

## **Important Legal Notice Takata Airbag Class Action against Subaru**

### **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 (**Subaru Class Action**).

Please read this notice carefully. If you do not understand the notice you should contact the lawyers for the plaintiff in the class action, Quinn Emanuel, or seek independent legal advice.

### **Why am I receiving this notice?**

On 22 November 2017, a class action was commenced in the Supreme Court of New South Wales (the **Court**) against Subaru (Aust) Pty Ltd (**Subaru**). On 22 May 2020, the Court made orders requiring this Notice be published for the information of persons who may be members of the class on whose behalf the action is brought (the **Court Orders**).

If, as at **27 February 2018**, you owned or leased a Subaru vehicle, which has been subject to a safety recall arising from it being fitted with certain Takata airbag/s, you may be a Group Member in the Subaru Class Action (**Group Member**).

### **Am I a Group Member of the Subaru Class Action?**

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 leasing a 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.

You are not a Group Member of the Subaru Class Action, if:

- (a) you do not meet the criteria outlined above; or
- (b) you sold your Subaru vehicle at any time prior to (or on) 27 February 2018.

### **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.

Group members in a class action are not individually responsible for the legal costs associated with bringing the class action. In a class action, only the Plaintiff is responsible for the costs.

Group Members in a class action will be bound by any judgment or settlement entered into in that class action, unless they have **opted out** of the proceeding. This means that:

1. if the class action is successful, Group Members may be eligible for a share of any settlement monies or Court-awarded damages;
2. if the class action is unsuccessful, Group Members will be bound by that result; and
3. regardless of the outcome of the class action, Group Members will not be able to pursue their claim against the Defendant in separate legal proceedings unless they have opted out.

### **What is this Subaru Class Action about?**

In summary, the Plaintiff alleges that, in importing, marketing and supplying 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.

The Plaintiff seeks orders that Subaru be required to compensate Group Members for the impact that the alleged contraventions have had on Group Members. This includes compensation for:

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; and
3. expenditure incurred (or to be incurred in the future) as a result of the presence of a Takata airbag in your Subaru vehicle, including the time, cost and inconvenience of attending a Subaru service centre to have the airbags replaced (e.g. taxi or public transport fares or lost wages etc);
4. distress, disappointment and/or anxiety caused to you as a result of the alleged defect, urgent recall, and eventual replacement of a Takata airbag in your Subaru vehicle.

The Subaru Class Action is currently set down for trial commencing on 1 March 2021. The parties have been ordered by the Court to commence mediation discussions before 7 December 2020. You will shortly receive a separate notice inviting you to voluntarily provide information to the defendants in advance of the court-ordered mediation. That separate notice is not related to this opt out notice. It is foreshadowed here by way of update only.

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.

### **What is Opt Out?**

In a class action, the Plaintiff does not need to seek the consent of Group Members to commence a claim on their behalf. Group Members can cease to be a member, however, by **opting out** of the class action. The deadline to opt out of the Subaru Class Action is **4:00pm AEST, on 31 August 2020** (the **Opt-Out Deadline**). Unless you opt out before this deadline, you will be bound by any outcome reached in the Subaru Class Action

### **What should I do if I WANT to be a group member in the Subaru Class Action?**

You do not need to do anything in response to this notice if you are already a Group Member and meet the criteria outlined above.

### **What should I do if I DO NOT WANT to be a group member in the Subaru Class Action?**

If you do not wish to remain as a Group Member in the Subaru Class Action (and therefore preserve your right to pursue a separate claim against Subaru), you must opt out of the class action by completing and submitting an “**Opt Out Notice**” (set out at **Schedule A** to this Notice) to the Sydney Registry of the NSW Supreme Court before the Opt-Out Deadline.

If you opt out of the Subaru Class Action:

- (a) you will not be affected by any orders made in the Subaru Class Action;
- (b) you will not be permitted to participate in the distribution of any damages awarded or settlement outcome in the Subaru Class Action;
- (c) you will be able to commence separate legal proceedings in relation to the matters the subject of the Subaru Class Action on your own behalf if you so wish.

Opt Out Notices **must** be submitted directly to the Sydney Registry of the NSW Supreme Court in hard copy (at the address appearing on the Opt Out Notice) before the **Opt-Out Deadline, 4:00 pm AEST on 31 August 2020**.

Opt Out Notices received after this time will not be accepted, and you will remain as a Group Member in the Subaru Class Action.

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

As explained above, if you do nothing you will remain a Group Member, provided you meet the criteria outlined above. As a Group Member, you will be bound by any judgment or settlement entered into in that class action.

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

The Subaru Class Action is **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 your vehicle dealer.

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: [www.subaru.com.au/takata-recall](http://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).

## SCHEDULE A

Form 115 (version 2)  
UCPR 58.2

### OPT OUT NOTICE

#### COURT DETAILS

|             |                                  |
|-------------|----------------------------------|
| Court       | Supreme Court of New South Wales |
| Division    | Equity                           |
| List        | General (Class Action)           |
| Registry    | Sydney Registry                  |
| Case number | 2017/353017                      |

#### TITLE OF PROCEEDINGS

|           |                              |
|-----------|------------------------------|
| Plaintiff | <b>Kimley Lloyd Whisson</b>  |
| Defendant | <b>Subaru (Aust) Pty Ltd</b> |

#### FILING DETAILS

|                                |   |
|--------------------------------|---|
| Filed for                      | <b>[name]</b> , person opting out of representative proceedings |
| Legal representative (if any)  | [solicitor] [firm]  |
| Legal representative reference | [reference number]  |
| Contact name and telephone     | [name] [telephone]  |
| Contact email                  | [email address]   |

#### OPT OUT NOTICE

Name of person opting out

Address of person opting out

I, a group member in these representative proceedings, opt out of the proceedings.

I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and
- 3 To the extent that I have a claim against the defendant(s), any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

## SIGNATURE

Signature of legal representative

Signature of or on behalf of  
person opting out if not legally  
represented

Capacity

[eg solicitor, authorised officer of person opting out,  
person opting out]

Date of signature

## NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to group members file this form in the registry of the court at the address below.

## REGISTRY ADDRESS

|                |  |
|----------------|--|
| Street address | Supreme Court of NSW<br>Law Courts Building, Queen's Square<br>184 Phillip Street<br>Sydney NSW 2000 |
| Postal address | Supreme Court of NSW<br>GPO Box 3<br>Sydney NSW 2001   |
| Telephone      | 1300 679 272   |