



Takata Recall - compliance and enforcement approach regarding written-off vehicles

May 2019

This guidance is to outline the position of the Australian Competition and Consumer Commission (**ACCC**) on compliance and enforcement under the compulsory Takata airbag recall with respect to written-off vehicles under active recall.

Background

Supplying dangerous Takata airbag inflators is prohibited in certain circumstances under the Government's compulsory [Takata airbag recall](#). For example, a vehicle under active recall (defined below), cannot be supplied (by anyone in trade or commerce) until its Affected Takata Airbag (**ATAI**) is replaced. A commercial Supplier must make arrangements with the relevant original equipment manufacturer (**OEM**) to have the ATAI replaced prior to supply.

You can find out the recall status of a vehicle by going to the vehicle manufacturer's website or contacting them directly, searching the registration number on the website IsMyAirbagSafe.com.au or looking up the Vehicle Identification Number (VIN) on the ACCC's [Product Safety Australia](#) website.

- An **active recall** is when a Supplier has taken steps to contact consumers to commence the replacement of a vehicle's ATAI.

Written-off vehicles

Written-off vehicles are damaged vehicles and are classified as either a statutory or repairable write-off.

- A **statutory write-off** is a vehicle that has been damaged so severely that it should not be repaired. These vehicles cannot be re-registered anywhere in Australia; however, parts from these vehicles may be sold and used to repair other vehicles.
- A **repairable write-off** is a vehicle that has been damaged and can be repaired, but the cost of repairs would probably be more than the vehicle is insured for.

If a written-off vehicle is under active recall, the Recall Notice requires its ATAI to be replaced prior to supply of the vehicle. The ACCC is aware that this prohibition on supply gives rise to a number of issues in relation to written-off vehicles:

- There is a finite supply of replacement airbags, and it is not an efficient use of these scarce resources for them to be installed in vehicles which have a low likelihood of ever being driven again by Australian consumers, and are more likely to be dismantled and destroyed (crushed).

- There are a number of practical difficulties in complying with the requirement to safely replace ATAs prior to supply of written-off vehicles due to the damaged condition of the vehicle.
- There are concerns that the prohibition on the supply of vehicles under active recall has resulted in a reduction in the supply of written-off vehicles, which are required by auto recycling and dismantling businesses as a source of scrap metal and spare parts.

Compliance and enforcement approach

It is important that businesses comply with their obligations under the Recall Notice. The ACCC, in conjunction with the state and territory consumer regulators, will be conducting market surveillance checks to make sure businesses are complying with the Recall Notice.

The ACCC is aware that some businesses may experience practical challenges in complying with the Recall Notice in relation to written-off vehicles. It notes that requiring scarce replacement airbags to be installed in vehicles with a low likelihood of ever being driven again by Australian consumers is not the best use of those scarce resources. While the ACCC cannot provide exemptions from the law, we do have discretion about the matters we investigate or how we resolve concerns.

Where we identify possible non-compliance, we will take into account the surrounding circumstances. In relation to written-off vehicles under active recall, the ACCC will take into account whether a business followed the steps set out in **Attachment A**. The two flow charts below summarise these steps.

For example, the ACCC will generally distinguish between a business that makes genuine efforts to comply with the approach set out in Attachment A, and a business that seeks to circumvent the requirements of the Recall Notice. The ACCC is unlikely to take enforcement action where a business has made genuine efforts to comply, takes the steps set out in Attachment A, is responsive to our concerns and agrees to timely remediation.

The ACCC will look to resolve most matters by providing businesses with information and seeking changes to address non-compliance. In line with the principles set out in our [Compliance and Enforcement Policy](#), we will escalate matters for an enforcement approach where stronger action is warranted.

The ACCC is more likely to take enforcement action where businesses:

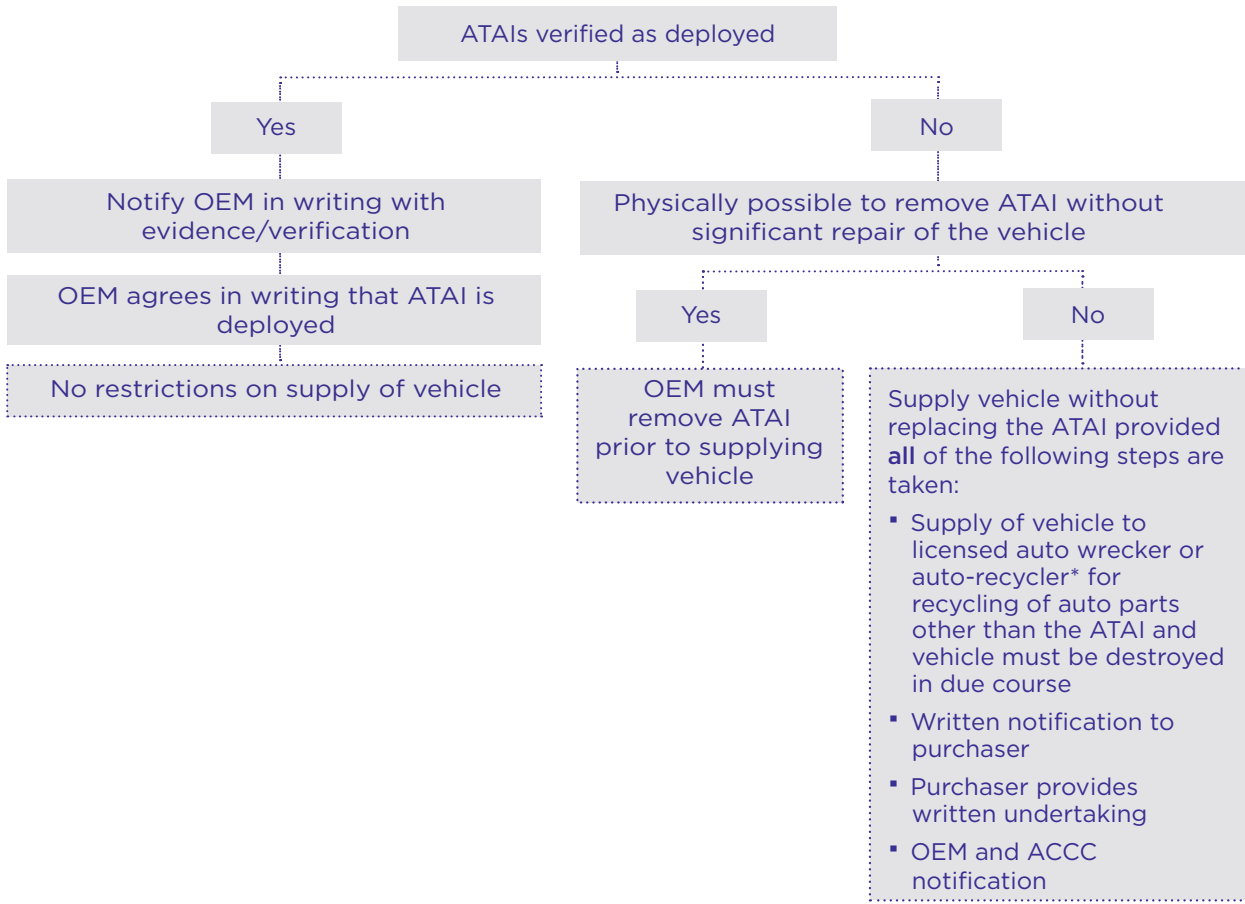
- fail to follow the steps set out in Attachment A or fail to comply with other aspects of the compulsory Takata airbag recall
- fail to respond to our compliance concerns
- choose not to take steps to mitigate compliance failures.

In addition, the ACCC is more likely to take action where such conduct is undertaken by large or national traders, and the conduct impacts a large number of consumers.

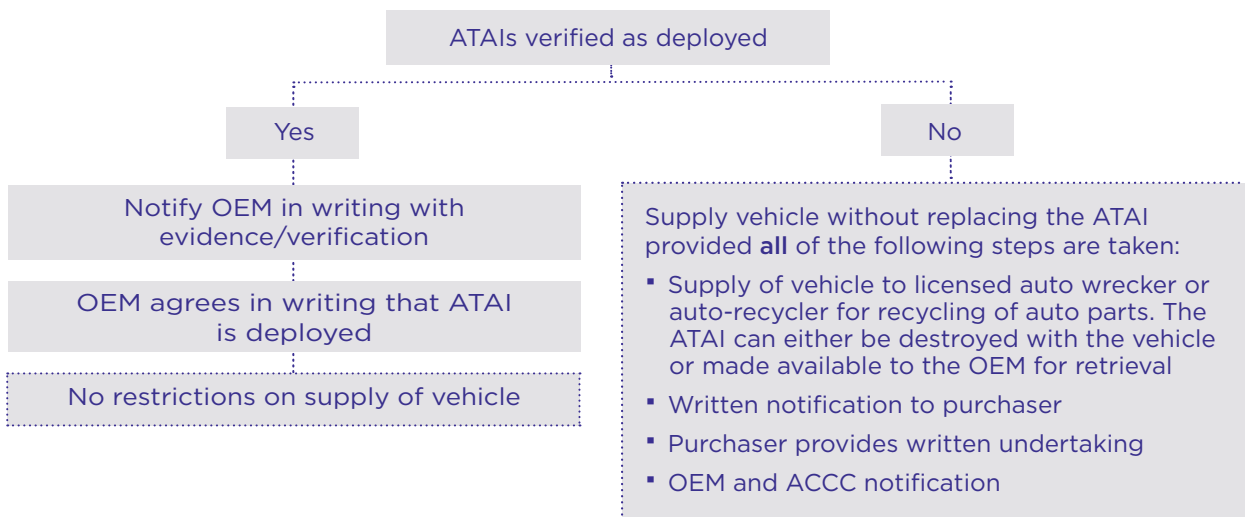
Although the ACCC has discretion about the matters we investigate or how we resolve concerns, businesses that supply vehicles in contravention of the prohibition on the supply of vehicles under the Recall Notice and the Australian Consumer Law (**ACL**) may nevertheless be subject to action by other ACL regulators or private individuals.

In addition to contravening the ACL and being exposed to related civil penalties, persons who supply affected vehicles under active recall will also be exposed to the risk of liability for injury or death arising from the supply under section 127(3) of the ACL. You should therefore seek your own legal advice where appropriate.

Written-off vehicles under active recall with Alpha inflators



Written-off vehicles under active recall with non-Alpha inflators



* That is, an auto wrecker or auto-recycler licensed to operate in accordance with applicable regulations in any state or territory of Australia.

Attachment A

Vehicles with Alpha inflators

1. If each ATAI is not able to be verified as already deployed, then:
 - (a) if it is physically possible to remove the ATAI without significant repair of the vehicle, then the ATAI must be removed by the OEM prior to supply; or
 - (b) if it is not physically possible to remove the ATAI without significant repair of the vehicle, then the vehicle may be supplied to a licensed auto wrecker or auto-recycler for recycling of auto parts other than the ATAI, and the vehicle must be destroyed in due course. In the case of such supply:
 - i. the purchaser must be notified in writing via a durable sticker in a prominent place on the vehicle, such as on the front windscreen or the driver or passenger window noting the presence of the Alpha ATAI and that the ATAI must be destroyed with the vehicle;
 - ii. the purchaser must provide a written undertaking that:
 - a. the ATAI will not be on-supplied and will be destroyed with the vehicle in due course (that is, not removed and destroyed, but destroyed in the process of entire vehicle destruction);
 - b. the purchaser will keep a written record of the destruction of the ATAI, including the date of destruction and the VIN, and they will provide a copy of that record to the OEM and the ACCC within a reasonable time after destruction; and
 - iii. the OEM and the ACCC must be provided with details of the supply (including the VIN, date of supply, details of the purchaser and a copy of the purchaser's signed undertaking).
2. If each ATAI is verified as already deployed, the OEM must be notified in writing with the evidence/basis of the verification noted (e.g. photo and/or written confirmation). If the OEM agrees in writing that the ATAI is already deployed, then there are no restrictions on the supply of the vehicle.

Vehicles with an ATAI(s) that are not Alpha inflators under active recall

1. If each ATAI is not able to be verified as already deployed, then the vehicle may be supplied to a licensed auto wrecker or auto-recycler. In the case of such supply:
 - (a) the purchaser must be notified in writing via a durable sticker in a prominent place on the vehicle, such as on the front windscreen or the driver or passenger window noting the presence of the ATAI and that the ATAI must be either: (i) destroyed with the vehicle; or (ii) made available to the relevant OEM for retrieval;
 - (b) the purchaser must provide a written undertaking that:
 - i. the ATAI will not be on-supplied and will either be destroyed with the vehicle in due course (that is, not removed and destroyed, but destroyed in the process of entire vehicle destruction) or will be made available to the OEM for retrieval (in compliance with the Spare Parts provisions in the Recall Notice); and
 - ii. where the ATAI is destroyed with the vehicle, the purchaser will keep a written record of the destruction of the ATAI, including the date of destruction and the VIN, and they will provide a copy of that record to the OEM and the ACCC within a reasonable time after destruction;
 - (c) the OEM and the ACCC must be provided with details of the supply (including the VIN, date of supply, details of the purchaser and a copy of the purchaser's signed undertaking); and
 - (d) the remaining parts of the vehicle (other than the ATAI) may be salvaged and supplied. That is, even where an ATAI is to be destroyed with the vehicle, that can occur after other parts are salvaged.
2. If each ATAI is verified as already deployed, the OEM must be notified in writing with the evidence/basis of the verification noted (e.g. photo and/or written confirmation). If the OEM agrees in writing that the ATAI is already deployed, then there are no restrictions on the supply of the vehicle.

Template undertakings are available on the [Product Safety Australia](https://www.productsafety.gov.au) website.