Takata Recall Notice

Guidance for vehicle manufacturers

28 February 2018

Vehicle manufacturers (also known as Original Equipment Manufacturers or OEMs) have key obligations under the Recall Notice. The Recall Notice imposes the same obligations on OEMs and related bodies corporate or licensed distributors of the OEM, on the basis that many motor vehicles with Affected Takata Airbag Inflators supplied in Australia were not manufactured in Australia.

About the Recall Notice

The Recall Notice imposes recall obligations on a vehicle manufacturer in relation to a vehicle with an Affected Takata Airbag Inflator if they were the first to supply that vehicle in Australia. For vehicle manufacturers who may be importing new vehicles with Affected Takata Airbag Inflators into Australia, the Recall Notice prohibits the supply of a new vehicle with an Affected Takata Airbag Inflator after 31 December 2018. Those vehicles supplied before that date that contain an Affected Takata Airbag Inflator must be supplied with certain specified information and in accordance with certain requirements, as set out in the Recall Notice.

Vehicle manufacturers may satisfy any of their obligations under the Recall Notice by action undertaken by their dealer network or other authorised representatives. Vehicle manufacturers must ensure that dealers and authorised representatives comply with the requirements of the Recall Notice when acting on their behalf.

See also: Explanatory statement (Takata)

Obligations and penalties

If you fail to comply with your obligations under the Recall Notice, you may face financial and other penalties for contravening the ACL.

If you are a vehicle manufacturer, 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 vehicles (if not already under active recall) 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 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, at a minimum, include the methods specified in Schedule 2 of the Recall Notice. These broadly include:

- 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 advertising and public media to raise awareness of the recall more broadly, including print media advertisements, radio and television advertising, press releases, social media posts and paid advertising and digital advertising
■ 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, informative and easy to navigate web content and accessibility for consumers from a Culturally and Linguistically Diverse (CALD) audience and consumers who are Deaf or have a hearing or speech impairment), 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 five 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 five 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 second-hand vehicle market, you must submit a Second-hand 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 second-hand vehicle market, including to suppliers of spare parts (e.g. auto salvage yards, online platforms such as eBay).

Quarantine, retrieve 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 retrieve, at your own cost, any Affected Takata Airbag Inflator that has been removed from one of your vehicles or could be installed into one of your vehicles when notified by a supplier of spare parts. You must ensure that the Affected Takata Airbag Inflator that is retrieved is handled in the same way that you must handle an Affected Takata Airbag Inflator removed from a vehicle under the Recall Notice.

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

You must put in place arrangements with your dealer network (and any other authorised representative as necessary) to allow consumers to take their vehicle into any of your dealers or authorised representatives 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 regarding these communications and provide the written communications, notices and durable labels prescribed by the Recall Notice. It is intended that such communications are consistent with the relevant text prescribed in the Recall Notice prior to the approval of your Communication and Engagement Plan.

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.

Establish a Recall Database and provide recall information on your website

Establish a Recall Database on your website that allows consumers to check the recall status of their vehicle by no later than 2 July 2018.

Publish the Recall and Replacement Timetable, Recall Initiation Schedule, and Quarterly Completion Schedule on your website by no later than 2 July 2018.

Provide a means for consumers to update their contact details on your website so that they can be notified when recall action is initiated for their vehicle.

Provide information relating to the serious safety risk posed by Affected Takata Airbag Inflators and the need for prompt replacement once recall action is initiated. You must also:

- make clear to consumers whose vehicle is not currently under active recall, that their vehicle may later be recalled
- alert consumers that have had their airbag replaced following a collision that their vehicle may have been installed with an Affected Takata Airbag that requires replacement (this must also be used in direct communications), and
- if you are or have used new Affected Takata Airbag Inflators as replacements, make clear that in some cases, replacement airbags may need to be replaced to ensure long term safety.

Appoint an independent auditor

You must appoint an independent auditor to monitor your compliance with the Recall Notice.

You must submit the name and qualifications of your nominated auditor to the ACCC by no later than the commencement of quarter three of 2018. The ACCC will advise you if it accepts the independence and qualifications of your nominated auditor. The Recall Notice outlines the process for obtaining ACCC approval of your nomination in greater detail.

You may jointly nominate an auditor with other suppliers.

The auditor must provide reports to you on a quarterly basis and these must also be provided to the ACCC. The auditor must make recommendations for improvement of your recall actions and assess implementation of previous recommendations made to you.

You may apply to the ACCC for an exemption from this requirement based on your replacement rates, the number of unrectified vehicles and any other relevant factors.

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.

On a quarterly basis, you must provide reports that include updates to any notifications you have made to the ACCC about misdeployments as well as
information about consumer complaints received and how they are being managed.

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 monthly basis and submitted to the ACCC within 10 business days of the end of each month.

You must submit a Baseline Completion 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 no 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.

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
- vary its obligations regarding its Recall Database and recall information on its website
- end recall obligations as to affected vehicles under certain circumstances
- obtain exemption from all or some of the obligations regarding appointment of an independent auditor, and
- vary content of its Communication and Engagement Plan.
# Reporting requirements

<table>
<thead>
<tr>
<th>Due date</th>
<th>Requirement</th>
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<tbody>
<tr>
<td>3 April 2018</td>
<td>Submit your proposed Communication and Engagement Plan to the ACCC for approval by Tuesday 3 April 2018.</td>
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<tr>
<td>3 April 2018</td>
<td>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.</td>
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<tr>
<td>1 May 2018</td>
<td>Submit your proposed Second-hand Vehicle Action Plan to the ACCC for approval by Tuesday 1 May 2018.</td>
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<tr>
<td>Ongoing obligation commences April 2018</td>
<td>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.</td>
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<tr>
<td>Ongoing obligation commences 1 June 2018</td>
<td>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.</td>
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<tr>
<td>2 July 2018</td>
<td>Submit details of your proposed Independent Auditor to the ACCC for approval by no later than Monday 2 July 2018.</td>
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<tr>
<td>2 July 2018</td>
<td>Submit your Baseline Commencement Report to the ACCC on Monday 2 July 2018.</td>
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<tr>
<td>2 July 2018</td>
<td>Establish a Recall Database on your website by no later than Monday 2 July 2018.</td>
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<tr>
<td>2 July 2018</td>
<td>Publish your Recall and Replacement Timetable, Recall Initiation Schedule and Quarterly Completion Schedule on your website by no later than Monday 2 July 2018.</td>
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<tr>
<td>Ongoing obligation commences July 2018</td>
<td>Submit your first report to the ACCC summarising information required to be tracked in regard to consumer complaints and reports of misdeployment by Friday 13 July 2018. These reports must be submitted to the ACCC within 10 business days of the end of each calendar quarter.</td>
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<tr>
<td>Ongoing obligation commences October/November 2018</td>
<td>Submit the first report from your Independent Auditor to the ACCC within one week of receipt. These reports must be made to you by the Independent Auditor within one month of the end of each calendar quarter and submitted to the ACCC within one week of receipt.</td>
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<tr>
<td>Ongoing obligation commences October 2018</td>
<td>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.</td>
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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](http://www.accc.gov.au)