

1 MARCH 2018

URGENT ADVICE - TAKATA AIRBAG RECALL

BACKGROUND

On Wednesday 28 February 2018 the Federal Government announced a compulsory recall for all vehicles with defective TAKATA airbags following an Australian Competition and Consumer Commission (ACCC) investigation. The Government acted because the ACCC investigation provided evidence that:

- a reasonably foreseeable use of vehicles with defective Takata airbags may cause injury to drivers and/or passengers, and
- one or more suppliers of vehicles with defective Takata airbags have not taken satisfactory action to prevent those vehicles causing injury to drivers and/or passengers.

The compulsory recall applies to:

- all vehicles that are subject to existing Takata voluntary recalls, and
- approximately 1.3 million additional vehicles that have not been voluntarily recalled.

Suppliers are required to submit a Recall Initiation Schedule to the ACCC by April 2018. The schedule will advise consumers with an affected vehicle when their vehicle will be recalled. The Recall Notice, **attached to this brief**, requires independent second hand / used vehicle dealers to clearly communicate the serious safety risk and the need for future replacement to prospective purchasers prior to the sale of any vehicle with an affected Takata Airbag Inflator. The Recall Notice also prohibits the sale of vehicles with affected Takata Airbag Inflators that are under 'active' recall by a vehicle manufacturer. The difference between 'active' versus 'future' is explained below.

Independent second hand / used vehicle dealers must ensure that they comply with their obligations under the Recall Notice or may face financial penalties for contravening the Australian Consumer Law (ACL).

The following clarification has been written to assist MTA Members and has been examined by the ACCC to ensure compliance and correctness. This information is supplementary to ACCC advice **which is attached to this brief.**

MEANINGS

Some terms are causing confusion. The following ACCC provided definitions should clarify.

Supplier: Under the Recall Notice, a vehicle's **supplier** is the first person to supply a vehicle with a defective Takata airbag into Australia. In most cases this will be the Australian head office of the vehicle manufacturer (also known as Original Equipment Manufacturer or OEM). A supplier can also include a business that imports and supplies vehicles from overseas that are not generally available for purchase in Australia (known as parallel imports).

Dealer: A dealer **is not** a supplier for the purposes of the Recall Notice, but a supplier (see definition above) may use its authorised dealer network to perform some of the actions required by the compulsory recall (such as replacement of the Takata airbag inflator).

Active Recall: **Dealers must not sell a vehicle that is under active recall.**
Active recall means when a vehicle manufacturer has initiated recall action for that vehicle. This means that the vehicle manufacturer has taken steps to notify owners of that type of vehicle that they can schedule a replacement. When vehicle manufacturers initiate recall action for a category of vehicles, they must notify the ACCC via the Product Safety Australia website and these vehicles will be added to the list of affected vehicles on the website <https://www.productsafety.gov.au/recalls/compulsory-takata-airbag-recall/takata-airbag-recalls-list>

Generally, and to avoid any doubt or potential non-compliance, all affected vehicles under current voluntary recalls that have already been notified to the ACCC are already under "active recall" for the purposes of the Recall Notice.

The vehicle manufacturer's Recall Initiation Schedule (once published by vehicle manufacturer and/or ACCC in April 2018) will set out the dates when different types of vehicles will fall under active recall and the vehicle manufacturer will take steps to notify affected consumers to schedule replacement.

It is your responsibility as a dealer to check the recall status of any vehicle in your inventory.

As a dealer you must check the VIN and other recall information for each vehicle in your possession to find out if it is under active or future recall. You can find out by using the Recall Database and Recall Initiation Schedule that will be published on the relevant manufacturer's website and by regularly checking the ACCC Product Safety Australia Website and signing up for recall alerts. Vehicle manufacturers are required to provide the ACCC with a Recall Initiation Schedule by 3 April 2018 that will list all vehicles scheduled for future recall (this may be updated over time). If a vehicle is under active

recall, you must make arrangements with the relevant vehicle manufacturer to have the affected Takata Airbag Inflator/s replaced. **The replacement will be at the vehicle manufacturer's cost.**

You should check for active recalls periodically as vehicles are added to the recall. You can subscribe to receive updates about the Takata recall on the ACCC's website at <https://www.productsafety.gov.au/newsletter/subscribe>

Voluntary

Recall:

Before 28 February 2018 some suppliers (manufacturers) had voluntarily recalled affected vehicles to have the Takata Airbag Inflator/s replaced.

Alpha

airbags:

Takata airbags called 'alpha' are considered to pose the highest safety risk of all the recalled Takata airbags. These require urgent replacement. **Alpha** airbags are identified on the current recall list at: <https://www.productsafety.gov.au/recalls/compulsory-takata-airbag-recall/takata-airbag-recalls-list>. **You should check periodically for updates as vehicles will be added to the list.**

Future

Recall:

The supplier will notify consumers with vehicles subject to 'future recall' and you can also find out on the supplier's Recall Initiation Schedule. Dealers may sell a vehicle that is scheduled for future recall without replacement, but you must ensure that you notify a prospective purchaser of the vehicle prior to sale that the vehicle has an affected Takata Airbag Inflator that will require future replacement in accordance with the requirements of the Recall Notice. The nature of this communication will vary depending on whether the vehicle is less or more than six years of age post-manufacture (using January of the model year as a proxy for date of manufacture).

IMMEDIATE ACTION

All Second Hand / Used Members must as soon as possible:

1. Check the Vehicle Identification Number (VIN) and other recall information for each second-hand vehicle in its possession to determine whether the vehicle is under active recall (or is scheduled for future recall) by a Supplier in relation to an Affected Takata Airbag Inflator replacement. This can be done through the relevant Supplier's website and,
2. If the vehicle is under active recall it must not be sold. You should organise for the replacement airbag from the supplier as soon as possible. This means contacting the Manufacturer / Manufacturer's Distributor Head Office in Australia. This includes vehicles that may have been imported into Australia but not through Manufacturer / Dealer channels.

SELLING A FUTURE RECALL VEHICLE (LESS THAN SIX YEARS OLD)

If the vehicle is not in active recall, but is listed for future recall, the Member may still sell the vehicle provided that they inform the consumer orally and in writing that:

1. the Vehicle has a faulty Takata airbag inflator which, depending on its age and other factors, will pose a risk of serious injury or death in the future;
2. the inflator will require replacement, and to avoid the risk of injury or death, it is critical that the inflator be replaced as soon as possible after recall action is initiated by the Supplier, because as it gets older, a combination of high temperatures and humidity can affect it and, if the vehicle is involved in a collision, the airbag can go off with too much explosive force causing sharp metal fragments to shoot out and kill or seriously injure people in the vehicle;
3. the Supplier will initiate recall of the inflator at the time specified in the Recall Initiation Schedule which is (or will be, as applicable) on the Supplier's website;
4. the Supplier will arrange for replacement of the inflator by making direct contact with the purchaser when recall action is initiated, if the purchaser's contact details are known by the Supplier; and
5. further information is available on the Supplier's website, and the purchaser can also contact the Supplier for further information.

The Member will also need to seek the consent of the consumer to provide their details to the Supplier to give effect to the recall.

A form to assist Dealers communicate to consumers is attached to this brief for vehicles that are less than six years post manufacture.

SELLING A FUTURE RECALL VEHICLE (MORE THAN 6 YEARS OLD)

If the vehicle is not in active recall, but is listed for future recall, the Member may still sell the vehicle provided that they inform the consumer orally and in writing that:

1. the Vehicle has a faulty Takata airbag inflator which poses a risk of serious injury or death which increases as the vehicle gets older and is exposed to high heat and humidity. The combination of age, high temperatures and humidity can affect the airbag so that, if the vehicle is involved in a collision, the airbag can go off with too much explosive force causing sharp metal fragments to shoot out and kill or seriously injure people in the vehicle;
2. the inflator requires replacement, and to minimise the risk of injury or death, it is critical that the inflator be replaced as soon as possible after recall action is initiated by the Supplier;
3. the Supplier will initiate recall of the inflator at the time specified in the Recall Initiation Schedule which is (or will be, as applicable) on the Supplier's website;
4. the Supplier will arrange for replacement of the inflator by making direct contact with the purchaser when recall action is initiated, if the purchaser's contact details are known by the Supplier; and

5. further information is available on the Supplier's website, and the purchaser can also contact the Supplier for further information.

The Member will also need to seek the consent of the consumer to provide their details to the Supplier to give effect to the recall.

A form to assist Dealers communicate to consumers is attached to this brief for vehicles that are more than six years post manufacture.

WHOLESALE ARRANGEMENTS

- The MTAA is investigating with the ACCC what (if any) arrangements apply to Wholesalers and Auction Houses.
- At this stage it is believed that Wholesalers will be in the same position as Dealers in that they are unable to sell vehicles that are subject to the active recall, until the repair of the Takata Airbag Inflator has been completed; and that if selling a future recall vehicle then oral and written notification will need to be provided.
- This advice is subject to confirmation and the ACCC may issue further guidance materials in regard to this specific area.

DISMANTLING / RECYCLER ARRANGEMENTS

- MTAA has raised with the ACCC the matter of Dismantlers and Recyclers decommissioning vehicles with impacted TAKATA airbags and what, if any, requirements are needed.
- The matter of written off vehicles has also been raised with the ACCC
- The ACCC will provide further advice and this will be provided as soon as it is available.

ATTACHED DOCUMENTATION FOR MEMBER USE

- The ACCC TAKATA Recall Notice Guidance material for second hand dealers (**separate attachment**)
- The TAKATA Formal Government Recall Notice 2018 (**separate attachment**)
- Forms to comply with notification requirements for future recall vehicles over six years post manufacture and less than six years post manufacture. (**Attached**)

TAKATA AIRBAG RECALL NOTICE

(For vehicles more than six (6) years post manufacture)

This notice refers to the vehicle listed in the Form 5 attached to this notice. The Supplier of the vehicle for the purposes of this notice is "[INSERT SUPPLIER NAME]"

As the Purchaser of the vehicle, you acknowledge that prior to the sale of the Vehicle, you were advised by the Dealer or its representative that the vehicle is, or is suspected to be, affected by the *Consumer Goods (Motor Vehicles With Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018*.

You are further put on notice that:

1. the vehicle has a faulty Takata airbag inflator which poses a risk of serious injury or death which increases as the vehicle gets older and is exposed to high heat and humidity. The combination of age, high temperatures and humidity can affect the airbag so that, if the vehicle is involved in a collision, the airbag can go off with too much explosive force causing sharp metal fragments to shoot out and kill or seriously injure people in the vehicle
2. the inflator requires replacement, and to minimise the risk of injury or death, it is critical that the inflator be replaced as soon as possible after recall action is initiated by the Supplier;
3. the Supplier will initiate recall of the inflator at the time specified in the Recall Initiation Schedule which is (or will be, as applicable) on the Supplier's website;
4. the Supplier will arrange for replacement of the inflator by making direct contact with you when recall action is initiated, if your contact details are known by the Supplier; and
5. further information is available on the Supplier's website "[INSERT SUPPLIER WEBSITE]" , and the purchaser can also contact the Supplier for further information.

Please indicate whether or not you agree for your information to be provided to the Supplier so that a replacement inflator may be organised in relation to the vehicle:

- I authorise my personal information being shared with the supplier for the purposes of organising a replacement inflator.
- I do not authorise my personal information being shared with the supplier for the purposes of organising a replacement inflator. You are encouraged to contact the Supplier "[INSERT SUPPLIER WEBSITE]" to provide your contact details directly.

Purchaser Signature: _____.

Date:_____.

TAKATA AIRBAG RECALL NOTICE

(For vehicles less than six (6) years post manufacture)

This notice refers to the vehicle listed in the Form 5 attached to this notice. The Supplier of the vehicle for the purposes of this notice is "[INSERT SUPPLIER NAME]"

As the Purchaser of the vehicle, you acknowledge that prior to the sale of the Vehicle, you were advised by the Dealer or its representative that the vehicle is, or is suspected to be, affected by the *Consumer Goods (Motor Vehicles With Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018*.

You are further put on notice that:

1. the Vehicle has a faulty Takata airbag inflator which, depending on its age and other factors, will pose a risk of serious injury or death in the future;
2. the inflator will require replacement, and to avoid the risk of injury or death, it is critical that the inflator be replaced as soon as possible after recall action is initiated by the Supplier, because as it gets older, a combination of high temperatures and humidity can affect it and, if the vehicle is involved in a collision, the airbag can go off with too much explosive force causing sharp metal fragments to shoot out and kill or seriously injure people in the vehicle;
3. the Supplier will initiate recall of the inflator at the time specified in the Recall Initiation Schedule which is (or will be, as applicable) on the Supplier's website;
4. the Supplier will arrange for replacement of the inflator by making direct contact with you when recall action is initiated, if your contact details are known by the Supplier; and
5. further information is available on the Supplier's website "[INSERT SUPPLIER WEBSITE]" , and the purchaser can also contact the Supplier for further information.

Please indicate whether or not you agree for your information to be provided to the Supplier so that a replacement inflator may be organised in relation to the vehicle:

- I authorise my personal information being shared with the supplier for the purposes of organising a replacement inflator.
- I do not authorise my personal information being shared with the supplier for the purposes of organising a replacement inflator. You are encouraged to contact the Supplier "[INSERT SUPPLIER WEBSITE]" to provide your contact details directly.

Purchaser Signature: _____.

Date: _____