

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for the purposes of
section 87B

by

Volkswagen Group Australia

ACN 093 117 876

1 Persons giving this undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (ACCC) by Volkswagen Group Australia (VGA) for the purposes of section 87B of the *Competition and Consumer Act 2010 (CCA)*.

2 Background

- 2.1 The Australian Consumer Law (ACL) commenced on 1 January 2011 and contains statutory guarantees in Division 1 of Part 3-2 which provides consumers with a basic, guaranteed level of protection for the goods and services which they acquire (**Statutory Consumer Guarantees**). The Statutory Consumer Guarantees cannot be excluded, restricted or modified. Consumers who are supplied with goods or services that fail to meet the consumer guarantees are entitled to remedies under Part 5-4 of the ACL.

ACCC concerns about the new car industry

- 2.2 The ACCC and other consumer protection agencies receive a large number of complaints each year relating to motor vehicles. Around 20% of complaints received by the ACCC about consumer guarantee issues concern motor vehicles.
- 2.3 Given this level of complaints, and as set out in the ACCC's 2018 Compliance and Enforcement Policy, the ACCC is prioritising its work on consumer issues in new car retailing, including responses by car manufacturers and new car dealers to consumer guarantee claims.
- 2.4 The ACCC's work in this area includes a market study into Australia's new car retailing industry. The ACCC is concerned by the significant body of evidence to the market study which suggests substantial non-compliance with ACL, and particularly the requirements of the Statutory Consumer Guarantees, in the new car industry.
- 2.5 Most car manufacturers provide consumers with a warranty with the purchase of a new car (**Manufacturer's Warranties** or **Manufacturer's Warranty**). Manufacturer's Warranties provide specific rights and obligations which are separate, and in addition to, the Statutory Consumer Guarantees.
- 2.6 The ACCC considers that car manufacturers' policies and procedures, including consumer redress systems and compliance programs, are focused on Manufacturer's Warranties, rather than consumers' entitlements arising from the Statutory Consumer Guarantees.

Misrepresentations about the Statutory Consumer Guarantees

- 2.7 The ACCC is concerned that some car manufacturers and new car dealers may make false or misleading representations to consumers about their statutory rights under the ACL in relation to:

- (a) the circumstances in which the Statutory Consumer Guarantees apply;
- (b) the remedies available to consumers when a car does not meet the Statutory Consumer Guarantees; and
- (c) the interaction between the Statutory Consumer Guarantees and Manufacturer's Warranties.

Misrepresentations in logbooks

2.8 The ACCC is also concerned that some logbooks (online or hard copy) provided by manufacturers with new cars may make false or misleading representations to consumers about:

- (a) the ability of consumers to choose who services their vehicles;
- (b) the ability to have non-Original Equipment Manufacturer parts fitted to their vehicle; and
- (c) the interaction of these factors on the Statutory Consumer Guarantees and Manufacturer's Warranties.

3 Misrepresentations about Manufacturer's Warranties

3.1 The ACCC is concerned that car manufacturers and dealers may make misleading representations to consumers about the length of coverage provided by Manufacturer's Warranties in circumstances where the sale of a vehicle has been pre-reported.

3.2 Pre-reporting refers to the practice of a car being recorded in a car manufacturer's system as sold, registered or otherwise in use before it has been purchased by a consumer. Pre-reporting can cause a vehicle's Manufacturer's Warranty to commence before the vehicle is purchased by a consumer. This has the effect of reducing the period of the Manufacturer's Warranty available to the consumer who purchases the vehicle, which may not be disclosed to the consumer at the time of purchase.

4 Volkswagen Group Australia

4.1 Volkswagen AG (in Germany) designs, engineers and manufactures Volkswagen vehicles. VGA imports, markets, sells and services Volkswagen vehicles and related components, parts and accessories in Australia. VGA distributes all vehicles via its dealer network. VGA provides a 3 year Manufacturer's Warranty to customers at the time they purchase a new Volkswagen vehicle.

4.2 The ACCC has received a number of complaints about the way in which VGA and its dealers have assessed claims about vehicle faults.

4.3 VGA continuously takes steps to review its level of compliance with the ACL, including reviewing, amongst other things, its complaint handling system and dealer policies and procedures.

4.4 VGA is committed to meeting its obligations under the ACL and providing its customers with the full benefit and protection of the Statutory Consumer Guarantees in relation to the purchase of any new vehicles from VGA.

4.5 However, VGA acknowledges the ACCC's concerns that:

- (a) representations to consumers about the interaction of the Statutory Consumer Guarantees and the Manufacturer's Warranties can be misleading and internal processes should be maintained that ensure consumers are informed of, and able to easily access, their legal rights under the Statutory Consumer Guarantees;
- (b) representations made in logbooks that either explicitly or impliedly represent that the use of third party servicing and/or non-Original Equipment Manufacturer parts will void new car warranties can be misleading and may confuse consumers about their rights under the Statutory Consumer Guarantees; and
- (c) pre-reporting has the potential to result in consumers being misled about the length of coverage provided by Manufacturer's Warranties.

5 Commencement of this Undertaking

5.1 This Undertaking comes into effect when:

- (a) this Undertaking is executed by VGA; and
- (b) this Undertaking so executed is accepted by the ACCC.

5.2 Upon the commencement of this Undertaking, VGA undertakes to assume the obligations set out in clause 6 below for the purposes of section 87B of the CCA for a period of 3 years.

6 Undertakings

6.1 VGA provides the undertakings set out below for the purposes of section 87B of the CCA and undertakes to implement these commitments, including by advising dealers and relevant staff of any changes to processes.

Consumer Law Compliance Program

6.2 VGA undertakes that within 12 months of the date of this Undertaking, VGA will review its existing Consumer Law Compliance Program, in accordance with AS ISO 19600:2015 (Compliance management systems – Guidelines), and make any changes necessary to ensure that consideration of customers' rights, under and arising from, the Statutory Consumer Guarantees is embedded in all relevant systems, procedures and practices with the objective of ensuring that consumers are not denied remedies they are entitled to arising from the Statutory Consumer Guarantees.

6.3 VGA undertakes that within 4 months it will review existing training material provided by VGA to its dealers and ensure its training material and Dealer Warranty Handbook is consistent with dealers' rights and entitlements under the ACL. Further, within 4 months VGA undertakes to distribute to dealers a notification in relation to dealers' entitlements arising under the ACL to be reimbursed for the total cost of any repair, replacement or refund of a vehicle resulting from any manufacturing defect. Under the ACL, this reimbursement cannot be altered or qualified by VGA in any way.

Complaints Handling System

6.4 VGA undertakes that within 6 months of the date of this Undertaking, VGA will review its existing Complaints Handling System in accordance with AS/NZS 10002:2014 (Guidelines for Complaint Management in Organisations). VGA will make any changes necessary to ensure that:

- (a) consideration of customers' rights under, and arising from, the Statutory Consumer Guarantees is embedded into the Complaints Handling System with the objective of ensuring that consumers are not denied remedies they are entitled to arising from the Statutory Consumer Guarantees; and
 - (b) as part of the Complaint Handling System, if requested, customers are advised in writing of the reason that a remedy sought by the customer has not been agreed by VGA or the relevant dealer.
- 6.5 VGA undertakes that within 4 months of the date of this Undertaking, VGA will ensure that VGA's website contains information about how customers may make a complaint and how complaints will be handled and resolved.

Post-sale Communications to Consumers

- 6.6 VGA undertakes that within 120 days of the date of this Undertaking, VGA will review its existing post-sale communications to customers to ensure that all new customers receive correspondence (usually by email) from VGA which advises them of their rights in relation to the Statutory Consumer Guarantees. This correspondence will be sent to new consumers within 30 days of the date of purchase.

Major and Minor Failures

- 6.7 The recent Australian Consumer Law Review Final Report (**ACL Review**) recommended that the law specify that where a good fails to meet the consumer guarantees within a short specified period of time, a consumer is entitled to the remedies of a refund or replacement without needing to prove a 'major failure'. The ACL Review also recommended that the law clarify that multiple non-major failures can amount to a major failure.
- 6.8 VGA undertakes to monitor any amendments to the ACL and to implement any changes necessary to ensure its Complaints Handling System complies with the ACL. In order to demonstrate a commitment to consumer rights that is consistent with these recommendations, VGA undertakes to, within 6 months:

- (a) implement a program that allows a customer to choose a refund, replacement or repair of a vehicle without having to prove that a major failure occurred, if a manufacturing defect that renders the vehicle immobile and no longer driveable occurs within 60 days of the date of the purchase, provided that:
 - (i) the customer, or a third party, did not cause the defect and did not fail to take reasonable steps to prevent the defect from occurring; and
 - (ii) VGA has been given a reasonable opportunity to determine the root cause of the defect.
- (b) update existing training material provided to all relevant staff to acknowledge that multiple minor failures of vehicles may constitute a major failure entitling the customer to a refund or replacement rather than a vehicle repair.

Manufacturing Defects and Technical Problems

- 6.9 VGA's customers can currently contact VGA's customer call centre to obtain information regarding manufacturing defects or other technical problems affecting the customer's type of vehicle (including details on any past or outstanding service/recall campaigns. VGA undertakes that within 6 months it will develop an online tool, available to customers through VGA's website, whereby customers are able to look up their vehicle using the

vehicle identification number (VIN), and obtain information about any technical problem that VGA is aware of affecting that type of vehicle, at the time of the customer contacting them, including any manufacturing defects or other technical problems affecting the safe operation of the vehicle. VGA will provide this information about technical problems, including any fix available, to the customer.

Warranty Start Dates

- 6.10 VGA has updated its Sales Reporting Policy with effect from 1 January 2018 to ensure that the new vehicle Manufacturer's Warranty commences when a new vehicle is handed over to a consumer.
- 6.11 For vehicles purchased prior to 1 January 2018 which are still subject to a Manufacturer's Warranty, VGA undertakes to ensure that in the event of a Manufacturer's Warranty claim, the period of a Manufacturer's Warranty commences from no earlier than the purchase date of the vehicle, consistent with the Sales Reporting Policy effective 1 January 2018.

Logbooks

- 6.12 VGA is in the process of reviewing its existing log/service books and moving to replace existing hard copy log books with online service books. As part of its review process, VGA undertakes:
- (a) within 6 months to review its log/service books and the Supplement to the Owner's Manual (hard copy), and make any changes necessary to ensure they do not contain representations of the kind outlined in paragraph 2.8 above; and
 - (b) to ensure that its online service books do not contain representations of the kind outlined in 2.8 above.

Past Complaint Review

- 6.13 VGA undertakes that it will:
- (a) identify all complaints made in the 12 months prior to the date of this Undertaking where:
 - (i) the complaint relates to a vehicle;
 - (ii) the complainant was refused a remedy; or
 - (iii) the remedy provided was less than sought by the complainant; and
 - (b) within 12 months of the date of this Undertaking, VGA will reassess the complaints identified in 6.13(a) to determine whether the customer was entitled to a remedy, or a more extensive remedy, under the ACL, and where that is determined, contact the customer and provide them with the appropriate remedy under the ACL.

Monitoring Compliance

- 6.14 VGA undertakes that within 4 months of the date of this Undertaking it will implement a program to monitor compliance with this Undertaking by means of:
- (a) a review of a sample of 10 customer complaints received per month;

- (b) updating its mystery shopping program to include testing and consideration of point of sale information provided by dealers to consumers about their entitlements under the ACL, through replicating the consumer experience, without disclosing that the mystery shopping exercise is being carried out (to the extent reasonably practicable without completing the transaction);
- (c) the mystery shopping exercises are to be carried out at a variety of locations each month; and
- (d) the mystery shopping exercises are to include consideration of any documents and/or materials provided by the dealer, or visible at the dealership, concerning consumer rights.

Independent Review

6.15 VGA undertakes to involve an independent expert or experts in the following:

- (a) the review of its existing Consumer Law Compliance Program and dealer training material referred to in clauses 6.2 – 6.3;
- (b) the review of its Complaints Handling System referred to in clauses 6.4 - 6.5;
- (c) the review of past complaints referred to in clause 6.13; and
- (d) the monitoring of compliance as referred to in clause 6.14.

Annual Review

6.16 VGA undertakes that for the duration of this Undertaking it will appoint an officer responsible for conducting an annual review of the commitments made in this undertaking and that responsible officer will report to the Board on the effectiveness and implementation of the commitments in ensuring ACL compliance.

ACCC Inquiries

6.17 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable inquiries with VGA in respect of compliance with this Undertaking and VGA will respond to such inquiries within a reasonable period of time.


7 Acknowledgments


7.1 VGA acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- (b) the ACCC may, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed by

Volkswagen Group Australia Pty Ltd (ABN 14 093 117 876) pursuant to section 127(1) of the Corporations Act 2001 by:


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Signature of director


.....
Signature of a director/company secretary

Michael Bartsch
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Name of director

JOHN NEWTON
.....
Name of a director/company secretary

27 Aug 2018
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Date

27-8-2018
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Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the Competition and Consumer Act 2010


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Rodney Graham Sims
Chairman

This.....6th..... day of September 2018

