



Australian Government
Department of Infrastructure,
Regional Development and Cities



Road Vehicle Standards

A background image showing a road with glowing blue and white light trails, suggesting motion and technology. The road curves into the distance under a dark sky.

Road Vehicle Recalls Working Group

RVR Discussion Paper #3 27 March 2019



Table of Contents

- INTRODUCTION.....2

- PURPOSE.....2

- 1. RISK-BASED APPROACH.....3
 - 1.1. Voluntary recalls3
 - 1.1.1. Safety4
 - 1.1.2. Non-compliance4
 - 1.2. Compulsory recalls.....5

- 2. PUBLICATION OF NOTICES5

- 3. STATUS OF A RECALL.....6
 - 3.1. Current practice under the Motor Vehicle Standards Act 19896
 - 3.2. Future policy under RVSA.....7

- 4. DISCUSSION QUESTIONS.....8



Introduction

The Road Vehicle Standards Bill 2018 and related legislation received Royal Assent on 10 December 2018.

A significant inclusion in the Road Vehicle Standards (RVS) legislation is the establishment of a framework for the voluntary and compulsory recall of road vehicles or approved road vehicle components. The recall provisions empower the relevant Minister to issue a recall notice for a compulsory recall, and set out the obligations on suppliers in relation to notifying the relevant Minister about a voluntary or compulsory recall.

The recall provisions under the Road Vehicle Standards Act 2018 (RVSA) commence on 10 December 2019.

On 13 February 2019, the Hon Michael McCormack MP, Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development, made the Road Vehicle Standards Rules 2019 (the Rules), under the RVSA.

The Department of Infrastructure, Regional Development and Cities (Infrastructure) has published a document that identifies how the section numbers and titles under the Rules have changed since the Exposure Draft was released in early 2018. This document is available on the [Road Vehicle Standards Rules 2019](#) page on Infrastructure's website.

Infrastructure is committed to consulting with industry, through the Road Vehicle Recalls Working Group (Recalls Working Group), to facilitate the smooth and effective implementation of the recall provisions under the RVS legislation.

Purpose

Infrastructure developed this discussion paper to facilitate discussion between Infrastructure and industry representatives at the third meeting of the Recalls Working Group on 27 March 2019. A copy of this paper and, once finalised, the outcomes of discussion will be published to the [Road Vehicle Recalls Working Group](#) page on Infrastructure's website.

Outcomes from each meeting of the Recalls Working Group that relate to supplier obligations under the recall provisions of the RVS legislation will be captured in guidance to be made publically available prior to 10 December 2019.

1. Risk-based approach

Infrastructure will take a risk-based approach to the assessment and management of recalls of road vehicles and approved road vehicle components from commencement of the recall provisions under the RVS legislation.

This approach will enable Infrastructure to prioritise its monitoring of recall performance by focusing on those recalls that pose the greatest risk, and in order to ensure appropriate allocation of resources, efficiency of process, and consistency and reliability of outcomes.

On receipt of a notification from a supplier, Infrastructure will undertake a formal, objective risk assessment that will enable us to determine the level of priority; low, moderate or high. The level of activity expected of suppliers will be proportionate to the level of priority assigned.

Infrastructure proposes to use a nomograph in order to assess risk.

A nomograph is a two-dimensional diagram designed to allow the approximate graphical computation of a function that, when applied to risk, plots the risk as the relationship between the severity of an injury and the probability of a hazard occurring.

Infrastructure's view is that the nomograph could be used to assess the overall risk presented by recalls of road vehicles and approved road vehicle components conducted for safety and non-compliance purposes.

Once the level of priority has been determined, this will be recorded in Recalls Management System. This will initiate a business process commensurate with the level of priority assigned to the recall. For example, the business process for a high priority recall will be less tolerant of missed deadlines in relation to the receipt of performance reports from suppliers and will trigger an escalation process.

1.1. Voluntary recalls

The recall provisions at Part 3 of the RVSA commence on 10 December 2019.

From that time, under section 211 of the RVS Rules suppliers will be required to notify Infrastructure when they take voluntary action to recall road vehicles and approved road vehicle components on the basis that:

- Use, or a reasonably foreseeable use (including misuse), of the vehicle or component will or may cause injury to any person, or
- The vehicle or component does not, or it is likely that it does not, comply with certain standards



There is no provision for Infrastructure to refuse notification by a supplier if these characteristics are present in relation to a voluntary recall.

As stated above, on receipt of notification from a supplier, Infrastructure will undertake a formal, objective risk assessment that will enable us to determine the level of priority; low, moderate or high. The level of activity expected of suppliers will be proportionate to the level of priority assigned.

1.1.1. Safety

Under section 211(2) of the Rules, a supplier is required to notify Infrastructure when they have taken voluntary action to recall road vehicles or approved road vehicle components on the basis that such vehicles:

will or may cause injury to any person; or a reasonably foreseeable use (including misuse) of such vehicles or components will or may cause injury to any person.

On the basis that a common language to characterise types of injury is important in order to achieve consistency and avoid ambiguity in risk assessment, Infrastructure proposes to use the European Union Alert Guidelines¹ (the Guidelines) when considering whether a defect will or may cause injury. A copy of the Table is at [Attachment A](#).

Table 3 of Appendix 5 to the Guidelines, titled 'Severity of Injury', includes a non-exhaustive table of types of injury against descriptions for a level of injury severity from 1 to 4, 1 being the least severe.

Infrastructure also proposes to assess non-compliance with a safety related standard in the same way.

1.1.2. Non-compliance

Under section 211(3) of the Rules, a supplier is required to notify Infrastructure when they have taken voluntary action to recall road vehicles on the basis that such vehicles:

do not, or it is likely that they do not, comply with:

- (a) the applicable national road vehicle standards; or*
- (b) applicable standards determined by the Minister under subsection 89(2); or*
- (c) applicable standards made under section 7 of the Motor Vehicle Standards Act 1989*

¹ European Commission (2010), Guideline for the management of the Community Rapid Information System 'RAPEX' established under Article 12 and of the notification procedure established under Article 11 of Directive 2001/95/EC (the General Product Safety Directive)



Under section 211(4) of the Rules a supplier is required to notify Infrastructure when they have taken voluntary action to recall approved road vehicle components on the basis that such components:

do not, or it is likely that they do not, comply with the applicable national road vehicle standards.

In general, it is Infrastructure's view that non-compliance with a relevant standard (other than non-compliance that will or may cause injury) under the RVSA should trigger a voluntary recall by the supplier.

It would then be open to a supplier to persuade Infrastructure that the non-compliance presents minimal risk and that rectification can be carried out via alternative means (e.g. service campaign) without detriment to vehicle owners.

1.2. Compulsory recalls

Under section 206 of the Rules, the relevant Minister under the RVS legislation will have the power to issue a compulsory recall notice in prescribed circumstances.

It is intended that the priority of a particular recall (as determined by Infrastructure), in conjunction with an assessment of the effectiveness of action taken by a supplier, will inform any recommendation made to the Minister under this provision.

2. Publication of Notices

Under section 212(3) of the Rules, the relevant Minister may publish a recall notice on the internet.

In practice, it is Infrastructure's intention to publish a notice for each recall notified to it and will be comprised of a subset of the information provided at the time of notification by the supplier.

Infrastructure will adopt the ACCC's practice of seeking the relevant suppliers consent to publish the content of a notice. This is an opportunity for a supplier to identify commercially sensitive content, as opposed to an opportunity to prevent publication of the notice.

Once published, the notice will remain on Infrastructure's website, irrespective of the status of the recall, for the following reasons:

- The potential for road vehicles to be provided to the Australian market via the Concessional RAV entry approval pathway and independently of the cohort of vehicles subject to the suppliers recall.
 - This will ensure that future buyers, undertaking due diligence prior to purchasing a vehicle, are alerted to the fact that certain vehicles have been subject to recall.

- It does not follow that the holder of the Type Approval becomes responsible for rectifying these vehicles.
- To demonstrate that Infrastructure's is accountable and transparent with respect to our regulatory activities.

3. Status of a recall

3.1. Current practice under the Motor Vehicle Standards Act 1989

There is no power under the MVSA for the recall of road vehicles nor does Infrastructure have powers under the Australian Consumer Law which is administered by the ACCC.

The decision to conduct a voluntary recall is made by suppliers of road vehicles.

If voluntary recall action is taken, under current arrangements suppliers who are members of either the Federal Chamber of Automotive Industries (FCAI) or the Truck Industry Council (TIC) are required to undertake voluntary recalls in accordance with the relevant bodies Code of Practice for the Conduct of an Automotive Safety Recall (CoP).

Under these CoPs, amongst other requirements, suppliers are required to submit periodic reports to Infrastructure when they take voluntary action to recall road vehicles. This occurs monthly for 'active' recall campaigns.

An analysis of the data concerning active recalls has shown that approximately 50% of vehicles subject to a voluntary recall are rectified within one year of a recall commencing, with over 80% rectified within three years. Rectification rates can be affected by the age of vehicles and parts availability.

FCAI and TIC members may, under their CoPs, seek Infrastructure's approval to change the status of an active recall to 'inactive' on the basis that a reasonable period of time has lapsed after the supplier sent the required customer notices, and after the supplier has notified the relevant registration authority in each state and territory of non-rectified vehicles, and no additional vehicles have been rectified for a reasonable amount of time. The term 'reasonable' is subjective and is determined in the circumstances of a particular recall.

The current CoPs also deem a recall campaign to be inactive three years from the commencement if all required notices have been sent.

An inactive recall campaign is one where the supplier has been unable to achieve rectification of 100% of the vehicles within the campaign for one reason or another (e.g. age of the vehicle). The effect of making a recall campaign inactive is to reduce the reporting burden on the supplier.



In the event that a vehicle is subsequently presented for rectification, the status of the recall campaign is changed back to active and monthly reporting recommences.

FCAI and TIC members are required, under their CoPs, to advise Infrastructure once a recall has been completed (100% rectified). On receipt of this advice, Infrastructure changes the status of the campaign from active to closed under current arrangements. This acquits all reporting obligations.

3.2. Future policy under RVSA

Infrastructure does not propose significant change to current practice.

It is Infrastructure's intention that a recall campaign's status may be changed from active to inactive when the supplier has demonstrated that all reasonable steps to rectify 100% of the target vehicles have been taken. These steps will differ from recall to recall, and will include vehicles that have not been registered for a period of at least two consecutive years.

When deciding if a recall should be made inactive, Infrastructure will consider the following:

- percentage of vehicles rectified
- the length of time a recall has been active
- age of the affected vehicles when a supplier is seeking to make a recall inactive
- when the last vehicle was rectified
- whether, in Infrastructure's view, the supplier has undertaken all reasonable steps to achieve 100% rectification

Infrastructure will change the status of an inactive recall campaign back to active if:

- a vehicle is presented for rectification after a recall has been made inactive, the status of the recall will be changed back to active
- the rectification action has not resolved the underlying reason for the recall action (and would not result in a new notification)

Infrastructure does not intend to support changing the status of an active recall to inactive on the basis of time elapsed since notification alone.

Infrastructure proposes to change the status of a recall to 'closed' once 100% of affected vehicles have been rectified. While there is no legislative provision under the RVSA to close or otherwise finalise a recall that has been voluntarily notified to Infrastructure, it is our intention to administratively close it in our system. As stated above, Infrastructure intends to retain all notices on its website, irrespective of the status of the recall.

4. Discussion questions

- What issues arise as a consequence of Infrastructure’s proposal to prioritise its monitoring of recall progress?
- Should an extension to a recall campaign result in a new notification, or modification to an existing campaign?
- What tool, if any, is used by suppliers to assess the severity of injury that will or may be caused by a defect?
- In deciding to conduct a recall campaign, how is:
 - risk factored in to the decision?
 - severity of injury factored in to the decision?
- 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?