



**PUBLIC REGISTER VERSION**

**Restriction of Publication of Part Claimed: pages 3 and 5**

Director  
Standards and Policy  
Consumer Product Safety Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601  
Email: [takata@acc.gov.au](mailto:takata@acc.gov.au)

9 October 2017

**Takata airbag proposed compulsory recall notice**

1. **Summary of submission**
  - 1.1 This submission is made jointly on behalf of Volkswagen Group Australia Pty Limited (VGA) and Audi Australia Pty Limited (Audi Australia) in relation to the terms of the Draft Recall Notice attached to the Proposed Recall Notice issued on 21 September 2017 by the Minister for Small Business pursuant to section 132A of the Competition and Consumer Act 2010 (Cth).
  - 1.2 VGA and Audi Australia submit that the combined resources of the relevant manufacturers and the Federal and State governments should be deployed in the near future to address the identified risks associated with the alpha population Takata frontal airbags with PSAN propellant technology.
  - 1.3 Volkswagen Group vehicles do not contain alpha population airbags nor Takata frontal airbags propelled by PSAN with calcium sulphate desiccant.
  - 1.4 VGA and Audi Australia have provided cogent evidence to the Vehicle Safety Standards Branch of the Department of Infrastructure and Regional Development and the ACCC that the airbags fitted to Volkswagen, Skoda and Audi brand vehicles supplied in Australia do not pose safety risks to vehicle occupants such that recall is warranted at this time.
  - 1.5 A rigorous testing regime of Takata frontal airbag inflators without desiccant collected from Volkswagen group vehicles have demonstrated no abnormal pressure, no ruptures and no moisture incursion out of specification in any of the tested inflators. Further, no Volkswagen Group vehicle in the field worldwide has displayed any abnormalities in front airbag deployment.
  - 1.6 That testing regime should be permitted to reach valid fact-based findings on risks associated with airbags fitted to Volkswagen Group vehicles. Once those findings

are available, decisions can be made concerning whether and in what form a recall program should be implemented, if any.<sup>3</sup>

- 1.7 However, this submission focuses on the practical difficulties that VGA and Audi Australia would face in attempting to comply with a Recall Notice issued by the Minister for Small Business pursuant to section 122 of the Australian Consumer Law (ACL) if that Recall Notice is issued in the terms proposed in the Draft Recall Notice.
- 1.8 Specifically, VGA and Audi Australia hold serious concerns that:
- (a) given existing global supply constraints and the substantial additional volumes that will be required simultaneously by manufacturers in Australia following the issue of the recall notice, VGA and Audi Australia will not be able to obtain a sufficient number of replacement airbags to facilitate the replacement of airbags in all Volkswagen, Skoda and Audi vehicles to which the recall will apply within the limited timeframes provided by the proposed terms of the notice; and
  - (b) given the capacities of authorised VGA and Audi Australia service centres, combined with the likelihood of most consumers contacting those service centres at the same time immediately following the publication of the recall, VGA and Audi Australia service centres will not be able to replace airbags in all relevant vehicles within the timeframes required by the notice (even if sufficient stocks of replacement airbags were available to them).
- 1.9 VGA and Audi Australia are also concerned that they do not have the necessary relationships or resources to effectively address the concerns identified in the Proposed Recall Notice in respect of Second Hand Consumer Goods and Salvaged Affected Takata Airbag Inflators.
- 1.10 Finally, VGA and Audi Australia consider that it would be desirable to make more explicit that the recall is intended to apply to frontal airbags only, given that non-frontal airbags (eg side, curtain, thorax, hybrid etc) have not been the subject of concerns in Australia or other jurisdictions, noting that the current definition of "Affected Takata Airbag Inflator" could potentially include non-frontal airbags such that, to avoid any doubt, the word "frontal" should be inserted in the definition.
- 1.11 VGA and Audi Australia submit that, if a compulsory recall notice is issued by the Minister, it should provide for a stepped program of notifications to consumers based on vehicle age having regard to the availability of replacement airbags, location and the available dealer workshop capacity to be able to perform replacements within a reasonable period of customer request. This is the approach that has been adopted in the United States. This approach would reasonably balance the concerns raised regarding the safety of consumers with the ability of manufacturers to perform the recall program.

---

<sup>3</sup> This is the position accepted by the KBA for Europe based on its close consultation with Volkswagen concerning the testing program currently being conducted by Volkswagen

2. **Global shortage of replacement airbags**
- 2.1 Neither VGA nor Audi Australia has supplied vehicles in Australia fitted with alpha population Takata inflators. However, VGA has supplied an estimated [REDACTED] Volkswagen vehicles (passenger and commercial) and [REDACTED] Skoda vehicles fitted with the other Takata front airbag inflator types to which the recall will apply and Audi Australia has supplied an estimated [REDACTED] vehicles fitted with the other Takata front airbag inflator types to which the recall will apply.
- 2.2 The timeframes within which VGA and Audi Australia will be required to replace the Takata airbags in those vehicles under the terms of the draft recall notice are as follows:
- (a) where five or more years have passed since manufacture, VGA/Audi Australia must initiate the recall action immediately upon commencement of the recall notice and replace the airbags within one month of a consumer contacting VGA/Audi Australia in response to the recall action to request a replacement; and
- (b) where less than five years have passed since manufacture, VGA/Audi Australia must initiate the recall action within 5 years and 4 months from the date of manufacture or by 31 December 2019 (whichever is earlier) and replace the airbags within 6 years of manufacture or by 31 December 2020 (whichever is earlier).
- 2.3 The vast majority of affected airbags installed in vehicles supplied by Audi Australia are installed in vehicles manufactured five or more years ago (estimated to be [REDACTED] in total).
- 2.4 For VGA, an estimated [REDACTED] of the affected airbags installed in Volkswagen and Skoda vehicles supplied by VGA are installed in vehicles manufactured five or more years ago (with the remaining estimated [REDACTED] affected airbags installed in vehicles manufactured less than five years ago).
- 2.5 Thus, it is possible (and even likely, given the nature of the consumer communications required by the recall notice, which highlight the risk of consumer harm - including death - without qualification) that VGA and Audi Australia could together require a total of [REDACTED] replacement airbags to be available to their service centres for installation into Volkswagen, Skoda and Audi vehicles within one month of the recall notice being issued by the Minister.
- 2.6 There is a global shortage of like-for-like replacement airbags available from KSS/Takata, which is in the process of winding down its production of like-for-like parts (with ammonium nitrate), and ceasing production altogether by Q1/2018.
- 2.7 Parts supply being used for the like for like recall being deployed in the US are very limited. The limited stocks available for like for like parts are not suitable for Australian parts demand.
- 2.8 As a result it is almost certain that VGA and Audi Australia will be unable to replace all airbags in accordance with the strict timelines required by the terms of the recall notice as currently proposed.

- 2.9 The current focus is on developing sustainable replacement parts. Sufficient production lead time will be required in order to develop, test and release new parts for alternative replacement airbags (without ammonium nitrate) and to build up additional production capacity, for fitting to Volkswagen Group vehicles, including the models supplied in Australia not supplied in the small number of jurisdictions in which the VW Group is conducting a recall at the direction of a governmental authority.
- 2.10 Consumer safety remains the highest priority for Volkswagen. The replacement parts are critical components that require stringent testing and time to ensure that their quality is assured and all safety and performance standards are met. This testing involves initial theoretical testing, performance testing and real-world simulated testing to be completed to ensure that replacement parts operate effectively and safely in Volkswagen vehicles. This process needs to be conducted with each modification or introduction of a new part to an airbag and cannot be streamlined without compromising safety. Further, the safety and effectiveness of each replacement part or airbag varies depending on the vehicle model in which it is installed.
- 2.11 Alternative replacement parts (without ammonium nitrate) therefore need to be developed, tested and released through this process. Production capacity will need to be built up to meet the requirements of the recall notice in Australia and other jurisdictions. VGA and Audi Australia understand that the first alternative replacement parts for Volkswagen Group vehicles will start to become available for Australian models from Q2/2018 and will progressively be rolled out in stages corresponding with production capacity.
3. **Service centre capacity constraints**
- 3.1 While obtaining sufficient supply of replacement airbags will cause VGA and Audi Australia significant difficulties, it is highly unlikely that VGA and Audi Australia service centres would have the capacity to replace all affected airbags within the required time limits specified in the notice (even if those airbags were available to them) if all or a substantial proportion of affected customers were to seek appointments within a short timeframe.
- 3.2 Service centres are required to provide a range of services to customers, including normal repair and maintenance services, retail service activities in preparation for sale of new vehicles and warranty and consumer guarantee work. Service centres must continue to need to meet these obligations following the initiation of the Takata airbag recall.
- 3.3 In particular, the replacement of airbags or their parts requires specialised diagnostic tools, skills and knowledge with personnel having already attained unique qualifications and also engaging in follow-up specialised training. There is currently a shortage of such skilled personnel in Australia, which will be compounded by the requirement that each Supplier is obligated to increase their capacity to replacement the affected airbags within the current terms of the Notice.

3-4 An analysis of the number of affected vehicles and current workshop capacity for Volkswagen, Skoda and Audi service centres indicates that, to replace all affected airbags manufactured five or more years ago within one month of customer request as the Notice currently requires:

- (a) Volkswagen and Skoda service centres would need to dedicate to Takata airbag replacement work between [REDACTED] of the workshop hours currently dedicated to warranty work and, for some dealers, this could only be achieved by dedicating more than 100% of currently available resources to Takata airbag replacement work and ceasing to perform any other work of any kind;
- (b) Audi service centres would need to dedicate to Takata airbag replacement work between some [REDACTED] of the workshop hours currently dedicated to warranty work and, for some dealers, this could only be achieved by dedicating more than 100% of currently available resources to Takata airbag replacement work and ceasing to perform any other work of any kind.

3-5 Given the capacity limits of VGA, Skoda and Audi Australia service centres, VGA and Audi Australia hold grave concerns that it will be possible for service centres to dedicate the workshop hours necessary to meet the requirements of the notice. Owing to these known constraints, and the difficulties described above in increasing available resources for the purposes of meeting the requirements of the recall, VGA and Audi Australia do not think it is reasonable for the Minister to impose deadlines which have little prospect of being adhered to through no fault of manufacturers or dealers.

#### 4. Proposed amendments to recall notice timeframes

4-1 Given the above issues, VGA and Audi Australia submit that the timeframes stipulated in Schedule 1 to the Draft Recall Notice for the commencement of recall action and replacement of affected airbags where 5 or more years have passed since manufacture be amended to require VGA and Audi Australia to:

- (a) commence contacting affected consumers as soon as practicable in tranches based on age of vehicle (rather than immediately), having regard to alternative replacement airbag (without ammonium nitrate) availability and service centre workshop capacity, provided that consumers with older affected airbags are prioritised and all affected consumers are contacted by 31 December 2020; and
- (b) complete airbag replacements within one month of a customer contacting VGA or Audi Australia.

4-2 Alternatively, if VGA and Audi Australia will be required to immediately commence the recall action for affected airbags where 5 or more years have passed since manufacture, VGA and Audi Australia submit that the requirement that the affected airbags be replaced within one month of a customer contact to be amended to require staged replacement as soon as practicable, having regard to alternative replacement airbag (without ammonium nitrate) availability and service

centre workshop capacity, provided that replacement of older affected airbags is prioritised, with all affected airbags are replaced by 31 December 2020.

5. **Second Hand Consumer Goods and Salvaged Affected Takata Airbag Inflators**
- 5.1 VGA and Audi Australia are concerned that the obligations imposed on suppliers of vehicles in respect of Second Hand Consumer Goods and Salvaged Affected Takata Airbag Inflators will be difficult for new vehicle manufacturers/importers to comply with and will, in any event, be unlikely to effectively address the concerns outlined in the Proposed Recall Notice.
- 5.2 VGA and Audi Australia do not have access to information about the purchasers of Second Hand Consumer Goods and do not have direct relationships with second hand vehicle vendors nor third party sales channels such as lease/fleet operators and online marketplaces like Carsales and Trading Post. VGA and Audi Australia will therefore face difficulties distributing information in respect of the recall to consumers in these channels and lack any contractual ability to impose any specific obligations on the third party operators in these channels.
- 5.3 VGA and Audi Australia are also concerned that the obligations to develop and implement a salvage plan in respect of Affected Takata Airbag Inflators are misplaced and would be more effective if imposed directly on third parties who deal in parts from vehicles that are scrapped or otherwise unregistered and not in use and independent repairers who install such parts in vehicles.
- 5.4 Further, the requirement that OEMs set out a process and provide a financial incentive for recovery of Affected Takata Airbag Inflators from vehicles that are in scrapyards or otherwise not in use could potentially give rise to complications under section 127(2) of the ACL, which prohibits a person from supplying consumer goods of the kind to which a defective/dangerous goods recall notice issued under section 122 of the ACL relates.

**Volkswagen Group Australia Pty Ltd**

**Audi Australia Pty Ltd**