



## VACC BRIEFING PAPER

### Takata Airbag Recall: The impact on franchise and independent used car motor vehicle dealers

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**For: Australian Competition and Consumer Commission (ACCC)**

#### Background

In 2008, multiple incidents involving misdeployment of Takata airbags were reported in the United States and other countries around the world. These incidents resulted in the death of motorists and several 'near misses' to persons carrying out mechanical work on affected vehicles.

The VACC membership base represents approximately 1,400 Victorian based LMCTS from a wide range of franchise dealerships and independent traders crossing many sectors. All would be affected in some regard with the Takata airbag recall. All VACC members have been advised of the ACCC's list of vehicles subject to a voluntary recall of all vehicles fitted with airbags supplied by the Japanese based parts supplier.

The recall has been the cause of major concern for VACC members, in particular, those who retail new and used cars. The issue centres on product safety obligations and worst-case consequences, as mandated under the provisions of the Australian Consumer Law (ACL). For dealers, the issue is compounded by the brand damage created by an issue for which dealers have no control, and expenses incurred on behalf of the manufacturer in carrying out the recall work.

Since 2009, more than 2.3 million vehicles in Australia have been effected by the Takata airbag recall. The airbags are in 60 makes of cars sold in Australia, including: Honda, Toyota, BMW, Mitsubishi, Subaru, Lexus, Jeep, Nissan, Chrysler, and Dodge. To date, the Takata airbag recall is the largest ever automotive recall, affecting up to 100 million cars worldwide<sup>1</sup>.

Mainstream media report that faulty Takata airbags have been linked to 18 deaths globally<sup>2</sup>. One of which occurred in Sydney in June 2017.

#### Current local situation

The ACCC advised VACC at a recent meeting of the Victorian Automobile Dealers Association (VADA), that there are approximately 1.5 million vehicles in Australia that are currently subject to a recall, but have not had Takata Airbag Inflators replaced<sup>3</sup>.

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<sup>1</sup> [https://infrastructure.gov.au/vehicles/recalls/recall\\_of\\_vehicles\\_fitted\\_with\\_takata\\_airbags.aspx](https://infrastructure.gov.au/vehicles/recalls/recall_of_vehicles_fitted_with_takata_airbags.aspx)

<sup>2</sup> <https://www.carsguide.com.au/car-news/takata-airbag-linked-to-australian-death-57787>

<sup>3</sup> <https://consultation.accc.gov.au/product-safety/takata-airbag-compulsory-recall/>

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On 21 September 2017, the Minister for Small Business, the Hon. Michael McCormack MP, issued a proposed recall notice for a compulsory recall of certain vehicles installed with defective Takata airbags and inflators salvaged from these vehicles<sup>4</sup>. The proposed recall notice aims to address and correct all affected vehicles by 31 December 2020.

### **Notification to owners of affected vehicles**

It is VACC's understanding that original owners of recalled vehicles have been notified by mail from the vehicle manufacturer. However, it has been revealed that second, and subsequent owner details are generally not supplied by a vehicle manufacturer. Discussions with VicRoads in 2015 informed VACC that manufacturers affected by this recall have an agreement in place with the National Exchange of Vehicle and Driver Information System (NEVDIS). NEVDIS hold information related to the second and subsequent registered owners of vehicles. VACC notes that manufacturers use the information provided by NEVDIS to communicate a recall notice to current owners who may not have been the original purchaser.

Dealers are perplexed at the level of apathy of some owners who either ignore the many recall notices sent to them, or remain ignorant to the situation with their vehicle. Dealers believe that once reasonable efforts have been made to advise a current owner of the recall that the onus should be placed firmly with the consumer to ensure they make arrangements to have the recall work completed at a Franchise Dealer. It must be made clear to consumers that recall work cannot to be completed by untrained aftermarket repairers.

### **Recall impacts on dealerships**

The magnitude of this recall has meant that the effect on dealership business has been significant. VACC interviewed VADA members with a view to highlighting the repercussions such a recall has at the local dealership level. The following points are made.

#### *Increase in new car dealership cost*

- Inordinate level of customer inquiries requesting more information relating to the recall and the booking of recall work. This has meant dealerships have had to employ more staff to process a higher level of consumer contact compared to normal level of enquiry.
- Dealerships have been forced to upgrade their phone systems to a call centre agent-based system to cope with the volume of calls.
- Dealership workshops typically have a mix of retail customer, warranty (recall) and internal work. The recall warranty work has changed the mix, with less retail work able being undertaken in some dealerships, however the same cost structure exists to run the business.
- Warranty work is generally paid at a lower rate than retail work. This rate is set by the manufacturer.

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<sup>4</sup> <https://consultation.accc.gov.au/product-safety/takata-airbag-compulsory-recall/>

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- Retail and loyal customers must wait longer for their service. As a result, dealerships are losing some of their loyal customers. This impacts dealers as penalties from the manufacturer are enforced in reaction to negative consumer feedback via Customer Satisfaction Index surveys.
  - The provision of loan cars for consumers affected by the recall is also an issue. Loan cars are not exempt from state-based motor duty<sup>5</sup>. Dealers will be forced to increase the number of loan cars or pay a consumer out of pocket expenses for a rental car. An unbudgeted increase in state based motor vehicle duty's is impacting severely on dealerships.

### *Change to operation of new car dealership*

- The increase in overall volume of service (recall) customers into dealerships, has meant reducing new car inventory on some dealer sites to allow for a higher number of customer cars to be parked for the duration of recall service visit.
- In some instances, dealership staff are removed from their contracted work roles to become parking officers.
- Over the Christmas period, dealers would usually see an upsurge in retail work for customers wanting cars serviced and safety checked for impending driving holidays.
- Dealerships have reported a loss of productivity due to warranty clerks needing to package the Takata airbags and send them back to the Original Equipment Manufacturer. This has been estimated to take up to half a day per week.
- Some dealerships/ brands must send technician(s) to manufacturer based training for the recall.
- Dealers have advised that some manufacturers are issuing edicts that pressure dealers to forsake retail work and purely concentrate on recall work.
- The storage of airbags onsite has resulted in some dealerships requiring redevelopment or introduction of storage facilities to store replacement parts.
- It is estimated that each Takata airbag replacement can take from .5 of an hour, to up to 2 hours to complete.

### *Staff implications*

- Dealerships have reported an increase in turnover of Service Advisors due to the excessive workload, abusive phone calls or hostile interactions from customers who feel their safety is in jeopardy.
- Many customers do not understand why they must wait for the recall work to be undertaken.

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<sup>5</sup> <http://www.sro.vic.gov.au/sites/default/files/DA-034.pdf>

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- The aggregated number of calls and verbal abuse by aggrieved consumers has escalated. This contributes to an unsafe workplace and has already resulted in lost productivity and lack of job satisfaction.
  - Additional pressure is felt over the Christmas holiday period when more staff are on leave. The manpower roster needs to be considered and dealership staff who have planned annual leave will have this interrupted in order to complete recall work.

### **The role of the manufacturer**

The role of the manufacturer in this, and similar types of issues, cannot be overstated.

Franchise dealers and used car operators, who are not aligned or of the respective brands, seek absolute surety that all manufacturers will assist without delay or discrimination. There has always been a concern from dealers regarding manufacturer behavior or attitude in this regard. ACCC must not let this fester.

It is the dealerships and retailers of the affected vehicles who risk suffering reputational damage from recalls such as this.

Dealerships understand that manufacturers are dependent on a third-party supplier [Takata] to service this kind of recall. If the parts stock doesn't exist, the manufacturer cannot commence the rectification process.<sup>6</sup> This leads to consumer dissatisfaction and reputational damage in an already overcrowded marketplace.

All manufacturers must be officially reminded by ACCC to support the dealer network and expedite any claims made by dealers under ACL provisions.

### **Timing of proposed recall**

Dealers request to Government that if any compulsory recall announcement is announced that it be deferred until late February 2018. This would allow for dealerships to further advance plans around logistical issues such as internal supply issues and document procedures related to handling the influx of recall work.

### **Section 127 (2) Australian Consumer Law**

Dealers and independent traders seek exemption, and protection, from the activation of ACL provisions as far as sale of products with a known compulsory recall attached as mandated by ACL Section 127 (2)<sup>7</sup>. It is our view that this section of the ACL was never meant for such a recall of this gravity involving such expensive, complex and non-passive product such as a motor vehicle. This section of the ACL, if activated, will have catastrophic business and social consequences for the retail automotive sector and other

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<sup>6</sup> <https://www.choice.com.au/transport/cars/general/articles/airbags-that-kill-australia-stalls-on-takata-airbag-recall>

<sup>7</sup> [https://www.legislation.gov.au/Details/C2017C00281/Html/Volume\\_3#\\_Toc492381603](https://www.legislation.gov.au/Details/C2017C00281/Html/Volume_3#_Toc492381603)

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industries reliant upon the sale of used motor vehicles. There must be an alternate, common sense solution to protect the prosperity of this industry and its 360,000 employees<sup>8</sup>.

Finally, dealers seek support from the ACCC via media releases and statements that clearly articulate and inform mainstream media, and the community, that this issue was not created by dealers. The current dealership network is technically proficient and equipped to handle the volume of recall work entering the system. The dealer network and independent used car traders seek a reasonable approach from ACCC, realistic service expectations of consumers and absolute cooperation from manufacturers.

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<sup>8</sup> Directions in Australia's Automotive Industry Report 2017