



# Takata Recall Notice

## Guidance for grey importers and RAWS participants

28 February 2018

Parallel, sometimes referred to as 'grey', importers of new and used motor vehicles in Australia have key obligations under the Recall Notice. Such importers sell legal, non-counterfeit vehicles outside normal distribution channels and may have no relationship to the producer of the vehicle.

The Recall Notice places fewer administrative obligations on grey/parallel importers, recognising that in most instances they are small businesses. Grey/parallel importers and RAWS participants are exempt from the online recall database, independent auditor and mainstream advertising requirements placed on other types of suppliers.

### About the Recall Notice

[The Recall Notice](#) imposes recall and replacement obligations on 'suppliers' of vehicles with Affected Takata Airbag Inflators, including parallel/grey importers of new vehicles and those importing used specialist or enthusiast vehicles under the Registered Automotive Workshop Scheme (RAWS) administered by the Department of Regional Development, Infrastructure and Cities. If you fall into this category it is important that you comply with these obligations or you may face financial and other penalties for contravening the Australian Consumer Law (ACL).

See also: [Explanatory statement \(Takata\)](#)

### Suppliers of affected vehicles

You will only be a 'supplier' of an affected vehicle under the Recall Notice where you were the first person to supply (e.g. sell) a vehicle to another person in Australia. You will not be a 'supplier' of vehicles that you have imported on behalf of another person, unless you also sell the vehicle to them. You will not be a supplier of a vehicle in circumstances where the vehicle was imported by someone else and you performed a modification service on it.

RAWS participants and grey importers are encouraged to approach local OEM representatives for assistance in sourcing spare parts and rectification of vehicles. Please advise the ACCC if the local OEM representatives are unable to assist you by emailing us at [tatakarecall@acc.gov.au](mailto:tatakarecall@acc.gov.au).

If you are a grey importer or a RAWS participant, the Recall Notice requires you to do the following.

### Initiate recall action of vehicles with Affected Takata Airbag Inflators

For vehicles with an Affected Takata Airbag Inflator that is an Alpha Inflator you must:

- initiate the recall of all affected vehicles within one week of commencement of the Recall Notice, using communication consistent with the requirements of Schedule 2

- replace the inflator within five days of the replacement part arriving at a dealership nominated by the consumer, where the replacement part must be provided to the nominated dealership within two weeks of the consumer request, and
- offer to arrange for the vehicle to be towed to the place of replacement or for a qualified technician to travel to the location of the vehicle

For vehicles with any other types of Affected Takata Airbag Inflator you must:

- initiate recalls and replace the inflators as soon as practicable after the ACCC notifies you that your Communication and Engagement Plan has been approved. If you already have some voluntary recalls on foot or plan to initiate recalls before 3 April 2018, then it is not intended that you delay or disrupt this activity whilst waiting for the ACCC to approve your Communication and Engagement Plan. However, direct consumer communications in relation to such recall activity must be consistent with the requirements of Schedule 2 of the Recall Notice.
- provide the ACCC with a Recall Initiation Schedule by 3 April 2018 (unless you intend to initiate recall action for all vehicles by that date). The Schedule may take into account supply of replacement parts and workshop capacity, but must prioritise recall initiation according to specified Priority Factors. The Priority Factors are known factors that increase the safety risk associated with vehicles with Affected Takata Airbag Inflators. They are:
  1. registration in a hot and humid location
  2. age of vehicle (particularly those over six years of age), and
  3. the location of the Affected Takata Airbag Inflator on the driver's side of the vehicle.
- ensure that the Recall Initiation Schedule allows the applicable Quarterly Completion Schedule to be met. The Quarterly Completion Schedule may be a default schedule for completion of replacement or a tailored one approved by the ACCC, but it must schedule all replacements for completion by 31 December 2020 unless otherwise approved by the ACCC on application.

When you initiate recall action for a vehicle or a category of vehicles, you must notify the ACCC via the recall notification link on the Product Safety Australia website. Your recall notification must include relevant information regarding the type of vehicles for which recall action was initiated, including a list of affected VINs the relevant Affected Takata Airbag Inflator family.

From the date you initiate recall action you are required to take steps to contact consumers directly or otherwise under your approved Communication and Engagement Plan to commence replacement of Affected Takata Airbag Inflators. Once you have initiated recall action for a certain type of vehicle it will be under 'active recall'.

Where a vehicle has both a driver and passenger side Affected Takata Airbag Inflator, you must use your best endeavours to replace both at the same time to limit workshop visits by consumers.

Under no circumstances may you use an Alpha Inflator as a replacement inflator.

You must not use a new Affected Takata Airbag Inflator as a temporary replacement after 31 December 2019.

If prior to 31 December 2019, you consider it necessary to use a new Affected Takata Airbag Inflator as a temporary replacement you must communicate this to the consumer both orally and in writing, record it in the vehicle service record and cause a notice and label to be affixed to the vehicle as prescribed under the Recall Notice.

You must bear the cost of the replacement of an Affected Takata Airbag Inflator, including any necessary costs where special arrangements are warranted.

If you have replaced an Affected Takata Airbag Inflator with a new Affected Takata Airbag Inflator prior to the commencement of the Recall Notice you must ensure that the consumer is informed of this as soon as possible using language prescribed in the Recall Notice. This obligation does not apply if you have already done so using language substantially similar to that prescribed in the Recall Notice.

You must complete replacement of all Affected Takata Airbag Inflators in accordance with the applicable Quarterly Completion Schedule and in any event by 31 December 2020, unless otherwise approved by the ACCC.

You also have an ongoing obligation to take reasonable steps to identify vehicles with Affected Takata Airbag Inflators that are presented to you or your dealer network and replace inflators.

## Develop a Communication and Engagement Plan to maximise recall success

You must develop and implement a Communication and Engagement Plan for contacting, communicating with and engaging with consumers to maximise the replacement of Affected Takata Airbag Inflators.

Your Plan must adopt some or all of the measures outlined in Schedule 2 of the Recall Notice as are reasonable and appropriate in your circumstances. Your Plan may include the following (depending on your circumstances):

- using clear and simple language that emphasises the risk of injury or death from shrapnel in the event of a rupture;
- using direct communications to notify individual consumers, with a strategy for escalation;
- using methods to raise awareness of the recall more broadly, for example social media posts or advertisements in specialist vehicle newsletters or publications;
- ensuring that you have useful and accessible sources of information for consumers and sufficient resources to facilitate prompt scheduling of replacements (this includes, adequately trained staff, a dedicated telephone number for consumer contacts, and
- frequently using multiple sources of data to ensure that consumer contact information is kept up to date, so that consumers can be located for notification purposes.

You must submit your proposed Communication and Engagement Plan to the ACCC for approval within one month of commencement of the Recall Notice. If the ACCC considers that your proposed Plan is inadequate, then it may propose improvements and you must submit a revised Plan within 5 business days of receipt of the ACCC's proposed improvements. If the proposed revised Plan is still considered inadequate, you must re-submit a second revised Plan with 5 business days of receipt of proposed improvements from the ACCC. If your second revised Plan is still inadequate then the ACCC will specify the required communications and consumer engagement that you must undertake.

You may also apply to the ACCC for approval to amend your Plan. The Recall Notice specifies what matters the ACCC will have regard to when assessing the adequacy of your proposed plan and any proposed amendments to your Plan once approved.

Despite the above, where the Recall Notice prescribes specified language for certain communications, you must use that language.

## Support replacement of Affected Takata Airbag Inflators in the secondhand vehicle market

To maximise the replacement of Affected Takata Airbag Inflators in the secondhand vehicle market, you must submit a Secondhand Vehicle Action Plan to the ACCC within two months of commencement of the Recall Notice. The Plan must outline how you intend to distribute information regarding the recall and how you will encourage and support the replacement of Affected Takata Airbag Inflators in the secondhand vehicle market.

## Quarantine and destroy Affected Takata Airbag Inflators taken from vehicles

You must ensure that Affected Takata Airbag Inflators that come into your possession, power or control and are not intended for use as a replacement are immediately quarantined, labelled and handled in a manner to prevent re-use for any purpose other than for testing.

You must provide instructions to your dealers and authorised representatives regarding quarantine, labelling and handling of Affected Takata Airbag Inflators and must provide evidence of these instructions to the ACCC on request.

You must ensure that all Affected Takata Airbag Inflators that come into your possession, power or control are ultimately destroyed or used in testing and must provide evidence of this to the ACCC on request.

## Deal with consumers fairly

If you have multiple dealers (or any other authorised representative), you must put in place arrangements to allow consumers to take their vehicle into any of your dealers for replacement of an Affected Takata Airbag Inflator.

In order to encourage replacement of Affected Takata Airbag Inflators by minimising consumer inconvenience, you must do the following at a consumer's request:

- if the replacement process will take more than 24 hours, you must provide the consumer with a loan or hire vehicle or offer to fund or provide alternative transportation (which is reasonable in the consumer's circumstances) for the duration of the replacement process

- where warranted, make special arrangements to facilitate replacement (such as towing/transporting a vehicle to a place of replacement, providing a qualified technician to perform replacement at a place near the consumer's location or similar measures). Special arrangements may be warranted if a consumer is:
  - elderly, infirm, disabled or otherwise has special needs
  - located more than 250 km from the nearest place of replacement you can arrange or
  - located on an island where you don't have a dealer or another authorised place of replacement.

Prior to the supply of a new vehicle with an Affected Takata Airbag Inflator, you must ensure that prescribed communications in the Recall Notice are used to warn prospective purchasers that the vehicle contains an Affected Takata Airbag Inflator that will require future replacement. You must provide clear instructions to your dealer network (if you have one) regarding these communications and provide the written communications, notices and durable labels prescribed by the Recall Notice.

If you don't already have a consumer dispute resolution mechanism or system that meets the requirements in the Recall Notice you must establish one. You must use your best endeavours to ensure the dispute resolution mechanism or system is consistent with AS/NZS 10002:2014 Guidelines for complaint management in organizations, tailored to your circumstances.

It is important to note at the outset that nothing in the Recall Notice alters consumer rights and remedies or supplier obligations under the Australian Consumer Law (ACL), *Competition and Consumer Act 2010* (Cth) and *Trade Practices Act 1974* (Cth), including the consumer guarantees provisions of the ACL and the implied warranties provisions of the TPA. The ACCC has detailed guidance material on its website regarding your legal obligations to treat customers fairly under the Australian Consumer Law (<https://www.accc.gov.au/business/treating-customers-fairly>).

## Provide recall information on your website

If you have a website, you must use your best endeavours to publish a searchable list of affected vehicles that you have supplied in Australia by VIN and your Recall Initiation Schedule.

## Use prescribed communications prior to sale of vehicles with Affected Takata Airbag Inflators

You must not sell a new or demonstration vehicle with an Affected Takata Airbag Inflator to a consumer:

- after 31 December 2018
- at any time if it is under active recall by the vehicle manufacturer.

If either of the above applies, you must ensure that the Affected Takata Airbag Inflator is replaced prior to sale.

If the above does not apply, you may legally sell a vehicle with an Affected Takata Airbag Inflator provided that you ensure that the prospective purchaser is made aware, prior to sale, of the need for future inflator replacement.

In this regard, you must ensure that:

- the consumer is notified orally and in writing (in clear and simple terms) that:
  - the vehicle has an Affected Takata Airbag Inflator that will require replacement
  - to avoid future risk of injury or death the Affected Takata Airbag Inflator must be replaced as soon as possible after the vehicle manufacturer initiates active recall of the inflator. You must specify the date that this will occur or, if the date is not yet known, refer the consumer to the vehicle manufacturer's website where the Recall Initiation Schedule will be published, and
  - the vehicle manufacturer will make direct contact with the consumer to arrange for replacement when recall action is initiated, and
- record at least the following information in the service record of the vehicle:
  - that the vehicle is installed with a faulty Takata airbag inflator
  - the location of the inflator (that is, driver side, passenger side or both), and
  - that, to avoid future risk of injury or death due to misdeployment, the Affected Takata Airbag Inflator must be replaced as soon as possible after recall action is initiated for the inflator, and either specify the applicable date from the Recall Initiation Schedule (once available), or note that the Recall Initiation Schedule will be published on the vehicle manufacturer's website, and
- cause a notice to be affixed to the vehicle's front windscreen and a durable label to be affixed to the vehicle's engine bay containing a statement

regarding the safety risk and need for future replacement (as prescribed in the Recall Notice).

If you also carry on business selling secondhand vehicles that you have not imported and supplied for the first time in Australia you also have important obligations under the Recall Notice. If this applies to you, you should read the *Takata Recall Notice—Guidance for independent Second-hand Vehicle Dealers* on our website for more information.

## Vehicles under 'active' recall

**You must not sell a vehicle that is under active recall by you or anyone else.** Active recall means when a vehicle manufacturer has initiated recall action for that vehicle. The vehicle manufacturer's Recall Initiation Schedule 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.

If you determine that 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 our website.

## Keep records about your recall activity and regularly report to the ACCC

If you hear about a reported misdeployment of an Affected Takata Airbag Inflator in one of your vehicles, you must report this to the ACCC within two business days of becoming aware of the report. You must provide the ACCC with relevant details if known, including the date and location of the incident, whether or not anyone was killed or injured, the make and model of the vehicle involved and the relevant Affected Takata Airbag Inflator family.

When you initiate recall action for a vehicle, you must notify the ACCC via the recall notification link on the Product Safety Australia website. Your recall notification must include relevant information regarding the type of vehicles for which recall action was initiated, including a list of affected VINs and the relevant Affected Takata Airbag Inflator family.

You must submit a Recall Initiation Schedule by no later than 3 April 2018. The Recall Initiation Schedule outlines when you will initiate recall action

for different categories of vehicle in the event that not all your vehicles will be under active recall by 3 April 2018.

You must submit a VIN Status Report to the ACCC on a monthly basis commencing on 1 June 2018. This report provides the ACCC with an overview of the recall and replacement status of each vehicle that you have supplied in Australia by VIN as well as other relevant information where known. These reports are cumulative and must be updated on a month basis and submitted to the ACCC within 10 business days of the end of each month.

You must submit a Baseline Commencement Report to the ACCC by 2 July 2018. The Baseline Commencement Report provides data relevant to your recall action to date and vehicles requiring replacement, as well as information relating to your supply of replacement parts.

You must submit monthly and quarterly reports to the ACCC regarding your replacement rates and replacement parts availability.

Reporting must be submitted via the Product Safety Australia website in the format prescribed by the ACCC.

Documents that are required to be provided to the ACCC pursuant to the Recall Notice, including reports and plans, may be published by the ACCC on the Product Safety Australia website.

## Recall completion

Your obligations under the Recall Notice will cease when you can satisfy the ACCC that you have completed 100 per cent of the replacements required by the Recall Notice, or—where inflators have not been replaced—you can satisfy the ACCC of any of the following for each unrectified vehicle:

- a consumer did not present their vehicle for replacement despite multiple notifications under your Communication and Engagement Plan, by multiple channels where necessary
- a consumer could not be notified (e.g. was not able to be located) by methods approved in your Communication and Engagement Plan or by means approved by the ACCC as acceptable (where notification preceded commencement of the Recall Notice)
- the vehicle has not been registered for at least two consecutive years with any state or territory registration authority, or
- the vehicle has been scrapped, exported or stolen.

# Application for variation of dates

You may apply to the ACCC to vary a date in the Recall Notice, including the 31 December 2020 completion date.

In considering such applications, the ACCC will have regard to the matters raised in your application and any other relevant information, including:

- the safety risk to consumers in all the circumstances
- the steps you have taken to obtain replacement parts
- the steps you have taken to increase qualified repair personnel or facilities
- the steps you have taken to identify and notify affected consumers
- the steps you have taken to address the risk of death or injury associated with vehicle use until the affected inflator is replaced (e.g. offering a loan or hire car).

Such applications must be made in writing, accompanied by any supporting documentation and submitted to the ACCC via the specified link on the Product Safety Australia website.

The ACCC may publish your application on the Product Safety Australia website.

## Other applications for variation

In addition to applications to vary dates, suppliers may apply to the ACCC to:

- set a tailored Quarterly Completion Schedule
- end recall obligations as to affected vehicles under certain circumstances
- vary content of its Communication and Engagement Plan.

# Reporting requirements

Due date	Requirement
3 April 2018	Submit your proposed Communication and Engagement Plan to the ACCC for approval by Tuesday 3 April 2018.
3 April 2018	Submit a Recall Initiation Schedule to the ACCC by no later than Tuesday 3 April 2018, unless initiating recall of all vehicles with Affected Takata Airbag Inflators prior to this date.
1 May 2018	Submit your proposed Second-hand Vehicle Action Plan to the ACCC for approval by Tuesday 1 May 2018.
Ongoing obligation commences April 2018	Submit your first Monthly Completion Report to the ACCC with recall and replacement rates for the month of April 2018 by Monday 14 May 2018. These reports must be submitted to the ACCC within 10 business days of the end of each month and relate to the preceding month.
Ongoing obligation commences 1 June 2018	Submit your first VIN Status Report to the ACCC by Friday 13 July 2018. These reports are cumulative and must be updated on a monthly basis and submitted to the ACCC within 10 business days of the end of each month.
2 July 2018	Submit your Baseline Commencement Report to the ACCC on Monday 2 July 2018.
2 July 2018	Publish a searchable VIN list and your Recall Initiation Schedule on your website (if you have one).
Ongoing obligation commences October 2018	Submit your first Quarterly Completion Report to the ACCC tracking your progress against your Quarterly Completion Schedule, including specified information to explain progress, by Friday 12 October 2018. These reports must be submitted to the ACCC within 10 business days of the end of each calendar quarter.

Some due dates in the Recall Notice fall on public holidays and weekends. Where this occurs, the required action may legally be completed the following business day due to the operation of sub-section 36(2) of the *Acts Interpretation Act 1901* (Cth). The above table takes this into account and provides the last possible due date for the required action (unless you apply to the ACCC for variation of the due date and the ACCC approves your application).

## More information

[Compulsory Takata airbag recall](#)