



## Application for assessment of compliance with replacement obligations: consumers that did not present the Vehicle for replacement of the ATAI or could not be notified despite multiple notification attempts - written statement

### Guidance notes:

- The template wording is to assist Suppliers to apply to the ACCC for assessment of their compliance with replacement obligations under the Consumer Goods (Motor Vehicles With Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018 (Recall Notice)
- A Supplier making an application under section 5(3) of the Recall Notice may submit written correspondence with its application confirming the information below for ACCC consideration.
- The ACCC will assess each such application and notify the Supplier whether it is satisfied that the Supplier has complied with its replacement obligations under the Recall Notice. Once the Supplier receives notification that the ACCC is satisfied that the Supplier has complied with its obligations to replace an ATAI, the Supplier's Quarterly Completion Report may reflect this (see Schedule 1, paragraph 3(c)).
- The letter/information in the letter may be used to apply to participating State and Territory registration authorities to ask them to consider whether to deregister a particular vehicle.
- Terms used in this document have the same definitions/meanings as in the Recall Notice.
- Giving false or misleading information is a serious offence. A copy of sections 137.1 and 137.2 of the *Criminal Code* (Cth) is provided at Attachment B.

[The letter must be on company letterhead]

1. [Insert company name] makes an application under section 5(3) of the Recall Notice.
2. The application relates to specific vehicle identification numbers (VINs) and includes details of the inflator. See **Attachment A**.
3. [Insert company name] has completed the communication processes required under [section 5(4)(a) and/or (b)] of the Recall Notice and has records to demonstrate this.
4. [Insert company name] will make the above records available and facilitate audit by the ACCC, auditors or a third party if the ACCC requests it to do so.
5. [Insert company name] notes that under sections 137.1 and 137.2 of the *Criminal Code* (Cth) that it is a serious offence to knowingly provide false or misleading information or documents to a Commonwealth entity, a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth, or the information or document is given in compliance or purported compliance with a law of the Commonwealth. A copy of relevant provisions of the *Criminal Code* (Cth) is at **Attachment B**.

[Signature - must be an 'officer of [company] within the meaning of the Corporations Act']

## Attachment A

Note: The attachment must clearly show the information requested below. As an alternative you may attach an excel spreadsheet with a list of VINs. Please do not include duplicate VIN numbers.

Vehicle Identification Number (VIN)	Position of the inflator and whether Alpha (indicate driver airbag [DAB], passenger airbag [PAB] and A, if Alpha)

## Attachment B

### Relevant provisions of the Criminal Code (Cth)

#### 137.1 - False or misleading information

- (1) A person commits an offence if:
  - (a) the person gives information to another person; and
  - (b) the person does so knowing that the information:
    - (i) is false or misleading; or
    - (ii) omits any matter or thing without which the information is misleading; and
  - (c) any of the following subparagraphs applies:
    - (i) the information is given to a Commonwealth entity;
    - (ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth;
    - (iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

(1A) Absolute liability applies to each of the subparagraph (1)(c)(i), (ii) and (iii) elements of the offence.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).

(4) Subsection (1) does not apply as a result of subparagraph (1)(c)(i) if, before the information was given by a person to the Commonwealth entity, the Commonwealth entity did not take reasonable steps to inform the person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3).

(5) Subsection (1) does not apply as a result of subparagraph (1)(c)(ii) if, before the information was given by a person (the first person) to the person mentioned in that subparagraph (the second person), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

- (6) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:

“Giving false or misleading information is a serious offence”.

### **137.2 - False or misleading documents**

- (1) A person commits an offence if:

- (a) the person produces a document to another person; and
- (b) the person does so knowing that the document is false or misleading; and
- (c) the document is produced in compliance or purported compliance with a law of the Commonwealth.

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply if the document is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:

- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3).