

# Road Vehicle Recalls Working Group

## Meeting 2

2 – 4:30 pm | Wednesday 21 November 2018  
Quest Melbourne Airport | Melbourne, Victoria

### Outcomes

#### **Participants**

Chair - Sharon Nyakuengama (SN), General Manager, Vehicle Safety Standards Branch (VSS), Department of Infrastructure, Regional Development and Cities (Infrastructure)

#### ***Infrastructure***

Alison Watson (AW), Director, Regulatory Design and Operational Implementation, VSS  
Graham Evans (GE), Director, Program Support and Stakeholder Engagement, VSS  
Beth Morrison (BM), Recall Reform Manager, Regulatory Design and Operational Implementation, VSS

Ross Hamilton, Assistant Director, Regulatory Design and Operational Implementation, VSS  
David Morton (via telephone), Recalls Manager, Regulatory Design and Operational Implementation, VSS

Matt Skinner, Regulatory Design and Operational Implementation, VSS

#### ***Industry***

<b>Organisation</b>	<b>Representative/s</b>
Australian Automotive Aftermarket Association (AAAA)	Lesley Yates
Australian Automotive Dealer Association (AADA)	Alex Tewes
Australian Imported Motor Vehicle Industry Association (AIMVIA)	Euan Philpot
Australian Road Transport Suppliers Association (ARTSA)	Trevor Dickson
Bus Industry Confederation (BIC)	Luke Hardy
Caravan Industry Association of Australia (CIAA)	Anne Campbell Roland Zhang
Daimler, Truck and Bus	Steven Ghaly, Renee Boyd
Federal Chamber of Automotive Industries (FCAI)	James Hurnall
Heavy Vehicle Industry Australia (HVIA)	Greg Forbes

Hino	Barry Noble
Honda Australia Motorcycle and Power Equipment	Greg Snart
Honda Motor Vehicles Australia	Debbie Lee
Mazda	Shane Bradford
Mitsubishi Motors Australia Limited (MMAL)	Ashley Sanders
National Heavy Vehicle Regulator	Peter Austin
Queensland Department of Transport and Main Roads	Anant Bellary
RAWS Association	Rob Ogilvie
Subaru	Hiep Bui
Toyota	Lou Mandato
Truck Industry Council (TIC)	Mark Hammond
	Chris Loose
VicRoads	Tracee Piper
	Michael Chan

### **Apologies**

	<b>Organisation</b>	<b>Representative</b>
	Commercial Vehicle Industry Association Australia (CVIAA)	Phil Hodges
	Nissan	John Galvin

### **Chairs opening remarks**

SN opened the meeting by welcoming the members and thanking them for their attendance.

SN updated the group on:

- progress of the RVS legislation, noting that, assuming the legislation is passed, the recall provisions will commence 12 months from Royal Assent, and
- the development of IT capability, and in particular, advised that work on recall functionality will likely commence in February or March 2019

### **RVR Discussion Paper #2 – discussion**

RVR Discussion Paper #2 was circulated to the members of the Recalls Working Group by email on 26 October 2018.

BM introduced RVR Discussion Paper #2 and gave a brief overview of its contents.

SN then sought feedback from members on the three questions asked at the end of the discussion paper.

## **Q1 – What can Infrastructure do to address issues arising from the RVS commencement arrangements proposed at section 2 of this paper?**

Members did not raise particular issues in relation to this question.

The FCAI stated that they have no issues with the recalls provisions under the RVS legislation as they reflect what is currently under the Australian Consumer Law (ACL).

- AW agreed that Infrastructure would look at the FCAI's draft update to their Code of Practice.

## **Q2 – What issues arise from Infrastructure's view that the defining characteristic of 'recall action' is the decision made to recall vehicles for the purpose of rectifying a safety issue or non-compliance with certain standards?**

- **What can Industry do to address these issues?**
- **What can Infrastructure do to address these issues?**

SN drew attention to the lack of a definition within the RVS legislation for 'recall action' and asked for the group's thoughts, particularly in relation to Infrastructure's views as set out in RVR Discussion Paper #2.

AW observed that, under current arrangements, some suppliers wait until they have stock to repair a defect before notifying the ACCC, and that such an approach would not be consistent with Infrastructure's view as set out in RVR Discussion Paper #2.

MMAL stated that this should not be prescriptive, and observed that each manufacturer has a different process for when and how notification of a voluntary recall occurs.

- AW agreed and said this is why broad principles have been developed.

AW asked how long it takes for Australian representatives to be advised of a decision made overseas to recall.

- MMAL responded that it was a difficult thing to answer and is dependent on the circumstances of each recall.
  - AW noted that the spectrum of what triggers a recall is likely to be risk based.

The FCAI asked whether:

- Suppliers would be required to notify Infrastructure or the public if a recall is initiated.
  - AW advised that the notification should be made to Infrastructure who will then publish the associated notice.
  - Infrastructure is talking to the Australian Competition and Consumer Commission (ACCC) to determine whether or not notices would also be published to the Product Safety Australia website (administered by the ACCC).

- Access to a PRA (or equivalent) is required to receive owner contact details from NEVDIS.

The TIC asked what role Infrastructure has in relation to identifying whether a recall is necessary.

- AW advised that Infrastructure has a team member who scans the environment (Australia and overseas) in order to identify vehicles that perhaps should be recalled.

**Q3 – What issues arise from Infrastructure’s view that the entity, whether an individual in business or a company, responsible for the supply of a road vehicle or approved road vehicle component to the Australian market for the first time through trade or commerce, should take voluntary action to recall?**

- **What can Industry do to address these issues?**
- **What can Infrastructure do to address these issues?**

The HVIA:

- Requested clarification on the obligation to notify Infrastructure within 10 days of notifying a person to whom a vehicle or component has been supplied outside of Australia.
  - AW advised that notification in these circumstances will enable Infrastructure to advise the relevant overseas regulator that the vehicle or component is subject to voluntary recall in Australia.
- Asked whether a component that is manufactured in Australia for supply overseas exclusively could be subject to the recall provisions under the RVS legislation.
  - AW advised that if the component has not been supplied to the Australian market through trade or commerce then it is not subject to the recall provisions under the RVS legislation.
- Asked whether a Second Stage Manufacturer (SSM) could be obligated under the recall provisions of the RVS legislation.
  - AW responded that there would be nothing stopping a SSM being obligated, but that it is difficult to establish how this would play out in each instance.
  - Infrastructure agreed with the FCAI’s observation that if a SSM holds a type approval, they are automatically a supplier under the RVS Rules.
- Stated that it would be important to know early on about the IT systems that would be used and how they would operate.
  - SN agreed and assured that Infrastructure would continue to engage and consult with the members of the Recalls Working Group.
- Noted that it would be difficult for Infrastructure to contact the supplier for Concessional RAV Entry vehicles.
  - AW observed there are active voluntary recalls being conducted by Registered Automotive Workshops (RAWs). The difference is that Infrastructure would

be more empowered in relation to the conduct of recalls under the provisions of the RVS legislation.

The CIAA observed that:

- It would be interesting to see what would happen if a person held a type approval for the chassis of a vehicle, and the vehicle was subject to recall – who would be responsible?
  - AW responded that it could be either the type approval holder or the SSM; it is dependent on why the vehicle is being recalled.
- The language changed between Type Approval pathway and the recall provisions and asked why this is the case.
  - AW advised that it is because the recall provisions under the RVS legislation have been drafted broadly to ensure that more than just type approval holders are covered.

The AADA asked whether vehicles imported by the Department of Defence (Defence) that are subsequently sold would be subject to the recall provisions under the RVS legislation.

- AW advised that in Infrastructure's view, it is the entity that first supplies the vehicles to the Australian market that will be obligated to take voluntary recall action in prescribed circumstances under the RVS legislation. Depending on the specifics of the circumstances, this could mean that Defence is the relevant entity.

#### Discussion outside the scope of Discussion Paper #2:

The RAWS Association:

- Advised that it is possible for RAWs to be situated overseas and that the RAWS Association is concerned about this. The RAWS Association is of the view that an importer's licence would mitigate risks.
- Advised that the Association is concerned about getting parts from manufacturers in order to complete a voluntary recall, particularly if a manufacturer refuses to provide a component or part.
  - It was observed that if a manufacturer was found to be blocking the purchase of a component or part this could be found to be a restraint of trade issue
  - AW noted that repair was only one way that a recall could be completed. The others are replace or compensate. In addition, it is open to a RAW to pay a manufacturer to undertake the repair work.
  - SN noted that ability to source parts and undertake recalls should be part of a business decision made by a person importing a vehicle.
- The FCAI observed that when their members introduce a vehicle to the market, they factor in possible recalls or the accessibility of parts. A RAW may not be aware of a recall on a vehicle they modify, and nor would the new owner.

- AW noted that Infrastructure has a team member who scans the environment for overseas recalls and tries to match that against vehicles that are provided to the Australian market.
- SN went on to say that one of the reasons the Australian Government decided to rule out personal new imports and parallel import schemes was recall coverage uncertainty. She noted that SEVs numbers are expected to remain the same under the new legislation and that there would not be a dramatic increase in recalls on such vehicles.

The FCAI asked what state and territory governments could do if a vehicle owner does not take appropriate action in response to a recall.

- The Queensland Department of Transport and Main Roads stated that there is scope for states and territories to do more.
  - Infrastructure is of the view that further consideration and engagement is required.
- What would happen in the event that a vehicle complies with an overseas standard that is more advanced than the Australian Design Rules (ADRs), but does not comply with the ADRs.
  - AW advised that Infrastructure would look at whether the non-compliance will or may cause injury or death.

#### Presentation – Revision to reporting of voluntary recalls

DM gave a presentation outlining changes made to the process under which suppliers provide monthly recall updates to Infrastructure, noting that the:

- Approach is aimed at streamlining the process, and
- The format for reporting would continue to be used under the RVS legislation.

#### Presentation - Notifying Infrastructure under the RVS legislation

BM presented on the types of information that Infrastructure may seek from suppliers notifying Infrastructure, distinguishing areas where Infrastructure will ask for more information than is sought under current arrangements, such as VIN lists (rather than ranges), technical reports and communication strategies.

Following the presentation, discussion focused on terminology. In particular, Industry participants queried Infrastructure’s requirement for a ‘technical report’ to be submitted when notifying.

The FCAI noted that as the RVS Rules and Industry Codes are being developed, consistency in use of terminology will be important in order to ensure that FCAI members meet government’s expectations.

- AW clarified that Infrastructure would like to receive a copy of the suppliers technical bulletin, work instructions (or equivalent) for undertaking the rectification.

Ref. #	Item	Status	Lead	Action required	Action status	TRIM Reference
<b>RVR 2a</b>	RVR Discussion Paper #2: Role of the Department, recall action, and responsible entity in relation to the voluntary recall provisions under the Road Vehicle Standards (RVS) legislation	Circulated	Infrastructure	Industry members to provide any further feedback on the content of the RVR Discussion Paper #2 to Infrastructure by 21 December 2018	Open	
<p>Written responses from members to the questions on page 3 of Attachment D can be provided to the Secretariat at:  <a href="mailto:Recalls@infrastructure.gov.au">Recalls@infrastructure.gov.au</a></p>						
<b>RVR 2b</b>	Update to FCAI's Code of Practice.	Agreed	FCAI	Infrastructure to look at the FCAI's draft update at relevant point in time.	Open	
<b>RVR 2c</b>	Establish NEVDIS protocol so that suppliers can access contact details of vehicle owners	Agreed	Infrastructure	Infrastructure to work with AustRoads and comeback to members	Open	
<b>RVR 2d</b>	HVIA requested that Infrastructure advise as early as possible the IT systems that will be used in relation to recalls, and how they will operate.	Agreed	Infrastructure	Infrastructure will continue to engage and consult with the members of the Recalls Working Group	Open	



Ref. #	Item	Status	Lead	Action required	Action status	TRIM Reference
RVR 2e	Presentation: Notifying Infrastructure under the RVS legislation	Presented and published	Infrastructure	RVR members to provide any further feedback to Infrastructure by 21 December 2018	Open	
A copy of the presentation is available from the <a href="#">Road Vehicle Recalls Working Group</a> website						
RVR 2f	Industry members asked that Infrastructure provide clarification on what is required from a technical report	Agreed	Infrastructure	Infrastructure to ensure guidance is provided	Open	