

# BULLETIN

## VACC Industry Divisions



Reference No: Takata-05-2019

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### **ACCC focus on Dealers who fail to notify consumers of vehicles affected by Future and Active Takata Airbag Recall status.**

Members are advised that the Australian Competition and Consumer Commission (ACCC) are responsible for administering the Consumer Goods (Motor Vehicles with Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018 (the recall).

Members are advised that the ACCC is now reacting to consumer complaints regarding the sale of vehicles with affected Takata Airbags.

#### **About the recall**

The compulsory recall was first announced on 27 February 2018 by the then Assistant Minister to the Treasurer, The Hon. Michael Sukkar MP. You can access information about the [compulsory recall](#) by taking the highlighted link.

#### **How many vehicles have been rectified?**

The number of affected vehicles within Australia was estimated to be approximately 3.8 million.

It is pleasing to see that in the year since the recall was first announced that the dealership network has handled approximately 2.8 million of these vehicles.

#### **What is the current ACCC focus?**

ACCC is now dealing with a number of consumer complaints relating to the retail sale of vehicles by dealers with affected Takata Airbags where the dealer may not have notified a consumer in accordance with the requirements of the recall notice.

ACCC is writing to those dealers to remind them of their obligations and asking dealers to provide the ACCC with the following:

- A copy of your dealership policy and procedures in relation to checking a Takata Airbag recall status of a vehicle prior to sale.
- Advice as to whether your franchisor provided clear instruction and communication to your dealership(s) regarding the recall notice and to provide copies of those communications to the ACCC.
- Documents pertaining to the transgressed deal.
- Details of any other consumer complaints regarding Takata Airbag Recall.
- Indication as to whether your dealership has sold any other affected vehicles without first notifying the consumer in accordance with the recall notice

VACC advises members to cooperate fully with any ACCC request. Do not ignore the ACCC request. If you have any queries, please call VACC in the first instance.

#### **Dealer obligation when retailing a Takata Airbag affected vehicle**

Members are reminded of their obligation(s) to consumers when retailing a vehicle to a consumer after 27 February 2018 that are affected by the recall. To ensure compliance please follow the guidance below.

The key points for dealing with these affected cars are the following:

### **Vehicle subject to an Active or Alpha Airbag Recall**

The **only** action a LMCT can take with an affected Active or Alpha Airbag is to have that airbag replaced.

Under no circumstances can a vehicle under an Alpha or Active Recall be sold to a consumer, wholesaled, transferred, auctioned or supplied to a person in trade or commerce. The same obligation does not apply to the Private-Private Market.

The **only** thing you can do as an LMCT is have that vehicle sent to a dealership to have the Takata Airbag Recall work completed.

Takata Alpha Airbags are to be treated as an absolute priority. VACC has advised VicRoads that VACC would support the registration suspension of any vehicle subject to an Alpha Recall.

Your staff should by this stage know all procedures when dealing with Alpha or Active Recalls.

### **Vehicle subject to a Future Recall**

LMCTs can continue to retail these vehicles with the mandated obligation to inform the **purchaser in writing, and orally**, that the vehicle is subject to a Future Recall.

Prescribed wording has been included in the recall notice.

A copy of the prescribed wording is listed in the two links below. You should print these forms and ensure your staff are aware of the procedure when retailing a vehicle subject to a Future Recall.

### **Selling a future recall vehicle (less than six years old)**

A form to assist Dealers communicate prescribed information to consumers for vehicles that are less than six years post manufacture is available by [taking this link](#). The form should be included in your deal packs. One signed copy for dealer and one signed copy for the consumer.

### **Selling a future recall vehicle (more than six years old)**

A form to assist dealers communicate to consumers prescribed information for vehicles that are more than six years post manufacture is available by [taking this link](#). The form should be included in your deal packs. One signed copy for dealer and one signed copy for the consumer.

### **Consumers who purchase a vehicle subject to a Future Recall must receive the applicable form before a contract of sale is signed.**

### **Punitive Measures available to ACCC**

Under Australian Consumer Law (ACL) maximum penalties apply per breach of the ACL for the supply of consumer goods that do not comply with safety standards. The fines can be up to a \$10 million fine; three times the value of the benefit received; or 10% of annual turnover in the preceding 12 months.

Your employees are also at risk in this regard as Individuals found responsible for the breach of ACL could be looking at a \$500,000 penalty.

Please call me at VACC with any issues.

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