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6 October 2017

Glenn Probyn
Director - Standards and Policy
Consumer Product Safety Branch
Australian Competition & Consumer Commission
Level 35, 360 Elizabeth Street
Melbourne VIC 3000

Submitted via the ACCC Consultation Hub

Dear Mr Probyn

Submission – Proposed Recall Notice: Takata Airbag Inflators

I refer to the proposed recall notice for a compulsory recall of motor vehicles with Takata airbag inflators and specified salvaged Takata airbag inflators published on 21 September 2017 (**Notice**).

Our submission comprises two parts:

- Part A contains our responses to the issues raised in Neville Matthew's email dated 21 September 2017.
- Part B contains our submission on the contents of the Notice.

If you have any questions about this submission, please direct them to myself or to Nissan's Senior Manager for Product Engineering, John Galvin – john_galvin@nissan.com.au or (03) 9797 5080.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Peter Gillam", with a long horizontal stroke extending to the right.

Peter Gillam
Acting Executive General Manager – After Sales
Nissan Motor Co. (Australia) Pty Ltd

PART A – ISSUES RAISED IN NEVILLE MATTHEW'S EMAIL DATED 21 SEPTEMBER 2017

1. The estimated costs of compliance with the Notice, including:

a. details and evidence of the costs;

| Item | Cost | Comments |
|---|-------|--|
| Recall Letters for customers who have had like-for-like airbags installed (section A(2)(b)) | c-i-c | Nissan queries the need to perform the action of informing customers that have had their airbags replaced, that they will need them replaced again, as this action does not impact the safety of their vehicle. |
| Media Strategy, including second hand market (section B(1)(a) 10(1)(a)) | c-i-c | As detailed in Part B, Nissan submit that radio and television are not the most appropriate advertising mediums to call out individually affected vehicles. For other mediums, Nissan has prepared an initial plan covering news (papers and websites), social media and the second hand market place. |
| High Quality data from multiple sources (section B(1)(d), B(1)(e)) | c-i-c | The cost of this data will depend on the source of such data which contains both the VIN and owner address. However, an example of the cost for 660,000 letters (including reminder letters) is provided. |
| Centralised Telephone booking system (section B(3)(c)) | TBC | As detailed in Part B, Nissan disagrees with this requirement given that clear contact details of each of our 189 dealers are provided on our website and in each recall letter. Nissan is in the process of studying the costs to implement a centralised telephone booking system should it be part of the recall notice. |
| Online repair scheduling platform (section B(6)(c)) | c-i-c | As detailed in Part B, Nissan disagrees with this requirement given that clear contact details of each of our 189 dealers are provided on our website and in each recall letter. If this requirement is implemented, Nissan would need to investigate how to implement such a solution, including finding a suitable supplier which can integrate with the many business systems operated by our dealers. The cost for such an on-line platform would involve development costs, and monthly subscriptions. |

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| Refunds and loan cars (section 5(1)(c), 5(2)) | c-i-c | <p>Nissan has, and has long had, sufficient parts to support the expected number of owners who may contact us to have the recall completed. However if all outstanding customers contact us immediately following the Recall Notice, there will not be sufficient parts or dealer capacity to complete the recall within 1 month.</p> <p>It is not possible to accurately determine the cost of refunds or loan cars as there are many variables, however we expect to have approximately 75% of parts on hand by the end of Dec 2017 so for the outstanding 25% of total affected vehicles (63,000) they will need loan cars for a period of at least 3 months.</p> |
| Towing of Alpha vehicles to dealerships (section 5(4)(b)) | c-i-c | <p>As detailed in Part B, Nissan's position is that towing is not appropriate for vehicles with Alpha inflators. In particular, Nissan query this requirement where Alpha inflators are only present in passenger side airbags.</p> <p>If the requirement remains, Nissan has provided an estimate based on:</p> <ul style="list-style-type: none"> • a standard tow truck rate, • 12,000 outstanding alpha airbag vehicles, and • the cost of transporting the customer to the dealership. |
| Destruction of airbags (section 6(2)) | c-i-c | <p>Nissan's current approach regarding inflator disposal is to immediately quarantine and return parts to a central location, where they are prepared for export and overseas destruction. Nissan recommend the wording of the Notice is revised to include "exported for destruction" as well as "destroyed".</p> <p>If the requirement remains, Nissan has provided an estimated cost.</p> |

b. if the supplier has already recalled all or some of the consumer goods in the Notice, the amount and source of costs that would be in addition to the actual costs (to date) and anticipated further costs of that voluntary recall.

All the above costs are additional to the existing recall costs that we have been incurring since 2013.

2. Whether the supplier considers it will have difficulty complying with the timetable for recall and replacement of affected Takata airbag inflators (that term has the same meaning here as it has in the Notice) set out in Schedule 1 of the Notice, and, if so:

a. identify the barriers to compliance with the timetable and what measures may be taken to remove or minimise those barriers.

As outlined in the costs section above, Nissan Australia has recently placed orders for a significant increase in parts coming to Australia. We have incoming parts which will take us to 75% coverage from our current 42% completion rate. These parts are expected to arrive by the end of December 2017. We are currently looking to place orders to cover 100% of affected vehicles. It is our expectation that these parts should arrive in the first half of 2018 (subject to global parts demand).

Please note that these parts are already either desiccated Takata parts, or parts made by an alternative supplier. The process to develop, test and validate the performance of these alternative inflators started

in 2016 and in some cases took more than 12 months to ensure the safety performance of the new inflators.

Barriers to compliance with the timetable – Alpha

The main barriers to compliance with this timetable are:

1. Where a customer is located in a remote location (including cases of remote islands). In these situations, the considerations involve:
 - a need to transport parts to the customer (in accordance with the dangerous goods requirements);
 - a possible need to locate a suitable dealer (including of other OEMs) who can facilitate the repair, and of which Nissan has no control over their service schedule;
 - the potential scarcity of loan vehicles (or alternate transport) in the area.
2. Where the vehicle has other outstanding recall work to be undertaken before the vehicle can be released, in particular if this recall work requires further parts which are not at the dealership.

In attempting to comply with this timetable, sufficient quantities of each of the 12 unique parts (across all affected models) would need to be on site at all 189 Nissan dealers, with no visibility of which dealership a customer may present their vehicle at. This may mean a shortage of parts in some locations and redundant stock in others.

An alternative requirement under the notice would be for a dealer to book the customer's vehicle in within one day of the part arriving in the dealership. This would ensure that appropriate priority is given to alpha airbag vehicles, whilst still ensuring appropriate parts management across all dealership locations.

Barriers to compliance with the timetable – non-Alpha inflators

1. Parts availability

Nissan Australia has already initiated the Recall action on approximately 128,000 outstanding non-Alpha inflator vehicles. Nissan has sufficient parts on hand or soon to arrive to meet the number of customers which we expect will present their vehicle to a dealership. The number of parts we have on hand, or are due to arrive by the end of December, will allow Nissan to achieve a 75% completion rate across all Takata recalls.

However if all 128,000 customers (plus the additional 52,000 new recalls which are in the process of being initiated) contact us immediately following the Recall Notice being published, then we will not have sufficient parts to complete all vehicles within a one month timeframe.

Nissan would like to propose that this requirement for a one month turnaround is amended along the lines of:

- Where a supplier has sufficient parts on hand, they must replace the inflator within one month of being contacted by the Consumer.
- Where the supplier does not have sufficient parts on hand, they will implement a process to stimulate completion of the earliest build vehicles first by focusing the communications and engagement in schedule 2 on such early build vehicles.
- Once the supplier has sufficient parts on hand, they will immediately contact all outstanding customers again to carry out the recall within one month of being contacted by the Consumer.

2. Dealer capacity

Similar to comments regarding parts availability, Nissan Australia has sufficient dealer capacity to meet the number of customers which we expect will present their vehicle to a dealership. However if all 128,000 customers (plus the additional 52,000 new recalls which are in the process of being initiated) contact us immediately following the Recall Notice being published, then we will not have sufficient parts to complete all vehicles within the one month.

By way of example, Nissan's 189 dealers complete approximately 420,000 repair orders (jobs) in a 12 month period, and at its peak completed 15,000 Takata recall jobs in one month. To take this to 180,000 jobs in one month (as the notice currently requires, if all customers contact us) is not possible as it is around 12 times our current Takata capacity. To complete 180,000 jobs in one month would affect the completion of other service, warranty and recall work.

Nissan is reviewing options to extend the hours of dealerships to offer additional capacity to Takata airbag replacements. However, as per the parts comments above, Nissan would like to propose that this requirement for one month turnaround is amended along the lines of:

- Where the supplier does not have sufficient dealership capacity (and they have attempted to extended the normal service hours), they will implement a process to stimulate completion of the earliest build vehicles first by focusing the comms and engagement in schedule 2 on such early build vehicles.

i. if there are anticipated issues regarding sourcing enough qualified personnel or appropriate facilities to meet the schedule, what efforts have been (if applicable) or may be made to source additional personnel and facilities.

The personnel and facility capability of our dealership network have been able to meet our customer's recall requirements to date.

b. if a supplier considers that there are insurmountable barriers to compliance with the timetable, identify an alternative timetable the supplier considers it could meet and still ensure no safety risk to consumers from affected Takata airbag inflators (along with details and any evidence to support this submission).

The largest barrier to compliance with the timetable is consumers presenting their vehicle for repair. Nissan will implement an approved communications and engagement plan to encourage completion, however it will ultimately be the responsibility of the owner to present their vehicle.

As we have mentioned in our correspondence with the ACCC, Nissan Australia recommends the ACCC strongly encourage the State Government registration authorities to consider not allowing the re-registration of vehicles with an outstanding Takata recall. We (and other vehicle manufacturers) have been requesting this in the quarterly Industry/Government meetings over the last 18 months, as we strongly believe that this is the best opportunity to dramatically increase the completion rate of Takata recalls in Australia.

There are a number of examples of this approach overseas. Iceland and Israel have fixed periods (6 or 12 months) from campaign launch timing (in line with Authority notification) in which all vehicles must be completed. After this time, the authorities will deny annual licensing/registration for affected vehicles of

recall campaigns. Therefore this is enforced either at initial registration, or as part of the annual renewal process.

In Germany, the relevant authority (the KBA) communicated to specific groups of owners affected by older airbag campaigns that they deemed to be slow in acting on Recall campaign action notification letters. The KBA advised owners they could restrict annual registration of the vehicle, and remove the 'sticker' (tamper proof registration seal) from vehicles if owners did not act within a specific timeframe. This demonstrates the approach of the KBA to increase owner responsibility to complete recalls and the consequences on owners if they fail to act.

3. Whether there are barriers to effective implementation of the recall in respect of consumer goods in rural or remote areas, and if so, how those barriers should be addressed as a practical matter and in compliance with all aspects of the Australian Consumer Law (the ACL), which is Schedule 2 to the CCA.

Rural and remote areas provide further barriers in addition to those we have already outlined above.

A recent example of this is a customer who contacted us from Badu Island, north of Christmas Island, to have the airbag recall completed. The only way to have the owner's vehicle rectified is to send the part to Christmas Island along with a technician from a Nissan dealership in either Cairns or Darwin and arrange for the vehicle to be shipped to Christmas Island. This process may take some weeks to complete.

Nissan Australia has always had a process to manage rural/remote location recalls. Such recalls are managed considering the location of the vehicle and the availability of a suitably qualified mechanic, which may be a local mechanic or a dealership of another manufacturer.

Nissan will continue to support owners in rural/remote areas, however as previously mentioned the timeframes (24 hours/1 month following contact) in the recall timetable present barriers to compliance with the notice.

In addition, Nissan will work with the other OEMs to identify alternative workshops (including of other brands) across the country to provide local solutions to as many owners as possible.

5. What incentives would best encourage or assist with recovery and destruction of affected Takata inflators from salvage yards, secondhand supply markets and similar sources of supply of salvaged parts.

We understand that under section 127 of the Australian Consumer Law, once a recall notice is in force, the sale of affected airbags is prohibited. If this is the case, we suggest that the ACCC utilise its powers to ban the sale of affected inflators.

To support the collection of affected airbags, Nissan will implement a collection service and offer to arrange for the export (and subsequent destruction) of the airbags at the cost of Nissan.

6. The effect(s) of the Notice on supply of new and used vehicles containing affected Takata airbag inflators and whether additional measures should be included in the Notice to specifically address that effect(s).

We also understand that under section 127 of the Australian Consumer Law, once a recall notice is in force, the sale of affected vehicles in trade and commerce is prohibited. If this is the case, we suggest

the Notice should specifically address this prohibition, and that affected vehicles must be rectified prior to sale by dealers and wholesalers. We also suggest the ACCC recommend to State Registration authorities to make this information prominent to dealers and wholesalers.

PART B – SUBMISSIONS ON NOTICE

Part 2 – Recall

| Ref | Notice wording | Nissan submission |
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| 5(1)(c) | <p>The Supplier of any Consumer Goods must:</p> <p>subject to subsections (2) and (3), if the Affected Takata Airbag Inflator is not replaced as required by the Recall Notice and in accordance with the timetable set out in Schedule 1, or such other timetable approved by the ACCC under subsection (5), then, at the request of the owner of the Consumer Goods, refund the price of the Consumer Goods less, in the case of a Vehicle, a reasonable amount for use of the Vehicle where more than 12 months has passed since the Vehicle was supplied, where 'reasonable amount' means reasonable decrease in market value, as reflected by RedBook and taking into account relevant factors including the odometer reading and the condition of the vehicle.</p> | <p>Nissan submit that refunds of vehicles presents a potentially unreasonable financial burden, and the remedy and the timeframe which give rise to the remedy, are not flexible around issues of global parts supply and short term capacity constraints.</p> |
| 5(4)(b) | <p>(b) if the Vehicle has an Alpha Inflator, then the Supplier must offer to arrange for the Vehicle to be towed to the place of replacement or for a qualified technician to travel to the Vehicle (or some similar arrangement so that the Consumer need not drive the Vehicle).</p> | <p>Nissan's position is that a towing requirement is inconsistent with the global direction on alpha inflators, which recommends owners to immediately drive their vehicle to a dealership.</p> <p>Where the Alpha inflator is located in <u>the passenger side airbag only</u>, Nissan's view is that an owner driving their vehicle directly to a dealership (with no passengers in the vehicle), does not present an unreasonable safety risk to the owner.</p> <p>Nissan can recommend to owners that no passengers are in the vehicle during this time (only the driver).</p> |
| 6(2) | <p>(2) Where the Supplier removes an Affected Takata Airbag Inflator, the Supplier must ensure that it is immediately quarantined and promptly destroyed so that it cannot be reused, unless it is intended to be used for testing, in which case it must be labelled and handled in a manner to prevent re-use.</p> | <p>Nissan's current approach regarding inflator disposal is to immediately quarantine and return parts to a central location, where they are prepared for export and overseas destruction. Nissan recommend the wording of the Notice is revised to include "exported for destruction" as well as "destroyed".</p> |
| 9(1) | <p>(1) A Supplier of Vehicles must develop, and implement, a salvage plan to maximise the removal of Affected Takata Airbag Inflators</p> | <p>Please refer to our response to Part A, Question 5.</p> |

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| | from Vehicles that are scrapped or otherwise unregistered and not in use. The plan must, at a minimum, set out a process and provide a financial incentive for persons to recover, and return to the Supplier for destruction, Affected Takata Airbag Inflators from Vehicles that are in scrapyards or otherwise not in use. | |
| 10(1)(b) | (b) incentivise replacement of Affected Takata Airbag Inflators. | Nissan request the ACCC to please provide further detail on the intention of this requirement. Nissan query incentivising replacement in the second-hand market compared with current individual owners. |

Schedule 1 – Recall timetable

| Type of airbag inflator | Time by which Recall Action Initiated | Time by which Affected Takata Airbag must be replaced | Nissan Submission |
|--|---|---|--|
| 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 | Please refer to Part A, Question 2(a). |
| 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. | Please refer to Part A, Question 2(a). |

Schedule 2 –Contacting and Communicating with Consumers

| Ref | Notice wording | Nissan submission |
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| A(1)(a) | Suppliers must clearly identify the defect in Vehicles and the risk of harm posed by that defect. In doing so, Suppliers must include at least the following statements: (a) For Vehicles fitted with an Alpha Inflator: "Stop driving your vehicle immediately! You and others in | As mentioned in Part 2, section 5(4)(b), Alpha inflators are only contained in passenger airbags of affected Nissan vehicles. In line with our submission in the above section, Nissan propose making the following amendments to the proposed statement: |

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| | <p>your vehicle are at risk of serious injury and death from your vehicle's defective airbag. Contact a [vehicle type] dealer immediately to arrange for your airbag to be replaced. Your [name and model of vehicle] is installed with a Takata airbag. A defect in the inflator in your airbag can cause it to deploy with much greater force than intended, causing sharp metal fragments to fly at high speed toward people in the vehicle. This could cause serious injury or death. You should stop driving your vehicle and immediately contact a [vehicle type] dealer to arrange for the airbag inflator to be replaced."</p> | <ul style="list-style-type: none"> • replacing the first sentence with words to the effect of "Your vehicle needs immediate attention!"; and • replacing the last sentence with words to the effect of: "You should immediately contact a [vehicle type] dealer to arrange for the airbag inflator to be replaced. You should stop driving your vehicle, except directly to a dealer. Do not carry passengers in your vehicle when driving to the dealer for this replacement." |
| B(1)(a) | <p>Suppliers must submit an engagement plan to the ACCC comprising at least the following components:</p> <p>(1) A comprehensive consumer communications strategy that employs a range of outreach techniques.</p> <p>That strategy must:</p> <p>(a) Include prominent advertisements in print newspapers in every market into which they supply and at least one national paper, as well as a media release and other forms of mainstream media coverage such as television and radio. The requirements in Part A of this Schedule regarding prescribed language for description of the defect and gravity of the hazard must be followed.</p> | <p>Nissan submit that television and radio are not the most appropriate media channels to convey the description of the defect and the relevant affected vehicles within these channels, given the mediums' short duration and inability for a viewer/listener to "linger" like in other mediums.</p> <p>Within a 15 second advertisement, only very high level information can be provided, which we submit will be insufficient for viewers or listeners to understand the threshold question of whether their vehicle is included in the recall.</p> <p>Alternatively, Nissan recommends this requirement is taken out of the Recall Notice, and an agreement is reached between Industry and Government to have combined advertising in these mediums with a very simple 'call to action' covering all relevant suppliers, although not calling out each individual affected vehicle. This approach will also mean the advertising can reach a wider audience, and with greater repetition of each brand, than if brands advertise independently.</p> <p>Nissan recently accepted the offer from the Federal government to use State and Territory vehicle registration records for alpha airbags, as it has been established that these records contain more complete data than NEVDIS (e.g. email address, phone numbers). Nissan would welcome the support of the ACCC to encourage the State authorities to extend the use of this data to all Takata Airbag vehicles.</p> |
| B(1)(e) | <p>(e) Pursue data from multiple sources beyond those that rely primarily on State and Territory vehicle registration records.</p> | |

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| B(3)(c) | <p>(c) Adopt a dedicated, toll-free phone number solely for vehicle recalls to centralise the scheduling of replacements, ensure appropriate prioritisation at Dealers and respond to customer questions or concerns regarding the recall and/or safety.</p> | <p>Nissan has an extensive dealer network of 189 dealers around Australia, and we provide the contact details including phone number of all dealers in the customer's State for convenience.</p> <p>Nissan do not currently have a centralised telephone dealer booking service and have not yet determined whether such a service is possible to implement within our systems and our dealers' systems. Any such implementation would involve significant time and cost. Nissan have sought clarification on the timeframe available for Nissan to study and implement such a system.</p> <p>As an alternative, Nissan can investigate the option of establishing a toll-free phone number for customer enquiries and support, with the capability of transferring the customer via a "warm handover" to the customer's most convenient dealership to schedule a replacement.</p> <p>Nissan submit that including a picture of the actual vehicle in the communication is a task of extreme complexity and administrative burden, given the number of models, grades, colours, trim packages, accessory packages and special editions that are involved. Further, all the affected Nissan vehicles are superseded models, some for more than 12 years, so new imagery would need to be created to meet the specific requirements of this item.</p> <p>Similar complexity and burden applies for a mail merge to describe the actual vehicle in words.</p> <p>Nissan also challenge the potential benefit of the requirement, especially given customer awareness of their own vehicle, and the impact this requirement has on our ability to provide timely communications.</p> <p>Refer to section B(3)(c) response above.</p> |
| B(4)(c) | <p>(c) Include a picture of the actual Vehicle at issue near the top of the communication, including such details as the Vehicle's make, model, model-year, colour and trim package, and repeat these same details in the text of the communication.</p> | |
| B(6)(a) | <p>(6) Include a clear call to action designed to facilitate prompt and efficient scheduling of replacements.</p> <p>(a) Prominently feature (and, wherever possible, repeat numerous times) the telephone number Consumers should call to schedule a replacement.</p> | |

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| B(6)(b) | (b) In telephone communications, ensure that all calls are designed to facilitate scheduling an appointment for a replacement as part of the initial interaction with the Consumer. Minimise the need for the Consumer to call the dealer separately or wait for a callback to schedule an appointment. | Refer to section B(3)(c) response above. |
| B(6)(c) | (c) In communications, include links to the Supplier's online repair scheduling platform. | Nissan do not currently have an online centralised dealer booking service and have not yet determined whether such a service is possible to implement within our systems and our dealers' systems. Any such implementation would involve significant time and cost. Nissan have sought clarification on the timeframe available for Nissan to study and implement such a system. |