

# Road Vehicle Recalls Working Group

## Meeting 3

2 – 4 pm | Wednesday 27 March 2019

Holiday Inn Sydney Airport | Sydney, New South Wales

### Outcomes

#### **Participants**

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

#### ***Infrastructure***

Alison Watson (AW), Director, Regulatory Design and Operational Implementation, VSS

Graham Evans, Director, Program Support and Stakeholder Engagement, VSS

David Morton (DM), A/g Director, Regulatory Design and Operational Implementation, VSS

Beth Morrison (BM), Recall Reform Manager, Regulatory Design and Operational Implementation, VSS

Phoebe Jones, Regulatory Design and Operational Implementation, VSS

Carmine Finucci (by telephone), Recalls Manager Reform Manager, Regulatory Design and Operational Implementation, VSS

Nadene Hingston (by telephone), 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)	Kristian Appelt Peter Greenwood
Australian Road Transport Suppliers Association (ARTSA)	Trevor Dickson
Bus Industry Confederation (BIC)	Luke Hardy
Caravan Industry Association of Australia (CIAA)	
Commercial Vehicle Industry Association Australia (CVIAA)	Imogen Reid
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 Motor Vehicles Australia	David Steven
Mazda	Shane Bradford
Mitsubishi Motors Australia Limited (MMAL)	Ashley Sanders
National Heavy Vehicle Regulator	Peter Austin
Nissan	John Galvin
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	Sacha Abeysekera Danilo Messias

#### Chair's opening remarks

SN welcomed the Recalls Working Group and provided an overview of the session. She thanked participants for their attendance.

#### Presentation: Key changes between the Exposure Draft of the Road Vehicle Standards Rules and the final version of the Rules

BM delivered a presentation regarding the key changes between the Exposure Draft of the Road Vehicle Standards (RVS) Rules (December 2017) and the final version of the Rules (February 2019).

The Working Group discussed changes to the Rules regarding notifications of a voluntary recall undertaken by a supplier. The Rules no longer provide, as the Exposure Draft did, that a notification to Infrastructure under the Rules in relation to a voluntary recall is also taken to be a notification to the Australian Competition and Consumer Commission (ACCC) under the Australian Consumer Law (ACL). The intention had been to avoid suppliers having to notify under both the Rules and the ACL if recalling road vehicles or approved road vehicle components that are also consumer goods.

Clarification was sought regarding whether reciprocal recognition of recall notification between the department and the ACCC remains the policy and how this will be implemented. BM explained that we had received advice that the reciprocal recognition provisions were

beyond power on the basis that they seek to alter the operation of the ACL. However, a supplier only making a single notification to the department regarding voluntary recall action remains our policy and the ACCC agrees. AW confirmed that the department would continue to work with ACCC on the mechanism by which we will achieve this.

Implementation of recall provisions under the RVS legislation, RVR Discussion Paper  
RVR Discussion Paper #3 was circulated to the members of the Recalls Working Group by email on 19 March 2019 and published on the department's website on 21 March 2019.

BM delivered an overview of RVR Discussion Paper # 3, regarding Infrastructure's proposed approach to risk-based monitoring of the progress of voluntary recalls, the publication of recall notices on Infrastructure's website, and a proposed approach to the status of recalls, including when recalls become inactive and re-activated and what the consequences are for the monitoring of the recall.

The Working Group considered five discussion questions as follows:

**Q1 – What issues arise as a consequence of Infrastructure's proposal to prioritise its monitoring of recall progress?**

Working Group participants sought clarification regarding how the monitoring recall progress will work. BM explained this, including but not limited to the following remarks:

- Under the existing industry Codes of Practice, suppliers submit progress reports to the department on a monthly basis regarding voluntary recalls. Rather than having a one-size-fits-all approach to monitoring the progress of voluntary recalls under the RVS legislation, the department will prioritise its approach to the monitoring of a recall on the basis of risk.
- For example, if there was a high-risk recall:
  - The department might request more frequent reporting to assist us to monitor the recall and the supplier's performance in relation to it.
  - On receipt of each report, there would be a fresh assessment of whether we need to recalibrate the monitoring strategy. If there was a higher risk (factors considered include but are not limited to – total population of vehicles, potential severity of injury), in the context of all the considerations do we consider sufficient progress is being made – how can we engage to positively affect progress of the recall, and tailoring of our monitoring to be proportionate.

The Working Group discussed the department's communication with suppliers regarding the department's reporting expectations. BM clarified that:

- When the department has received a notification, considered the notification, assessed the level of risk (including communication with the supplier as appropriate regarding the level of risk and appropriate monitoring strategy), and published the voluntary recall notice, we would communicate back to supplier regarding our expectations of their reporting to us.
- Reporting expectations may change over time.
- A recall may change priority. We would expect a high priority recall to change priority over time. The department would calibrate its approach to monitoring and reporting expectations based on reports made by the supplier regarding the progress of the recall.

A participant sought clarification whether Industry Codes of Practice regarding recalls will need to reflect the department's approach to prioritisation. BM clarified:

- It is a matter for industry whether Codes of Practice should be amended.
- The department would generally share a view regarding the risk we have assessed and our prioritisation of the monitoring of the progress recall, that we would publish guidance in future regarding our expectations regarding reporting recall progress to the department.
- If there is a tension between the relevant industry Code of Practice and the department's guidance or other expectations communicated to the supplier by the department, the department's expectations should be followed.

A participant raised that dealers generally have 14 days from the repair of a vehicle to report this to the manufacturer. Any expectation by the department shorter than monthly reporting would be challenging for the manufacturer to meet. BM stated:

- The department expects that most recalls would be of a moderate risk rating and the likelihood is that monthly reporting would continue for most recalls.
- Any shorter reporting period would have to be warranted by the risk and beneficial to the monitoring and active management of that recall.

A participant noted that they treat recalls all with a similar strategy and with similar priority. The only significant distinction between recalls is where they need to direct the customer to behave in a particular way/perform a particular action, for example always ensuring that a bonnet latch is closed.

A participant asked what the department defines as a successful recall. There was discussion on how the lapsing of time or anniversaries of the initiation of a recall would be considered.

BM stated:

- The department acknowledges that the longer a recall is active, it gets harder and harder to increase the completion rate towards 100%. Time lapsed certainly is a factor to consider.
- The age of the vehicle when recalled is also a factor.
- The department will consider whether there are any creative means to get closer to a 100% completion rate.
- Overall the department will consider what practical completion looks like for the particular recall in question. This will shift the department more towards an evidence-based assessment of practical completion.

The Working Group discussed the need for analysis regarding what the trends have been over time for completion rates. There was acknowledgement from the department and other participants that some recalls do track at a steady rate, and some recalls do not see much movement for some time, and parts availability is one of the factors related to this. The department expressed that it is keen to understand better why recalls may not progress for some time.

BM explained further the department's approach that when it receives a notification, it might focus more than it has in the past on how the message will be conveyed to customers, in particular to assist the progress of the recall and public confidence in the stages of the recall. This may not necessarily involve more expectations on a supplier, it might relate to how the department can assist, for example through its proposed social media presence and use of its website.

## **Q2 – Should an extension to a recall campaign result in a new notification, or modification to an existing campaign?**

The Working Group discussed current arrangements for when existing recalls were to be extended, either by notification of a new recall, or modification of an existing recall.

- Participants noted that the Head Offices of passenger vehicle manufacturers overseas would often dictate when a recall was to be undertaken and how any extensions to the recall would be managed. For example, a participant noted that they would be advised by the parent company if there was to be an extension of an existing recall, and whether this would be the modification of an existing recall and covered by the same campaign number, or whether it would be a new recall under a new campaign number.
- One participant noted that when the parent company says to use the same campaign code it helps them to monitor its progress.
- AW noted that if new vehicles are added to existing recalls, it can get challenging for the department to understand the data. The monitoring of the Takata airbag recall undertaken by a number of suppliers (pre ACCC compulsory recall) was discussed as

an example of how multiple extensions of the scope of existing recalls (e.g. the addition of new VIN ranges) could give a misleading picture of completion rates for the department.

- One participant noted that the modification of a VIN range within an existing recall is the exception, not the norm, and often will be because of an inadvertent omission. Typically the extension of a recall involves a new notification, new recall and new PRA number assigned [by the ACCC] to the recall. It was noted that these practices vary between suppliers.

There was general consensus that there should be flexibility, in relation to the extension of the scope of an existing recall, to modify the existing recall (e.g. add a new Model or VIN range to the recall and keep the same number) or create a new recall, and there should be system functionality to support this. Department to progress policy and system development to provide this flexibility.

### **Q3 – What tool, if any, is used by suppliers to assess the severity of injury that will or may be caused by a defect?**

Participants were not aware of what tool, if any, might be used by their Head Office.

### **Q4 – In deciding to conduct a recall campaign, how is:**

- **risk factored in to the decision?**
- **severity of injury factored in to the decision?**

The Working Group discussed how suppliers often use the parent company's completed risk assessment and are the conduit for a recall: they are not going to change a parent company's risk assessment regarding a recall, and particularly will not contradict a parent company's decision that a recall is warranted.

The Caravan Industry Association of Australia (CIAA) representative stated that most of the members of the organisation manufacture and supply caravans within Australia, and have a different experience to those suppliers who have parent companies based overseas and advise whether a voluntary recall should be undertaken. The CIAA representative was supportive of the department putting forward its risk assessment tools and factors for consideration, as helpful information for the caravan industry and a conversation starter regarding whether a voluntary recall is warranted and what the risk is.

One participant noted that they had a risk assessment tool. Certain risks were rated out of 10. If an aggregate of risk elements score above a certain total, or any risk element scores 80% or above, then the tool indicates that a recall should be undertaken. Risk elements include risk of death or injury.

The Working Group participants discussed and queried how the department would manage recalls that it considered were appropriate but had not been undertaken, or the department considered were not appropriately progressing. BM and DM noted:

- The department would have reasonably broad guidelines regarding the monitoring of the progress of a recall. Different sorts of factors may be taken into account when assessing whether a recall is warranted, depending on the safety issue or non-compliance with relevant standards. The department cannot provide exact criteria.
- Suppliers should have a quality management system that covers recalls. The quality management system should be tailored to the business, and some consideration to the circumstances where a voluntary recall should be undertaken should be built in by the supplier. These may not be the same as how the department assesses risk.
- The ability of a decision-maker in the department to take into account factors they consider relevant when deciding whether to grant, vary, suspend or revoke an approval gives sufficient flexibility for us to take into account any concerns regarding the appropriate progression of recalls
- To assist us to form a view whether a voluntary recall by a supplier may be appropriate, the department undertakes activities including the following. The results of these and other activities, can be the trigger for more detailed conversations with the supplier regarding whether a recall is appropriate, or why a recall may not be appropriate:
  - engages with suppliers
  - undertakes environmental scanning, which includes but is not limited to media monitoring and looking at recalls in other jurisdictions where seemingly the same model is supplied in Australia
  - receives and considers Vehicle Safety and Non-Compliance Reports from members of the public and other regulators
  - undertakes technical assessment of some potential safety or non-compliance issues which we have noted or that have been reported to us

The department will put forward further guidance regarding how it will assess whether a voluntary recall may be warranted by a supplier, and how monitoring of that recall should be prioritised, including tools and factors to be considered when considering risk, including the assessment of the severity of possible injury.

BM encouraged Working Group participants to contact the department with any information regarding tools or factors they use or intend to use to assess the risk associated with a safety issue or non-compliance which may warrant a recall.

## **Q5 – What issues arise as a consequence of Infrastructure’s proposed approach to the status of recalls?**

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

The Working Group discussed status changes from active to inactive recalls, and the impacts of how and when a status changes. It was noted:

- Inactive status reduces the reporting burden regarding recalls. Inactive status also reduces the burden for the supplier regarding the management of the recall.
- If an unrectified vehicle is identified and able to be rectified, the supplier must still undertake the rectification work and report this to the department, which would re-enliven the recall.
- The department has not formed a view on whether inactive recalls would be made public in detail. However this is not something that is currently made public on the ACCC’s product safety website.
- If a recall is closed, then that is something that is suitable to report on the website to demonstrate that it is no longer active.

The Working Group discussed issues associated with the monitoring of completion rates for road vehicle components, in particular traceability of the parts and ability to determine a realistic completion rate for the recall. It was noted:

- Supplier would know how many components had been supplied to the market, however many consumable items may have been used and replaced.
- Parts that are approved road vehicle components are subject to recall provisions under the RVS legislation. Aftermarket parts sold through a service centre would be consumer goods under the ACL only and not covered by the RVS legislation.
- Many components supplied to the market are consumable items may have been used and replaced regularly, for example filters. Further, a participant noted that some components are accessories fitted to vehicles for which dealers do not keep records. A participant noted that this is an area where a time basis for inactivating a recall could have some validity. It should be noted that only *approve* road vehicle components are within scope of the recall provisions under the RVS legislation.
- These issues justify why the department’s policy regarding the status of a recall will not be one-size-fits-all, and instead will be a case-by-case assessment of when ‘enough is enough’ for completion rates so that a recall campaign can be made inactive. It is also why the department needs to continue to build its understanding of barriers to completing recalls.

A participant asked a question regarding whether, if another vehicle within the scope of an inactive recall was rectified, the campaign needs to be made active again. The department advised that the recall would re-activate by default, but there would be a consideration

between the supplier and department as to how to proceed, including an examination of the prospects of further vehicles being located.

#### Issues relevant to the administration of road vehicle recalls under current arrangements

DM gave an update on the implementation of a monitoring template for the reporting of voluntary recall rectification rates. He said the take-up of this has been excellent and has improved the department's data collection and analysis.

DM and AW noted that this Working Group would endure past implementation to focus on issues management in the conduct of recalls, and serve as a forum for suppliers to share experience and best practice regarding recalls. AW noted this group, in particular during the Takata airbag recall before it became a compulsory recall, was a useful forum for suppliers to discuss strategies and learn from success amongst each other.

DM invited the Working Group to raise any issues regarding the current interaction with the department, and other further comments.

No issues were raised.

#### Other business

The Working Group discussed a number of other matters relevant to the implementation of the RVS legislation as it relates to recalls, and other issues regarding recalls, as follows:

#### **Non-compliance with other standards**

AW clarified what would happen if there was a feature in a road vehicle (for example, adaptive cruise control in a passenger vehicle) mandated as a safety standard in another jurisdiction but not Australia, and was recalled in that other jurisdiction for malfunction of that feature and resulting non-compliance with that standard. She noted that a voluntary recall of that vehicle may be appropriate in Australia on safety grounds relating to the malfunction, rather than non-compliance with standards.

A participant asked a question regarding recall obligations regarding non-compliance with standards set by states and territories, for example requirements that state and territory registration authorities place on buses. AW noted that non-compliance with those requirements could only be captured under the RVS legislation if it caused a safety issue, however non-compliance with state and territory standards or expectations may be reported to us. Such non-compliance would be an intelligence source for the department and would potentially trigger an examination of whether there was a safety issue in regards to which a recall under the RVS legislation may be appropriate.

#### **Scope of a recall, and the department's regulatory reach**

The Working Group discussed recalls in the context of vehicles sold to recyclers, and the prevention of the component from shifting to another vehicle. The department noted that the

RVS legislation does not reach to wreckers and aftermarket parts, and these matters would be covered by the ACL.

The department noted that we would not consider statutory write-offs to be within the population of vehicles to be recalled. Repairable write-offs would be within the population of vehicles to be recalled. There was further discussion of the scope of recalls. It was noted that whether a vehicle is subject to a recall is not dependent on the registration status of the vehicle.

### **Access to data from state and territory registration authorities and NEVDIS**

A participant asked why the department does not have access to NEVDIS, and whether the department could put in place access to state and territory registration data or NEVDIS. The Working Group discussed how this would be one of the key ways for the department to help suppliers in improving recall rates. Participants noted that contact by mobile phone and email is more effective than post. The Working Group discussed how the department could use its learnings from the Takata airbag recall, and work together with state and territory governments to make changes to assist suppliers increase rectification rates.

Participants discussed a range of issues regarding access to the NEVDIS system. It was noted that the National Heavy Vehicle Regulator can see certain data however cannot provide access to it in a way that would assist suppliers to increase rectification rates. There was discussion of whether, for example, access could be given to state and territory registration data on the basis of a public safety exception contained within privacy legislation.

It was further noted by a participant that it is expensive to continue to access updated NEVDIS data to capture changing ownership of vehicles. A statistic was offered by one participant that 20% of records change every month, with new vehicles being added, vehicles being written off, and vehicles changing hands. It was suggested that, to assist suppliers in having up to date information on vehicles and owners, NEVDIS could offer supplementary reports just with changed records (for example, a list of statutory write-offs) without further charge after providing the original VIN list. The suggestion was that NEVDIS would send these supplementary reports on a monthly or quarterly basis, to prevent the supplier having to pay per VIN for the full VIN list – this would be cheaper and administratively simpler. The issues with this proposal were discussed and it was flagged that this was likely not realistic for NEVDIS based on their cost-recovery model.

There was broad agreement from the Working Group that an expansion of the data available to suppliers for the purpose of increasing rectification rates would be desirable from supplier's perspectives. It was noted that this could involve states and territories reforming their data structures and IT systems to support better data sharing. It was emphasised that even understanding what the scale, timeframes and nature of the changes might need to be would be helpful.



The department committed to exploring opportunities with Austroads/NEVDIS, and states and territories, to improve access to data.

**Future meetings**

SN noted that outcomes of this meeting would be circulated for comment before a final version is put onto our website. The next meeting of this group will likely be in June.

BM encouraged participants to contact the department regarding any matters they suggest may be discussed at future Working Groups and this could be added to the agenda.

SN invited feedback on the venue and location of this meeting to help the department to arrange future meetings in places that best facilitate discussion and are convenient for a range of participants to attend.

Ref. #	Item	Status	Lead	Action required	Action status	TRIM Reference
RVR 3a	RVR Discussion Paper #3.	Circulated	Infrastructure	Industry members to provide feedback to Infrastructure on the content of RVR Discussion Paper #3 by 26 April 2019.	Open	
Written feedback from members can be provided to the Secretariat at: <a href="mailto:Recalls@infrastructure.gov.au">Recalls@infrastructure.gov.au</a>						
RVR 3b	Presentation: Key changes between the Exposure Draft of the RVS Rules and the final version.	Delivered	Infrastructure	Infrastructure to circulate to members and publish to the RVR Working Group website.	Open	
RVR 3c	Infrastructure's policy position in relation to reciprocal recognition of notification between the department and the ACCC.	Agreed	Infrastructure	Infrastructure to continue to work with the ACCC on the mechanism to achieve this.	Open	
RVR 3d	Infrastructure undertook to provide guidance on our expectations on reporting recall progress to the department.	Agreed	Infrastructure	Infrastructure to ensure guidance is provided.	Open	
RVR 3e	Infrastructure would like to understand better why recalls may not progress for some time.	Agreed	Industry members	Industry members to provide response to Infrastructure by 26 April 2019.	Open	

<b>Ref. #</b>	<b>Item</b>	<b>Status</b>	<b>Lead</b>	<b>Action required</b>	<b>Action status</b>	<b>TRIM Reference</b>
<b>RVR 3f</b>	Department to progress policy and system development to provide flexibility in relation to the extension or modification of the scope of an existing recall, or the creation of a new recall.	Agreed	Infrastructure	Infrastructure to ensure policy and system provide the required flexibility.	Open	
<b>RVR 3g</b>	Industry members to advise Infrastructure of tools used to assess the risk associated with a safety issue or non-compliance which may warrant a recall.	Agreed	Industry members	Industry members to provide response to Infrastructure by 26 April 2019.	Open	
<b>RVR 3h</b>	Infrastructure to raise industry concerns with access to, and accuracy of, NEVDIS data with Austroads.	Agreed	Infrastructure	Infrastructure to work with Austroads and comeback to members.	Open	