulphate desiccant where less than five years have passed since manufacture	Within five years and three months from the date of manufacture of the Affected Takata Airbag Inflator, or by 31 December 2019, whichever is earlier.	A Vehicle must have its Affected Takata Airbag Inflator replaced within six years from the date of manufacture of the Affected Takata Airbag Inflator, or by 31 December 2020, whichever is earlier.

The effect of the above timetable is that it will impose conditions upon *Suppliers* that are outside *Suppliers'* control (for example, global shortages of replacement airbags, or other logistic issues relating to airbags). If the *Draft Recall Notice* is issued, and there is a global shortage of replacement airbags (or other logistic issues relating to airbags), this may cause consumer panic (or a lack of confidence in the recall process), which would damage the ACCC's consumer protection goals.

In addition to global shortages of replacement airbags, if the *Draft Recall Notice* is issued now, it is likely that many consumers would simultaneously seek to have their *Vehicles* rectified (regardless of the urgency of this rectification work). *Suppliers* (through their franchisees) have only limited workshop space (and skilled staff) to be able to repair these *Vehicles*. Any delays to *Vehicle* repairs would further contribute to consumer panic (which is avoided with the current schedule of voluntary recalls).



MMAL also notes that it is not always practically possible to ensure that all *Vehicle* owners present their *Vehicles* for rectification. Some *Vehicle* owners will refuse repeated notifications, engagements and media. An example of such is shown below:



MMAL requests that the *Draft Recall Notice* be amended to clearly set out when *Suppliers* have complied with their obligations to contact *Consumers* (with the timetable in Schedule 1 also consequentially amended).

Separately, *MMAL* also notes that there is no power under the *ACL* to require *MMAL* to provide refunds to *Consumers* if *MMAL* fails to comply with the timetable in the *Draft Recall Notice*. *Suppliers* are only liable to pay damages for any loss or damage caused by the *Affected Takata Airbag Inflators*, and are not required to provide a full or partial refund.

Section 6: Replacement of an Affected Takata Airbag Inflator

MMAL is making best endeavours to replace *Affected Takata Airbag Inflators* with an inflator which is not an *Affected Takata Airbag Inflators*. Unfortunately, in some cases, this is not possible. *MMAL* is currently scheduled to complete its re-sourcing away from *Affected Takata Airbag Inflators* for all recalls by the end of December 2017.

MMAL considers that clause 6(1)(b) of the *Draft Recall Notice* should expressly identify that it does not have retrospective effect; for example, it should be clear that *Suppliers* are not required to request that *Consumers* return *Vehicles* already rectified for the sole purpose of causing notices to be affixed on those *Vehicles*. *MMAL* believes that such a requirement would be prejudicial to the future recall to replace the *Affected Takata Airbag Inflator* with an inflator which is not an *Affected Takata Airbag Inflator*, as it would discourage *Consumers* from presenting their *Vehicles* in the future.

MMAL currently exports all *Affected Takata Airbag Inflators* removed from vehicles in Australia to Takata in Japan for: sampling; on-going test programmes; and ultimate disposal. *MMAL* has a process of quarantine, storage and transportation of *Affected Takata Airbag Inflators*, which meets Australian and international dangerous goods regulations.

Clause 6(2) of the *Draft Recall Notice* should be amended to clearly confirm that *MMAL's* strategy satisfies the *Draft Recall Notice's* requirements. Alternatively, clause 6(2) of the *Draft Recall Notice* should set out express requirements that will satisfy its provisions.



MITSUBISHI MOTORS AUSTRALIA LIMITED

ABN 53 007 870 395

Head Office

1284 South Road Clovelly Park, S.A. 5042

PO Box 8, Melrose Park South Australia 5039

Ph: +61 1300 13 12 11 Fax: +61 1300 55 33 19

Clause 9: Life of Product Action: Salvaged Affected Takata Airbag Inflators

MMAL considers that the most efficient method of controlling the risk of salvaged *Affected Takata Airbag Inflators* is for the ACCC to undertake action to ban the sale of these inflators in the second hand market, whether by a Consumer Protection Notice, or some other mechanism at the ACCC's disposal, and to identify *Vehicles* from which *Affected Takata Airbag Inflators* have been sourced.

Naturally, MMAL will work with scrapyards and owners of *Vehicles* not in use to take possession of, and dispose of, *Affected Takata Airbag Inflators* as per the above-mentioned process.

MMAL seeks to confirm ACCC's willingness to consider, in the absence of imposing a ban on the sale of *Affected Takata Airbag Inflators*, a collaborative approach between the automotive industry and the Auto Parts Recyclers Association of Australia.

Schedule 2 Contacting and Communicating with Consumers

Part B Engagement Plan

MMAL agrees that a comprehensive communications strategy employing a range of outreach techniques is necessary and has, under its voluntary recalls, engaged in a number of the techniques listed in the *Draft Recall Notice*.

Given the large number of brands and models affected, and the fact that advertisements, media releases and other forms of mainstream media coverage target consumers on an aggregate basis, MMAL believes that the most effective use of mainstream media engagement may be a coordinated, industry wide approach. This would have the effect of lessening "consumer fatigue" arising from multiple approaches from multiple brands with similar messaging.

If the ACCC is amenable to this approach, it may be appropriate to allow affected brands to coordinate their strategy through an engagement plan submitted to the ACCC by the FCAI.

MMAL agrees that other forms of (targeted) media (where the *Consumer* can be matched directly to an affected *Vehicle*) should remain the responsibility of the individual brand and be included in the brand's own engagement strategy. MMAL will continue to pursue engagement strategies which prove most successful in raising *Consumer* awareness of the safety risk that exists in relation to affected *Vehicles* and maximises *Consumer* responses to MMAL's communications. For example, MMAL and other affected *Suppliers* are working with DIRD to increase consumer engagement by using language/wording, letters and envelopes provided by DIRD, in addition to those ordinarily sent by the manufacturer.

END OF COMMENT
