



Australian Government

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



Road Vehicle Recalls Working Group

RVR Discussion Paper #1

Notification of voluntary recalls under the proposed Road
Vehicle Standards (RVS) legislation

10 August 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 Minister for Urban Infrastructure and Cities, the Hon Paul Fletcher MP, introduced the Road Vehicle Standards (RVS) suite of legislation into Parliament.

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 Minister to issue a recall notice for a compulsory recall, and set out the obligations on suppliers in relation to notifying the Minister about a compulsory or voluntary 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.

This paper will form the basis for discussion at the first meeting of the Recalls Working Group on 10 August 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.

Current arrangements

Infrastructure is responsible for the regulation of vehicles when first supplied to the Australian market under the *Motor Vehicle Standards Act 1989*. While Infrastructure engages with suppliers of consumer goods that are vehicles covered by the Australian Design Rules (ADRs) to negotiate and monitor voluntary recalls, suppliers of these vehicles are legally obligated to notify the Australian Competition and Consumer Commission (ACCC) when they take voluntary recall action. Consumer goods are defined under the Australian Consumer Law (ACL) which is administered by the ACCC.

Suppliers of vehicles that are also consumer goods who are members of the Federal Chamber of Automotive Industries (FCAI) are also required to abide by its Code of Practice for the conduct of automotive safety recalls. A copy of the FCAI Code is at [Attachment A](#) for reference. Under the Code of Practice, amongst other requirements, suppliers are required to advise Infrastructure that they have taken voluntary recall action, and to submit a monthly performance report to Infrastructure.

The Truck Industry Council (TIC) has also promulgated a Code of Practice for the conduct of an automotive safety recall which also requires its members to advise Infrastructure when they have taken voluntary recall action. A copy of the TIC Code is at [Attachment B](#) for reference.

Under the two industry Codes, suppliers notify Infrastructure when they have initiated a voluntary recall of a vehicle. Notification is predominantly made by email, and to a lesser extent by mail. Historically, Infrastructure has not required that notification be made in a standardised form.

On commencement of the recall provisions under the RVS legislation

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

On commencement, Infrastructure will gain responsibility for the administration of voluntary and compulsory recalls for road vehicles and approved road vehicle components (hereafter referred to as road vehicles) if:

- Serious or systematic safety issues, or
- Non-compliance with ADRs or applicable standards determined by the Minister, are identified.

Meaning of road vehicle

The RVS Bill sets out the meaning of road vehicle at Section 6 (see [Attachment C](#)). The test as to whether a road vehicle is designed solely or principally for use on public roads is set out at paragraph 6(1)(a) and is an objective test.

Paragraph 6(2) provides that if a person holds a road vehicle type approval for a particular type of road vehicle that is not a road vehicle covered by subclause 6(1), then once the person enters, or authorises the entry of the vehicle of that type on the RAV, then it becomes a road vehicle at the time the vehicle is entered onto the RAV. This is intended to allow for manufacturers of motor vehicles that may not be road vehicles under the definition at subclause 6(1) to be regulated under the RVS legislation.

Meaning of approved vehicle component

The RVS Bill sets out the meaning of road vehicle component at Section 7 (see [Attachment D](#)).

The RVS legislation enables Infrastructure to regulate components to be used in the manufacture or modification of certain road vehicles.

Under the RVS legislation, a component must be used in the manufacture of a road vehicle so as to form part of the vehicle and can include a number of components that have been assembled to form a larger component (such as a bus chassis). It is not intended that a component would be approved if it is intended for general sale directly to consumers.

Notification

The recall provisions under the RVS legislation model, but do not replace, those under the ACL. They also extend coverage to non-consumer products, such as trucks and buses, which do not meet the definition of consumer good under the ACL.

Section 200 of the exposure draft of the RVS Rules sets out the notification requirements for a voluntary recall of road vehicles or approved road vehicle components. If a person voluntarily takes action to recall road vehicles or approved road vehicle components, this section requires that notification be made within two days of taking that action. Failure to do this would be a breach under section 40 of the RVS Act (subject to passage) which may attract a financial penalty or other enforcement action. A similar offence exists under section 128 of the ACL.

The RVS legislation provides that notice given under it in relation to the initiation of a voluntary recall is taken as notice given in relation to the initiation of a voluntary recall under the ACL, and vice versa. Infrastructure is working with the ACCC to ensure that suppliers have access to a single point of contact, rather than having to engage with two government agencies.

Infrastructure's position

Infrastructure's preferred option to facilitate the standardised notification of recalls of road vehicles under the RVS legislation is to develop a customised Recall Management System (RMS) and associated public interface. 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.

An essential function of the RMS will be to share relevant notifications (e.g. vehicles that are consumer goods), in as close to real time as possible, with the ACCC to enable publication to their Product Safety Australia website.

Discussion questions

- What issues arise if, following commencement of the recall provisions under the RVS legislation, notification of action taken to voluntarily recall road vehicles, or approved road vehicle components, is to be made to Infrastructure?
- What business processes/policies do you follow when initiating a voluntary recall?
- What are the pain points when making a notification of a voluntary recall?
- What do you have regard to when considering whether to initiate a voluntary recall?

6 Meaning of *road vehicle*

- (1) A **road vehicle** means any of the following:
 - (a) a motor vehicle designed solely or principally for use in transport on public roads;
 - (b) a trailer or other vehicle (including equipment or machinery equipped with wheels) designed to be towed on a public road by a motor vehicle covered by paragraph (a);
 - (c) a vehicle that is within a class determined in an instrument under paragraph (5)(a) and not determined in an instrument under paragraph (6)(b);
 - (d) a vehicle determined in an instrument under paragraph (6)(a);
 - (e) a partly completed or unassembled vehicle that would otherwise be covered by any of the above paragraphs.
- (2) If:
 - (a) a person holds a road vehicle type approval for a vehicle of a particular type; and
 - (b) that type of vehicle is not a road vehicle covered by subsection (1); and
 - (c) the person enters, or authorises the entry of, a vehicle of that type on the RAV in accordance with this Act;the vehicle becomes a **road vehicle** at the time the vehicle is entered on the RAV.
- (3) For the purposes of paragraphs (1)(a) and (b), in determining whether a motor vehicle is designed solely or principally for use in transport on public roads, regard is to be had only to the physical and operational features of the motor vehicle.
- (4) However, a vehicle is not a **road vehicle** if:
 - (a) the vehicle is within a class determined in an instrument under paragraph (5)(b) and not determined in an instrument under paragraph (6)(a); or
 - (b) the vehicle is specified in an instrument under paragraph (6)(b).

Determination of classes of vehicles

- (5) The Secretary may, by legislative instrument:
 - (a) determine classes of vehicles that are **road vehicles**; or
 - (b) determine classes of vehicles that are not **road vehicles**.

Determination of specified vehicles

- (6) The Secretary may, by notifiable instrument:
 - (a) determine that a specified vehicle is a **road vehicle**; or
 - (b) determine that a specified vehicle is not a **road vehicle**.
- (7) The power to make a notifiable instrument under subsection (6) is not limited by a legislative instrument made under subsection (5).

Incorporation of other instruments

- (8) An instrument under subsection (5) or (6) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.
- (9) Subsection (8) has effect despite subsection 14(2) of the *Legislation Act 2003*.

7 Meaning of *road vehicle component*

- (1) A ***road vehicle component*** means any of the following:
 - (a) a component to be used in the manufacture of a road vehicle, including an assembly;
 - (b) a component that is within a class determined in an instrument under paragraph (3)(a) and not determined in an instrument under paragraph (4)(b);
 - (c) a component determined in an instrument under paragraph (4)(a).
- (2) However, a component is not a ***road vehicle component*** if:
 - (a) the component is within a class determined in an instrument under paragraph (3)(b) and not determined in an instrument under paragraph (4)(a); or
 - (b) the component is specified in an instrument under paragraph (4)(b).

Determination of classes of components

- (3) The Secretary may, by legislative instrument:
 - (a) determine classes of components that are ***road vehicle components***; or
 - (b) determine classes of components that are not ***road vehicle components***.

Determination of specified components

- (4) The Secretary may, by notifiable instrument:
 - (a) determine that a specified component is a ***road vehicle component***; or
 - (b) determine that a specified component is not a ***road vehicle component***.
- (5) The power to make a notifiable instrument under subsection (4) is not limited by a legislative instrument made under subsection (3).

Incorporation of other instruments

- (6) An instrument under subsection (3) or (4) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.
- (7) Subsection (6) has effect despite subsection 14(2) of the *Legislation Act 2003*.