

THE INTERFACE OF INQUESTS WITH CONSUMER LAW AND POLICY: THE TAKATA AIRBAG DEBACLE IN AUSTRALIA AND BEYOND

LUKE NOTTAGE*

Unsafe Takata airbags still circulate worldwide despite two decades of recalls and recent initiatives to improve consumer product safety regulation. The New South Wales coronial inquest between 2019–21 into Australia's first fatality in 2017 uncovered how Honda Australia and regulators were partly asleep at the wheel regarding voluntary recalls. The fatality triggered a belated compulsory recall and legislative reform in 2018, giving Australia's Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts such powers, and it started taking a clear lead role in vehicle recalls. The Inquest's late-2021 findings and recommendations for avoiding future harms from Takata airbags and other recalls were little reported but influenced regulatory practices and perhaps some private litigation. Such inquests and analogues overseas deserve wider scrutiny. They can help identify serious product-related risks and responses, assisting compensation claims and regulatory learning, while avoiding future harms and providing an extra resource for consumer product safety law reforms.

I INTRODUCTION

Exploding Takata airbags in vehicles caused many injuries and deaths as well as huge economic impacts, generating the largest and most complex recalls of consumer goods ever in Australia and worldwide (as elaborated in Parts II and III below).¹ Yet the unfolding of this saga and its aftermath have not attracted attention in the legal literature, nor has the coronial inquest held in Sydney between 2019–21

* Professor of Comparative and Transnational Business Law, University of Sydney Law School; Professor of Anglo-American Law, University of Tokyo Law School. I thank Sean Hasegawa for research and editorial assistance. I am also grateful for the helpful feedback and/or information from Simon Bronitt, Philip Dwyer, Sarouche Razi, Damian Scattini and Cameron Stewart. Any misconceptions and errors remain my sole responsibility.

1 See generally Dirk Cameron Gibson, 'Takata Airbag Scandal' in Robert W Kolb (ed), *The SAGE Encyclopedia of Business Ethics and Society* (SAGE Publications, 2nd ed, 2018) 3335; Kevin Fitzgerald and David Schuman, *In Your Face: An Insider's Explosive Account of the Takata Airbag Scandal* (Recall Awareness, 2nd ed, 2019).

into the first known fatality in Australia in 2017 (Parts IV and V). This is despite the important lessons that can be drawn from business and regulator (mis)behaviour regarding Takata airbags, and more generally from the design and implementation of consumer product safety regimes (Part VI).

Reports of injuries and fatalities from Takata airbags, eventually linked to degradation of their propellant, led various countries to require recalls by vehicle manufacturers, including notably the United States ('US') from 2016, but the compulsory recall order in Australia came only in February 2018 (detailed below, especially in Part III). Recalls remain ongoing around the world after almost two decades, including in Australia. On 30 May 2025, a recall notice from automobile manufacturer BMW for airbags produced by Takata in Japan, installed in a sports steering wheel upgrade for BMW's E9x vehicles manufactured between 2010–12, appeared on the top page of the Product Safety Australia ('PSA') website maintained by the Australian Competition and Consumer Commission ('ACCC').² The reason for the recall was clearly stated: 'Takata airbag inflators are subject to a compulsory recall ... As the airbag gets older, a combination of high temperatures and humidity can cause the airbag inflator propellant to degrade.'³ The recall notice then identified the hazards to consumers:

If an affected vehicle is involved in a collision triggering the airbag, or if the airbag mis-deploys, the metal inflator housing may explode/rupture under too much internal pressure.

If the defective airbag inflator ruptures, the airbag can go off with too much explosive force causing sharp metal fragments to shoot out and kill or seriously injure people in the vehicle.

There have been serious injuries and deaths caused by faulty Takata airbags.⁴

Finally, the recall notice highlighted what consumers should do:

Do not drive your vehicle *under any circumstances* if your vehicle is affected. *Immediately* contact your preferred authorised BMW dealer to schedule the replacement airbag.

Your dealer will arrange to have your vehicle towed to the workshop so that you do not need to drive the vehicle.

The airbag replacement and towing are *free of charge*.⁵

By clearly setting out such steps and the risks, this recall notice is consistent with the ACCC's guidance for suppliers regarding consumer product safety

2 ACCC Product Safety (Web Page) <<https://web.archive.org/web/20250601101120/https://www.productsafety.gov.au/>>.

3 'BMW E9x Vehicles 2010–12 with Takata PSDI-5 Driver Airbag', ACCC Product Safety (Web Page, 30 May 2025) <<https://www.productsafety.gov.au/search-consumer-product-recalls/bmw-e9x-vehicles-2010-2012-with-takata-psdi-5-driver-airbag>>.

4 Ibid.

5 Ibid (emphasis in original).

recalls, as revised in April 2023,⁶ and largely also with guidelines it had issued in 2010 and 2015.⁷

Another recent recall notice from BMW involving a separate hazard but also involving Takata airbags was published almost a year earlier, on 26 July 2024, on the Vehicle Recalls website maintained by Australia's Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts ('TD').⁸ This ostensibly covered over 57,000 BMW F-Series vehicles manufactured over 2009–17: 'Some ... may have been converted after production with steering wheel variants containing a faulty Takata inflator. ... the driver's airbag inflator may rupture in the event of airbag deployment.' The hazard then identified was that 'compressed gas and metal fragments may be propelled through the airbag cushion towards the vehicle occupants causing serious injury or death'. The notice added that consumers could either upload photos of the steering wheel and vehicle identification number or make an appointment with their preferred BMW dealer, to check if the steering wheel is one of the converted ones, in which case it would be replaced free of charge.

The less emphatic wording in this recall notice may be because many of the affected cars were not expected to have the converted steering wheels. A news report on 27 July 2024 on this recall, mentioning however that it was for 'more than 60,000 cars', explained further:

BMW sells accessory steering wheels as a way for enthusiasts to customise their cars.

The brand does not expect to replace inflators in tens of thousands of vehicles.

The recall for BMW models is an international campaign that includes almost 400,000 cars in the US.

America's NHTSA safety authority ... said 'certain vehicles may contain a sport or M-Sport steering wheel equipped with a Takata driver's front airbag module that contains a PSDI-5 inflator that could have been installed by an owner, even though it was not officially offered/approved by BMW as a replacement part'.⁹

The reporter further quoted a BMW Australia spokesperson as stating: 'These steering wheels were not fitted at the time of original manufacture, but during

6 'ACCC Publishes New Product Safety Recall Guidelines', *Australian Competition & Consumer Commission* (Web Page, 4 April 2023) <<https://www.accc.gov.au/about-us/news/media-updates/accc-publishes-new-product-safety-recall-guidelines>>; Australian Competition & Consumer Commission, 'Conducting a Consumer Product Safety Recall: A Guideline for Suppliers' (Guidelines, April 2023).

7 Cf Luke Nottage, 'Consumer Product Safety Regulation: Recalls and Accident Information Disclosure Systems' in Association of South East Asian Nations, 'Consumer Protection Digests and Case Studies' (Policy Guide, November 2014) vol 1, 15 <<https://aseanconsumer.org/read-publication-consumer-protection-digests-and-case-studies-a-policy-guide-volume-i>>; Australian Competition & Consumer Commission, 'Consumer Product Safety Recall Guidelines: What a Supplier Should Do When Conducting a Product Safety Recall' (Guidelines, December 2015).

8 Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (Cth), 'B M W Australia Ltd.: BMW Multiple F Series Models 2009–17', *Vehicle Recalls* (Web Page, 26 July 2024) <<https://www.vehiclerecalls.gov.au/recalls/rec-006035>>.

9 David McCowen, 'BMW Issues Takata Airbag Recall for Upgraded Steering Wheels', *news.com.au* (online, 27 July 2024) <<https://www.news.com.au/technology/motoring/motoring-news/bmw-issues-takata-airbag-recall-for-upgraded-steering-wheels/news-story/9b99f5fe7a35f993cd82a395439948cc>>.

vehicle custodianship. All affected customers have or are being *proactively* notified to check and replace the airbag of their vehicle if necessary.¹⁰

As this article explains below (Part IV), Honda Australia phrasing its recalls from 2015 as ‘precautionary’, along with inadequate scrutiny by the ACCC and the TD of supplier communications with consumers, were found by an inquest over 2019–21 by the Coroners Court of New South Wales (‘NSW’) to be contributing factors in Australia’s first known fatality from a Takata airbag in 2017.¹¹ The BMW spokesperson’s use of the word ‘proactively’ last year raises the question whether sufficient lessons have been learned from that tragic and avoidable death and the Inquest’s findings.

The *Inquest into the Death of Huy Neng Ngo* (‘*Inquest Findings*’) also found significant confusion as to the responsibilities of the two Australian regulators leading up to the 2017 fatality. The regulatory regime and practices were changed following enactment of the *Road Vehicle Standards Act 2018* (Cth) (‘*RVSA*’), which replaced the *Motor Vehicle Standards Act 1989* (Cth) (‘*MVSA*’), but publication of the two Takata airbag recalls in 2024 and 2025 remains confusing. Since the *RVSA* came into effect on 1 July 2021, recalls of road vehicles and integrated components are publicised through the TD’s website.¹² This provides a preliminary explanation for the 2024 recall found there. The ACCC’s PSA website is supposed to remain for consumer goods that are non-road vehicles (eg, golf carts), accessories (after-market parts not intended for integration into vehicles, like child car restraints) and caravans etc where safety issues concern occupation, not the vehicle itself.¹³ The website should also contain recalls it continues to administer, such as the compulsory Takata airbag recall introduced in 2018. The latter arrangement explains the recall notice added in 2025 to the ACCC’s PSA, but it does not cross-reference the 2024 recall on the TD’s website even though that too involves Takata airbags. Perhaps the latter recall involves Takata airbags with a different propellant or features other than those covered by the 2018 compulsory recall still administered by the ACCC, but that is not evident to consumers.

In addition, as mentioned in Part III below, despite belatedly achieving a very high replacement rate for unsafe Takata airbags, many tens of thousands of vehicles remain unrectified. This remains an ongoing problem not only in Australia but also abroad. In the US in July 2024, for example, Center for Auto Safety spokesman Michael Brooks told the Washington Post that ageing Takata airbag inflators that remain on the road represent ‘a critical concern’: “It’s a critical concern now, and in five years we’re going to have even more vehicles reaching the age where they are at a critical concern,” he said.¹⁴ In China, following the first public analysis

10 Ibid (emphasis added).

11 *Inquest into the Death of Huy Neng Ngo* (Coroners’ Court of New South Wales, Deputy State Coroner E Truscott, 19 November 2021) (‘*Inquest Findings*’).

12 ‘A New Home for Road Vehicle Recalls’, *ACCC Product Safety* (Web Page, 2 July 2021) <<https://www.productsafety.gov.au/about-us/product-safety-news/news/a-new-home-for-road-vehicle-recalls>>.

13 Ibid.

14 McCowen (n 9), citing Aaron Gregg, ‘BMW Recalls 394,000 Older Vehicles Equipped with Takata Air Bags’, *The Washington Post* (online, 10 July 2024) <<https://www.washingtonpost.com/business/2024/07/10/bmw-airbag-recall/>>.

of two separate fatalities in late 2022, Qifeng Miao et al recommended various regulatory improvements after noting that ‘tens of millions of defective Takata airbags are estimated to remain unrecalled’.¹⁵ In Singapore, a hearing took place in September 2025 in a coronial inquest after a Honda driver was killed around three years earlier, with the vehicle having come into the country through a parallel importer (subsequently defunct). Evidence showed the rectification rate for all brands of vehicles with Takata airbags was only 90% in June 2023, rising to 94% a year later.¹⁶ This shows how Takata airbags and their recalls continue to cause problems, also creating scope for the NSW coronial inquiry findings to assist the Singaporean proceedings.¹⁷

The two recall notices from BMW Australia, in 2024 via the TD’s website and especially that in 2025 via the ACCC’s PSA website, are much better worded than the communications that vehicle suppliers like Honda Australia issued a decade earlier for Takata airbags. Such failures contributed to slow progress in replacing them and triggered an extremely rare compulsory recall order from the Australian Government on 27 February 2018.¹⁸

One significant factor in this escalation from voluntary recalls by vehicle suppliers to a compulsory blanket recall was a three-month investigation and report into inadequate Takata airbag recalls, released in July 2017 by CHOICE (Australia’s largest consumer non-governmental organisation (‘NGO’)), which attracted significant media attention.¹⁹ CHOICE reportedly found that two-thirds of the 2.1 million vehicles subject to voluntary recall notices in Australia by then had still not been recalled, despite around 180 injuries worldwide and 100 million vehicles being recalled worldwide.²⁰ The global recall was so large-scale that sourcing replacements became difficult for the family-owned Takata (with a legendary founder),²¹ by then filing for bankruptcy despite having been one of the top three airbag manufacturers globally (with 20% market share around the time

15 Qifeng Miao et al, ‘Two Cases of Driver Death Caused by Airbag Rupture’ (2024) 25(4) *Traffic Injury Prevention* 612, 615 <<https://doi.org/10.1080/15389588.2023.2234533>>.

16 Lydia Lam, ‘Driver Killed by Metal Piece from Takata Airbag in First Such Case in Singapore after Global Recall’, *Channel News Asia* (online, 29 September 2025) <<https://www.channelnewsasia.com/singapore/man-died-airbag-takata-death-metal-shot-head-5374941>>.

17 Unfortunately, Singapore does not publicise inquest findings. Therefore, it cannot be ascertained from the findings delivered on 21 January 2026 whether that inquest drew on the NSW Coroner’s Report. See generally Claudia Tan and Nadine Chua, ‘Driver in 2022 Crash Killed by Metal Fragment Ejected from Defective Takata Airbag: Coroner’, *The Straits Times* (online, 21 January 2026) <<https://www.straitstimes.com/singapore/courts-crime/driver-who-died-in-2022-crash-killed-by-metal-fragment-ejected-from-defective-takata-airbag>>.

18 ‘About the Compulsory Takata Airbag Recall’, *ACCC Product Safety* (Web Page) <<https://www.productsafety.gov.au/business/understand-product-safety-rules/role-of-the-acc-and-government-in-recalls/compulsory-takata-airbag-recall/about-the-compulsory-takata-airbag-recall>>.

19 Eleni Psaltis, ‘Takata Airbag Recall Process Leaves Drivers with “Ticking Time-Bombs”, Choice Says’, *ABC News* (online, 24 July 2017) <<https://www.abc.net.au/news/2017-07-24/takata-airbag-recall-process-choice-report/8736198>>.

20 Ibid.

21 See ‘What Caused Takata’s Airbag Problems?’, *Knowledge at Wharton* (Web Page, 29 February 2016) <<https://knowledge.wharton.upenn.edu/podcast/knowledge-at-wharton-podcast/dasher-macduffie-takata-airbags/>>.

of the first recall).²² In Australia, some suppliers substituted the most lethal airbags with other Takata airbag models knowing those too would degrade and therefore become dangerous, thus needing further replacement by safe models, but without informing vehicle owners.²³ Disturbingly, as well, the voluntary recall notices often did not clearly specify the hazards associated with the Takata airbags, which had already caused many serious injuries and even deaths abroad.

The second main factor precipitating the compulsory recall order in February 2018 was the first suspected fatality in Australia from an exploding Takata airbag, involving a 2007 Honda CR-V driver. This was reported in south-west Sydney some three months after an injury in Darwin in April 2017. Further reporting indicated that the Coroners Court of NSW would determine the cause of the death of the driver, Mr Huy Neng Ngo.²⁴

This article focuses on the Takata airbag saga (Part III), after explaining Australia's law and practice generally regarding consumer product safety regulation and some reform initiatives in recent years (Part II). It then turns to the Inquest over 2019–21, for which I provided a witness statement due to having alerted ACCC officials in late 2015 about inadequate wording in a recall notice received from Honda Australia for another recall of Takata airbag vehicles (Part IV). The article considers diverse impacts from the Inquest's findings and recommendations for avoiding further such deaths, and other related developments (Part V). Part VI then investigates other product-related coronial inquests in Australia, and somewhat similar fact-finding mechanisms for improving consumer product safety – notably in Japan. Part VII concludes that coronial inquests or analogues should be better integrated into consumer product safety regulatory design and enforcement.

II CONSUMER PRODUCT SAFETY RE-REGULATION IN AUSTRALIA AND BEYOND

When enacting the *Trade Practices Act 1974* (Cth) ('TPA'), Australia followed other major economies of that era by including public regulatory powers around consumer product safety as a core component of consumer protection law. As well as 'pre-market' powers, allowing setting of mandatory design or information standards for specific types of high-risk products (especially children's products), the TPA provided 'post-market' controls such as bans of unsafe product types and mandatory recalls. In 1986, the Act added a requirement that suppliers notify the government when undertaking a voluntary recall.²⁵

22 Terry Turner, 'Takata Airbag Recall', *ConsumerNotice.org* (Web Page, 21 September 2021) <<https://www.consumernotice.org/personal-injury/vehicle-safety/takata-airbag/>>.

23 *Inquest Findings* (n 11) [17], [20], [99].

24 See 'Driver Likely Killed by Defective Takata Airbag in Sydney Crash, Police Say', *ABC News* (online, 21 July 2017) <<https://www.abc.net.au/news/2017-07-21/driver-killed-by-defective-air-bag-say-police/8732788>>.

25 Luke Nottage, 'Product Safety Regulation' in Geraint Howells, Iain Ramsay and Thomas Wilhelmsson (eds), *Handbook of Research on International Consumer Law* (Edward Elgar Publishing, 2nd ed, 2018)

The Act was renamed the *Competition and Consumer Act 2010* (Cth), including the *Australian Consumer Law* ('ACL') as schedule 2. The substantive provisions for consumer product safety regulation were adopted not just as federal legislation but also as the law of each state and territory,²⁶ although enforcement of this harmonised law nation-wide remains largely shared among the federal regulator (the ACCC) and state and territory regulators. The ACCC manages the PSA website²⁷ to publicise voluntary recall notices received from suppliers and information about other regulatory powers related to general consumer product safety (found primarily in *ACL* part 3-3). Under the new *ACL*, the federal minister advised by the ACCC also has the sole power to issue a permanent ban of unsafe product types (section 114) and to declare mandatory minimum performance or information (warning) standards for specific types of consumer goods (section 104). Furthermore, the ACCC is the primary contact point for a further obligation on suppliers added from 2010 to the *ACL* (section 131) requiring them to report promptly on product-related serious injuries and rapid-onset illnesses or deaths (even before possibly a voluntary recall). However, this reporting obligation is less extensive than in the European Union ('EU') since 2001 or Canada's *Consumer Product Safety Act*, SC 2010, c 21 both of which, for example, add mandatory reporting of serious *risks* of harm (including 'near misses') – not just actual injury or death.²⁸

The ACCC also has a Memorandum of Understanding ('MOU') with other government departments and agencies with somewhat overlapping jurisdictions, dealing for example with which takes the lead in investigations and/or enforcement. For example, concerning road vehicle safety, on 17 March 2023 the ACCC revised its 2021 MOU with the TD.²⁹ Following the Takata airbag debacle, including concerns about the ACCC's slow response in encouraging and then forcing recalls, the *RVSA* extends the power to issue mandatory recalls to the TD.³⁰ The latter also is specified as the lead agency for recalls regarding vehicles, whereas the ACCC retains the lead role in, for example, recalls concerning unsafe vehicle accessories (2021 MOU art 5).

231, 254–5 <<https://doi.org/10.4337/9781785368219.00015>>; *Trade Practices Act 1974* (Cth) s 65R, as inserted by *Trade Practices Revision Act 1986* (Cth) s 35.

26 *Fair Trading Act 1987* (NSW) s 28; *Fair Trading Act 1989* (Qld) s 16; *Fair Trading Act 1987* (SA) s 14; *Australian Consumer Law (Tasmania) Act 2010* (Tas) s 6; *Australian Consumer Law and Fair Trading Act 2012* (Vic) s 8; *Fair Trading Act 2010* (WA) s 19.

27 See ACCC Product Safety (Web Page) <<https://www.productsafety.gov.au/>>.

28 *Competition and Consumer Act 2010* (Cth) sch 2 s 131 ('ACL') is also narrower in only requiring suppliers to report rapid-onset illnesses (not those building up more slowly) and those involving contact with doctors or nurses (not other health professionals, even if injuries are severe). For more details and comparative analysis, see Luke Nottage and Jocelyn Kellam, 'Product Liability and Safety Regulation' in Justin Malbon and Luke Nottage (eds), *Consumer Law and Policy in Australia and New Zealand* (Federation Press, 2013) 187.

29 *Memorandum of Understanding: Road Vehicle Safety*, Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Cth)–Australian Competition and Consumer Commission, signed 17 March 2023, 1 [1.2].

30 *Road Vehicle Standards Rules 2019* (Cth) r 206 ('RVSR').

Nonetheless, although the ACCC historically has given considerable deference to specialist regulators given their assumed greater technical expertise, it has been encouraged to engage more robustly with them in the wake of problems such as Takata airbags and earlier unsafe infinity cabling installed in homes.³¹ The ACCC and *ACL* regime also remains unusual, compared to jurisdictions in Asia,³² in giving the general consumer regulators wide *prima facie* jurisdiction over consumer products concerning pre-market and post-market controls. This is useful to minimise chances of regulatory capture by line ministries, and to cover any jurisdictional gaps,³³ but creates coordination challenges.

After a 2017 report into implementation of the new *ACL* regime,³⁴ in 2019 the federal Treasury began a further consultation into improving Australia's consumer product safety regulatory regime – notably by adding an EU-style general safety provision ('GSP') to the *ACL*.³⁵ This *ex ante* regulation would have made supply of any unsafe general consumer product a statutory contravention, allowing investigations and fines by public authorities.³⁶ By contrast, incentives to avoid unsafe products by allowing product liability claims under the *ACL* (partly under part 3-5, adding from 1992 an EU-style strict-liability regime) are indirect and haphazard. That *ex post* incentivising mechanism depends on whether harm was caused and then generated a successful compensation claim by consumers, despite persistent access to justice challenges.³⁷

Submissions to this Treasury consultation, including by CHOICE and my own elaborated in an article published in 2020, argued that adding a GSP to the *ACL* would usefully help change the dominant mindset of suppliers in Australia from producing (and especially) importing products from abroad and then voluntarily recalling them if and when problems started to be identified by consumers, regulators and media reports. Notably, I observed that Australia until then had higher voluntary recall numbers (741 for general consumer goods and 844 for vehicles over almost three years, 2017–19) and/or higher rates per capita annually,

31 See, eg, Productivity Commission, 'Consumer Law Enforcement and Administration' (Research Report, March 2017) 171–2.

32 Luke Nottage et al, *ASEAN Consumer Law Harmonisation and Cooperation: Achievements and Challenges* (Cambridge University Press, 2019) 130–47 <<https://doi.org/10.1017/9781108770149>>.

33 Cf, eg, the regulatory challenges faced for konjac jelly snacks causing choking hazards, banned under the *ACL* but originally not covered under Japan's regime: Noriko Kawawa, 'Jelly Mini-Cups Containing Konjac: Is a Warning Enough to Protect Vulnerable Consumers?' (2013) 13(2) *Australian Journal of Asian Law* 135.

34 Consumer Affairs Australia and New Zealand, *Australian Consumer Law Review: Final Report* (Report, March 2017) <<https://nla.gov.au/nla.obj-2817033324/view>> ('*ACL Review*').

35 'Improving the Effectiveness of the Consumer Product Safety System', *The Treasury* (Web Page, 30 November 2019) <<https://treasury.gov.au/consultation/improving-effectiveness-consumer-product-safety-system>>.

36 Consumer Affairs Australia and New Zealand, 'Improving the Effectiveness of the Consumer Product Safety System' (Statement, October 2019) 41–2 <<https://treasury.gov.au/sites/default/files/2022-12/cris-consumer-product-safety-system.pdf>>.

37 See generally *Australian Consumer Survey 2011* (Report, June 2011); Treasury (Cth) and EY Sweeney, *Australian Consumer Survey 2016* (Report, 18 May 2016); Treasury (Cth) and Kantar Public Australia, *Australian Consumer Survey 2023* (Final Report, 2023).

than several comparable Asia-Pacific economies.³⁸ Australia's recall figures have remained persistently high, as Table 1 shows, despite heightened concerns and media reporting about safety issues more generally since the COVID-19 pandemic.³⁹

Table 1: Australia's Voluntary Recalls of Consumer Products and Vehicles (2022–24)

Calendar years	ACCC's PSA recalls	TD's vehicle recalls	Annual total recalls
2022	289	225	514
2023	259	234	493
2024	270	290	560
(2022–24)	(818)	(749)	(1567)

Even in areas with many specific product safety requirements, as with vehicles, having a GSP can help make firms along supply chains more proactive in identifying, managing and communicating consumer product safety hazards.

However, the 2019 Treasury consultation into adding a GSP to the *ACL* seems to have attracted significant resistance as it did not progress beyond a Consultation Regulatory Impact Statement setting out pros and cons of various reform options along with recommendations.⁴⁰ This is despite the EU recently turning its directive incorporating the GSP (dating back to 1992) into a 2023 regulation that bolsters the mechanism in various ways, including more onerous requirements associated with recalls.⁴¹

38 Luke Nottage, 'Improving the Effectiveness of the Consumer Product Safety System: Australian Law Reform in Asia-Pacific Context' (2020) 43(4) *Journal of Consumer Policy* 829 <<https://doi.org/10.1007/s10603-020-09459-9>>.

39 Numbers sourced from the two Australian government websites maintained separately since 2021: 'Search Consumer Product Recalls', *ACCC Product Safety* (Web Page) <<https://www.productsafety.gov.au/recalls>>; 'Vehicle Recalls', *Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts* (Web Page) <<https://www.vehicle recalls.gov.au/>>.

40 The Treasury (Cth), 'Improving the Effectiveness of the Consumer Product Safety System' (Consultation Regulatory Impact Statement, October 2019) <<https://treasury.gov.au/sites/default/files/2022-12/cris-consumer-product-safety-system.pdf>>.

41 See, eg, 'Regulation 2023/988/EU: General Product Safety', *European Agency for Safety and Health at Work* (Web Page, 7 October 2025) <<https://osha.europa.eu/en/legislation/directive/regulation-2023988eu-general-product-safety>>.

Manufacturers have the obligation to carry out a risk analysis and to draw up technical documentation before placing their products on the market. To ensure the traceability of a product through the supply chain, each product should carry information that allows identification of the product itself as well as the manufacturer or other relevant economic operators. If economic operators become aware that a product is dangerous, they must take corrective measures and inform, through the Safety Business Gateway (part of Safety Gate), market surveillance authorities and cooperate with them.

For recalls, for example, suppliers must prioritise direct contact with consumers and include exact details in notices to ensure easy comprehensibility: *Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on General Product Safety, Amending Regulation (EU) No 1025/2012 of the European Parliament and of the Council and Directive (EU) 2020/1828 of the European Parliament and the Council, and Repealing Directive 2001/95/EC of the European Parliament and of the Council and Council Directive 87/357/EEC* [2023] OJ L 135/1, arts 35–6.

Instead, from late 2021 the Treasury initiated a consultation aimed at making it easier for Australian regulators to transplant foreign bodies' safety standards for specific products, which could become automatically updated if and when revised abroad.⁴² Despite reservations expressed about rule of law implications of delegating such broad power to the executive branch of government, when exposure draft legislation was released in late 2024,⁴³ section 104 of the *ACL* was duly amended.⁴⁴ Although not as effective as a GSP in changing suppliers' overall mindset and systems to put more emphasis on consumer product safety, at least this reform allows Australian regulators to move more quickly to adopt best-practice specific standards from foreign regulators facing emerging product safety problems, as occurred with Takata airbags.

A second, potentially more far-reaching reform that could improve consumer product safety comes from a further Treasury-led consultation that also started in late 2021, perhaps under some political pressure as this was some months before the Australian general election (held on 21 May 2022).⁴⁵ The consultation was expanded in late 2024, similarly not long before the next general election (3 May 2025).⁴⁶ A major proposal was to create a new regulatory contravention of the *ACL* if direct suppliers or manufacturers do not provide statutory remedies for breaching the 'consumer guarantees' set out in part 3-2 (transplanted in 2010 from New Zealand's *Consumer Guarantees Act 1993* (NZ)).⁴⁷ This would result in civil pecuniary penalties, like those for use of 'unfair terms' under part 2-3 (otherwise based heavily on EU law) since an *ACL* amendment in effect from 2023.⁴⁸ A key guarantee is that suppliers provide goods of 'acceptable quality', including 'safety' (*ACL* section 54), otherwise this can constitute a 'major failure' including giving the consumer a right to a refund (*ACL* sections 259(3) and 263(4)(a)). Evidence shows the difficulties encountered by consumers in obtaining such remedies, or even the lesser remedy of replacement or repair at the supplier or manufacturer's

42 'Supporting Business through Improvements to Mandatory Standards Regulation under the Australian Consumer Law', *The Treasury* (Web Page, 21 January 2022) <<https://treasury.gov.au/consultation/c2021-223344>>.

43 See Luke Nottage, Submission to Treasury (Cth), *Product Safety Regulation: Exposure Draft Legislation* (22 October 2024) 8 <<https://treasury.gov.au/consultation/c2024-589944>>, citing Andrew Edgar, 'From Court Rules to Globalised Standards: Incorporation by Reference in Commonwealth Regulations' (2021) 101 *ALJL Forum* 49 <<http://dx.doi.org/10.2139/ssrn.4004600>>.

44 *Treasury Laws Amendment (Fairer for Families and Farmers and Other Measures) Act 2024* (Cth) sch 2 pt 1 ss 6–9.

45 'Improving Consumer Guarantees and Supplier Indemnification Provisions under the Australian Consumer Law', *The Treasury* (Web Page, 11 February 2022) <<https://treasury.gov.au/consultation/c2021-224294>>.

46 'Consumer Guarantees and Supplier Indemnification under Consumer Law', *The Treasury* (Web Page, 19 December 2025) <<https://treasury.gov.au/consultation/c2024-583535>>.

47 Jeannie Paterson and Kate Tokeley, 'Consumer Guarantees' in Justin Malbon and Luke Nottage (eds), *Consumer Law and Policy in Australia and New Zealand* (Federation Press, 2013) 97.

48 See generally Jeannie Paterson and Hal Bolitho, 'Unfair Terms and Legitimate Business Interests in Standard Form Small Business Contracts' (2023) 30(1) *Competition and Consumer Law Journal* 19.

option if the failure is not major (section 259(2)), including longstanding problems involving ‘lemon’ vehicles containing multiple defects.⁴⁹

The idea behind this recent proposal is that the threat of the regulator adding fines for not providing consumers with remedies will make suppliers take them more seriously. Incentives for suppliers to source safer products are further expanded in Australia as, again, unlike most jurisdictions abroad, such mandatory performance standards extend beyond individual consumers transacting for a non-business purpose to apply to various business-to-business situations (due to the expanded definition of ‘consumer’ in *ACL* section 4). However, as arguably happened with the consumer guarantees regime introduced in 2010 nation-wide, although suppliers initially seemed to provide remedies quite readily, they may again start to resist – even with regulators adding pressure in the shadow of the new fines. Cases may end up contested in court, although at least the regulator could become involved, rather than the present situation whereby essentially only consumers can claim consumer guarantee remedies through courts or tribunals.⁵⁰ Another foreseeable response by suppliers is that they will offer what they assert are sufficient remedies to the most persistent consumers, thus avoiding most chances of a fine, but resist vigorously vis-à-vis other consumers. This civil penalty reform will therefore be more indirect and less effective than adding a GSP to the *ACL*, and in any case remains unusual by world standards and may not even proceed to enactment.

A final recent change to Australia’s regulatory regime, which has been implemented after years of discussion, could also have some impact on consumer product safety outcomes, especially in larger-scale cases. From mid-2024, three consumer NGOs (including CHOICE)⁵¹ can file a ‘designated complaint’ based on prima facie evidence to the ACCC, requiring it to investigate further and publicly announce what action (if any) it will take regarding the practice allegedly causing widespread consumer detriment.⁵² This is based primarily on the ‘super complaints’ mechanism that has been operating successfully in the United Kingdom for two decades,⁵³ and useful to ensure that consumer regulators (and ministers) are held accountable – especially as their powers keep growing under the *ACL*.

49 See, eg, Consumer Policy Research Centre, *Detours and Roadblocks: The Consumer Experience of Faulty Cars in Victoria* (Report, 31 October 2023) <<https://cprc.org.au/detours-and-roadblocks/>>. However, following the 2017 *ACL Review* (n 34), s 260(2) of the *ACL* (n 28) was amended to clarify that multiple minor defects can amount to a major failure: *Treasury Laws Amendment (2020 Measures No 6) Act 2020* (Cth) sch 4 s 36.

50 The *ACL* (n 28) s 277 added in 2010 a mechanism for the ACCC to get consumers to opt-in to representative proceedings to claim consumer guarantee violations, but this seems never to have been used.

51 See, eg, its first-ever complaint, lodged in May 2025, alleging misleading electricity bills: Andy Kollmorgen, ‘CHOICE Files Energy Retailer “Super Complaint” with the ACCC’, *CHOICE* (Web Page, 21 May 2025) <<https://www.choice.com.au/shopping/shopping-for-services/utilities/articles/energy-retailer-designated-complaint>>.

52 See generally ‘Designated Complaints’, *Australian Competition & Consumer Commission* (Web Page) <<https://www.accc.gov.au/about-us/designated-complaints>>.

53 Philip Cullum, ‘Up, Up and Away: What Australia Can Learn from Two Decades of UK “Super-Complaints”’, *Medium* (online, 2 September 2022) <<https://medium.com/@PhilipCullum/up-up-and-away-what-australia-can-learn-from-two-decades-of-uk-super-complaints-848e4469a748>>.

III THE TAKATA AIRBAG DEBACLE

Behind the above-mentioned reforms and consultations lie some major product safety problems that have arisen in Australia over the last decade or more.⁵⁴ Arguably those have been exacerbated by the shift to more online transactions due to the COVID-19 pandemic lockdowns over 2020–21. The largest-scale issue was the debacle around the Takata airbag recall.

As reported by the ACCC, by March 2021, this had already become the biggest-ever recall globally, affecting an estimated 100 million vehicles.⁵⁵ It is also the largest for Australia, with by then 4.1 million airbags in 3.06 million vehicles rectified or deemed complete under the compulsory recall notice issued on 27 February 2018. The 3.06 million vehicles included 312,000 deemed as unregistered for more than two consecutive years (94,927), written-off or stolen (118,020) or where the owner was unable to be contacted (40,741) or did not respond to recall notifications (58,198). The ACCC reported that many of those were ‘no longer on the roads and those that are will be captured by state and territory registration sanctions programs’, enacted to prevent registration (and therefore driving) of vehicles subject to the recall that had not had their Takata airbags replaced. Excluding all those vehicles gave a 99.9% overall rectification rate by end-February 2021. In addition to the compulsory recall of airbags containing phase-stabilised ammonium nitrate (‘PSAN’) that degraded over time, making them overall unsafe on deployment, ‘eight vehicle manufacturers have also issued voluntary recalls for some vehicles manufactured between 1996 and 2000, which may have been fitted with a different type of faulty Takata airbag, being a NADI airbag’. Such airbags, not subject to the compulsory recall scheme administered by the ACCC, have been monitored since July 2021 by the TD.

Part I of the *Inquest Findings* released on 19 November 2021 explains how this huge problem emerged.⁵⁶ From the early 2000s, Takata had started using PSAN propellant in some airbag model inflators. As it became apparent that this could become unstable or degrade over time, especially when subject to moisture or thermal cycling (vehicles heating up then cooling down), desiccants were added into some but not all models. Further, calcium sulphate as one desiccant was later found to be unreliable.

In November 2008, Honda in the US notified its regulator of the first of many recalls of models with Takata airbags with dangerous PSAN inflators. Over 2013–15, Takata filed defect reports, resulting by 3 November 2015 in the regulator ordering acceleration of recalls by certain vehicles with Takata airbags. The vehicle safety authority noted that despite continuing uncertainty about the precise causes,

54 See, eg, Marianna Longmire, ‘Five Product Safety Wins CHOICE Helped Deliver’, *CHOICE* (Web Page, 6 July 2020) <<https://www.choice.com.au/shopping/consumer-rights-and-advice/your-rights/articles/choice-product-safety-wins>>.

55 See ‘Car Manufacturers Complete 99.9 Per Cent of Takata Airbag Recall’, *Australian Competition & Consumer Commission* (Web Page, 5 March 2021) <<https://www.accc.gov.au/media-release/car-manufacturers-complete-999-per-cent-of-takata-airbag-recall>>.

56 *Inquest Findings* (n 11) [71]–[74].

seven individuals had already been killed by such airbags and 92 more injured. This first order (subsequently amended as more information emerged about the defects) included Honda CR-V models from 2002–06, and it was drafted to incorporate future voluntary recalls by manufacturers – thus coming to encompass the 2007 Honda CR-V model. That model vehicle also came to be voluntarily recalled in Australia, but was not replaced before Mr Ngo was killed by an exploding airbag on 13 July 2017.⁵⁷

Honda and other vehicle suppliers in Australia were still classifying Takata airbags into those with ‘alpha’ inflators (under recall in the US as of January 2014 for identified faults) and others with ‘beta’ inflators (not under recall in 2014).⁵⁸ When Mr Ngo was killed, his non-desiccated ‘SDI’ category airbag inflator was classified as ‘beta’ and his vehicle’s voluntary recall 5ZV was not prioritised by Honda Australia in the same manner as its recalls of vehicles with alpha airbags. Only a month afterwards, in August 2017, did it classify vehicles airbags like his vehicle’s as critical and prioritise them in the same more urgent way.⁵⁹ However, when he was killed, there had been around 19 known fatalities worldwide from misdeployment of PSAN Takata airbags (with the first in 2009 in the US), with many of the deaths and injuries reportedly in Honda vehicles.⁶⁰ Further, by then there had been deaths in Malaysia attributed to SDI airbags in Honda vehicles, which Honda Australia had been made aware of.⁶¹

In addition, in May 2016 the US regulator publicised a report commissioned from Dr Harold Blomquist researching the precise causes and factors causing the ruptures (‘Blomquist Report’). He concluded that all non-desiccated Takata airbags had a design defect in that they would degrade, inevitably reaching an unsafe level.⁶² The regulator then ordered recalls of all such airbags, whether alpha or beta, albeit identifying technical and geographical factors accelerating the risks.⁶³

In June 2016, the TD sent the Blomquist Report with a summary to Honda Australia and held its first ‘Takata Airbag Working Group’ regular meeting including

57 Ibid [75]–[83].

58 Ibid [86].

59 Ibid [101]–[102].

60 Ibid [100].

61 Ibid [104].

62 Harold R Blomquist, ‘Expert Report of Harold R Blomquist, PHD’ (Report, United States Department of Transportation National Highway Traffic Safety Administration, May 2016) 11–12 [32] <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/expert_report-hrbloomquist.pdf>.

63 *Inquest Findings* (n 11) [87]–[93]. Although not mentioned in the *Inquest Findings*, on 27 February 2017 a US District Court also accepted a plea bargain by Takata for a charge of wire fraud, which led to a total criminal penalty of [US] \$1 billion, including \$975 million in restitution and a \$25 million fine, and three years’ probation. Under a joint restitution order entered at the time of sentencing, two restitution funds [were] established: a \$125 million fund for those individuals who have been physically injured by Takata’s airbags and who have not already reached a settlement with the company, and a \$850 million fund for airbag recall and replacement costs incurred by those auto manufacturers who were victims of Takata’s fraud scheme.

‘Takata Airbag Inflator Matter, 16-cr-20810’, *United States Attorney’s Office: Eastern District of Michigan* (Web Page, 5 December 2017) <<https://www.justice.gov/usao-edmi/takata-airbag-inflator-matter-16-cr-20810>>.

ACCC representatives.⁶⁴ These regulators finalised their view that neither type of Takata airbag should be provided to the Australian market and generally should be recalled. Findings noted that ‘the number of vehicles recalled and number of affected vehicle manufacturers substantially increased following the publication of the Blomquist Report and the views adopted by [the TD] in light of it’.⁶⁵

However, recalls in Australia remained voluntary, and progress in rectifying vehicles remained slow – as can be seen from this graph of vehicles rectified under Australia’s compulsory recall order issued only in February 2018.

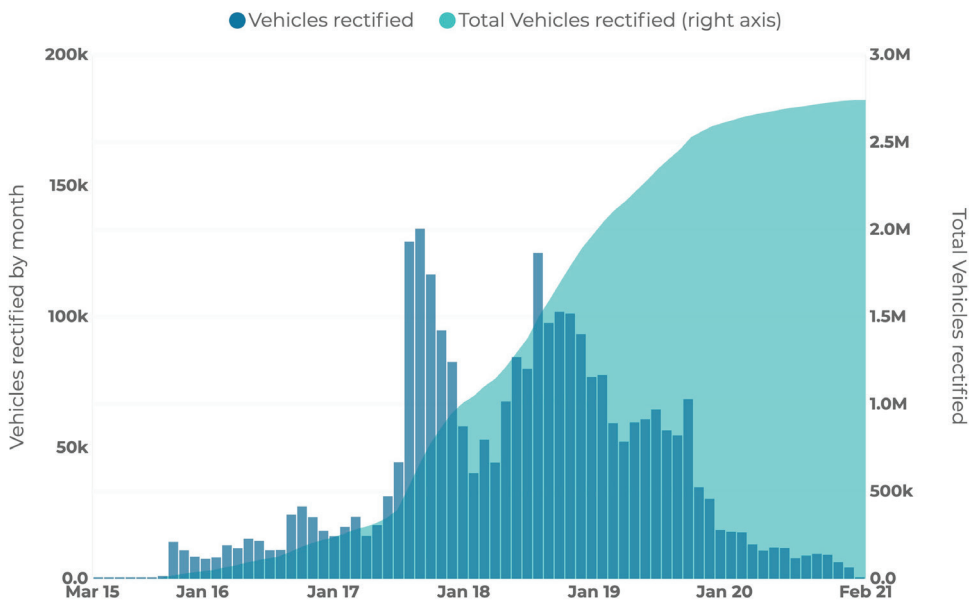


Figure 1: Monthly and Cumulative Takata Airbag Rectifications (March 2015 – February 2021).⁶⁶

A small step up in monthly rectifications achieved can be seen from September 2016 to June 2017 in Figure 1. This may have been due to some media reporting of deaths and recalls in the US and Australia’s first known injury in Darwin in April 2017 (mentioned in Part I and in the *Inquest Findings*), and relatedly some better efforts by regulators and suppliers. However, Figure 1 shows that the peak in monthly recalls emerged from July 2017 (when Mr Ngo was killed and CHOICE issued its report as mentioned above) through to January 2018, followed by another wave from February 2018 (when Australian authorities finally issued their compulsory recall order).

⁶⁴ *Inquest Findings* (n 11) [95]–[97].

⁶⁵ *Ibid* [98].

⁶⁶ ‘Takata Recalls Progress Data’, *ACCC Product Safety* (Web Page, 28 February 2021) <<https://www.productsafety.gov.au/business/understand-product-safety-rules/role-of-the-acc-and-government-in-recalls/compulsory-takata-airbag-recall/takata-recalls-progress-data>>.

An academic study in 2021 identified factors impacting Australian consumer responses to Takata airbag recalls, using ACCC administrative data through to the end of 2018 (so almost one year into the compulsory recall, plus the prior voluntary recalls from 2015).⁶⁷ The results, which seem likely generalisable to other products, show that recalls were significantly less successful and therefore effective for certain groups:⁶⁸

1. The probability of consumers replacing Takata airbags was lowest in locations with a high percentage of usual residents speaking a language other than English or born overseas or Indigenous; lowest replacement rates were also found with households with two employees or no employees.
2. Those in the bottom 10% socio-economically were much less likely to comply.
3. Those in areas where others had replaced airbags were more likely to do so too (suggesting a social norm effect).
4. Lower-value vehicle owners were less likely to comply.
5. Response was less likely as numbers of notifications already received by the consumer increased.
6. For consumers not responding to the first few notifications, varying methods was more effective.

The study also conducted a randomised survey in late 2018 revealing 90% of participants were aware of the Takata recalls, although individuals speaking a language other than English had less awareness – and were less willing to respond to a hypothetical recall.⁶⁹ Also, for example, respondents were more likely to replace a defective product when the information was negatively framed (emphasising a loss rather than a gain) and with a focus on death or injury.

These factors arguably should have been identified and acted on earlier by suppliers and regulators to improve the overall progress of Takata airbag recalls, reducing risks of harm and other costs in implementing recalls. Many of them also arguably help explain the lead-up to the death of Mr Ngo in his 2007 Honda CR-V on 13 July 2017. As noted in the *Inquest Findings*,⁷⁰ he was born in Cambodia, migrating to Australia as a young man to raise a family in Cabramatta (Sydney). He had recently then turned 58 and was operating a business with his wife in Claymore.

IV THE CORONIAL INQUEST (2019–21)

The NSW inquest over 2019–21 into the death of Mr Ngo in mid-2017 was particularly extensive, reflecting by then the ongoing risks from Australia's largest-ever recall campaign and strong public interest. It involved 23 hearing days spread out from 23 September 2019 to 3 July 2020, generating a 242-page report

67 Nicholas Biddle and James Zhang, *Application of Behavioural Insights to Understand the Australian Recall of Takata Airbags* (Report, 2021).

68 Ibid 3.

69 Ibid.

70 *Inquest Findings* (n 11) [4]–[5].

of findings on 19 November 2021 from the then Deputy State Coroner, Magistrate Elaine Truscott ('the Coroner'). The Counsel Assisting the Coroner ('Counsel Assisting') were David Kell SC⁷¹ and Ms TL Phillips, instructed by lawyers in the NSW Crown Solicitor's Office (often used for more complex coronial inquests, rather than Police lawyers). The role of Counsel Assisting is particularly important in inquests and the Coroner noted that her findings 'significantly adopt the structure, chronological information, and factual content of the evidence as set out in Counsel Assisting's detailed and lengthy written submissions'.⁷²

Generally, regulated now primarily by the *Coroners Act 2009* (NSW) ('*Coroners Act*'), a coronial inquiry can be held into a violent death or a sudden death of unknown cause. The procedure is

fundamentally different from ordinary 'litigation'. An inquest is not litigation at all. There are no 'parties' and no 'contest'. No-one sets out to 'prove' any particular allegation or proposition.

Rather, an inquest is an investigation, aimed at discovering the truth. It is an inquisitorial exercise in fact-finding.⁷³

A related feature is that coroners may make recommendations (under section 82 of the *Coroners Act*), and frequently do so in cases raising systemic problems (as in this Inquest), typically for improvements to public health and safety related to the death investigated. Recommendations can be made to suppliers of products or services, for example, as well as supervisory governmental entities. Those experienced in inquests suggest to legal advisors that they should consider well before the inquest what recommendations might be made, and if 'improvements in safety can or should be made, then it is likely to reflect well on your client at inquest if it can be shown that those improvements have already been carried out'.⁷⁴ Findings regarding the manner and causes of death will also sometimes be critical of (in)actions by organisations and individuals, so advisors suggest that clients should also consider early on what steps should be taken to amend systems, policies etc to ameliorate adverse findings. Such clients should also consider making apologies, and sometimes do so, if it is or becomes apparent their fault contributed to the death.⁷⁵

Such matters already indicate significant differences from ordinary litigation in courts, and there are many others – even today.⁷⁶ For example, reflecting the inquisitorial and investigative nature of inquests, there is early and ongoing consultation between the coroner and counsel assisting, including ex parte. The

71 This senior barrister had also been appointed NSW Crown Advocate in 2016: see 'Appointment to Note: Crown Advocate', *New South Wales Bar Association* (Web Page, 14 September 2016) <<https://nswbar.asn.au/the-bar-association/publications/inbrief/view/7be4753ee4e26b4fd93440f81929a7d6>>.

72 *Inquest Findings* (n 11) [2].

73 Ian Bourke, 'Appearing in the Coronial Jurisdiction' [2014] (Autumn) *Bar News: Journal of the NSW Bar Association* 39, 39.

74 Ibid 42.

75 Ibid 47, noting also that under the *Civil Liability Act 2002* (NSW) ss 68–9, apologies given in court cannot be used as admissions of fault in civil proceedings.

76 See Donna Ward, 'Advocacy in Coronial Inquests: A Seminar' [2021] (Autumn) *Bar News: Journal of the NSW Bar Association* 36.

latter consults with a police officer in charge of investigating the death to prepare for the coroner a list of issues and draft list of witnesses, and which persons or organisations should be informed about the inquest to seek leave to appear and give evidence. Counsel assisting primarily examine all witnesses on behalf of the coroner, even if others are given leave to call further witnesses. Witnesses are not usually asked to wait outside the court while others give evidence. The usual rules of procedure and evidence do not apply (section 58(1) of the *Coroners Act*), so ideally all relevant questions to witnesses (which can be leading as well as non-leading) will be asked by counsel assisting (and often also the coroner). Counsel assisting also usually circulate draft proposed recommendations towards the end of hearings.⁷⁷

Inquests have become ‘a hybrid process containing both adversarial and inquisitorial elements ... coroners exercise judicial power, notwithstanding the executive nature of their functions’.⁷⁸ The adversarial elements arise partly because the findings and recommendations can be influential, even generating later civil and/or criminal proceedings, and in NSW the coroners are judicial officers.⁷⁹ Those called for or seeking permissions to give evidence also typically engage lawyers. In this Inquest, for example, Honda Australia, the ACCC and TD respectively engaged very experienced Senior Counsel and large law offices for their legal representation.⁸⁰

The *Inquest Findings* begin in Part B⁸¹ by succinctly summarising how Mr Ngo was killed by an exploding airbag in his 2007 Honda CR-V following a collision on 13 July 2017. His driver-side Takata airbag was subject to Honda Australia’s ‘5ZV’ recall notice, which around then had a completion rate of around 86%. In March 2017, after multiple recall letters from Honda to his wife as owner, Ms Ngak Chea (also injured by misdeployment of her passenger-side airbag), had arranged for her local branch of a larger dealership to replace the airbag on 11 July 2017 – two days before the fatal accident. However, their daughter ran late in getting the car to the dealership, so the dealership rebooked airbag replacement for 5 October 2017.

Part J critically analysed the dealership’s arrangements for the replacement, concluding that they

should have involved a booking slot at a time earlier than 3½ months of Ms Chea’s phone call. Honda Australia should have continued to monitor Salesforce [its computer system linking with dealerships] and had they done so, should have attempted to reallocate Ms Chea’s booking to another dealer with earlier available booking slots. By failing to do so Honda Australia effectively indicated to dealers that a delay of about 3 months was reasonable in the circumstances. The consequence of this tolerance may have impacted on [the dealership] running its refurbished Honda Service Centre below maximum staffing capacity until shortly after Mr Ngo’s death.

77 Bourke (n 73) 44–5.

78 *Musumeci v A-G (NSW)* (2003) 57 NSWLR 193, 199 [33] (Ipp JA).

79 See generally Bourke (n 73); Ward (n 76).

80 *Inquest Findings* (n 11) 2. For example, Honda engaged Arthur Moses SC, also President of the NSW Bar Association over 2017–8: ‘Arthur Moses SC’, *New Chambers* (Web Page) <<https://newchambers.com.au/barristers/arthur-moses-sc/>>. The TD’s counsel were instructed by the Australian Government Solicitor, while the ACCC’s counsel were instructed by Corrs Chambers Westgarth.

81 *Inquest Findings* (n 11) [3]–[13].

On 11 July 2017 [the dealership] should have been in a position to accommodate and therefore should have accommodated [Mr Ngo's daughter's] request to bring the vehicle in despite being three hours late. As at July 2017, given the completion of the refurbished service department facilities three months earlier, Peter Warren should have been fully operational with more staff to complete the replacement of recalled airbags.⁸²

From September 2015 sufficient replacement airbags were available, so delays were linked to the dealership's staffing and workshop constraints.⁸³ Other reasons were that they and the Honda Recall Call Centre telephone operator did not communicate risks, and Honda's payment structure for carrying out recalls.⁸⁴ The Coroner also found it regrettable that by March 2017 Honda

had ceased monitoring the delays through its Salesforce system and only took steps to re-allocate consumers facing delays of this length to other dealers where the customer made a complaint. Had Ms Chea (or a member of her family) voiced complaints about the delay of the planned replacement of the defective airbag it is likely that it could have happened sooner than what was scheduled.⁸⁵

Part K then highlighted serious problems with Honda Australia's 5ZV recall and correspondence with Ms Chea. It sent her four letters on 18 November 2015 (four months after the 5XC recall had been notified from Honda Japan), 19 May 2016, 28 October 2016, and 15 March 2017 (with the last sent by registered post).⁸⁶ From the first template letter, however, the wording (as underlined by the Coroner below) was inadequate to identify and communicate the risks, noting only that Honda

has determined that a *potential concern may* exist with the driver's front airbag inflator in your vehicle and a Product Safety Recall *will be* conducted ... During testing of the driver's front airbag inflators, it was observed that there was *a wide range of density variations within the inflator propellant*. This can lead to *abnormal airbag deployment* in the event of an accident, *potentially* increasing the risk of injury. As a *precautionary action*, the driver's front airbag inflator will be replaced.⁸⁷

The fourth letter remained similar with 'somewhat more impactful language and fonts' but still had 'some deficiencies',⁸⁸ notably by not referring to serious risk of injury or (like the third letter) death. The opening hours given for the Honda Recall Call Centre were incorrect (shorter), Honda attempted to disclaim responsibility for not having a dealership complete the recall, and although the language was less verbose and technical, the visual layout 'could have been significantly improved'.⁸⁹ The Coroner also credited Honda for starting research from March 2017 to find ways to improve its recall rate (only 60% by the end of 2016),⁹⁰ resulting in a far more explicit recall letter in October 2017 which marked

82 Ibid [189]–[190].

83 Ibid [119].

84 Ibid [115], [125].

85 Ibid [157].

86 Ibid [215].

87 Ibid [217]–[218] (emphasis in original).

88 Ibid [221].

89 Ibid [221]–[223].

90 Ibid [230]–[232].

a ‘vastly significant improvement’.⁹¹ However, that letter came months after Mr Ngo was killed on 13 July 2017.

Given the risks known by Honda, the Coroner found it

particularly regrettable that Honda Australia perpetuated the characterisation of the 5ZV recall as a precautionary or preventative measure, as doing so effectively suggests that it is an unnecessary recall falling short of the criteria that the consumer good (product) ‘will or may cause injury’.⁹²

The purpose of a recall is to remove consumer products that are or may be a danger to the public and to do so as quickly as possible. The term ‘precautionary’ suggests a removal of a product from the market even though it does not reach the threshold of risk. The term ‘preventative measure’ does not describe a defect at all and is merely a restatement of the purpose of a recall – namely to prevent harm to the consumer or Australian public. Finally, to categorise the recall as precautionary or preventative had a tendency to suggest that Honda Australia in recalling 5ZV vehicles was doing so as a matter of courtesy rather than legal requirement.

The Coroner also criticised the timing of the recall letters, at intervals exceeding, for example, the 90 days provided by the voluntary code for recalls developed by the Federal Chamber of Automotive Industries (‘FCAI’) in consultation with regulators. The Coroner noted:⁹³

Honda Australia staggered its consumer letters to cope with the volume of vehicles which were having airbags replaced. This appears to have had the effect of lessening the delay at the Honda dealerships which were, at least at some Sydney dealers, already running at 3 months. However, the gap between letters to consumers likely adversely impacted on consumer response. It is in those circumstances that Honda Australia continued to send out letters to consumers beyond the third letter suggested by the FCAI Code. It is likely due to that persistence, together with the improved communication in the March 2017 letter, that Ms Chea responded and booked the Vehicle in for airbag replacement. That such persistence was required was likely due to the delay between the letters and the failure of the original letters to convey adequate information to the consumer in the first place.

In addition, the Coroner rejected Honda Australia’s submission that it exercised due diligence by ‘assessing the risk based on what was being communicated to it by its parent company’ in Japan, despite essentially replicating the latter’s recall notifications and passing on that information to Australian regulators.⁹⁴ The Coroner also suggested that the FCAI code should add that suppliers should complete such due diligence requirements within seven days of notification, in light of *ACL* section 128 requirements that suppliers undertaking a voluntary recall should explain the nature of the defect plus the circumstances of use that may lead to danger.⁹⁵

Part L of the *Inquest Findings* elaborates on the regulatory regime for voluntary recalls of airbags, as well as the then FCAI code and the (only partly dovetailing) ACCC guidelines for recalls generally. Under the *ACL*, the ACCC receives and manages notifications of voluntary recalls (section 128) and since 2010 mandatory

91 Ibid [237].

92 Ibid [265]–[266].

93 Ibid [291].

94 Ibid [264].

95 Ibid [278]–[280].

reports of known product-related accidents (section 131).⁹⁶ The minister advised by the ACCC can also impose a compulsory recall (section 122). Under the then *MVSA*, the TD ensured compliance with Australian Design Rules (which then became safety standards under the *ACL*, but with no provisions specifically for airbags) for vehicles imported and supplied in Australia.⁹⁷ No legislation gave powers regarding recalls but the TD, given its specialist knowledge, reportedly monitored voluntary recalls notified to the ACCC under *ACL* section 128.⁹⁸ The substituted *RVSA* extends compulsory recall powers to the TD,⁹⁹ and from July 2021 that Department also receives and publicises (via its own website) vehicle-related recalls.

Given some historical overlap around voluntary recall monitoring, on 19 October 2016 the two agencies concluded a MOU based on many years of settled practice. The wording (clauses 8 and 10) and evidence given to the Inquest suggested that despite only the ACCC being able to escalate a voluntary recall to a compulsory recall at the time, the TD ‘was allocated responsibilities under the MOU for negotiating (where necessary) and monitoring the progress of voluntary recalls of motor vehicles by suppliers as well as engaging with suppliers about their recall strategies’.¹⁰⁰

However, at the Inquest, TD staff (perhaps somewhat self-servingly) alleged that the ACCC was the ‘principal regulator’ for Takata airbag recalls while the TD merely offered technical support.¹⁰¹ Senior ACCC executive Timothy Grimwade disagreed, arguing the TD took the lead.¹⁰² That was contested by his own former colleague, Dean Wright (a whistleblower mentioned below in Part V, reportedly fired in 2018). As Assistant Director of the Recalls and Hazard Assessment Section with the ACCC’s Product Safety Branch from about October 2010 until mid-2016, he believed

the ACCC *did* have responsibility to monitor the effectiveness of the Takata recalls.

Mr Wright said he understood that part of the role of the ACCC was to use education and campaigns in order to improve product safety awareness as to the dangers associated with Takata airbags. Further, Mr Wright did not agree that, during the period in which he was Assistant Director, the ACCC had ‘outsourced’ its responsibilities in relation to examining documentation associated with recalls, interactions with industry, monitoring recalls and identifying safety issues to [the TD].¹⁰³

Grimwade accepted that there had been a ‘lack of clarity’ about the two regulators’ respective boundaries even with the MOU.¹⁰⁴ Going further, Counsel

⁹⁶ Ibid [294]–[299].

⁹⁷ Ibid [300]–[301], [304]–[305].

⁹⁸ Ibid [302]–[303].

⁹⁹ *RVSA* (n 30) r 206.

¹⁰⁰ *Inquest Findings* (n 11) [314].

¹⁰¹ Ibid [322]–[323].

¹⁰² Ibid [328]–[329].

¹⁰³ Ibid [330]–[331] (emphasis in original).

¹⁰⁴ Ibid [333].

Assisting submitted that there had been ‘significant’¹⁰⁵ and ‘substantial confusion’¹⁰⁶ regarding, eg:

1. reviewing and finalising recall notifications contents on the ACCC’s website; and
2. whether the TD and/or ACCC were responsible for engaging with suppliers about recall strategies, plans for communicating with owners, reviewing recall letters, and bringing risks to the attention of the broader public.

Part M of the *Inquest Findings* turns to what happened next. For example, the TD did monitor progress in recalls by Honda (and other manufacturers) but rather simplistically based on ‘benchmark recall rates’ from historical data in prior voluntary recalls of all vehicles (preceding, eg, the proliferation of social media). The rates did not consider ‘the risk profile of the various recalls’, nor ‘the age of the vehicles’. Nonetheless, during the Takata airbag recalls the TD still expected that manufacturers would reach the historical benchmark rate of around 80% within three years of initial recall.¹⁰⁷ A further problem was that recall notices published on the ACCC’s website were not updated for new knowledge about the product’s risks, although by the time of the Inquest this had become required.¹⁰⁸

Perhaps most disturbingly, the TD did not have any systematic process to ensure it received even the first recall letter from Honda and did not generally request later letters from them or other manufacturers.¹⁰⁹ Further, the TD did not check letter contents to assess the effectiveness in communication with consumers,¹¹⁰ considering they lacked such expertise, whereas the ACCC understood the TD to be undertaking that task.¹¹¹ Only at the Inquest’s hearing was Grimwade informed that the TD had not been reviewing letters and that the TD considered itself to lack the expertise needed to do so, though he considered that their expertise would have been sufficient.¹¹² By contrast, Wright considered that the ACCC did play a role in reviewing recall letters, with both agencies having expertise in preventing ‘weasel words’ being used when communicating with consumers.¹¹³

This role confusion continued despite several alerts to the regulators from late 2015, generating limp responses and missed opportunities to improve the Takata airbag recall rollout. First, from September 2015 the prominent National Roads and Motorists Association raised some members’ concerns with the ACCC about the appropriateness of the management of the recall by the ACCC and manufacturers.¹¹⁴ Second, in November 2015 the ACCC received a report of a Mazda 6 airbag misdeploying and injuring the driver’s face with fragments.¹¹⁵

105 Ibid [335].

106 Ibid [341].

107 Ibid [387].

108 Ibid [392]–[393].

109 Ibid [396].

110 Ibid [397].

111 Ibid [405].

112 Ibid [406].

113 Ibid [410].

114 Ibid [457].

115 Ibid [468]–[470].

Third, the *Inquest Findings* note that in December 2015, I raised separately with three senior ACCC staff my concerns about the language of ‘precautionary’ recalls being used based on a recall letter received for my own Honda (similar to that in the November 2015 letter for the 5ZV recall) which I considered misleading.¹¹⁶ Yet the Coroner noted that apparently neither the TD nor the ACCC had, until Mr Ngo’s death on 13 July 2017,

raised with Honda Australia any query about the basis for its use of ‘precautionary’ language in recall communications with its customers; and that the concerns raised by Professor Nottage were not otherwise conveyed to Honda Australia. ... Mr Grimwade accepted that Honda Australia should have been approached, either by the ACCC or [the TD], in this regard. He gave evidence to the effect that a failure to take up those concerns involved a missed opportunity on the part of the ACCC or [the TD].¹¹⁷

In summary, the Coroner found:

This ‘precautionary’ or ‘preventative measure’ approach was seemingly taken by Honda Australia with the 5ZV recall (as it was with at least three prior recalls) and is evident in Honda Australia’s recall campaign as only recall letters were mailed to consumers rather than adopting a wider publicity campaign which prevailed until there was a death in Australia. The content of the consumer recall letters at least until March 2017 effectively failed to convey to the consumer the importance of the need to replace the airbag. The recall strategy failed to bring to the attention of the consumer the risk or danger that the airbag posed. That this approach continued well past the publication of the Blomquist report and that none of Honda Australia, [the TD] or the ACCC sought to widen the recall strategy at this time is regrettable. Moreover, as already discussed ... it is regrettable that Honda Australia, which had the primary responsibility for its voluntary campaign, did not identify that it should change its consumer recall letter and strategy well before March 2017.

It was a failure that the ACCC did not itself or seek [the TD] to intervene in Honda Australia’s campaign approach when the opportunity arose, such as in 2015 with the NRMA and Professor Nottage communications or indeed in the Takata Airbag Working Group meetings.¹¹⁸

Accordingly, overall, the Coroner agreed with the eight major submissions advanced by Counsel Assisting,¹¹⁹ concluding:

[D]ue to a lack of clarity and at times substantial confusion as to the respective roles of [the TD] and the ACCC, together with the lack of a documented escalation process against which to monitor and advance the progress of the recall, the ACCC and [the TD] inadequately administered and monitored the Takata Airbag voluntary recalls during the period July 2015 to July 2017. The inadequacy particularly arose in that there was a failure to ensure that the defect and hazard of the Takata airbag subject to the Honda Australia 5ZV recall was properly described to the Australian public on the ACCC’s PSA website, in the Honda Australia letters to consumers, or by Australian public media broadcasts in a timely and adequate manner.¹²⁰

Finally, the *Inquest Findings* included five related sets of recommendations for ongoing monitoring by the TD and ACCC of all recalls involving motor vehicles and/or components. Most were not contested, and indeed some were implemented

116 Ibid [517]–[523].

117 Ibid [524].

118 Ibid [644]–[645].

119 Ibid [714]–[757].

120 Ibid [758].

already or soon after the Inquest.¹²¹ However, the Coroner decided not to adopt Counsel Assisting's recommendation to develop an Australian standard for airbags, due to practical objections raised, but rather recommended that the TD consider engaging in a study to determine the feasibility of such standard-setting.¹²² The Coroner also discussed reforms to impose sanctions for those registering vehicles in NSW with vehicles subject to the 2018 compulsory recall who have not yet had unsafe Takata airbags replaced.¹²³ A concluding summary of all recommendations to key stakeholders¹²⁴ included due diligence requirements for Honda Australia as well as the FCAI in its recalls code regarding, for example, independent inquiries and risk assessments being needed when Australian firms receive recall notices from parent companies abroad.

V THE AFTERMATH OF THE INQUEST

The FCAI Code now essentially adopts the Coroner's recommendations,¹²⁵ and Honda Australia also seems to have kept (belatedly) improving its recall practices.¹²⁶ In addition, when recommendations are made following inquests to NSW government ministers and agencies, they are required to respond formally to the NSW Attorney-General within six months, but this Inquest directed recommendations essentially towards the federal ACCC and TD.¹²⁷ Those agencies also appear to have significantly improved their MOU and cooperation, recall websites and other resources, and indeed had started to do so by the time of the Inquest hearings over 2019–20.¹²⁸ However, the statutory regime extending compulsory recall powers to the TD for vehicles had already been enacted in 2018, so the *Inquest Findings* in 2021 came too late to influence any debate about that reform.

121 Ibid [759]–[763].

122 Ibid [764]–[768].

123 Ibid [770]–[795].

124 Ibid [798].

125 Federal Chamber of Automotive Industries, 'Code of Practice for the Conduct of a Road Vehicle Voluntary Recall' (Code of Practice, August 2022) <https://www.fcai.com.au/wp-content/uploads/2023/02/fcai_code_of_practice_for_the_conduct_of_a_road_vehicle_voluntary_recall_august_2022.pdf>. The 2022 Code now adds to clause 3.1 a note for suppliers to conduct such due diligence, but without mentioning the 7-day time limit suggested at [278] of the *Inquest Findings* (n 11) – perhaps because that is not mentioned in the actual recommendations. It also still does not cross-reference the ACCC Recall Guidelines incorporating best practices for consumer products.

126 *Inquest Findings* (n 11) [221].

127 As of 11 February 2026, there is no public record of a response from Transport for NSW regarding warning letters and/or registration sanctions, perhaps because the Coroner stated this recommendation was 'to the extent not already done': ibid [798]. See 'Responses to Coronial Recommendations Archive', *Communities and Justice* (Web Page, 1 November 2024) <<https://dcj.nsw.gov.au/legal-and-justice/laws-and-legislation/legal-assistance-and-applications/responses-to-coronial-recommendations/response-to-coronial-recommendations-archive.html>>.

128 *Inquest Findings* (n 11) [664]. See above nn 29–30 and accompanying text.

Considering the wider impact of the Inquest, it did attract some attention from mainstream media at the outset of hearings in September 2019¹²⁹ and when those ended in mid-2020.¹³⁰ It is somewhat surprising that there was not more coverage during the intervening (over 20) hearing days, as for inquests generally there is often great media interest and journalists frequently attend the hearings.¹³¹ The relative inattention in this case may have been due to the COVID-19 pandemic lockdowns in Sydney implemented over the first half of 2020.

More curiously, there was almost no reporting following the release of the *Inquest Findings* on 19 November 2021. This was despite a report in June 2021 about another Takata airbag fatality in Australia, raising questions about why that too did not generate a coronial inquest.¹³²

One possible explanation is that even the NSW Inquest's quite damning conclusions regarding Honda and the two Australian regulators were considered by late 2021 to be 'old news', especially after years of deaths and disruption caused by the COVID-19 pandemic. Journalists who had covered the hearings through to mid-2020 might also have been distracted by other news items in the 17 months or so it took the Coroner to release the *Inquest Findings* following the last hearing on 3 July 2020.

Additionally, by end-February 2021 the Takata airbags had seemingly been almost all replaced (as mentioned in Part III above). Several Inquest recommendations had been or would soon be implemented, and these measures and some admissions made by witnesses during the Inquest about their personal or institutional failures may have softened the Coroner's findings – as is not uncommon with inquests (see Part IV above). Nonetheless, more publicity around the Inquest's findings would have been desirable, and remains so now – not least because further recalls of Takata airbags are still being announced and implemented, not necessarily with ideal wording or governmental coordination (see Part I above). More broadly, it is important for good governance in a democracy that bureaucratic and legislative problems be widely reported and discussed in public.

From that perspective, it is heartening that an article published online by a smaller news outlet in Australia on 9 December 2021, soon after the *Inquest Findings*, reported that a former ACCC official (Dean Wright, mentioned in Part IV above) allegedly lost his job in 2018 and then was threatened with criminal action after internal emails became public via a television exposé on the Takata

129 See, eg, Nick Dole, 'Faulty Takata Airbag Inflicted 'Shotgun-Like' Wound on Sydney Man, NSW Coroner Told', *ABC News* (online, 23 September 2019) <<https://www.abc.net.au/news/2019-09-23/faulty-takata-airbag-coroner-inquiry-death-cabramatta-man/11538628>>.

130 'Regulators Knew of Two Takata Accidents Before a Sydney Man's Death, Inquest Told', *The Guardian* (online, 22 June 2020) <<https://www.theguardian.com/business/2020/jun/22/regulators-knew-of-two-takata-accidents-before-a-sydney-mans-death-inquest-told>>.

131 Bourke (n 73) 48, noting also that hearings are generally open to the public under sections 47 and 74(2)(a) of the *Coroners Act 2009* (NSW).

132 'Helen Lee Valadares Revealed as Third Person Killed by a Faulty Takata Airbag in Australia', *Daily Telegraph* (online, 2 June 2021) <<https://www.dailytelegraph.com.au/news/nsw/helen-lee-valadares-revealed-as-third-person-killed-by-a-faulty-takata-airbag-in-australia/news-story/>>.

airbag scandal. Apparently concerned that the ACCC had not reacted quickly enough to the public safety threat, the *Inquest Findings* gave Wright confidence to reveal his identity and suggest that ‘the ACCC owes the public an apology for not being truthful’.¹³³

Some further influence from the Inquest arose regarding class actions brought in the NSW Supreme Court against Toyota, Subaru, Honda, BMW, Nissan, Mazda and Volkswagen (‘VW’). The plaintiffs’ specialist international law firm, Quinn Emmanuel, met to exchange views with the law firm representing Mr Ngo’s family in the Inquest.¹³⁴ These proceedings were initiated in the Supreme Court of NSW against the first three car manufacturers in 2017, after Mr Ngo’s death and the CHOICE report, and then in 2018 against the other four.¹³⁵ On 1 November 2019, despite the plaintiffs urging time to allow more people to register to participate in the class actions, Sackar J accepted the defendants’ proposal for a ‘soft closure’ of the class to facilitate a mediated settlement,¹³⁶ after observing

not just the defendants before me, but many other car manufacturers [which] have had well publicised issues with the alleged air bags. The Takata air bag has featured prominently in the media in very recent times. The notion of vehicle recall has been brought to the attention of many members of the public. Many affected by the airbags have already received notices and participated in a recall, and have already taken active involvement in relation to their motor vehicles. I note in passing, although it was not in evidence, it is not seriously controversial that the ACCC from time to time, has purported to notify anyone affected by the Takata airbags to have their vehicles checked. It is also a matter of some notoriety that there is a dedicated website to the Takata airbags, whereby one can search their vehicle registration to determine whether they need to have their airbag replaced.¹³⁷

The soft closure order was reversed by the NSW Court of Appeal, partly due to a subsequent High Court judgment.¹³⁸ Bell P further observed:

133 David Hardaker, ‘ACCC Whistleblower Vindicated, Goes Public: But Remains Persona Non Grata’, *Crikey* (online, 9 December 2021) <<https://www.crikey.com.au/2021/12/09/accc-whistleblower-vindicated-steps-out-of-shadows/>>. The news outlet added that the ‘ACCC said it did not propose to comment on Wright’s “actions or opinions”’. It also said it had “identified and implemented a number of lessons drawn from the inquest” before the coroner’s report was released and was working on others’.

134 Interview with Damian Scattini (Sydney, 14 August 2025) (copy on file with author). The firm also met with representatives of a Northern Territory woman seriously injured in 2017 by a Takata airbag. That incident also led to the Motor Accident Compensation Commission commencing proceedings against Toyota in August 2020: see Jano Gibson, ‘Toyota Sued over Darwin Woman’s “Traumatic” Injuries Caused by Faulty Airbag’, *ABC News* (online, 28 August 2020) <<https://www.abc.net.au/news/2020-08-28/toyota-sued-over-womans-injuries-caused-by-faulty-takata-airbag/12604874>>.

135 ‘Takata Airbag Scandal: Class Action Filed against Three Car Manufacturers’, *SBS News* (online, 25 July 2017) <<https://www.sbs.com.au/news/article/takata-airbag-scandal-class-action-filed-against-three-car-manufacturers/9f2hhiquv>>; ‘Air Bags Class Actions’, *Supreme Court of New South Wales* (Web Page) <https://web.archive.org/web/20210510042703/https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Toyota-Australia-Class-Action.aspx>; *Takata Air Bags Class Action – Common Questions* [2018] NSWSC 1868.

136 *Takata Air Bag – Class Closure and Registration* [2019] NSWSC 1493, [50]–[52] (Sackar J). The soft closure involved the class closing 8 weeks before the scheduled mediation, and reopening by the first day of trial if the matter proceeded to trial.

137 Ibid [48].

138 *Haselhurst v Toyota Motor Corporation Australia Ltd* (2020) 101 NSWLR 890, 913–9 [100]–[123] (Payne JA, Bell P agreeing at 892 [1], Macfarlan JA agreeing at 896 [19], Leeming JA agreeing at 896 [20]) (‘*Haselhurst Appeal*’), discussing *BMW Australia Ltd v Brewster* (2019) 269 CLR 574.

respondents will know how many vehicles containing defective airbags were sold in the period covered by the group definition; they should know at least approximately how many vehicle owners have had their airbags replaced. To the extent that uncertainty as to the number and/or identity of group members remains (because of resales, for example), it is not difficult to conceive as to how a settlement might be structured on a pro rata basis to accommodate such uncertainty ...¹³⁹

Indeed, after seven days of mediation in early 2021 before retired Supreme Court judge Patricia Bergin, a settlement was reached for \$52 million between the open class members and Honda and the other manufacturers – except for VW.¹⁴⁰ In September 2021, Hammerschlag J made preliminary orders pending a final settlement approval hearing, setting 18 February 2022 as the date by which group members were to register to participate in the proposed settlement.¹⁴¹ By then, 33,382 people had registered; 109 more sought to register afterwards, and they then also shared in the settlement approved by Rees J on 20 June 2022. Rees J further noted the average payout per vehicle owner was only around \$600, as the Supreme Court also allowed the request for \$13 million to be distributed to the third-party litigation funder (25% of the settlement sum, being the first ‘common fund order’ allowed in New South Wales), \$15.3 million to the lawyers and experts, and a fee to administer the remaining funds.¹⁴² As such, the influence from the Inquest held through to mid-2020 on the 2021 settlement, before the *Inquest Findings* were made public in November 2021, was not large in monetary terms.¹⁴³

In finally approving the settlement in June 2022, Rees J also considered the prospects of success in the plaintiffs’ causes of action. These centred on lack of acceptable quality under the *ACL* (or merchantable quality under the predecessor *TPA* for vehicles purchased before 2010), as well as misleading and unconscionable conduct.¹⁴⁴ Despite the November 2021 *Inquest Findings* about inadequate recall notices (at least from Honda, in part because of its knowledge about problems with Takata airbags), Rees J noted simply:¹⁴⁵

[I]nsofar as the plaintiff alleged misleading or deceptive conduct or unconscionable conduct by the motor vehicle distributors, the motor vehicle distributors contended

139 *Haselhurst Appeal* (n 138) 896 [16].

140 *Haselhurst v Toyota Motor Corporation Australia Ltd* [2022] NSWSC 1076, [6] (Rees J) (‘*Haselhurst Settlement Approval*’).

141 *Re Takata Airbags Class Actions Settlement (Preliminary Orders)* [2021] NSWSC 1153, sch A [13].

142 *Haselhurst Settlement Approval* (n 140) [1]–[6], [62] (Rees J). See also Supreme Court of New South Wales, ‘Takata Airbag Class Actions against Toyota, Subaru, Honda, BMW, Nissan and Mazda: Notice of Proposed Settlement’ (Notice) <<https://supremecourt.nsw.gov.au/documents/Class-Actions/Air-Bags---Haselhurst---Takata/54-Proposed-Settlement-Notice.pdf>>.

143 However, the average payout was larger than in the US against most of the same manufacturers: see, eg, Anne Bucher, ‘Takata Airbag Class Action Settlement’, *Top Class Actions* (Web Page, 18 August 2017) <<https://topclassactions.com/lawsuit-settlements/closed-settlements/takata-airbag-class-action-settlement/>>.

144 *Haselhurst Settlement Approval* (n 140) [4] (Rees J).

145 *Ibid* [29]. Incidentally, in proceedings brought in 2019 against Mazda for poor customer service regarding other serious vehicle faults, the ACCC succeeded by 2024 in its claims of misleading conduct, but failed to establish unconscionable conduct: see ‘Mazda to Pay \$11.5m for Misleading Consumers about Consumer Guarantee Rights for Serious Vehicle Faults’, *Australian Competition & Consumer Commission* (Web Page, 14 February 2024) <<https://www.accc.gov.au/media-release/mazda-to-pay-115m-for-misleading-consumers-about-consumer-guarantee-rights-for-serious-vehicle-faults-0>>.

that they had a reasonable basis for any representations made as to the safety of the vehicles, including because the airbag inflators were supplied by Takata, a specialist airbag manufacturer who supplied most other major vehicle manufacturers with airbags throughout the world. Takata had provided contractual assurances and warranties as to quality and fitness for purpose. Takata had supplied numerous design, production and other test results over time purporting to show that the airbag inflators complied with specifications. Takata had represented on numerous occasions that the relevant airbag inflators did not contain any defect that made them or the vehicles in which they were installed unsafe.

Approving the settlement in June 2022, Rees J was also influenced by other difficulties encountered¹⁴⁶ by the unsuccessful representative plaintiff, University of Newcastle Professor Philip Dwyer,¹⁴⁷ in the class action that continued against VW, as that manufacturer did not join the others in the mediated settlement provisionally agreed in February 2021. On 18 June 2021, Stevenson J held that Dwyer had not proven that his Passat vehicle was not of acceptable quality when purchased, by not establishing ‘any link between the propensity of PSAN to degrade and any relevant, functionally significant, propensity of the PSAN to degrade in the particular airbag installed in his vehicle so as to cause it to explode or malfunction’. Stevenson J further held Dwyer anyway had not proven any actual loss or damage suffered from its Takata PSAN airbag ‘not least because VW has, without charge, replaced the Takata airbag with an airbag that is undoubtedly sound’.¹⁴⁸ On 7 September 2021, the Court also ordered Dwyer (jointly and severally with the litigation funder) to pay VW’s costs.¹⁴⁹

The ruling on lack of damage incurred is understandable, although the result could differ now given a recent High Court judgment on timing for assessing when *ACL* violations arise.¹⁵⁰ However, in finding no liability, Stevenson J was impressed by VW’s evidence that there had not since been any incident with a Takata airbag exploding in a VW vehicle; its testing from February 2016 of around 20,000 inflators from its vehicles built since 2005 found all deployed correctly; and there was no European recall of Takata airbags in VW vehicles.¹⁵¹ This downplays the risks of eventual serious accidents identified from the Blomquist Report in May 2016, resulting in the US (and Australia in 2018) eventually recalling all Takata PSAN airbags. If the *Inquest Findings* had been published earlier than November

146 *Haselhurst Settlement Approval* (n 140) [25]–[28] (Rees J).

147 See generally Kathryn Fisk, ‘VW Awarded Legal Costs after Winning Supreme Court Case over Takata Airbags Recall: UPDATE’, *Which Car?* (Web Page, 10 September 2021) <<https://www.whichcar.com.au/news/volkswagen-group-takata-airbags-nsw-court-case-legal-costs-update>>. Dwyer had previously been a group member in a class action against VW regarding its global diesel emissions scandal, which settled in 2019 and was coordinated by another specialist law firm: see generally ‘Volkswagen Settles Australian Diesel Class Actions That Affected 100,000 Vehicles’, *The Guardian* (online, 16 September 2019) <<https://www.theguardian.com/australia-news/2019/sep/16/volkswagen-settles-australian-diesel-class-actions-that-affected-100000-vehicles>>. This saga also led to a record fine against VW in Australia for false representations under the *ACL*: ‘Court Orders Volkswagen to Pay Record \$125 Million in Penalties’, *Australian Competition & Consumer Commission* (Web Page, 20 December 2019) <<https://www.accc.gov.au/media-release/court-orders-volkswagen-to-pay-record-125-million-in-penalties>>.

148 *Dwyer v Volkswagen Group Australia Pty Ltd* [2021] NSWSC 715, [14]–[15] (Stevenson J) (‘Dwyer’).

149 *Dwyer v Volkswagen Group Australia Pty Ltd* [No 2] [2021] NSWSC 1137.

150 *Capic v Ford Motor Company of Australia Pty Ltd* (2024) 419 ALR 437.

151 *Dwyer* (n 148) [52], [67]–[78] (Stevenson J).

2021 and used in these Supreme Court proceedings, this liability question could well have been decided differently. They could also have had an impact on the mediated settlement reached in February 2021 in the six other class actions, including against Honda.

Also in 2021, in August (again before the *Inquest Findings*), the ACCC started proceedings against Mercedes-Benz. It alleged Mercedes had minimised the risk of serious injury of death from the faulty Takata airbags ‘on at least 73 occasions’ by stating the recall was precautionary in nature and that ‘there had been no incidents, accidents, injuries or deaths ... at all,’ despite one fatality and another serious injury having already occurred in Australia.¹⁵² This was contrary to the compulsory recall communication plan, and on 2 September 2022, Mercedes-Benz agreed to pay an \$12.5 million fine.¹⁵³

Interestingly, it is not clear if the ACCC alleged that wording like ‘precautionary’ was misleading conduct in trade, also violating the *ACL* (section 18). Further, the ACCC apparently did not bring proceedings against Honda Australia for misleadingly using such language in its voluntary recall letters with consumers, despite such findings effectively being made in the *Inquest*. Perhaps such proceedings would have been embarrassing for the ACCC given the *Inquest* also found multiple failures by the regulators, including by not reviewing and responding to concerns about such communications with Honda customers.

This hypothesis becomes more plausible given that the ACCC did proceed against Honda Australia, eventually achieving a fine of \$6 million, for misleading conduct towards customers of three former authorised Honda dealerships in NSW, Victoria and Western Australia (stating incorrectly that they would close or had closed and would no longer service Honda vehicles).¹⁵⁴ Further questions were raised concerning Honda Australia after it issued a recall in April 2024 regarding a faulty fuel pump in over 52,000 vehicles built over 2017–20, despite this having been notified also in June 2020.¹⁵⁵

In sum, we find some but quite diverse and limited impact from the *Inquest*. Through some media reporting at the start and end of hearings over 2019–20, more consumers may have become aware of the Takata airbag risks. However, from early 2018 the federal government had belatedly announced a more effective compulsory recall and suppliers (except, say, Mercedes-Benz) had also improved their communications with customers. By the *Inquest* hearings, the regulators had

152 Ben Zachariah, ‘Takata Lawsuits in NSW Settled by Major Car Companies for \$52 Million’, *Which Car?* (Web Page, 17 September 2021) <<https://www.whichcar.com.au/news/takata-lawsuits-in-nsw-settled-by-major-car-companies-for-52-million>>.

153 ‘Mercedes to Pay \$12.5m for Failing to Comply with Takata Recall Communication Plan’, *Australian Competition & Consumer Commission* (Web Page, 2 September 2022) <<https://www.accc.gov.au/media-release/mercedes-to-pay-125m-for-failing-to-comply-with-takata-recall-communication-plan>>.

154 ‘Honda to Pay \$6m in Penalties for Misleading Consumers about Dealership Closures’, *Australian Competition & Consumer Commission* (Web Page, 15 December 2023) <<https://www.accc.gov.au/media-release/honda-to-pay-6m-in-penalties-for-misleading-consumers-about-dealership-closures>>.

155 Blair Jackson, ‘“Serious Injury or Death”: Honda Fuel Pump Recall Affects Thousands’, *news.com.au* (online, 3 April 2024) <<https://www.news.com.au/national/breaking-news/serious-injury-or-death-honda-fuel-pump-recall-affects-thousands/news-story/d7338375882fe5e444baedc62c1af99f>>.

already started to improve their coordination and enforcement activities, which is not uncommon with such proceedings (as mentioned in Part IV). Legislators had also already enacted provisions to give the TD compulsory recall powers and a clearer lead role and responsibility regarding vehicles and componentry. Private litigation does not seem to have been impacted much by the evidence given through hearings, let alone (17 months later) the *Inquest Findings*, but could have been, especially if there had been less delay in those being issued.

VI OTHER CONSUMER PRODUCT-RELATED INQUESTS AND ANALOGUES ABROAD

Many areas of law can impact on product safety outcomes, either directly (such as *ex ante* public regulation, but also, eg, criminal prosecution for ‘professional negligence causing death’ in Japan) or indirectly (eg, compensation for harmed consumers under product liability law). Some areas are less obvious, eg, worker safety laws (allowing claims against employers for workers having to use unsafe products), or even defamation laws (limiting public complaints). Coronial inquests in common law systems like Australia have been little analysed in legal literature recently.¹⁵⁶ Yet, along with possible analogues abroad, they deserve more attention for their actual and potential roles in improving consumer product safety, as analysed above in the case of Takata airbags.

My preliminary investigation finds few other inquest findings in Australia clearly finding deaths caused by unsafe consumer products and/or recommendations from coroners for improvements by regulators or suppliers. However, searching the NSW Coroners Court’s findings website under ‘Australian Consumer Law’ reveals that on 16 January 2015 the then Deputy Coroner Paul McMahon found that 14-year-old James Ciappara had died in a collision on his petrol-powered motorised bicycle attempting to avoid the police. He recommended that the federal minister responsible under the *ACL* should consider banning equipment and products designed to enable the conversion of bicycles to make them go faster.¹⁵⁷ Unfortunately, there is no requirement for a federal Minister (only a NSW minister or agency) to respond formally to a recommendation from a NSW coroner, and there does not seem to have been any implementation of this recommendation.¹⁵⁸

156 Cf, eg, David Ranson, ‘The Coroner’s Role in Medical Treatment Related Deaths: How Effective? How Efficient?’ (1998) 23(6) *Alternative Law Journal* 284. He suggests, for example, that coroners likely lack the broad expertise assembled by in-hospital medical panels reviewing adverse events, so are unlikely to substantially contribute to preventing future such events: at 286–7. A few years after his analysis, from 2002, Australian states and territories agreed to contribute data on core preventable adverse events: see, eg, ‘Sentinel Events Reporting’, *Clinical Excellence Commission* (Web Page) <<https://cec.health.nsw.gov.au/incident-management/biannual-report/sentinel-events>>.

157 *Inquest into the Death of James Ciappara* (Coroners’ Court of New South Wales, Deputy State Coroner Paul MacMahon, 16 January 2015) 17.

158 Cf, eg, the ACCC’s mandatory standard for bicycles: *Consumer Product Safety Standard: Pedal Bicycles 2004* (Cth). See ‘Bicycles Mandatory Standard’, *ACCC Product Safety* (Web Page) <<https://www.productsafety.gov.au/business/search-mandatory-standards/bicycles-mandatory-standard>>.

One possible reform suggested by this case, and indeed the Takata airbag Inquest where the Coroner made recommendations directed primarily at federal rather than NSW state regulators, is to add a requirement for a state Attorney-General not only to report back to parliament on the state responses to coronial inquiries but also on how any coroners' recommendations to federal authorities have been passed on and responded to.

Searching similarly for Victoria, on 4 October 2019 Coroner Audrey Jamieson made a 'Finding into Death without Inquest' when a 63-year-old man was crushed by his caravan during repairs.¹⁵⁹ She found that Trevor O'Brien had misappropriated a jockey-wheel to use improperly as a 'jack' to hold up his caravan while working underneath it, but it had given way and crushed him.¹⁶⁰ The Coroner noted the ACCC's 'Working Under a Vehicle' Safety Alert published in 2011 which warned never to get under a vehicle supported by a jack. The Alert was issued after research the ACCC conducted with the National Coronial Information System ('NCIS') had identified 46 deaths from crushing over the previous decade, with an average of 160 injuries each year.¹⁶¹ In 2019, the ACCC issued a media release (and related video) showing that 120 Australians had died from do-it-yourself ('DIY') vehicle maintenance since 2000, mostly from incorrectly supported vehicles.¹⁶² This was despite the ACCC's 2018 supplier guide requiring warning labels for actual jacks.¹⁶³ The Coroner was concerned with the trend in fatalities associated with DIY vehicle maintenance, despite the ACCC's efforts to increase awareness of safety issues, and therefore recommended that the federal minister make a safety standard for jockey-wheels including warnings not to use them as vehicle jacks.¹⁶⁴ Again, however, this does not seem to have been actioned.¹⁶⁵

Unfortunately, the website for the NCIS¹⁶⁶ (which was established in 2000) does not identify the above two cases (or the Takata inquest), when searching under 'Australian Consumer Law'. Websites for inquests from other states and territories are not user-friendly for the public either. However, regulators like the ACCC and TD may be able to access comprehensive data, and that should be more readily available to the public. Australian regulators should monitor and indeed report to the public on coronial inquests abroad or analogues regarding consumer product safety topics of interest in Australia, such as the recent inquest in Singapore.¹⁶⁷ Our regulators and coronial authorities should also alert counterparts abroad (perhaps

159 *Finding into Death without Inquest: Trevor John O'Brien* (Coroners' Court of Victoria, Coroner Audrey Jamieson, 4 October 2019).

160 *Ibid* 5 [4].

161 *Ibid* 6 [5]–[6].

162 *Ibid* 7 [8].

163 *Ibid* 6 [7].

164 *Ibid* 6–8.

165 Cf *Consumer Goods (Trolley Jacks) Safety Standard 2017* (Cth); *Consumer Goods (Portable Ramps for Vehicles) Safety Standard 2017* (Cth); *Consumer Goods (Vehicle Support Stands) Safety Standard 2017* (Cth); *Consumer Product Safety Standard for Vehicle Jacks 2010* (Cth).

166 See 'About Us', *National Coronial Information System* (Web Page) <<https://www.ncis.org.au/index.php/about-us>> (also incorporating data from New Zealand).

167 See above n 17 and accompanying text.

focusing on economies closely linked through free trade agreements) about inquiries and findings concerning consumer product-related deaths.

As well as warning about serious product-related risks, better management and disclosure of such information can help identify problems with business and regulatory practices more generally. Inquests may be particularly valuable when risks arise that fall awkwardly between regulatory regimes, as occurred with the Takata airbags and earlier problems like Infinity electrical cabling and faulty Samsung washing machines. Nonetheless, the primary mandates of coroners to determine causes of death and recommend measures to avoid future deaths through a judicial process may mean that inquests are unable to fully weigh the risks and benefits of introducing safety standards or bans under consumer law. This may explain the lack of implementation of the recommendations from the Ciappara Inquest in 2015 and the Victorian O'Brien Inquest in 2019. Nonetheless, in late 2016 the federal government established an intergovernmental committee into quad bike safety chaired by the Attorney-General's Department and involving the ACCC as well as Safe Work Australia (the national worker safety and compensation body), which also drew on NSW- and South Australian-funded research. This began partly after NSW and Queensland inquest findings over 2015–16 into multiple deaths,¹⁶⁸ and resulted in the *Consumer Goods (Quad Bikes) Safety Standard 2019* (Cth) under the *ACL*.¹⁶⁹

Analogues to inquests, a procedure found with variants now across many common law jurisdictions, should also be investigated worldwide. In Japan, for example, which follows mainly the continental European civil law tradition, the Consumer Safety Investigation Committee ('CSIC') was established in 2012 within the independent Consumer Affairs Agency ('CAA') created in 2009 after a series of major product safety failures.¹⁷⁰ The CSIC similarly aims to identify the causes of consumer accidents and propose countermeasures, rather than directly pursuing civil or criminal liability of suppliers.¹⁷¹ The CSIC's focus on prevention was partly inspired by other administrative procedures, notably for aircraft and rail transport accident investigation, but also a push from the family of a victim killed

168 'Quad Bike Safety Inquest Recommendations and Research', *Safe Work Australia* (Web Page) <<https://www.safeworkaustralia.gov.au/safety-topic/hazards/quadwatch/quad-bike-safety-inquest-recommendations-and-research>>.

169 See 'Quad Bikes Mandatory Standard', *ACCC Product Safety* (Web Page) <<https://www.productsafety.gov.au/business/search-mandatory-standards/quad-bikes-mandatory-standard>>. See generally 'Quad Bikes Guide', *ACCC Product Safety* (Web Page) <<https://www.productsafety.gov.au/consumers/drive-and-ride-safely/quad-bikes-guide>>. See also Tony Lower, Kerri-Lynn Peachey and Rajneesh Kaur, 'A Preliminary Review of the Impact of the Australian Consumer Goods (Quad Bikes) Safety Standard 2019 on Fatal Work-Related Incidents' (2025) 49(4) *Australian and New Zealand Journal of Public Health* <<https://doi.org/10.1016/j.anzjph.2025.100254>>.

170 See 'Consumer Safety Investigation Commission', *Consumer Affairs Agency* (Web Page) <<https://www.caa.go.jp/en/policy/csic/>>, providing an overview plus the example of a 20 November 2017 report into choking hazards from children's toys (chaired by Katsuya Uga, then Professor of administrative law at the University of Tokyo and, between 2019–25, a Supreme Court judge).

171 Consumer Safety Investigation Commission, 'Overview of the Consumer Safety Investigation Commission' (Fact Sheet) <<https://www.caa.go.jp/en/policy/csic/pdf/csic.pdf>>.

by a malfunctioning elevator.¹⁷² The CSIC's focus requires review of all types of information, including as to why laws were not complied with, beyond what may be relevant for ordinary litigation.¹⁷³

However, a key difference from inquests in Australia is that the CSIC is part of the executive branch rather than the judiciary, so it does not hold public hearings and lacks subpoena powers as well as anything like Counsel Assisting. Nonetheless, the CSIC is supposed to remain independent of the CAA and often advises its Director (or other Ministers) what law or regulatory reform should be undertaken.¹⁷⁴ Future research could usefully compare what other impacts the CSIC investigation process, findings and recommendations have had on the media, suppliers, regulators, consumers and even private litigants in Japan – as was attempted above (Part V) regarding the Takata airbag Inquest in NSW.

VII CONCLUSIONS

Unsafe Takata airbags remain in circulation, in Australia and worldwide, despite almost two decades of recalls and recent initiatives to improve consumer product safety regulation generally (Parts I–III above). The NSW coronial inquest over 2019–21 into Australia's first known fatality in 2017 uncovered how Honda Australia and regulators were partly asleep at the wheel regarding voluntary recalls (Part IV). The fatality triggered a belated compulsory recall and legislative reform to equip the TD with recall powers, both introduced in 2018. By the end of the Inquest the TD was taking a clear lead role in vehicle recalls. The *Inquest Findings* and recommendations for avoiding future harms from Takata airbag and other recalls, only released in November 2021, flew largely under the radar in the media but influenced some regulatory practices and could have had an impact on private litigation (Part V). Such inquests elsewhere across Australia, and analogues overseas, deserve broader scrutiny (Part VI). They can help identify serious product-related risks and responses, assisting with compensation claims and regulatory learning, while avoiding future harms and providing an extra resource for consumer product safety law reform debates.

172 Luke Nottage and Souichirou Kozuka, 'Consumer Law Redress and Administration, Product Safety Regulation and Contracts: Comparing Japan and Australia' (2024) 30(3) *Competition and Consumer Law Journal* 269, 289. See also Luke Nottage, 'The ABCs of Product Safety Re-regulation in Japan: Asbestos, Buildings, Consumer Electrical Goods, and Schindler's Lifts' (2006) 15(2) *Griffith Law Review* 242 <<https://doi.org/10.1080/10383441.2006.10854574>>.

173 Nottage and Kozuka (n 172) 289.

174 Ibid.