

COMPETITION AND CONSUMER ACT 2010

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

by

Ford Motor Company of Australia Limited

ACN 004 116 223

**1. Person(s) giving the Undertaking**

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Ford Motor Company of Australia Limited (**Ford Australia**), for the purposes of section 87B of the *Competition and Consumer Act 2010 (CCA)*.

**2. Background**

- 2.1 Ford Australia imports, markets, sells and services motor vehicles and related components, parts and accessories in Australia. Ford Australia distributes all vehicles via its dealer network.
- 2.2 The Australian Consumer Law (**ACL**) commenced on 1 January 2011 and contains statutory guarantees in Division 1 of Part 3.2 which provide consumers with a basic, guaranteed level of protection for goods and services which they acquire (**Statutory Consumer Guarantees**). The Statutory Consumer Guarantees cannot be excluded, restricted or modified.
- 2.3 The ACCC commenced litigation against Ford Australia in the Federal Court of Australia (VID821/2017) in relation to, in broad terms, Ford Australia's processes for handling customer complaints in relation to certain Ford vehicles fitted with six speed dry dual-clutch automatic transmissions (**PowerShift Vehicles**).
- 2.4 The proceedings have been resolved between the parties, upon admissions made in the Agreed Statement of Facts and Admissions filed (or to be filed) in the proceedings. Ford Australia has admitted that between 1 May 2015 and 29 February 2016, in connection with the supply to customers of PowerShift Vehicles, it:
- (a) failed to ensure that customers who had purchased those vehicles were provided with adequate information about their legal rights and potential legal rights (including potential rights under the Statutory Consumer Guarantees);
  - (b) had and gave effect to processes for dealing with and responding to complaints from customers about the PowerShift transmission and requests for refunds or replacement vehicles that:
    - (i) failed to ensure that proper consideration was given to the individual circumstances and actual or potential legal rights of customers;
    - (ii) resulted in many customers accepting offers made by Ford Australia because customers were told refunds or no-cost replacements were not an option and had limited time to accept offers, which were conditional on customers entering into settlement agreements that included non-disclosure provisions; and
    - (iii) failed to ensure that customers who signed settlement agreements understood that they may be compromising their legal rights; and
  - (c) had inadequate processes which caused many customers to purchase new replacement vehicles at a significant additional cost to the customers,
- and thereby engaged, in trade or commerce, in conduct that was in all the circumstances unconscionable in contravention of s 21 of the ACL.

2.5 Ford Australia has cooperated with the ACCC in relation to the resolution of the proceedings and as part of that resolution Ford Australia has agreed to give this Undertaking.

### 3. Commencement of this Undertaking

3.1 This Undertaking comes into effect on the later of:

- (a) this Undertaking being executed by Ford Australia;
- (b) this Undertaking so executed being accepted by the ACCC; and
- (c) the making of final orders by the Federal Court in the proceedings (the **Commencement Date**).

3.2 Upon the commencement of this Undertaking, Ford Australia undertakes to assume at its own cost the obligations set out in clauses 4 and 5 for the purposes of section 87B of the CCA.

### 4. Compliance Program

#### *Consumer Law Compliance Program*

4.1 Ford Australia undertakes that, within 150 days of the Commencement Date, Ford Australia will take all reasonable steps to ensure that its existing Consumer Law Compliance Program is in accordance with AS ISO 19600: 2015 (Compliance management systems – Guidelines) to ensure that consideration of consumers' 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 (**Upgraded Compliance System**).

4.2 Ford Australia undertakes that Ford Australia will engage an independent third party (**External Reviewer**) to advise on the adoption and implementation of the Upgraded Compliance System and the External Reviewer will satisfy the requirements specified in clause 4.3 of this Undertaking.

4.3 The External Reviewer must:

- (a) not be a present or past staff member or director of Ford Australia;
- (b) have significant experience in implementing, or providing advice on implementing, compliance systems including ACL compliance systems;
- (c) be subject to professional rules of conduct that can be enforced by a professional body; and
- (d) not have significant shareholding or other interests in Ford Australia.

4.4 Ford Australia undertakes that Ford Australia will ensure that the Upgraded Compliance System will remain in place until at least 30 June 2021.

#### *Complaints Handling System*

4.5 Ford Australia undertakes that, within 150 days of the Commencement Date, Ford Australia will take all reasonable steps to ensure that its Complaints Handling System is in accordance with AS/NZS 10002:2014 (Guidelines for Complaint Management in Organisations) (**Upgraded Complaints Handling System**). Ford Australia will ensure that:

- (a) consideration of customers' rights under and arising from the Statutory Consumer Guarantees is embedded into the Upgraded Complaints Handling System with the objective of ensuring that consumers are not denied remedies they are entitled to arising from the Statutory Consumer Guarantees;
- (b) as part of the Upgraded Complaints Handling System, if requested, customers are advised in writing of the reason that a requested remedy has not been agreed; and
- (c) the Upgraded Complaints Handling System will remain in place until at least 30 June 2021.

4.6 Ford Australia undertakes that, within 150 days of the Commencement Date, Ford Australia will

publish on Ford Australia's website, and will ensure that it continues to publish on Ford Australia's website with a reasonable level of prominence, until at least 30 June 2021, a Customer Service Charter:

- (a) stating how customers may initiate product complaints and how complaints are handled and resolved by Ford Australia; and
- (b) stating Ford Australia's commitment to comply with the ACL (and without limitation the Statutory Consumer Guarantees) and outlining Ford Australia's relevant obligations and consumers' entitlements under the ACL.

4.7 Ford Australia undertakes that, within 150 days of the Commencement Date, until at least 30 June 2021, Ford Australia will make available to all Ford vehicle owners:

- (a) information relating to any Field Service Actions open for the customer's vehicle (that is, any Field Service Actions which fall within the following categories: safety compliance, safety recall, extended warranty – multi repair, extended warranty – single repair, customer satisfaction – owner notified, emissions non-compliance – owner notified, label/literature – owner notified and optional product improvement) which have been released, or are released from time to time after the Commencement Date (with such information to be made available within 30 days of release) by Ford Australia and which relate to their Ford vehicle; and
- (b) a complete transaction history of all repairs of manufacturing defects performed on the customer's vehicle, upon request by the owner of the vehicle.

This information will be made available via an online portal accessible from the website located at the URL <https://www.ford.com.au/> (or an equivalent website) or via Ford Australia's Customer Relationship Centre in the case of the information referred to in clause 4.7 (b).

4.8 Ford Australia undertakes that, within 150 days of the Commencement Date, Ford Australia will issue to all individuals listed in clauses 1, 2 and 3 of **Annexure A**, a direction to comply with the ACL (and without limitation the Statutory Consumer Guarantees).

4.9 Ford Australia undertakes that, within 150 days of the Commencement Date and for a period of at least five years thereafter, Ford Australia will ensure that all customers who purchase a new Ford vehicle, and who are known to Ford Australia, receive a communication from Ford Australia which advises them of their rights in relation to the Statutory Consumer Guarantees. These letters will be sent to customers within 30 days of Ford Australia being made aware of the customer's purchase.

4.10 Ford Australia undertakes that, within 150 days of the Commencement Date and for a period of at least five years thereafter, Ford Australia will take reasonable steps to provide copies of the letters provided for in clause 4.9 to Ford Australia dealers so that these can be provided by Ford Australia dealers to all customers at the time of purchase of any new or used Ford vehicle. Ford Australia undertakes to take reasonable steps to ensure that Ford Australia dealers provide these letters to customers at the time of purchase.

4.11 Ford Australia undertakes that, within 150 days of the Commencement Date until at least 30 June 2021, Ford Australia will monitor compliance with this clause 4 (including the Annexures referred to in this clause 4) by means of:

- (a) a review of a sample of 10 customer complaints received by Ford Australia's Customer Relationship Centre (**CRC**) per month (such a review must take place at least once per quarter); and
- (b) a test call program whereby test calls will be made to the CRC during which inquiries will be made to the CRC operatives regarding consumer entitlements under the ACL (**Test Call Program**).

4.12 Ford Australia undertakes that the compliance measures referred to in clause 4.11 will be done by or under the supervision of an independent expert who must satisfy the requirements specified in clause 4.3 of this Undertaking but need not be the same person as referred to in clause 4.2 of this

Undertaking.

4.13 Ford Australia undertakes that:

- (a) the Test Call Program will be conducted every 6 months;
- (b) the Test Call Program will include conducting 10 different test calls over each 6 month period; and
- (c) each test call will:
  - (i) seek to replicate a consumer experience without disclosing that a test call is being conducted;
  - (ii) include queries that are intended to test the accuracy of information provided by the CRC operative about consumers' rights under the ACL, including queries about what rights a consumer has if they experience a problem with the vehicle; and
  - (iii) include an assessment of whether the information provided by the CRC operative was accurate and not misleading.

4.14 Ford Australia undertakes that Ford Australia will:

- (a) maintain records of the results of the reviews referred to in clause 4.11 and of the results of the test calls referred to in clause 4.13 (including details of any corrective action arising from the reviews and test calls) (**Compliance Monitoring Records**) until at least 30 June 2021; and
- (b) provide a copy of any Compliance Monitoring Records to the ACCC as may be requested in writing by the ACCC provided that the request is made by 30 June 2021.

4.15 Ford Australia undertakes that, within 150 days of the Commencement Date, Ford Australia will issue a dealer bulletin to all Ford Australia dealers:

- (a) stating Ford Australia's commitment to comply with the ACL (and without limitation the Statutory Consumer Guarantees);
- (b) reminding dealers that they have obligations to consumers in relation to the Statutory Consumer Guarantees;
- (c) stating that Ford Australia's obligations (and the obligations of Ford Australia's dealers) do not cease at the end of Ford Australia's Manufacturer's Warranty (or other warranty, such as a dealer's extended warranty) and that Ford Australia's goodwill guidelines (or other guidelines) do not limit or restrict, in any way, a consumer's rights under the Statutory Consumer Guarantees;
- (d) reinforcing that dealers have a right to be indemnified by Ford Australia under section 274 of the ACL in certain circumstances; and
- (e) providing guidance/clarification on the following:
  - (i) the rights and remedies of consumers under the ACL, in particular the right of a consumer to a refund or replacement (rather than a repair) where there has been a major failure to comply with a consumer guarantee;
  - (ii) the fact that multiple minor failures of a vehicle may constitute a major failure entitling the customer to a refund or replacement rather than a vehicle repair;
  - (iii) where there has been a major failure to comply with a consumer guarantee, a consumer may be entitled to a refund or replacement even though the vehicle is capable of repair;
  - (iv) the fact that a consumer may still be entitled to a remedy even though their vehicle was serviced by someone other than a Ford Australia dealer; and
  - (v) the fact that a consumer may still be entitled to a remedy even though their vehicle

was purchased second hand (though with reference to the condition of the vehicle at the time of the relevant second hand sale and to the fact that the Statutory Consumer Guarantees do not apply in circumstances where a consumer has purchased their vehicle privately).

*Training for employees*

- 4.16 Ford Australia undertakes that, within 150 days of the Commencement Date, Ford Australia will introduce an improved Consumer Law Compliance Training Program which includes the features set out in clause 4 of **Annexure A**.
- 4.17 Ford Australia undertakes that from the Commencement Date until at least 30 June 2021, Ford Australia will ensure that:
- (a) the Ford Australia employees identified in clause 1 of **Annexure A** receive compulsory online training no less than annually for each employee after the Commencement Date;
  - (b) the Ford Australia employees identified in clause 2 of **Annexure A** receive face to face training no less than annually after the Commencement Date;
  - (c) the managers and operators within the CRC identified in clause 3 of **Annexure A** receive online and face to face training no less than annually after the Commencement Date; and
  - (d) the training includes the features set out in **Annexure A** (subject to appropriate revisions to ensure it accurately reflects obligations under the ACL).

*Training for dealers*

- 4.18 Ford Australia undertakes that, within 150 days of the Commencement Date, Ford Australia will introduce an improved Consumer Law Compliance Training Programme for dealers which contains the features set out in **Annexure B** and which will remain in place (subject to appropriate revisions to ensure it accurately reflects obligations under the ACL) until at least 30 June 2021.

*Compliance Officer*

- 4.19 Ford Australia undertakes that, within 60 days of the Commencement Date, Ford Australia will appoint an internal Compliance Officer who will be responsible for implementing, reviewing and monitoring Ford Australia's revised Consumer Law Compliance Program and Complaints Handling System. Ford Australia undertakes that it will continue to appoint an internal Compliance Officer for the purposes of this clause 4.19 until at least 30 June 2021.
- 4.20 Ford Australia undertakes that the Compliance Officer will report to Ford Australia's Board and/or Senior Management every 6 months, until at least 30 June 2021, on the effectiveness of Ford Australia's Consumer Law Compliance Program and Complaints Handling System.
- 4.21 Ford Australia undertakes that, where requested, until at least 30 June 2021, Ford Australia will provide to the ACCC, at Ford Australia's own expense, copies of all documents relating to:
- (a) Ford Australia's revised Consumer Law Compliance Program;
  - (b) Ford Australia's revised Complaints Handling System; and
  - (c) Consumer Law Compliance Training attendance by Ford Australia employees and dealers.

*External Review*

- 4.22 Ford Australia undertakes that from the Commencement Date until at least 30 June 2021, Ford Australia will, at its own expense, cause an annual review to be carried out of its Consumer Law Compliance Program (which includes its Consumer Law Compliance Training Program) and Complaints Handling System (**Annual Review**).
- 4.23 Ford Australia undertakes that the Annual Review will satisfy the following requirements:
- (a) the Annual Review must be carried out by an external reviewer (**the Annual Reviewer**) who must satisfy the requirements in clause 4.3 (and must also not be a present or past professional advisor of Ford Australia), but need not be the same person as referred to in

clause 4.2;

- (b) the Annual Review will assess Ford Australia's compliance with the requirements set out in this clause 4 (including the Annexures referred to in this clause 4) and will include an assessment on the extent to which Ford Australia's systems, practices and procedures achieve the objective of ensuring that consumers that experience problems with Ford vehicles resulting from a failure of the vehicle to comply with a Statutory Consumer Guarantee are offered remedies in accordance with any applicable entitlements under the ACL; and
  - (c) for each Annual Review, the Annual Reviewer will provide a written report as to his/her findings including any reservations and recommendations for improvement.
- 4.24 Ford Australia will provide the Annual Reviewer with all relevant records and information in Ford Australia's possession or control to enable the Annual Review to be undertaken.
- 4.25 Ford Australia undertakes that Ford Australia will provide the ACCC and Ford Australia's Board with a copy of an Annual Reviewer's report within 30 days of receiving it.
- 4.26 Ford Australia undertakes that within a reasonable period of time, and at its own expense, Ford Australia will in good faith consider recommendations made by the Annual Reviewer and implement appropriate measures so as to ensure that any deficiencies identified by the Annual Reviewer are addressed.

#### **5. Consumer redress program (Independent Complaints Review Program)**

- 5.1 Ford Australia undertakes that the independent complaints review program set out in this clause 5 (**Independent Complaints Review Program**) will commence on the date that customers are able to lodge claims on the Independent Complaints Review Program Webpage as provided for in clause 5.11 (**Independent Complaints Review Program Commencement Date**).
- 5.2 Ford Australia undertakes that Ford Australia will give effect to the Independent Complaints Review Program for a period of 12 months from the Independent Complaints Review Program Commencement Date and any further period required to determine any claim lodged within the 12 month period.

##### *Eligibility to participate in the Independent Complaints Review Program*

- 5.3 Customers who owned a PowerShift Vehicle at any stage during the period between 1 May 2015 and 1 November 2016 (**Relevant Period**) (even if they no longer own it) and who meet one of the following criteria will be eligible to participate in the Independent Complaints Review Program:
- (a) customers who entered into a settlement agreement with Ford Australia or otherwise accepted an offer from Ford Australia during the Relevant Period in order to resolve a complaint relating to their PowerShift Vehicle where the remedy provided by Ford Australia was a partial refund or a replacement vehicle (either where the relevant consumer made a financial contribution towards the cost of that replacement vehicle or the customer was provided with a replacement vehicle of a lower specification or value than their PowerShift Vehicle);
  - (b) customers who made a request to Ford Australia or to the CRC (including where requests were received by Ford Australia or the CRC from Ford Australia dealers), during the Relevant Period, for a refund or replacement vehicle in order to resolve a complaint relating to their PowerShift Vehicle and who did not obtain a refund or replacement vehicle from Ford Australia; or
  - (c) customers who made a request to Ford Australia or to the CRC (including where requests were received by Ford Australia or the CRC from Ford Australia dealers), during the Relevant Period, for a refund or replacement vehicle in order to resolve a complaint relating to their PowerShift Vehicle and the remedy provided by Ford Australia was less than that sought by the relevant customer.

##### **(Eligible Customers)**

- 5.4 As a condition of being considered an Eligible Customer, a customer shall agree to stay any concurrent proceedings or claims against Ford Australia relating to a request for a refund or replacement vehicle (made during the Relevant Period, in order to resolve a complaint relating to their PowerShift Vehicle).
- 5.5 For their application to be considered, customers must submit an application to participate in the Independent Complaints Review Program prior to the expiry of the Independent Complaints Review Program.
- 5.6 Customers will be permitted to provide evidence to the Independent Arbiter in order to establish that they are an Eligible Customer and will be invited to do so before any determination that they are not an Eligible Customer.
- 5.7 For the avoidance of doubt, for the purposes of clauses 5.3(b) and 5.3(c) and subject to the requirements set out in those clauses, where the Independent Arbiter determines that the customer made a request in substance for a refund or replacement during the Relevant Period to Ford Australia or the CRC (including where requests were received by Ford Australia or the CRC from Ford Australia dealers and even if the customer did not expressly use the words 'refund' or 'replacement' or refer to the Statutory Consumer Guarantees) the customer will be treated as an Eligible Customer.
- Publication of the Independent Complaints Review Program*
- 5.8 Ford Australia undertakes that, within 30 days after the Commencement Date, Ford Australia will establish a dedicated webpage (**Independent Complaints Review Program Webpage**). The Independent Complaints Review Program Webpage shall:
- (a) be accessible via a link (**Click Through Icon**) published on the website located at the URL <https://www.ford.com.au/> (or such other website as may be agreed with the ACCC in writing) (**Ford Australia Website**);
  - (b) be accessible for the duration of the Independent Complaints Review Program; and
  - (c) contain a notice in the form and terms of the Notice at **Annexure C** to this undertaking (**Webpage Notice**) which shall remain on the Independent Complaints Review Program Webpage for the duration of the Independent Complaints Review Program.
- 5.9 The Click Through Icon shall be:
- (a) located prominently on the Ford Australia Website; and
  - (b) not obscured, blocked or interfered with by any operation of the Ford Australia Website.
- 5.10 Ford Australia undertakes that, on and from the Commencement Date, Ford Australia will establish a mechanism on Ford Australia's website to allow any person to register their email address to receive updates on the Independent Complaints Review Program, and Ford Australia will notify as soon as practicable any person who so registers when the Independent Complaints Review Program Webpage becomes available.
- 5.11 Ford Australia undertakes that, within 75 days after the Commencement Date, Ford Australia will:
- (a) establish a mechanism on the Independent Complaints Review Program Webpage allowing customers to submit claims to participate in the Independent Complaints Review Program; and
  - (b) include information on the Independent Complaints Review Program Webpage regarding the Independent Complaints Review Program, such as an explanation of the Independent Complaints Review Program, the eligibility criteria for participating in the Independent Complaints Review Program, the terms for participating in the Independent Complaints Review Program, how customers can make a claim and submit information, the anticipated timeline for the claims process, answers to frequently asked questions and information on consumer entitlements under the Statutory Consumer Guarantees.
- 5.12 Ford Australia undertakes that, within 75 days after the Commencement Date, Ford Australia will take all reasonable steps to contact customers who may be eligible to participate in the

Independent Complaints Review Program (according to the criteria set out in clause 5.3 and to the extent that those customers' contact details are available in Ford Australia's databases) informing them of the Independent Complaints Review Program (including the eligibility criteria and terms for participating in the Independent Complaints Review Program) and including a notice in the form and terms of the Notice at **Annexure C** to this undertaking (**Customer Notice**).

- 5.13 Ford Australia undertakes that it will cause a link to the Independent Complaints Review Program Webpage to appear on the 'About' section of the Ford Australia Facebook page from the Commencement Date and for the duration of the Independent Complaints Review Program.

*Independent Arbiter*

- 5.14 Ford Australia undertakes that, within 45 days after the Commencement Date, Ford Australia will engage an independent third party to conduct the functions set out in clause 5.16 (**Independent Arbiter**).

- 5.15 The Independent Arbiter must:

- (a) be experienced in advising on, assessing claims under or adjudicating on consumer rights under the Statutory Consumer Guarantees;
- (b) be subject to professional rules of conduct that can be enforced by a professional body;
- (c) not be a present or past staff member or director of Ford Australia;
- (d) not have any significant shareholding or other interests in Ford Australia; and
- (e) not be a past or present professional adviser of Ford Australia.

- 5.16 The Independent Arbiter will determine whether:

- (a) consumers who seek to participate in the Independent Complaints Review Program meet the criteria set out in clause 5.3 and are therefore an Eligible Customer; and
- (b) an Eligible Customer was entitled to a full refund of the purchase price or a replacement vehicle of the same type and of a similar value under the ACL at the time they made a request for a refund or replacement vehicle during the Relevant Period.

- 5.17 Where the Independent Arbiter determines that an Eligible Customer was entitled to a full refund of the purchase price or a replacement vehicle of the same type and of a similar value under the ACL at the time they made a request for a refund or replacement vehicle during the Relevant Period and that remedy is more favourable than the remedy (if any) received by the Eligible Customer, Ford Australia will offer the Eligible Customer the difference in cash between the remedy received (if any) and the remedy the Independent Arbiter has found them to be entitled to (**Revised Remedy**).

- 5.18 The Independent Arbiter's review shall be limited to determining whether the Eligible Customer was entitled to a full refund of the purchase price or a replacement vehicle of the same type and of a similar value under the ACL at the time they made a request for a refund or replacement vehicle during the Relevant Period.

- 5.19 In cases where the Independent Arbiter determines that the Eligible Customer was entitled to a full refund under the ACL at the time they made a request for a refund or replacement vehicle during the Relevant Period, but the Eligible Customer subsequently sold their vehicle, the maximum Revised Remedy which Ford Australia shall be required to offer the Eligible Customer pursuant to this Undertaking shall be the difference between the full refund amount and the amount received by the Eligible Customer upon the sale of their PowerShift Vehicle.

- 5.20 The Independent Arbiter shall take all reasonable steps to make determinations within the following timelines:

- (a) determination as to whether an applicant consumer is an Eligible Customer: within 30 days of receiving the consumer's claim;



- (b) determination of any entitlement to a full refund of the purchase price or a replacement vehicle of the same type and of a similar value under the ACL: within 30 days of determining whether a consumer is an Eligible Customer.

5.21 Ford Australia undertakes that Ford Australia will provide the Independent Arbiter with the information and documents and other assistance necessary for the Independent Arbiter to make their determination.

5.22 Ford Australia and the Eligible Customer shall be free to submit any documents to the Independent Arbiter which are relevant to the Independent Arbiter's consideration of the Eligible Customer's claim and whether an applicant is an Eligible Customer under the Independent Complaints Review Program, and the Independent Arbiter shall provide copies of all information and documents provided by one party to the other party.

5.23 Ford Australia undertakes to bear the costs of the Independent Arbiter as well as the costs of any additional resources reasonably retained by the Independent Arbiter.

*Binding nature of the Independent Arbiter's determination*

5.24 The Independent Arbiter's determination shall be binding on Ford Australia and the Eligible Customer (in the latter case, from the date any redress offer is accepted by the Eligible Customer) and shall not be subject to review.

5.25 As a condition of accepting a redress offer, an Eligible Customer shall be required to sign a settlement agreement within 21 days (or such other period as Ford Australia may agree) in which the Eligible Customer agrees that the redress offer is offered by Ford Australia in full and final settlement of all matters surrounding the Eligible Customer's claim for a refund or replacement vehicle (made during the Relevant Period to resolve a complaint relating to the Eligible Customer's PowerShift Vehicle) and that the Eligible Customer agrees to release Ford Australia and the relevant Ford Australia dealer(s) from any and all actions, suits and claims associated with that claim now and in the future (including claims for legal costs) (**Settlement Agreement**). The Settlement Agreement shall not include any confidentiality or non-disparagement terms, and will be drafted in straightforward and easy to understand language.

*Record keeping*

5.26 Ford Australia undertakes that Ford Australia will provide reports every 3 months to the ACCC, commencing 90 days after the Independent Complaints Review Program Commencement Date (or such other date to be agreed with the ACCC) and ending 90 days after the Independent Arbiter has determined the last of the claims made under the Independent Complaints Review Program, with copies of such reports also to be provided to Ford Australia's Board of Directors, setting out:

- (a) the number of cases reviewed by the Independent Arbiter during the previous 3 months;
- (b) an itemised list of all remedies (by consumer and including VIN) provided during the previous 3 months, with the date the Independent Arbiter commenced reviewing the case, the date the Independent Arbiter made a determination, and the date Ford Australia provided the relevant remedy;
- (c) the number of cases not yet determined by the Independent Arbiter as at the date of the report; and
- (d) copies of all determinations (including reasons) provided by the Independent Arbiter to Ford Australia during the previous 3 months.

5.27 Ford Australia undertakes that Ford Australia will publish reports every 6 months on the Independent Complaints Review Program Webpage, commencing 200 days after the Independent Complaints Review Program Commencement Date (or such other date to be agreed with the ACCC) and until the Independent Arbiter has determined the last of the claims made under the Independent Complaints Review Program, setting out summary statistics relating to the Independent Complaints Review Program during the previous 6 months.

5.28 Ford Australia undertakes that Ford Australia will maintain a record of all documentation relating to the review of each Eligible Customer including the assessment and determination made by the Independent Arbiter, until at least 30 June 2021.

5.29 For the purposes of monitoring compliance with this Undertaking, the ACCC may make reasonable inquiries of Ford Australia in respect of its compliance with this Undertaking and Ford Australia will respond to such inquiries within a reasonable period of time. Nothing in this clause 5.29 requires Ford Australia to provide information or documents to the ACCC which are subject to legal professional or other privilege.

## 6. Acknowledgments


6.1 Ford Australia 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

Ford Motor Company of Australia Limited (004 116 223) pursuant to section 127(1) of the *Corporations Act 2001* by:

  
.....  
Signature of director

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

GRAEME WHICKMAN  
.....  
Name of director

JENNIFER LINSTEN  
.....  
Name of a director/company secretary

19/4/18  
.....  
Date

19/4/18  
.....  
Date

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

  
.....

Rodney Graham Sims  
Chairman

This 23 day of April 2018

**Annexure A**  
**Consumer Law Compliance Training for employees**

1. Ford Australia will cause all of the following Ford Australia employees to complete on-line training annually (except for employees whose duties could not result in them being concerned with conduct that may contravene sections 18, 21 and 29 and Part 3.2, Division 1 (consumer guarantees) of the ACL):
  - (a) all employees who are leadership level 5 and above (ie senior managers and executives);
  - (b) Sales employees;
  - (c) Marketing employees;
  - (d) Ford Customer Service Division (FCSD) employees;
  - (e) Government Affairs employees;
  - (f) Communications employees; and
  - (g) Finance staff involved in supporting Sales, Marketing or FCSD.
2. Ford Australia will cause all of the following Ford Australia employees to complete face to face training annually (except for employees whose duties could not result in them being concerned with conduct that may contravene sections 18, 21 and 29 and Part 3.2, Division 1 (consumer guarantees) of the ACL):
  - (a) the National Sales Company Leadership Team;
  - (b) all Legal employees;
  - (c) all Customer Liaison employees;
  - (d) all employees involved in determining offers to be made to customers as part of the 'Reacquired Vehicle' process (or any other equivalent process).
3. Ford Australia will cause all managers and operators within the Ford Australia Customer Relationship Centre to complete online and face to face training annually (except for individuals whose duties could not result in them being concerned with conduct that may contravene sections 18, 21 and 29 and Part 3.2, Division 1 (consumer guarantees) of the ACL).
4. Ford Australia will improve and supplement its existing Consumer Law Compliance Training Program by ensuring that it includes further guidance/clarification on the following:
  - (a) the Statutory Consumer Guarantees;
  - (b) without limiting paragraph 4(a) above, the rights and remedies of consumers under the ACL, in particular the right of a consumer to a refund or replacement (rather than a repair) where there has been a major failure to comply with a consumer guarantee;
  - (c) the fact that multiple minor failures of a vehicle may constitute a major failure entitling the customer to a refund or replacement rather than a vehicle repair;
  - (d) where there has been a major failure to comply with a consumer guarantee, a consumer may be entitled to a refund or replacement even though the vehicle is capable of repair;
  - (e) the fact that a consumer may still be entitled to a remedy even though their vehicle was serviced by someone other than a Ford Australia dealer;
  - (f) the fact that a consumer may still be entitled to a remedy even though their vehicle was purchased second hand (though with reference to the condition of the vehicle at the time of the relevant second hand sale and to the fact that the Statutory Consumer Guarantees do not apply in circumstances where a consumer has purchased their vehicle privately); and

- (g) the fact that Ford Australia's Manufacturer's Warranty does not limit or restrict, in any way, a consumer's rights under the Statutory Consumer Guarantees.

**Annexure B**  
**Consumer Law Compliance Training for Dealers**

1. Ford Australia will improve and supplement its existing Consumer Law Compliance Training Program for dealers by ensuring that it includes further guidance/clarification on the following:
  - (a) the Statutory Consumer Guarantees;
  - (b) without limiting paragraph 1(a) above, the rights and remedies of consumers under the ACL, in particular the right of a consumer to a refund or replacement (rather than a repair) where there has been a major failure to comply with a consumer guarantee;
  - (c) the fact that multiple minor failures of a vehicle may constitute a major failure entitling the customer to a refund or replacement rather than a vehicle repair;
  - (d) where there has been a major failure to comply with a consumer guarantee, a consumer may be entitled to a refund or replacement even though the vehicle is capable of repair;
  - (e) the fact that a consumer may still be entitled to a remedy even though their vehicle was serviced by someone other than a Ford Australia dealer;
  - (f) the fact that a consumer may still be entitled to a remedy even though their vehicle was purchased second hand (though with reference to the condition of the vehicle at the time of the relevant second hand sale and to the fact that the Statutory Consumer Guarantees do not apply in circumstances where a consumer has purchased their vehicle privately);
  - (g) the fact that Ford Australia's Manufacturer's Warranty does not limit or restrict, in any way, a consumer's rights under the Statutory Consumer Guarantees; and
  - (h) reinforce that dealers have a right to be indemnified by Ford Australia under the ACL in certain circumstances.
2. Ford Australia will require dealers to report to Ford Australia annually on their completion of the Consumer Law Compliance Training Program for dealers – this includes all dealer senior management, sales and aftersales employees completing the training with the exception of warehouse and distribution staff who have no direct contact with customers.

**Annexure C  
Notices**

**1. Webpage Notice**

**IMPORTANT NOTICE TO POWERSHIFT CUSTOMERS**

Ford Australia has admitted that, between 1 May 2015 and 29 February 2016, it contravened the Australian Consumer Law in the way that it responded to requests for refunds or replacements for certain Fiesta, Focus and EcoSport vehicles fitted with a six speed dry dual-clutch automatic transmission ('PowerShift Vehicles').

**This may affect you if you:**

- **owned a PowerShift Vehicle between 1 May 2015 and 1 November 2016; and**
- **made a request for a refund or replacement, between 1 May 2015 and 1 November 2016, to Ford Australia (including to Ford Australia's Customer Relationship Centre) either directly or with the assistance of a Ford Australia dealer; and**
- **did not receive a full refund or a replacement vehicle (at no additional cost to you).**

If you think this applies to you, you may be eligible to participate in Ford Australia's independent complaints review program. Under this program you can apply to have your claim for a refund or replacement vehicle reassessed by an independent arbiter. You have until      to make a claim.

Please see below for more details

## 2. Customer Notice

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Please visit here for more details [[Link to Independent Complaints Review Program Webpage](#)]