

Memorandum of Understanding

Road vehicle safety

Department of Infrastructure, Transport, Regional Development and Communications

Australian Competition and Consumer Commission

1 July 2021

1. Introduction

- 1.1. This Memorandum of Understanding (MOU) establishes a framework for cooperation and coordination between the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure) and the Australian Competition and Consumer Commission (ACCC) (the Agencies) in relation to the *Road Vehicle Standards Act 2018* (RVS Act), the *Road Vehicle Standards Rules 2019* (the RVS Rules) (together, the RVS legislation) and consumer product safety under Part 3-3 of the Australian Consumer Law (ACL).
- 1.2. This MOU replaces the MOU between Infrastructure and the ACCC made on 19 October 2016.

2. Purpose

- 2.1. The purpose of this MOU is to facilitate:
 - (a) efficient administration of legislative responsibilities – in particular, to promote:
 - i) clarity of roles to minimise duplication of, or gaps in, regulatory oversight, and reduce the cost of compliance;
 - ii) simplicity and clarity for businesses whose activities are regulated by the Agencies;
 - iii) consistent information for consumers which enables consumers to find the relevant safety information regardless of which Agency they first connect with; and
 - iv) facilitation of consistent approaches and best regulatory practice;
 - (b) effective operational liaison and efficient information exchange between the Agencies; and
 - (c) coordination in relation to public announcements, ministerial briefings and legislative and administrative changes where necessary or appropriate.
- 2.2. The objective of the Agencies is to establish practices, to the extent possible, to facilitate one point of contact for suppliers and consumers and avoid duplication of regulatory activity and contact. This may range from administrative practices to more formal provision of authority under the relevant regulatory frameworks to facilitate Lead Agency action.

3. Agency roles

Infrastructure

- 3.1. Infrastructure is the Commonwealth Government Department whose role is to provide policy and strategic advice to government, and deliver programs, services and fit-for-purpose regulation for infrastructure, transport, regional development, cities, territories, communications, arts and culture. Infrastructure works with portfolio entities, federal, state and territory, and international governments, international organisations, industry, research institutions and the community to generate innovative advice and make sure the advice and services Infrastructure delivers are effective and meet the needs of the community.
- 3.2. Infrastructure administers portfolio legislation, and reviews and shapes regulatory frameworks. This includes administering the RVS Legislation. The RVS Act has the following objects:
- (a) to set nationally consistent performance based standards that road vehicles must comply with before being provided in Australia;
 - (b) to provide consumers in Australia with a choice of road vehicles that:
 - i) meet safety and environmental expectations of the community;
 - ii) use energy conservation technology and anti-theft technology; and
 - iii) are able to make use of technological advancements; and
 - (c) to give effect to Australia's international obligations to harmonise road vehicle standards.
- 3.3. As part of Infrastructure's role in administering the RVS Legislation, Infrastructure is establishing a framework for the recall of road vehicles and approved road vehicle components that are unsafe or do not comply with applicable standards, and administering and enforcing that framework. Under the RVS Legislation:
- (a) the Infrastructure Minister has the function of receiving notifications of voluntary action taken to recall road vehicles or approved road vehicle components, under section 212 of the RVS Rules;
 - (b) the Infrastructure Minister may initiate a compulsory recall of road vehicles or approved road vehicle components by issuing a recall notice under section 206 of the RVS Rules;
 - (c) the Infrastructure Minister and senior Infrastructure employees may require suppliers to give information, produce documents or give evidence in relation to road vehicles or approved road vehicle components of a particular kind that are unsafe or do not comply with applicable national road vehicle standards.

ACCC

- 3.4. The ACCC is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (CC Act), including the ACL, and a range of additional legislation, to promote competition and fair trading and regulate national infrastructure for the benefit of all Australians.
- 3.5. The ACL is applied as Commonwealth, State and Territory law, administered by the ACCC and State and Territory fair trading agencies respectively (ACL regulators). Product safety obligations under the ACL apply to persons in trade or commerce who supply consumer goods or product related services (consumer products) and include:
- (a) notifying the Commonwealth ACL Minister of a voluntary recall under section 128 of the ACL;

- (b) complying with a compulsory recall imposed by a Commonwealth, State or Territory ACL Minister under section 122 of the ACL;
- (c) providing mandatory reports, subject to exemptions, to the Commonwealth ACL Minister of death or serious injury or illness associated with the use or foreseeable misuse of consumer products under sections 131 and 132 of the ACL (mandatory injury reports (MIRs));
- (d) complying with safety standards imposed by the Commonwealth ACL Minister under sections 104 and 105 of the ACL; and
- (e) complying with interim and permanent bans imposed by the Commonwealth ACL Minister under sections 109 and 114 of the ACL, and interim bans imposed by State and Territory ACL Ministers under section 109 of the ACL.

In addition, the Commonwealth, State and Territory ACL Ministers may issue a safety warning notice under section 129 of the ACL.

4. Effect of this MOU

- 4.1. This MOU is administrative and does not create any binding legal obligations.
- 4.2. Each Agency will bear its own costs in relation to the activities that it undertakes under this MOU, unless otherwise agreed by the Agencies in writing.

5. Lead Agency

- 5.1. A key purpose of this MOU is to designate which Agency will take the lead in relation to vehicle-related recalls and other safety issues.
- 5.2. The Lead Agency for recalls and other safety issues will be:¹

- (a) Infrastructure in relation to:

- i) road vehicles (e.g. cars, caravans, commercial vehicles, campers, trailers) where the safety issue arises from:
 - a. a part in the road vehicle as first supplied e.g. engine, ignition & transmission system, battery, braking system, lighting & signalling;
 - b. an accessory supplied with the road vehicle at first supply e.g. floor mats, jacks supplied with new cars; or
 - c. a like-for-like after-market replacement of that part or accessory in the road vehicle;² and
- ii) approved road vehicle components e.g. approved reverse lamp, bus seat or braking system;

- (b) the ACCC in relation to:

- i) vehicles that are not road vehicles but are consumer products e.g. golf carts, miniature motor bikes, motorised mobility devices, quad bikes;
- ii) new and second-hand after-market vehicle parts and accessories that are consumer products (unless a like-for-like replacement in a road vehicle) e.g. generic battery or tyres, child car restraint, portable ramp, recovery strap, bike carrier;³ and

¹ Due to the current automated vehicle reform program, this MOU does not apply to automated vehicles and after-market parts and accessories that provide automated functionality.

² This refers to where a part or accessory in a road vehicle is replaced by a new or second-hand part or accessory to keep the road vehicle operating as first supplied, where the replacement part or accessory is the same vehicle-brand or supplied through the vehicle brand network.

³ Takata NADI 5-AT, PSAN 13X and other airbag safety issues will continue to be covered by arrangements agreed to by Infrastructure and the ACCC, and reflected in the September 2020 federal budget.

- iii) caravans and campers where the part or accessory relates to human occupation, not the vehicle e.g. fridge, stove in caravan.

5.3. The Lead Agency's functions include:

- (a) risk identification;
- (b) risk assessment;
- (c) risk management including risk communication;
- (d) voluntary and compulsory recalls; and
- (e) injury reports received.

5.4. Attachments A to C to this MOU provide further guidance on the regulatory interface between Infrastructure and the ACCC:

- (a) The table at Attachment A sets out the allocation of responsibilities across the continuum of products from road vehicles and approved road vehicle components through to general household consumer products.
- (b) The decision tree at Attachment B is intended to help facilitate the application of the table to particular products in practice.
- (c) Attachment C provides further guidance on the functions of the Lead Agency.

However, Infrastructure and the ACCC recognise that, on occasion, the Agencies will need to consult each other to identify the Lead Agency, and that the Attachments will need to be revised over time.

6. Support

6.1. Where an Agency is the Lead Agency, the other Agency (the Supporting Agency) will provide the following support:

- (a) if the person submits a recall notice to the Supporting Agency, the Supporting Agency will arrange for the notice to be redirected to the Lead Agency;
- (b) referring consumers and suppliers who contact the Supporting Agency's call centre to the Lead Agency's call centre;
- (c) ensuring that the Supporting Agency's recalls website includes a link to the Lead Agency's website, to assist suppliers and consumers to identify the relevant website;
- (d) providing relevant information from State and Territory regulators, being:
 - i) where Infrastructure is the Supporting Agency – road transport authorities;
 - ii) where the ACCC is the Supporting Agency – ACL regulators;
- (e) at the request of the Lead Agency, sharing social media posts or publishing on the Supporting Agency's website any safety alerts or media releases issued by the Lead Agency; and
- (f) at the request of the Lead Agency, facilitating contact with other networks, being:
 - i) where Infrastructure is the Supporting Agency – vehicle industry forums, State and Territory road transport authorities and the National Exchange of Vehicle and Driver Information System (NEVDIS); and
 - ii) where the ACCC is the Supporting Agency – State and Territory ACL regulators.

Note As set out in clause 8.2 of this MOU, information exchange is subject to the applicable law including confidentiality and privacy.

6.2. Where the ACCC is the Supporting Agency, if a person provides a relevant MIR to the ACCC under section 131 or 132 of the ACL, the ACCC will contact the person to request the person also provide this information to Infrastructure.

Note 1: If the person does not do so, disclosure by the ACCC of the information to Infrastructure will be subject to the applicable law including section 132A of the ACL and the *Privacy Act 1988*.

Note 2: In practice, MIRs are rarely provided in relation to road vehicles as the reporting requirements under sections 131 and 132 of the ACL are subject to exemptions including State and Territory transport and coroner laws.

6.3. Where there is a road vehicle recall, Infrastructure will assess the risk, and advise the ACCC, where necessary, if Infrastructure requires the assistance of the ACCC to extend the road vehicle recall to new or second-hand parts or accessories (beyond those in the recalled road vehicles as a like-for-like replacement).

Note: Further guidance on this process is set out at Attachment C.

7. Public announcements, ministerial briefings, and legislative and administrative changes

7.1. Wherever practicable, Infrastructure and the ACCC will consult each other on:

- (a) proposed media statements and other public announcements by one that refer to the other;
- (b) proposed ministerial briefings and correspondence on matters of overlapping responsibility;
- (c) proposed legislative, policy and procedural changes that may affect the operation of this MOU, including changes to the roles and responsibilities of either Infrastructure or the ACCC; and
- (d) opportunities to review the vehicle safety framework such as:
 - i) opportunities to reduce duplication by reviewing sections 5 (definition of road vehicle legislation) and 77 (ACL safety standards) of the RVS Act and subsections 212(8) & (9) (ACL recall notices) of the RVS Rules; and
 - ii) the operation of Part 3-3 of the RVS Act in relation to disassembled and new parts, and accessories for commercial vehicles.

Where prior consultation is not practicable, notice of the relevant announcement, briefing or change will be given to the other Agency as soon as possible.

7.2. Infrastructure and the ACCC will each be responsible for responding to media requests involving matters where they are the Lead Agency.

8. Regular meetings and information exchange

8.1. Infrastructure and the ACCC will meet regularly (initially, on a monthly basis) at the project officer level to facilitate:

- (a) an open exchange of information;
- (b) operational liaison including clarification of responsibilities in relation to a voluntary recall, MIR, safety issue, or media or Ministerial request where necessary or appropriate;
- (c) requests for support;
- (d) identification of any issues arising from determinations under sections 6 and 7 of the RVS Act to exclude vehicles or components;
- (e) updates in relation to public announcements, ministerial briefings, and legislative and administrative changes, including proposals to exclude vehicles or components under section 6 or 7 of the RVS Act, and how this MOU will operate in relation to the excluded product;

- (f) consistency in approach to recalls and other product safety functions, and
- (g) opportunities for cooperative staff training and secondments.

8.2. Information exchange under this MOU is subject to the applicable law in Australia including confidentiality and privacy.

9. Administrative arrangements

9.1. The officers responsible for:

(a) the day-to-day operations under this MOU are:

- i) Assistant Secretary, Vehicle Safety Operations, Surface Transport at Infrastructure; and
- ii) General Manager, Consumer Product Safety, Risk Management and Policy at the ACCC;

(b) resolving any difference or dispute that arises under this MOU which cannot be resolved by the officers responsible for day-to-day operations are:

- i) First Assistant Secretary, Surface Transport Policy Division at Infrastructure; and
- ii) Executive General Manager, Consumer Product Safety Division at the ACCC;

(c) the administration of this MOU are:

- i) Secretary of Infrastructure; and
- ii) Chairperson of the ACCC;

(or such persons who, from time to time, hold or perform the functions of these positions).

10. Commencement, termination, variation and review

- 10.1. This MOU will commence on 1 July 2021 and will remain in force until it is terminated by either Infrastructure or the ACCC giving 30 days' notice in writing.
- 10.2. Any variation to this MOU will be made in writing and be approved by authorised representatives of Infrastructure and the ACCC.
- 10.3. Infrastructure and the ACCC will meet to review the operation of this MOU and consider the need for any variation to its terms once the MOU has been in effect for 12 months. The Agencies will then agree on the next date for a review of the MOU.

11. Publication of MOU

- 11.1. This MOU communicates the administrative arrangements that operate between Infrastructure and the ACCC. To inform all stakeholders, this MOU may be made public.



Rodney Graham Sims
Chair
Australian Competition and Consumer
Commission

Date: 29 June 2021



Simon Atkinson
Secretary
Department of Infrastructure, Transport,
Regional Development and
Communications

Date: 30 June 2021

