



**Australian Government**

**Department of Infrastructure,  
Regional Development and Cities**



## Road Vehicle Recalls Working Group

*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

21 November 2018

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## Introduction

The Australian Government released exposure drafts of the suite of Road Vehicle Standards (RVS) legislation, including draft RVS Rules (the Rules), for public consultation in mid-December 2017. This formal consultation process concluded on 16 February 2018. That same month the then Minister for Urban Infrastructure and Cities, the Hon Paul Fletcher MP, introduced the Road Vehicle Standards (RVS) suite of legislation into Parliament<sup>1</sup>.

A significant inclusion in the 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 Department of Infrastructure, Regional Development and Cities (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 second meeting of the Recalls Working Group on 21 November 2018. 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.

## 1 Current arrangements

### 1.1 Legislation

Under current arrangements, Infrastructure is responsible for the regulation of vehicles when first supplied to the Australian market under the *Motor Vehicle Standards Act 1989* (Cth) (MVSA)<sup>2</sup>. While there is no power under the MVSA for the recall of road vehicles, Infrastructure engages with suppliers of road vehicles that are vehicles covered by the Australian Design Rules (ADRs) to negotiate and monitor voluntary recalls.

The decision to conduct a voluntary recall to rectify unsafe road vehicles, or road vehicles that do not comply with the standards determined under the MVSA, is made by vehicle suppliers. If the supplier is a member of either the Federal Chamber of Automotive Industries (FCAI) or the Truck Industry Council (TIC), the recall is undertaken in accordance with the relevant Code of Practice for the Conduct of an Automotive Safety Recall (Code of Practice) implemented by these associations.

Under these Codes of Practice, amongst other requirements, suppliers are required to advise Infrastructure when they have taken voluntary recall action, and submit a regular performance reports to Infrastructure to facilitate monitoring of the progress of the recall.

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<sup>1</sup> Road Vehicle Standards Bill 2018, <https://www.legislation.gov.au/Details/C2018B00005>

<sup>2</sup> Motor Vehicle Standards Act 1989, <https://www.legislation.gov.au/Details/C2016C00857>

If the voluntary recall action involves a road vehicle that is also a consumer good as defined under the Australian Consumer Law (ACL)<sup>3</sup>, the supplier is legally obligated under section 128 of the ACL to notify the responsible Minister under the ACL.

Consumer goods are defined under the ACL as goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption.

## 2 Arrangements on commencement of the recall provisions under the RVS legislation

### 2.1 Legislation

If the RVS legislation becomes law, the recall provisions at Part 3 of the Bill will come in to effect 12 months later. There is no transition period.

At that time, Infrastructure will take the lead on the end-to-end management of voluntary and compulsory recalls of road vehicles and approved road vehicle components if:

- safety issues, or
- non-compliance with the ADRs or any other standards as determined under the RVS legislation are identified<sup>4</sup>.

The ADRs are national standards for vehicle safety, anti-theft and emissions.

### 2.2 Legacy recalls

#### 2.2.1 Voluntary

On commencement of the recall provisions under the RVS legislation the ACCC's management of current and inactive recalls of road vehicles will cease. At that time, Infrastructure will assume responsibility for them.

Suppliers who had notified voluntary recalls to the ACCC prior to the commencement of the recall provisions under the RVS legislation will not be obligated to notify Infrastructure in these circumstances.

Periodic progress reports should continue to be submitted to Infrastructure for monitoring.

#### 2.2.2 Compulsory

The ACCC will retain responsibility for the Consumer Goods (Motor Vehicles with Affected Takata Airbag Inflators and Specified Spare Parts) Recall Notice 2018 (the Takata airbag compulsory recall).

There will be no change to existing obligations on affected suppliers under the Takata airbag compulsory recall as a consequence of the commencement of the recall provisions under the RVS legislation.

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<sup>3</sup> The Australian Consumer Law is scheduled to the *Competition and Consumer Act 2010*, <https://www.legislation.gov.au/Details/C2018C00390>

<sup>4</sup> The recall provisions under the RVS legislation will apply to road vehicles entered on to the RAV, approved road vehicle components, and road vehicles supplied prior to the commencement of the RVS legislation.

## 2.3 Future recalls

### 2.3.1 Voluntary

Under section 200 of the RVS Rules, a person will be required to notify Infrastructure within two days of taking voluntary recall action in relation to a road vehicle or approved road vehicle component supplied within Australian. If the vehicle or component was supplied outside of Australia, then the supplier must notify the person to whom the vehicle or component was supplied and notify Infrastructure within 10 days of doing so.

In practice, suppliers will make notifications and submit periodic performance reports to Infrastructure via a public interface to Infrastructure's as yet to be developed customised Recalls Management System (RMS). The public interface is the platform to which Infrastructure will publish recall notices, and material (guidance and other) relevant to both suppliers and the community.

It is intended that this IT capability will be available for use from commencement of the recall provisions under the RVS legislation. It is Infrastructure's intention to continue to utilise the membership of the Recalls Working Group to address functional requirements.

### 2.3.2 Compulsory

Under section 194 of the RVS Rules, the relevant Minister under the RVS legislation will have the power to issue a compulsory recall notice in prescribed circumstances.

## 3 What triggers the obligation to notify Infrastructure?

The policy intention of including recalls within the RVS legislation is to ensure that there are mechanisms for rectifying road vehicles or approved road vehicle components that are unsafe or do not comply with certain standards, for example the ADRs.

Infrastructure's role, with respect to notifications of voluntary recalls, will be to oversee voluntary recalls of road vehicles or approved road vehicle components to ensure the timely initiation of voluntary recall action, and to assess the adequacy of the overall recall plan, to ensure unsafe or non-compliant vehicles or components are rectified.

There is an obligation under section 200 of the RVS Rules for a person to notify Infrastructure within two days of taking voluntary recall action in relation to a road vehicle or approved road vehicle component supplied within Australian. If the vehicle or component was supplied outside of Australia, then the supplier must notify the person to whom the vehicle or component was supplied and notify Infrastructure within 10 days of doing so.

The RVS legislation does not provide a definition of 'recall action'. Infrastructure is of the view that notification of a voluntary recall should be made within two days of a decision to remedy<sup>5</sup> a safety issue or non-compliance with certain standards (e.g. ADRs). Taking this approach would achieve the objective of timely initiation of voluntary recall action.

In reaching this view Infrastructure accepts that the decision to remedy, and the subsequent notification to Infrastructure, does not necessarily require the supplier to schedule **rectification work**

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<sup>5</sup> Remedy includes repair or replacement as appropriate in the circumstances

to occur immediately. This could be for a variety of reasons, but might be on the basis that a 'solution' needs to be developed, or parts are scarce.

The ACCC has published consumer product safety recall guidelines<sup>6</sup> to the Product Safety Australia website. At page nine of the guidelines, the ACCC describes a number of actions that might be taken by suppliers which would trigger the obligation to notify the ACCC under section 128 of the ACL. Actions referenced in the ACCC's guidelines which Infrastructure might view as evidence of action taken to voluntarily recall under the RVS legislation include:

- calling back or withdrawing products from the market or distribution chain
- requesting consumers or other suppliers to:
  - return products for refund, replacement or modification, or
  - contact the supplier to arrange for a replacement product or part to be sent to the consumer
- making arrangements for a servicing agent to repair or modify a product when it is next presented for servicing

In these instances, Infrastructure is of the view that notification within two days of making the decision to remedy is advantageous to both the supplier and Infrastructure as it will enable the parties to quickly work together to resolve any issues that might arise in relation to the complexity and/or severity of the issue necessitating the recall, communications, staging and stakeholder management.

## 4 Who should take voluntary action to recall?

As stated above, the policy intention of including recalls within the RVS legislation is to ensure that there are mechanisms for rectifying road vehicles or approved road vehicle components that are unsafe or do not comply with certain standards, for example the ADRs.

One of the key considerations for both Infrastructure and suppliers is 'who' should be responsible for initiating voluntary recall action under the recall provisions of the RVS legislation.

Infrastructure's view is that voluntary recall action should be undertaken by the entity, whether an individual in business or a company, responsible for the supply of a road vehicle or approved road vehicle component for the first time to the Australian market through trade or commerce.

Under the RVS legislation, vehicles that are suitable for supply for the first time to the Australian market are recorded on the Register of Approved Vehicles, or the RAV.

There are two pathways to entry on the RAV. The:

1. Type Approval Pathway
2. Concessional RAV Entry Pathway

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<sup>6</sup> ACCC Product Safety Recall Guidelines, December 2015, <https://www.productsafety.gov.au/recalls/guidance-for-suppliers/conducting-a-recall>

## 4.1 Type Approval pathway

As stated above, Infrastructure is of the view that voluntary recall action should be undertaken by the entity, whether an individual in business or a company, responsible for the supply the road vehicle or approved road vehicle component for the first time to the Australian market through trade or commerce.

In the context of road vehicles or approved road vehicle components that were entered onto the RAV via the Type Approval Pathway, Infrastructure would consider it appropriate that the Original Equipment Manufacturer (OEM), or their Australian representative, initiate voluntary recall action.

## 4.2 Concessional RAV Entry Pathway

In deciding who should be responsible for taking voluntary action to recall in relation to road vehicles supplied to the Australian market for the first time via the Concessional RAV Entry Pathway, Infrastructure is of the view that the same principle would apply as set out above.

Voluntary recall action should be undertaken by the entity, whether an individual in business or a company, responsible for the supply the road vehicle or approved road vehicle component for the first time to the Australian market, through trade or commerce.

One category of road vehicle that may be eligible under the Concessional RAV Entry Approval pathway are vehicles that are to be modified by a Registered Automotive Workshop (RAW).

The criteria that needs to be satisfied for a RAW modified vehicle to be eligible for entry on the RAV are that:

- the vehicle is on the Specialist and Enthusiast Vehicles (SEV) Register... ; **and**
- the *applicant owns the vehicle...* [emphasis added].

Vehicles in this category may be:

### 1. *Personally imported for sale*

If a vehicle is personally imported for the purpose of selling it to the Australian market, and the person who imported the vehicle is an individual in business, Infrastructure's view is that the importer would be the relevant entity to take voluntary recall action.

### 2. *Imported by a RAW for sale*

If a RAW (which must be a company) imports a vehicle with the intention of selling it after modification, Infrastructure's view is that the RAW would be the relevant entity to take voluntary recall action.

### 3. *Imported by a dealer for sale*

Similarly, if a dealer (individual in business or a company) imports a vehicle to be sold after modification by a RAW, Infrastructure's view is that the dealer would be the relevant entity to take voluntary recall action.

### 4. *Personally imported for private use*

If a person imports a vehicle for personal use after modification by a RAW, there is no responsible entity to undertake voluntary recall as the vehicle has not been supplied to the Australian market for the first time through trade or commerce.

## 5 Discussion questions

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