

## Important Legal Notice

# Subaru Class Action re Takata Airbags

## NOTICE TO GROUP MEMBERS OF VOLUNTARY QUESTIONNAIRE

**For group members who wish to provide their claim information prior to a Court-ordered mediation**

### 1. What is this Notice?

This Notice contains important information about the class action brought against Subaru on behalf of consumers affected by the Takata airbag recall of Subaru branded vehicles (**Subaru Class Action**).

It is one of seven class actions against car manufacturers in Australia referred to as the “**Takata Airbag Class Actions**”. This Notice relates **only** to the Subaru Class Action.

This Notice is different from an earlier notice that you may have received regarding the right of Group Members to opt out of the Subaru Class Action.

This Notice is made available pursuant to Court orders made 24 August 2020. Subaru considers that the parties may be assisted at a mediation (and in settlement discussions generally) by information that group members can provide about their claim.

The Court has accordingly approved a voluntary Questionnaire (enclosed with this Notice) that Group Members **may** complete, if they wish to provide information regarding their claim now. Your rights will **not** be affected if you do nothing in response to this Notice, but your information may assist discussions between the parties at the mediation and increase the chances of settlement occurring.

The purpose of this Notice is to outline the ways that you may complete that Questionnaire.

You should read this notice carefully. If there is anything in this notice that you do not understand, you may direct questions to [contact@takataclassaction.com.au](mailto:contact@takataclassaction.com.au) or call 1300 476 493. Any questions you have concerning the matters contained in this notice should not be directed to the Court.

### 2. What is a class action?

A class action is an action that is brought by one person (**the Plaintiff** – in this case Mr Kimley Lloyd Whisson) on his or her behalf and on behalf of a group of people (**Group Members** – this may include you) against another person (**the Defendant** – in this case Subaru), in circumstances where the Plaintiff and Group Members have similar claims against the Defendant. The Plaintiff is represented by Quinn Emanuel.

You are considered a Group Member of a class action if you meet certain criteria (see below), and did not choose to ‘opt out’ of the class action before the opt-out deadline. A previous notice was sent to Group Members in the Subaru Class Action to notify them of their rights to opt out of the Subaru Class Action. The Opt-Out Deadline was 31 August 2020. A copy of the notice can be found here:

<http://www.supremecourt.justice.nsw.gov.au/Documents/Class%20Actions/Air%20Bags%20-%20Haselhurst%20-%20Takata/SUBARU%20OPT%20OUT%20NOTICE.pdf>

Group Members in a class action are not individually responsible for legal costs associated with bringing the class action insofar as it concerns the issues common to the group. In a class action, only the Plaintiff is responsible for the costs in prosecuting issues common to the group.

### 3. What is the Subaru Class Action about?

In summary, the Plaintiff alleges that, in importing and marketing Subaru vehicles fitted with certain Takata airbag/s in Australia, Subaru:

1. failed to comply with the merchantable quality guarantee in the Trade Practices Act 1974 (Cth) or acceptable quality guarantee in the Australian Consumer Law;
2. engaged in misleading or deceptive conduct; and
3. engaged in unconscionable conduct.

Subaru denies those allegations and is defending the Subaru Class Action.

If the Plaintiff proves these allegations they seek compensation for the financial losses suffered. The losses alleged to have been suffered may include:

1. the difference between the price paid for your Subaru vehicle and the 'true value' of that vehicle (to the extent that difference is attributable to the presence of a Takata airbag);
2. costs associated with the loss of use of your Subaru vehicle, if you elected not to drive your Subaru vehicle for a period due to the presence of a Takata airbag;
3. money you have spent (or will spend) as a result of the presence of a Takata airbag in your Subaru vehicle, including the time, cost and inconvenience of going to a Subaru service centre to have the airbags replaced in your Subaru (e.g. taxi or public transport fares or lost wages etc) (**Out of Pocket Expenses**); and
4. distress, disappointment and/or anxiety caused to you by the presence of a Takata airbag in your Subaru vehicle and the subsequent safety recall of the vehicle.

The Subaru Class Action is **not** a means for you to get your recalled Takata airbags replaced. If you have an affected vehicle and the airbag has not been replaced, please read the reminder at the bottom of this Notice. Getting your airbag replaced in accordance with the recall will not affect your ability to participate in the Subaru Class Action.

The Subaru Class Action is currently set down for trial commencing on 3 May 2021. The parties have been ordered by the Court to commence mediation discussion by 15 March 2021.

You can access copies of key documents filed in connection with the Subaru Class Action on the website of the Supreme Court of New South Wales at [http://www.supremecourt.justice.nsw.gov.au/Pages/sco2\\_classaction/Toyota-Australia-Class-Action.aspx](http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx) or visiting the Sydney Registry of the Supreme Court of New South Wales.

### 4. Are you a Group Member?

You are a Group Member in the Subaru Class Action if you meet **both** of the following criteria:

1. At any time during the period 1 January 2004 to 27 February 2018 you acquired a Subaru vehicle in Australia (either by purchasing a new or second-hand Subaru vehicle or by taking on a lease of a new Subaru vehicle on hire or on hire-purchase):
  - (a) that was fitted with a front driver or passenger airbag manufactured or supplied by Takata Corporation (**Takata Airbag**); and

- (b) which has been the subject of an airbag-related product safety recall; **and**
2. you did not sell or otherwise dispose of your Subaru vehicle prior to or on 27 February 2018.

If you sold your Subaru vehicle at any time prior to (or on) 27 February 2018 you are **not** a Group Member and this Notice does not relate to you.

### **5. Should I provide my claim information now?**

The Court has ordered the parties to commence mediation by 15 March 2021. At this Court-ordered mediation, the parties will discuss the possibility of settling the Subaru Class Action.

You do not have to provide your claim information to remain a Group Member, but there are a number of reasons why you may consider doing so now:

- a. It allows the parties to confirm that you are a Group Member and to contact you if you become eligible to receive compensation. You may be eligible to receive compensation in the event that the Subaru Class Action settles at a mediation, or if there is a favourable judgment.
- b. There is no cost to complete the questionnaire and it does not render you liable to pay any costs.
- c. Any claim information you provide may assist the parties to engage in that mediation and may increase the chances of settlement occurring.

### **6. If I provide my details now, and the action is successful, will I need to provide further details to obtain compensation?**

If you provide details about your claim by completing the questionnaire now, you may still need to provide additional details about your claim again in the future, after any successful settlement or judgment award.

However (as explained above), if you provide details about your claim now, the parties will be able to contact you following any successful settlement or judgment to let you know of any further information required to process your claim.

### **7. Will completing the Questionnaire improve my position as a group member?**

Providing information about your claim may assist discussions between the parties at the mediation and increase the chances of settlement occurring.

Completing the Questionnaire will not change the way your claim is assessed or the timing of that assessment.

### **8. I want to complete the Questionnaire. How do I do so?**

If you are an eligible Group Member in the Subaru Class Action and would like to submit the Questionnaire, you may do so by:

1. completing the Questionnaire online at the 'Toyota / Subaru Australia re Takata Class Action Questionnaire' at [www.takataclassaction.com.au](http://www.takataclassaction.com.au); or
2. printing or downloading a PDF copy of the Questionnaire available at this link <https://www.takataclassaction.com.au/subaru-questionnaire> and emailing it to [contact@takataclassaction.com.au](mailto:contact@takataclassaction.com.au); or

3. printing or downloading a PDF copy of the Questionnaire and posting it to Netstrategies Pty Ltd t/as Clarety Solutions, GPO Box 2566, Sydney NSW 2001.

Completing the Questionnaire is **voluntary** and **closes on 30 November 2020**. If you submit your claim information after this deadline, the parties may not be able to use your information at the mediation.

### **9. What is the separate Opt Out Notice?**

Pursuant to Court orders, an Opt Out Notice was previously issued to Group Members to notify them of their rights to opt out of the Subaru Class Action. The Opt-Out Deadline was 31 August 2020.

### **10. What happens if I do nothing?**

You remain a Group Member, provided you meet the criteria outlined above and you have not opted out of the Subaru Class Action. As a Group Member, you will be bound by any judgment or settlement entered into in the Subaru Class Action.

If you decide not to complete the Questionnaire, you will still be entitled to make a claim for compensation from any successful judgment award or settlement that may be reached in the future. However as explained above at Q&A #5 above, there are a number of reasons why you may consider completing the Questionnaire now.

### **11. Is there a similar Questionnaire in the other Takata Airbag Class Actions?**

Only Toyota and Subaru are asking Group Members to complete Questionnaires in the Toyota Class Action and Subaru Class Action. In other words, only owners or lessees of Toyota/Lexus and Subaru vehicles who meet the Group Member definition will have the opportunity to complete the Questionnaire. If you own a Toyota or Lexus vehicle, you will receive a separate Notice regarding the Toyota Questionnaire.

The defendants to the other Takata Airbag Class Actions (i.e. Volkswagen, Honda, Mazda, Nissan and BMW) have not requested a similar process in their proceedings.

#### **IMPORTANT REMINDER REGARDING THE TAKATA AIRBAG RECALL**

If you own a Subaru vehicle that has been recalled because it is fitted with a Takata airbag and you have not had the airbag replaced, please urgently contact a Subaru dealer. Keep a record of your conversation and any correspondence.

Getting your airbag replaced in accordance with the recall will not affect your ability to participate in the Subaru Class Action.

More details about the Takata airbag recall and how you can contact your nearest Subaru dealer can be found at: <https://www.subaru.com.au/takata-recall>. If you are unsure whether your vehicle is affected, you can check at: [www.ismyairbagsafe.com.au](http://www.ismyairbagsafe.com.au).

**SUBARU CLASS ACTION**  
**GROUP MEMBER QUESTIONNAIRE FORM**

**Whisson v Subaru (Aust) Pty Ltd**

The person named below provides the following information in respect of their claim.

Unless indicated below, please answer **all questions** to the best of your ability having made reasonable inquiries.

You can complete this form online at [www.takataclassaction.com.au](http://www.takataclassaction.com.au); or submit a copy of this PDF form by (a) email to: [contact@takataclassaction.com.au](mailto:contact@takataclassaction.com.au) or (b) post addressed to: Netstrategies Pty Ltd t/as Clarety Solutions, GPO Box 2566, Sydney NSW 2001.  
If you have questions about how to complete this questionnaire, please call 1300 476 493.

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**Section 1 - Group member name and contact details**

1. Who is the registered owner of the Subaru vehicle?  
Name of the registered owner .....
2. If you are not the registered owner of the vehicle, please provide your name and the authority you rely on to complete this form on behalf of the registered owner (identified above).  
Your name .....  
Authority you rely on (e.g. company director, lawyer) .....
3. What are your contact details?  
Mobile number.....  
Postal address.....  
Email address.....

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**Section 2 - Details of your Subaru vehicle**

4. What is the model and year of your vehicle?  
Model (e.g. Corolla) and year .....
5. What is the Vehicle Identification Number (**VIN**) or registration number of your car?  
*Your VIN is a unique 17 character serial number that can be found on your vehicle (such as the passenger side door sill) or in documentation (such as registration papers).*  
VIN:.....  
Registration number:.....
6. Do you still own or lease your vehicle? (Please tick)  
 Yes     No
7. Did you own or lease your vehicle on **27 February 2018**? (Please tick)  
 Yes     No

**IF YOU ANSWERED NO, YOU ARE NOT A GROUP MEMBER  
AND CANNOT PARTICIPATE IN THE SUBARU CLASS ACTION.**

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**Section 3 - Details of the purchase or lease of your Subaru vehicle**

8. When did you acquire (whether by purchase or lease) your vehicle?  
Day / Month / Year .....
9. Was your vehicle new or second hand when you acquired it? (Please tick)  
 New                       Second hand
10. Did you acquire your vehicle by purchasing it, or by leasing it? (Please tick)  
 Purchase                       Lease
11. If you ticked "**Purchase**" in question 10 above, how much did you pay for your vehicle?  
*Please write "N/A" if you did not pay for your vehicle (for example, because it was a gift)*  
Sale price \$ .....
12. If you ticked "**Lease**" in question 10 above:  
(a) How long was the lease?  
Years ..... Months .....

(b) If your lease expired, did you purchase your vehicle *after* the lease expired? (Please tick)

Yes       No       Not applicable

(c) If you ticked "Yes" in question 12(b) above, how much did you purchase it for?

*Please write "N/A" if you did not pay for your vehicle (for example, because it was a gift)*

Purchase price \$ .....

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#### Section 4 – Details of the sale of your Subaru vehicle

You **only** need to complete Section 4 if you sold your vehicle

13. Approximately when did you sell your vehicle? Month / Year .....

14. How much did you sell your vehicle for?

*Please write "N/A" if you did not receive payment for your vehicle (for example, because you gifted it to someone else)*

Purchase price \$ .....

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#### Section 5 – Replacement of the Takata airbags in your Subaru vehicle

15. Have you had the airbag(s) in your vehicle replaced as part of the recall for Takata airbags? (Please tick)

Yes

(Please provide approximate date the airbag(s) were replaced:

First replacement: Month...../ Year.....

Second replacement (if any): Month...../ Year.....)

No (Please go to section 7)

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#### Section 6 – Details of costs that you are claiming

*You may be contacted in the future to provide supporting material for your claim*

16. Did you incur any costs in attending the service centre for the replacement of the airbags in your vehicle? (Please tick)

For example, the cost of travelling to / from the service centre (i.e. did you need to take a taxi, take time off work that you weren't paid for, or travel on public transport etc to attend the service centre?).

Yes       No

If you ticked "Yes" in question 16 above, please specify the type of costs and the amount claimed

Type of cost(s).....

Amount(s) claimed \$ .....

17. What is the approximate distance between the place you normally garage your vehicle (which may be your home address) and the location of the service centre that you attended for the replacement of the airbag/s in your vehicle?

KMs: .....

18. Do you wish to claim any **other** losses due to the presence of a Takata Airbag in your vehicle? (Please tick)

For example, this may include the loss of use of your vehicle (including the cost of any replacement car and associated expenses such as taxis that you had to use while your airbag was being replaced, or for any period of time that you did not use your car because it had an airbag subject to the safety recall), lost wages, child care arrangements, other expenses or any other type of loss that you may have incurred in connection with either having your airbag/s replaced and/or not using the vehicle because it had an airbag subject to the safety recall.

Yes       No

If you ticked "Yes" in question 18 above, please specify the type of costs and the amount claimed

Type of cost(s).....

Amount(s) claimed \$ .....

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#### Section 7 – Group Member declaration

I confirm that the information I have provided in this form is true and complete.

Date:

Name:

Signature: