

Settlement Notice

Important Legal Notice

Takata Airbag Class Actions against Toyota, Subaru, Honda, BMW, Nissan and Mazda

NOTICE OF PROPOSED SETTLEMENT

1. Summary

This notice contains important information about the proposed settlement of the class action proceedings filed in the Supreme Court of New South Wales in relation to approximately 2 million Toyota, Lexus, Subaru, Honda, BMW, Nissan and Mazda branded vehicles on behalf of consumers affected by Takata airbag recalls (together, the **Takata Airbags Class Actions**). This notice does **not** relate to a similar class action brought in relation to Volkswagen branded vehicles affected by Takata airbag recalls.

Please read it carefully. If you are a group member in the Takata Airbag Class Actions, your legal rights will be affected by the proposed settlement. To work out whether you are a group member, see section 3 below.

If you do not understand this notice or you have any questions, you should contact the lawyers for the plaintiffs in the class actions, Quinn Emanuel, or seek independent legal advice. The Court is not able to answer questions about the proposed settlement.

PROPOSED SETTLEMENT

The parties to the Takata Airbag Class Actions have agreed to a proposed settlement of **\$52 million** and intend to shortly apply to the Court for approval of that settlement on behalf of the plaintiffs and group members. If the Court approves the settlement, eligible group members will be entitled to receive a settlement payment from the approved settlement sum after deduction of legal fees, administration costs and litigation funder's remuneration.

WHAT GROUP MEMBERS NEED TO DO

If you are a group member and want to claim a settlement payment you must **register by 4:00pm AEDT on 18 February 2022**. Instructions about how to register appear at section 8 below.

If you fail to register before the deadline and the proposed settlement is approved, you will lose: (a) your right to receive a settlement payment and (b) any rights you may have in relation to the circumstances giving rise to the Takata Airbag Class Actions.

CONTACT DETAILS

You can contact Quinn Emanuel for further information at takata@quinnemanuel.com

Note: if you owned or leased a Toyota Corolla vehicle (Model Years 2003-2005) affected by recall notice PRA 2020/18579 issued in September 2020, then you should visit the settlement and opt out notice at:

https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx.

If you do not/did not own a vehicle affected by recall notice PRA 2020/18579, you should not click the link and should continue reading this notice.

Questions? Visit www.airbagclassaction.com

2. What are the Takata Airbag Class Actions about?

In summary, the plaintiffs allege that, in importing, marketing and supplying certain vehicles fitted with specific Takata airbag/s in Australia, the defendants:

- (a) failed to comply with the merchantable quality guarantee in the Trade Practices Act 1974 (Cth) or acceptable quality guarantee in the Australian Consumer Law;
- (b) engaged in misleading or deceptive conduct; and
- (c) engaged in unconscionable conduct,

as a result of which the plaintiffs say that group members suffered economic loss, including out of pocket expenses.

The defendants deny these allegations.

The key court documents filed in the Takata Airbag Class Actions can be found here: https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx

3. Are you a Group Member?

You are a group member of the Takata Airbag Class Actions if you satisfy **each** of the following requirements:

- (a) at any time during the Relevant Period (set out below for each vehicle make), you acquired a Toyota, Lexus, Subaru, Honda, BMW, Nissan or Mazda branded vehicle in Australia that was fitted with a front driver or passenger airbag manufactured or supplied by Takata Corporation, and which has been the subject of a Takata safety recall; **and**
- (b) you still owned (or leased) that vehicle on 27 February 2018; and
- (c) you did not opt out of the Takata Airbag Class Actions, by completing and submitting an opt out notice by the Court-ordered opt out deadline.

The Relevant Period for each brand of vehicle is:

Make	Relevant Period
Toyota	1 November 2000 to 27 February 2018
Lexus	1 November 2000 to 27 February 2018
Subaru	1 January 2004 to 27 February 2018
Honda	1 January 2001 to 27 February 2018
BMW	1 January 1999 to 27 February 2018
Nissan	1 January 2000 to 27 February 2018
Mazda	1 January 2002 to 27 February 2018

Please see **section 11** of this notice for a list of affected models.

4. Overview of proposed settlement

Before the proposed settlement can take effect, it must be approved by the Supreme Court of New South Wales (see **section 9**).

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Under the proposed settlement and with no admissions as to liability, the defendants will pay \$52 million (**settlement sum**) to settle the Takata Airbag Class Actions inclusive of legal costs, expenses, disbursements, interest and any funding commission approved by the Court.

As part of the proposed settlement:

- (a) Regency intends to seek orders from the Court that it be paid \$13 million out of the settlement sum for funding the six separate representative proceedings (comprising the Takata Airbag Class Actions), being 25% of the settlement sum (see **section 6**);
- (b) the plaintiffs intend to seek an order for reimbursement of the reasonable legal costs incurred in the Takata Airbag Class Actions, estimated at approximately \$15,300,000 (see **section 7**);
- (c) the plaintiffs intend to apply to the Court for an order that the costs of administering the settlement be payable from the settlement sum (see **section 7**); and
- (d) the plaintiffs intend to apply to the Court for an order that they each be paid an amount of \$20,000.00 as reimbursement for the time and expenses incurred in their role as lead representatives in the Takata Airbag Class Actions.

It is proposed that the amounts set out above be deducted from the settlement sum prior to distribution of compensation to eligible group members. The effect of this is that the Court-approved funding commission and legal costs will be shared on a pro-rata basis by all eligible group members.

5. What settlement payment will you be entitled to?

The amount of the settlement payment to be paid to each individual group member cannot be determined at this stage as it will depend on a number of factors, including the amount of legal fees and funding commission ultimately approved by the Court to be paid from the settlement sum, and how many group members register to take part in the proposed settlement. Group member eligibility will be assessed in accordance with the court-approved scheme for determining group member entitlements (**settlement scheme**). If approved by the Court, the amount paid in respect of each eligible vehicle will be the same, regardless of brand or model of vehicle.

6. Payment to litigation funder

The plaintiffs in the proceedings are funded by a litigation funder, Regency Funding Pty Ltd (**Regency**). Regency intends to apply to the Court for an order for Regency to be paid \$13 million, being 25% of the settlement sum, or a lesser amount that the Court considers to be just. The purpose of this type of order (known as a 'common fund order') is to compensate Regency for funding the Takata Airbag Class Actions. The Court will decide whether it considers a 'common fund order' to be appropriate and, if so, the amount to be paid to Regency. This amount will be deducted from the settlement sum, prior to settlement payments being distributed to eligible group members.

7. Will Group Members be liable for legal costs?

The plaintiffs intend to apply to the Court for an order having the effect that the costs that the plaintiffs have incurred (and will incur) in conducting the Takata Airbag Class Actions for the benefit of all group members will be paid out of the overall settlement sum. This will include the costs of administering the settlement scheme (see **section 5**).

The plaintiffs estimate that the total costs that will be incurred in conducting the six Takata Airbag Class Actions, from the beginning of each proceeding up to the end of distribution of the settlement sum to all eligible group members, will be approximately **\$15,300,000**. This figure includes costs already incurred and estimated future costs relating to the settlement approval and management of the settlement scheme, and is subject to review by an independent costs expert. The Court will be asked to approve the payment of legal costs from the overall settlement sum. Group members are not responsible for any out of pocket costs.

Group members do not need to pay any out of pocket costs to register for a settlement payment.

8. What Group Members must do

If you are a group member, there are three **(3)** options you must consider:

Option 1: If you support the proposed settlement and wish to be eligible for a settlement payment you **must** register your interest to participate in the settlement by completing and submitting a registration form online at **www.airbagclassaction.com**, or by requesting a PDF copy by emailing the Settlement Administrator at **info@airbagclassaction.com** and returning a completed form to the Administrator by email. The deadline to register is **4:00pm AEDT on 18 February 2022**.

Registrations received after 4:00pm AEDT on 18 February 2022 will not be accepted.

Option 2: If you oppose **any** of the terms of the proposed settlement and wish to object then you must complete the “**Notice of Objection**” which appears at **Schedule A** to this Notice. The deadline to object to the proposed settlement is **4:00pm AEDT on 18 February 2022**.

Please note: Even if you do object to the settlement, but wish to receive a settlement payment if the settlement is approved, you should still register in accordance with Option 1 in case your objection is overruled and the settlement takes effect.

Option 3: Do nothing in response to this notice. If you do not register by **4:00pm AEDT on 18 February 2022** and the proposed settlement is approved, you will lose: (a) your right to receive a settlement payment; and (b) any rights, including any rights to a settlement payment, you may have in relation to the circumstances giving rise to the Takata Airbag Class Actions.

If you are not sure what to do, you should contact Quinn Emanuel or seek independent legal advice.

9. Court approval hearing

The Court will hold a public hearing to decide whether the settlement is fair and reasonable and in the interests of group members. The hearing will be held at the **Supreme Court of New South Wales, Law Courts Building, Queen's Square, 184 Phillip Street, Sydney, NSW 2000**. It is not necessary for group members to attend this hearing in order to receive a settlement payment, but group members may attend if they wish and can contact Quinn Emanuel for details of when the hearing will take place.

Questions? Visit www.airbagclassaction.com

You have a right to apply to be heard on the question of whether approval of the settlement should be granted. As noted above, if you wish to object you must complete the Notice of Objection appearing at Schedule A to this notice, and send a copy of that form to Quinn Emanuel by **4:00pm AEDT on 18 February 2022**. If you object to the settlement being approved, you or your lawyer may also present your position to the Court at the hearing where the Court will decide whether to approve the settlement.

If the Court approves the settlement, the settlement will be binding on all group members and will extinguish the claims of all group members (including all claims arising from or related to any circumstance or allegation giving rise to or referred to in the Takata Airbag Class Actions).

10. What happens if the settlement is not approved?

If the proposed settlement is not approved by the Court, the Takata Airbag Class Actions will continue and there will be no distribution of monies to group members unless the plaintiffs are successful in the proceeding, or a further settlement is reached.

11. Affected vehicle models

The affected vehicle models in the Takata Airbag Class Actions are set out below:

Make	Models
Toyota	<p><u>Driver side airbag inflator recalls:</u> ECHO (NCP10, NCP13) (MY2002-2005) and RAV4 (ACA22, ACA23) (MY2003-2005).</p> <p><u>Passenger side airbag inflator recalls:</u> COROLLA ZZE121 (MY2003), ZZE122 (MY2001-2007); ZZE123 (MY2003-2005); COROLLA ZRE152 (Hatch) (MY2006-2013); Corolla ZRE152 (MY2006-2013); ZRE153 (Sedans) (MY2010-2013); Rukus AZE151 (MY2010-2015); AVENSIS ACM20 (MY2001-2003); ACM21 (MY2003-2009); YARIS (Hatch) NCP90 (MY2005-2011); NCP91 (MY2005-2011); YARIS (Sedan) NCP93 (MY2006-2016).</p>
Lexus	<p><u>Passenger side airbag inflator recalls:</u> SC430 (UZZ40 FN48Y) (MY2001-2006); SC430 (UZZ40 FN45Y) (MY2006-2010); IS250 (GSE20) (MY2005-2013); IS250C (GSE20) (MY2009-2014); IS350 (GSE21) (MY2010-2013); ISF (UES20, USE21) (MY2008-2014); LFA (LFA10) (MY2011-2012).</p>
Subaru	<p><u>Passenger side airbag inflator recalls:</u> Exiga (MY10-MY15); Forester (MY09-MY12); Impreza (MY04-MY11); Liberty (MY04-MY14); Outback (MY04-,MY14); Tribeca (MY07-MY13); WRX (MY04-MY14), WRX STI (MY04-MY14).</p>
Honda	<p><u>Driver side airbag inflator recalls:</u> Accord (MY01-MY07); City (MY09-MY12); Civic (MY06-MY11); CR-V (MY02, MY07-MY11); Insight (MY10-MY13); Jazz (MY04-MY14); Jazz Hybrid (MY12-MY13); Legend (MY07-MY12); MDX (MY03-MY06).</p> <p><u>Passenger side airbag inflator recalls:</u> Accord (MY03-MY12); Accord Euro (MY03-MY15); City (MY09-MY12); Civic (MY01-MY11); CR-V</p>

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Honda (continued)	(MY02-MY11); Insight (MY10-MY13); Jazz (MY03-MY14); Jazz Hybrid (MY13) Legend (MY07-MY12); MDX (MY03-MY06); Odyssey (MY04-MY08).
BMW	<u>Driver side airbag inflator recalls:</u> 1 Series (E82, E87, E88, F20, F21); 2 Series (F22, F23, F45, F46); 3 Series (E46, E90, E91, E92, E93, F30, F31, F34); 4 Series (F32, F33, F36); 5 Series (E39, F07, F10, F11); 6 Series (F06, F12, F13); X1 (E84); X3, X4 (E83, F25, F26); X5, X6 (E53, E70, E71, F15, F16); X5M, X6M (F85, F86); M2, M3, M4 (F80, F82, F83, F87); M5 (F10); M6 (F06, F12, F13). <u>Passenger side airbag inflator recalls:</u> 3 Series (E46); X5, X6 (E70, E71).
Nissan	<u>Driver side airbag inflator recalls:</u> C11 Tiida (MY06-MY12); D40 Navara (MY07-MY15). <u>Passenger side airbag inflator recalls:</u> Y61 Patrol (MY01-MY16); N16 Pulsar (MY01-05); D22 Navara (MY02-MY15); T30 X-Trail (MY01-07); J31 Maxima (MY03-08); C11 Tiida (MY06-MY12); D40 Navara (MY07-MY15).
Mazda	<u>Driver side airbag inflator recalls:</u> Mazda 6 (MY2002–07); BT-50 (MY2006–11); B-Series (MY2004–06); RX-8 (MY2004–07). <u>Passenger side airbag inflator recalls:</u> Mazda 6 (MY2002–10); Mazda 2 (MY2007–14); CX-7 (MY2006–09); CX-9 (MY2007–12); RX-8 (MY2003–11).

IMPORTANT REMINDER REGARDING THE TAKATA AIRBAG RECALL

The Takata Airbag Class Actions are **not** a means for group members to get their recalled Takata airbags replaced. If you have a vehicle that has been recalled because it is fitted with a Takata Airbag(s) and you have not had the airbag(s) replaced, please urgently contact the manufacturer or your closest authorised dealer.

Getting your airbag replaced in accordance with the recall will not affect your ability to participate in the Takata Airbag Class Actions.

If you are unsure whether your vehicle is affected, you can check by entering your Vehicle Identification Number (**VIN**) at:

Toyota	https://www.toyota.com.au/recalls
Lexus	https://www.lexus.com.au/owners/recalls
Subaru	https://www.subaru.com.au/recall
Honda	https://www.honda.com.au/en/recall
BMW	https://www.recall.bmw.com.au/
Nissan	https://www.nissan.com.au/owners/recalls/takata-recall.html
Mazda	https://mazda.com.au/recalls/

Questions? Visit www.airbagclassaction.com

Takata Airbag Class Actions

2017/00340824 Louise Haselhurst v Toyota Motor Corporation Australia Limited

2017/00353017 Kimley Whisson v Subaru (Aust) Pty Limited

2017/00378526 Akuratiya Kularathne v Honda Australia Pty Limited

2018/00009555 Owen Brewster v BMW Australia Ltd

2018/00009565 Jaydan Bond v Nissan Motor Co (Australia) Pty Limited

2018/00042244 Camilla Coates v Mazda Australia Pty Limited,

*(together, the **Takata Airbag Class Actions**).*

NOTICE OF OBJECTION TO PROPOSED SETTLEMENT

The person identified below:

1. is a group member in the Takata Airbag Class Actions; and
2. wishes to object to the proposed settlement of the Takata Airbag Class Actions.

A. Details of Objector

Name:

Telephone number:

Postal address:

Email address:

VIN:

Date vehicle purchased:

Do you still own your vehicle (yes/no)

If you no longer own your vehicle, date vehicle was disposed of:

Signed:

Date:

(If not the named group member, please state the relationship to the named group member:

.....

B. Grounds of objection

My objection to the proposed settlement is for the following reasons *[set out in the space below any submissions you wish to make, attach additional pages if necessary]*:

C. Evidence and submissions

Any group member who has provided written notice of an objection to the proposed settlement and/or any aspect of the proposed distribution of the settlement sum, including the proposed costs sharing order, and who wishes to rely on:

- (a) any evidence in support of their objection; and/or;
- (b) any written submissions in support of their objection (in addition to those submissions referred to at paragraph B above),

must serve on Quinn Emanuel that evidence and/or submissions (together with this completed form) by no later than **4:00pm AEDT on 18 February 2022.**

D. Attendance at settlement approval hearing

I intend to appear before the Court at the hearing.

[If you intend to appear, please complete the following]:

I will appear on my own behalf

I will be represented by a lawyer: Name and contact email of lawyer:

.....

I do not intend to appear, but wish for my submissions to be considered in my absence

The group member has also registered as a group member: Yes / No (circle one)

The group member has read the “Notes for Objectors” below: Yes / No (circle one)

Notes for Objectors: By the Court’s orders made on 10 September 2021, Objectors are required to deliver to Quinn Emanuel a completed copy of this form together with any written submissions and any affidavit evidence the Objector wishes to rely on in support of their objection to the proposed settlement by **4:00pm AEDT on 18 February 2022.**