



Memorandum of Understanding

Road Vehicle Safety

Department of Infrastructure, Transport, Regional Development, Communications and
the Arts

Australian Competition and Consumer Commission

17 March 2023

1. Introduction

1.1. This Memorandum of Understanding (MOU) establishes a framework for cooperation and coordination between the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (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 1 July 2021.

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 has established a regulatory framework for the recall of road vehicles and approved road vehicle components that are unsafe or do not comply with applicable standards, and is 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 agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (CC Act), regulate national infrastructure and undertake market studies.
- 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 (MRs), 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;
- (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.

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.

battery or tyres that are not a like-for-like replacement in a road vehicle, child car restraint, portable ramp, recovery strap, bike carrier;³ and

- 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) publishing and monitoring voluntary recalls⁴;
- (e) overseeing compulsory recalls⁵; and
- (f) 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 decision tree at Attachment A is intended to assist in the application of the table to particular products in practice.
- (b) The table at Attachment B 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.
- (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:

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 October 2020 federal budget.

⁴ Noting that neither Infrastructure nor the ACCC have formal recall monitoring powers under their relevant legislation.

⁵ Noting that neither Infrastructure nor the ACCC have formal recall monitoring powers under their relevant legislation.

- 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 8.3 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 MR 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, MRs 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 (at minimum, twice yearly) 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, MR, 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. Meetings may also be requested by either Agency, on an ad hoc basis, as required.

8.3. 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, 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, Road and Vehicle Safety 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 17 March 2023 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 3 years. 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.

Gina Cass-Gottlieb

Jim Betts

Gina Cass-Gottlieb

Jim Betts

Chair

Secretary

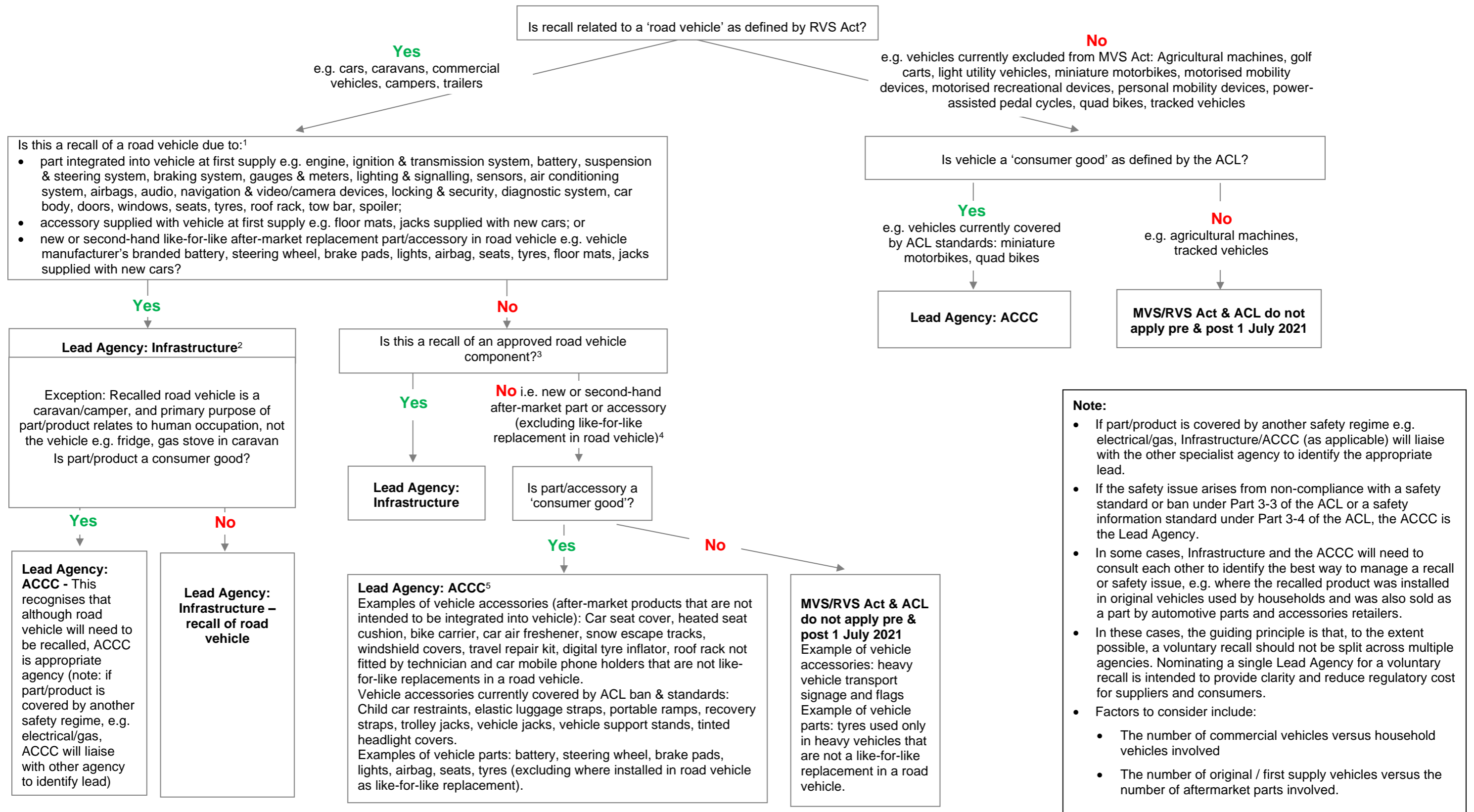
Australian Competition and Consumer
Commission

Department of Infrastructure, Transport,
Regional Development,
Communications and the Arts

Date: 10 February 2023

Date: 17/3/23

Attachment A: Infrastructure-ACCC regulatory interface for vehicle-related recalls & safety issues from 1 July 2021 – Decision tree



1 Can cover non-physical recall of vehicle e.g. technician goes to vehicle where vehicle is unsafe to drive.

2 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.

3 In practice, component type approvals are generally not sought for light passenger vehicle components.

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

5 Where necessary, Infrastructure and the ACCC will also discuss the best way to manage a recall or safety issue on a case-by-case basis. Infrastructure will assess the risk of road vehicle recall, and where necessary advise the ACCC when the recall should be extended to new or second-hand parts.

Attachment B: Infrastructure-ACCC regulatory interface for vehicle-related recalls & safety issues from 1 July 2021 – Table: Continuum of automotive products to consumer goods

Table colour key: **Blue text: Infrastructure remit** | **Purple text: ACCC remit**

Product category	Examples	Comments	Agency to:				
			Receive the recall notification	Publish the recall on its website	Monitor recalls or other rectification administratively	Investigate if market intervention is required	Brief its Minister about market intervention
Road vehicle	<p>Cars, commercial vehicles, caravans, campers, trailers</p> <p>Recall could be due to:</p> <ul style="list-style-type: none"> part integrated into vehicle at first supply e.g. engine, ignition & transmission system, battery, suspension & steering system, braking system, gauges & meters, lighting & signalling, sensors, air conditioning system, airbags, audio, navigation & video/camera devices, locking & security, diagnostic system, car body, doors, windows, seats, tyres, roof rack, tow bar, spoiler accessory supplied with vehicle at first supply e.g. floor mats, jacks supplied with new cars new or second-hand like-for-like after-market replacement part/accessory in the road vehicle e.g. vehicle manufacturer's branded battery, steering wheel, brake pads, lights, airbag, seats, tyres, floor mats, jacks supplied with new cars <p>Note:</p> <ul style="list-style-type: none"> Vehicle is recalled to affect repair, replacement, refund or modification of part – but may cover non-physical recalls e.g. technician goes to vehicle where vehicle is unsafe to drive Takata NADI 5-AT, PSAN 13X and other airbag safety issues will continue to be covered by arrangements agreed to by Infrastructure and ACCC, and reflected in October 2020 federal budget. 	<p>As defined by RVS Act</p> <p>RVS Act prohibits first supply of vehicle if vehicle not on Register of Approved Vehicles (RAV) – requires road vehicle type approval (limited exceptions)</p> <p>Part may be the subject of national road vehicle standard (NRVS)</p>	<p>Infrastructure – noting Infrastructure does not have formal recall monitoring powers</p> <p>Exception: ACCC where vehicle is a caravan/camper, and primary purpose of part/accessory relates to human occupation, not the vehicle e.g. fridge, stove in caravan. This recognises that, although the vehicle will need to be recalled, the ACCC is the appropriate agency (if vehicle is a consumer good) (noting that if consumer good is the subject of another specialist safety regime e.g. electrical, gas, ACCC will liaise with other agency to identify lead agency for investigation)</p>				
Approved road vehicle component	<p>Approved reverse lamp, bus seat, axle assemblies, braking control systems for heavy trailers (in practice, component type approvals are generally not sought for light passenger vehicles)</p>	<p>As defined by RVS Act: Road vehicle component (component to be used in manufacture of vehicle) to which a component type approval applies</p>	<p>Infrastructure – noting Infrastructure does not have formal recall monitoring powers</p>				
Vehicle after-market part, not a consumer good	<p>New part supplied only for commercial vehicle e.g. battery, steering wheel, brake pads, lights, airbag, seats, tyres</p> <p>Part removed from disassembled commercial vehicle for second-hand sale</p>	<p>Vehicle part i.e. after-market part intended to be integrated into road vehicle; supplied only for commercial vehicle</p>	<p>MVS/RVS Act & ACL do not apply pre & post 1 July 2021</p> <p>Exception: Infrastructure where new or second-hand like-for-like replacement is in road vehicle</p>				
Vehicle after-market accessory, not a consumer good	<p>Heavy vehicle transport signage and flags</p>	<p>Vehicle accessory i.e. after-market product not intended to be integrated into road vehicle; supplied only for commercial vehicle</p>	<p>MVS/RVS Act & ACL do not apply pre & post 1 July 2021</p> <p>Exception: Infrastructure where new or second-hand like-for-like replacement is in road vehicle</p>				
Vehicle after-market part, consumer good	<p>New or second-hand part supplied for light vehicle that are not like-for like replacements in a road vehicle e.g. battery, steering wheel, brake pads, lights, airbag, seats, tyres</p> <p>Part removed from disassembled light vehicle for second-hand sale</p>	<p>Vehicle part i.e. after-market part intended to be integrated into road vehicle; consumer good as defined by ACL</p>	<p>ACCC</p> <p>Exception: Infrastructure where new or second-hand like-for-like</p>	<p>Infrastructure</p>	<p>ACCC – noting the ACCC does not have formal recall monitoring powers</p> <p>Exception: Infrastructure where new or second-hand like-for-like replacement is in road vehicle*</p>		

Product category	Examples	Comments	Agency to:				
			Receive the recall notification	Publish the recall on its website	Monitor recalls or other rectification administratively	Investigate if market intervention is required	Brief its Minister about market intervention
			replacement is in road vehicle*				
Vehicle after-market accessory, consumer good	<p>Vehicle accessories currently covered by ACL ban & standards: Child car restraints, products containing button batteries, elastic luggage straps, portable ramps, recovery straps, trolley jacks, vehicle jacks, vehicle support stands, tinted headlight covers (however, RVS Act applies where product is included with vehicle at first supply, and vehicle is recalled e.g. jacks supplied with new cars)</p> <p>Other examples (only where it is not a like-for-like replacement in a road vehicle): Car seat cover, heated seat cushion, roof rack not fitted by technician, bike carrier, car air freshener, car mobile phone holder and key fobs containing button batteries, snow escape tracks, windshield covers, travel repair kit, digital tyre inflator</p>	<p>Vehicle accessory i.e. after-market product not intended to be integrated into road vehicle; consumer good as defined by ACL</p> <p>Accessory may be the subject of an ACL ban or mandatory standard and/or another specialist safety regime e.g. electrical</p>	<p>ACCC – noting the ACCC does not have formal recall monitoring powers.</p> <p>If the consumer good is the subject of another specialist safety regime:</p> <ul style="list-style-type: none"> The ACCC will liaise with other agency to identify lead agency for investigation or recall monitoring If the good is recalled, the ACCC Product Safety Australia website may simply link to the other agency's website for the product category <p>Exception: Infrastructure where new or second-hand like-for-like replacement is in road vehicle*</p>				
Motorised vehicle excluded from RVS Act, consumer good	<p>Vehicles currently excluded from MVS Act: Agricultural machines, golf carts, light utility vehicles, miniature motorbikes, motorised mobility devices, motorised recreational devices, personal mobility devices, power-assisted pedal cycles, quad bikes, tracked vehicles</p> <p>Vehicles currently covered by ACL standards: miniature motorbikes, quad bikes</p>	<p>RVS Act s 7 determination that vehicle is not a road vehicle</p>	<p>ACCC – noting the ACCC does not have formal recall monitoring powers.</p> <p>If the consumer good is the subject of another specialist safety regime:</p> <ul style="list-style-type: none"> The ACCC will liaise with other agency to identify lead agency for investigation or recall monitoring If the good is recalled, the ACCC Product Safety Australia website may simply link to the other agency's website for the product category 				
Consumer good not related to vehicles	<p>15,000 plus categories of consumer goods</p>	<p>As defined by ACL: Goods that are intended or of a kind likely to be used for personal, domestic or household use or consumption</p>	<p>ACCC – noting the ACCC does not have formal recall monitoring powers.</p> <p>If the consumer good is the subject of another specialist safety regime:</p> <ul style="list-style-type: none"> The ACCC will liaise with other agency to identify lead agency for investigation or recall monitoring If the good is recalled, the ACCC Product Safety Australia website may simply link to the other agency's website for the product category 				

* Note:

- Where necessary, Agencies will discuss the best way to manage a recall or safety issue on a case-by-case basis, with reference to the guiding principle and document their agreed approach.
- Infrastructure will assess risk of road vehicle recalls, and where necessary advise the ACCC when a recall should be extended to new or second-hand parts.
- If the safety issue arises from non-compliance with a safety standard or ban under Part 3-3 of the ACL or a safety information standard under Part 3-4 of the ACL, the ACCC is the Lead Agency.
- This MOU does not apply to automated vehicles, and after-market parts and accessories that provide automated functionality due to the current automated vehicle reform program.

Attachment C: Lead Agency functions

This Attachment provides further guidance on the functions of the Lead Agency under clause 5 of the MOU. The Lead Agency's functions include the following.

1. Risk identification – establishing processes to obtain information about potential safety risks.
2. Risk assessment:
 - (a) analysis and investigation to better understand the nature and characteristics of the identified safety risk, including where appropriate conducting a formal safety investigation;
 - (b) evaluating the risk against priority factors to determine what action, if any, is required; and
 - (c) updating the risk assessment in light of new information.
3. Risk management – activity to control or reduce the safety risk such as:
 - (a) encouraging suppliers to take appropriate action such as a recall;
 - (b) risk communication;
 - (c) education and compliance strategies such as a consumer awareness campaign to change the way consumers use a product, or a supplier campaign to improve compliance with a safety obligation;
 - (d) enforcement strategies to enforce compliance with statutory obligations;

Note: Section 77 of the RVS Act provides that national road vehicle standards are taken to be safety standards for the purposes of sections 106 and 122 (other than subsection 106(7)) of the ACL. Where a person fails to comply with national road vehicle standards, Infrastructure will be the Lead Agency, and any action for non-compliance will be taken under the RVS Act and RVS Rules, not the ACL.
 - (e) regulatory strategies such as revising or making new national road vehicle standards (where Infrastructure is the Lead Agency) or safety standards (where the ACCC is the Lead Agency);
 - (f) recommending a compulsory recall to the Minister;
 - (g) ongoing review of the effectiveness of the Agency's risk management strategy; and
 - (h) issuing public guidelines and media releases, and responding to media requests.
4. Where a voluntary recall is proposed or notified:
 - (a) being the principal point of contact for suppliers and other stakeholders (e.g. consumers, media and Ministerial enquiries, and other regulators);
 - (b) receiving, on behalf of the relevant Commonwealth Minister, notices under section 128 of the ACL or section 212 of the RVS Rules (as applicable);

Note 1: Persons who voluntarily recall road vehicles or approved road vehicle components that are also 'consumer goods' under the ACL, will be requested to complete Infrastructure's online form, and not the online form on the ACCC's Product Safety Australia website. This will be supported by an authorisation from the Commonwealth ACL Minister for Infrastructure to receive notices under section 128 of the ACL for voluntary recalls of road vehicles and approved road vehicle components. This recognises the need for government agencies to avoid duplication.

In this situation, the notices to Infrastructure will be under section 128 of the ACL. This is because sections 212(8) and (9) of the RVS Rules provide that if a person has given notice under sections 128(2) and (4) of the ACL in relation to the voluntary recall of road vehicles or approved road vehicle components, then the person is taken to have given notice under section 212(2) and (4) of the RVS Rules.

To provide simplicity and clarity for stakeholders, Infrastructure's guidelines will apply to these notices, and not the ACCC's guidelines. The Agencies will work together to ensure that Infrastructure's online form satisfies the mirror notice requirements under both section 212 of the RVS Rules and section 128 of the ACL.

If a person submits a recall notice to the wrong Agency, the relevant Agency will arrange for the notice to be redirected to the other Agency.

Note 2: To fully address the safety problem, the recall of a road vehicle may need to be expanded to cover incidental issues such as the recall of a disassembled part (i.e. original part removed from vehicle for second-hand sale) and new parts in stock. In practice, Infrastructure, when it receives notice of a voluntary recall of a road vehicle, will assess whether the recall should be extended (beyond new or second-hand parts or accessories in the recalled road vehicles as a like-for-like replacement). Where these are consumer products, at Infrastructure's request, the officers identified in clause 9.1(a) of the MOU will then discuss, under clause 5.4 of the MOU, the best way to manage the recall or safety issue, and resourcing. The officers will be guided by the objectives in clause 2 of the MOU including providing clarity, minimising duplication and reducing compliance costs for stakeholders.

- (c) negotiating the recall with the supplier;
- (d) reviewing the supplier's recall strategy (including, where appropriate, risk assessment and method, frequency and content of communication with consumers and media strategy);
- (e) publishing the recall notice on the Agency's website;
- (f) seeking alignment between the recall notice on the Agency's website and other consumer communications;
- (g) monitoring the progress and effectiveness of the recall, including by seeking regular progress reports on the recall from the supplier and other information related to the product or the recall (such as reports of death or serious injury or illness associated with the product, complaints by consumers or other suppliers in the supply chain, and information from experts and/or other Australian and international regulators) – although noting that the Agencies do not have formal recall monitoring powers;
- (h) negotiating improvements to the voluntary recall where necessary or appropriate, and taking action where necessary or appropriate to improve recall effectiveness (e.g. negotiating additional steps with the supplier, issuing media releases);
- (i) using compulsory information gathering powers to obtain information, documents and evidence relevant to a recall, where necessary or appropriate;
- (j) addressing non-compliance with recall notification requirements through enforcement of the RVS Legislation or section 128 of the ACL (as applicable); and

Note: Infrastructure is the Lead Agency where a person is required to notify a recall of a road vehicle or approved road vehicle component under section 128 of the ACL and section 212 of the RVS Rules and fails to do so. In this situation, any action where non-compliance with a recall of a road vehicle or approved road vehicle component has occurred will be taken under the RVS Legislation, not the ACL.

- (k) considering whether a compulsory recall should be recommended to the relevant Minister.

5. Where an injury report (including an MR) is received:

- (a) being the principal point of contact for suppliers and other stakeholders (e.g. consumers, media and Ministerial enquiries, and other regulators);

Note: Clause 6.2 of the MOU provides that, if a person provides an MR to the ACCC in relation to a road vehicle or approved road vehicle component, the ACCC will contact the person to request the person also provide this information to Infrastructure. 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*.

- (b) assessing the report and determining the appropriate risk management strategy; and

- (c) where the report relates to a product that is subject to an existing voluntary recall, reviewing whether the report alters the original risk assessment and recall strategy and, if so, whether the published recall notice (and other consumer or related communications) should be updated or other action taken.