

FEDERAL CHAMBER OF AUTOMOTIVE INDUSTRIES



CODE OF PRACTICE FOR THE CONDUCT OF AN AUTOMOTIVE SAFETY RECALL

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(ver 1.1)

**This Code was prepared under the direction of the
Federal Chamber of Automotive Industries Board, and
endorsed by Members of that Organisation**

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CODE OF PRACTICE FOR THE CONDUCT OF AN AUTOMOTIVE SAFETY RECALL

INTRODUCTION

The Code describes the procedures to be followed when a Member is advised (or becomes aware) that a Member's Product may have a Safety Defect.

The ACL provides the Minister with powers to order a mandatory recall in appropriate circumstances. However, the need for a mandatory recall may be avoided by a Member undertaking an effective Safety Recall.

The objectives of a Safety Recall are to:

- Undertake a Recall Service as soon as possible;
- Inform the relevant authorities;
- Inform the Customers and public; and
- Prevent the distribution and sale of a Member's Product that is in the Member's or the Member's Dealers power, possession or control that are subject to the Safety Recall until completion of the Recall Service on such Member's Products.

As at the Commencement Date the Department of Infrastructure and Transport (DoIT) administers safety recalls on road-going vehicles on behalf of the Consumer Safety Unit of the Australian Competition and Consumer Commission (ACCC). VSSB handles the day-to-day administration of safety recalls. This administrative arrangement is under an exchange of letters between the Minister and the Federal Transport Minister.

1 DEFINITIONS AND INTERPRETATION

1.1 In this CODE, unless the context otherwise requires:

- (a) "**ACL**" means the Australian Consumer Law set out in Schedule 2 of the CCA;
- (b) "**Australia**" means the Commonwealth of Australia;
- (c) "**CCA**" means the *Competition and Consumer Act 2010* (Cth) (as amended and in force for the time being) of Australia;
- (d) "**Commencement Date**" has the meaning given to it in paragraph 2.2 of this Code;
- (e) "**Code**" means this Code of Practice (including the schedules) as amended from time to time;
- (f) "**Customer**" means the Person, who is not the Member or Member's Dealer, in whose name the Vehicle is registered, or would ordinarily be registered, under the relevant Statutory Enactment in which the Vehicle is, or is usually, located;
- (g) "**Excluded Defect**" means, in relation to an Automotive Product, a defect which is caused by, or is attributable to:

- (i) the failure of the Customer, driver, operator or user of the Product to comply with such reasonable directions, instructions, recommendations or warnings as have been provided with the Product by the relevant Member or given to the original retail purchaser of the Product (or the purchaser's nominee) by or on behalf of the Member, or the Member's Dealer, at the time of the sale of the Product to the purchaser or as have been provided to the Customer by or on behalf of the Member, or the Member's Dealer, prior to the occurrence of the defect;
 - (ii) the involvement of the Product in an accident;
 - (iii) the abnormal use or abuse of the Product;
 - (iv) normal wear and tear of the Product;
 - (v) a negligent or wilful act or omission by the Customer, driver, operator or user of the Product or by any other Person except the Member; or
 - (vi) the failure of the Customer to maintain the Product in a reasonable condition and state of repair or to have the Product serviced, maintained or repaired by a competent servicer or repairer in a proper and workmanlike manner and in accordance with such relevant directions, instructions and/or recommendations as have been provided with the Product by the relevant Member, or given to the original retail purchaser of the Product (or the purchaser's nominee) by or on behalf of the Member, or the Member's Dealer, at the time of the sale of the Product to the purchaser or as have been provided to the Customer by or on behalf of the Member, or the Member's Dealer, prior to the occurrence of the defect;
- (h) **"FCAI"** means Federal Chamber of Automotive Industries A.B.N. 53 008 550 347;
 - (i) **"Federal Transport Department"** means the Department of the Australian Government which is responsible for the administration and handling of matters relating to road transport under the relevant Statutory Enactments of Australia and which is administered by the Federal Transport Minister;
 - (j) **"Federal Transport Minister"** means the Minister of State for the time being administering the provisions of the Statutory Enactments of Australia relating to road transport;
 - (k) **"Incidents"** has the meaning given to it in paragraph 5 of this Code;
 - (l) **"Interim Ban"** means an interim ban as defined in section 109 of the ACL;
 - (m) **"Manager"** has the meaning given to it in paragraph 3 of this Code;
 - (n) **"Member"** means a member of the FCAI as at the Commencement Date (being one of the Persons included for the time being in the list of Members set out in Schedule 1) together with any other member which subsequently endorses this code;
 - (o) **"Member's Dealer"** means, in relation to a Member, a Person authorised by the Member to sell, at wholesale or at retail, within Australia, the Member's Vehicles and/or the Member's Parts;
 - (p) **"Member's Part"** means a Part manufactured, assembled, distributed and/or marketed by the Member within Australia;
 - (q) **"Member's Product"** means a Member's Vehicle or, as the case may be, a Member's Part;

- (r) **“Member’s Recall Department”** has the meaning given to it in paragraph 3 of this Code;
- (s) **“Member’s Vehicle”** means a Vehicle manufactured, assembled, distributed and/or marketed by the Member within Australia;
- (t) **“Minister”** means the Federal Minister of State for the time being administering the ACL;
- (u) **“NEVDIS”** means the National Exchange of Vehicle and Driver Information System;
- (v) **“Original Notice”** has the meaning given to it in paragraph 10.1(d);
- (w) **“Part”** means a part, assembly, accessory or other item of equipment supplied or marketed for use in, on or with, a Vehicle;
- (x) **“Permanent Ban”** means a permanent ban as defined in section 114 of the ACL;
- (y) **“Person”** includes a natural person, partnership of persons, firm, corporation or other legal entity;
- (z) **“Recall Products”** has the meaning given to it in paragraph 7(a);
- (aa) **“Recall Service”** means, in relation to a Safety Recall, the inspection of a Recall Product and the rectification (or where necessary the replacement) of the Recall Product if the Recall Product is found to have the Safety Defect in respect of which the Safety Recall is being conducted;
- (bb) **“Relevant Date”** has the meaning given to it in paragraph 11.3.1;
- (cc) **“Safety Recall”** means a voluntary recall, conducted in accordance with this Code, of a Member’s Product which has, or may have, a Safety Defect, for the purpose of inspecting the Member’s Product and rectifying (or where necessary replacing) the Member’s Product if it is found to have the Safety Defect;
- (dd) **“Safety Defect”**, in relation to a Member’s Product, means:
 - (i) a defect in the original design, manufacture or assembly of a Member’s Product or in a modification, addition, alteration or repair made to a Member’s Product by, or at the direction or with the approval of, the Member which precludes, or may preclude, the Member’s Product from being driven, operated or used in a safe manner or which will, or may, cause injury to any person. When determining whether a Member’s Product can be driven, operated or used in a safe manner, and whether it will or may cause injury to any person, reasonably foreseeable use or misuse of the Member’s Product must be taken into account;
 - (ii) the Member’s Product is the subject of an Interim Ban or a Permanent Ban;
and
 - (iii) the Member’s Product does not comply with a Safety Standard,
 and does not include an Excluded Defect;
- (ee) **“Safety Standard”** means a safety standard as defined in section 104 of the ACL;
- (ff) **“Second Notice”** has the meaning given to it in paragraph 11.3.1(a);
- (gg) **“Second Relevant Date”** has the meaning given to it in paragraph 11.3.2;

- (hh) “**State**” or “**Territory**” means a State or, as the case may be, a Territory of Australia;
- (ii) “**Statutory Enactment**” means a statute, act, ordinance, by-law, rule or regulation of Australia or, as the case may be, of a State or Territory;
- (jj) “**Third Notice**” has the meaning given to it in paragraph 11.3.2;
- (kk) “**Vehicle**” means a passenger, commercial, recreational or other vehicle designed primarily and principally for the carriage of persons or goods;
- (ll) “**Vehicle Registration Authority**” means the authority, office or entity responsible for the time being for the registration of vehicles in Australia or, as the case may be, a State or Territory pursuant to the provisions of the applicable Statutory Enactments and includes any authority, office or entity which for the time being, with the approval of some or all of the Vehicle Registration Authorities, maintains a central registry of vehicle registration and associated data; and
- (mm) “**VSSB**” means the Vehicle Safety Standards Branch (or its successors) a branch within the Federal Transport Department that handles the day-to-day administration of safety recalls.

1.2 In this Code:

- (a) A word or expression (including a word or expression defined or given a special meaning) denoting the singular number only will include the plural number and vice versa and where a word or expression is defined or given a special meaning a cognate word or expression will have a corresponding meaning.
- (b) The headings are for ease of reference only and must not be used for the purpose of interpretation.

2 GENERAL

2.1 Preparation and Endorsement

This Code has been prepared under the direction of the Board of FCAI and endorsed by the Members.

2.2 Commencement

- a) This Code will come into operation on the first day of February 2017 (Commencement Date) and as from that date will replace all prior FCAI Codes of Practice relating to the recall of any Member’s Products.
- b) Each Member must complete any unfulfilled recall obligations at the Commencement Date in accordance with the terms of the Codes of Practice in force at the date the relevant Safety Recall was released.

2.3 Legal Status

This Code is subject in all respects to the provisions of the ACL and all other applicable Statutory Enactments. Accordingly, compliance with this Code will not relieve a Member from the Member’s obligations to comply with the provisions of the ACL and the other applicable Statutory Enactments and common laws.

2.4 Purpose and Scope

While the purpose of this Code is to set out the basic procedures which are to be followed by a Member in conducting a Safety Recall of the Member's Product, that have, or may have, a Safety Defect, a Member may adopt and follow, either generally or in a particular case, more stringent procedures.

2.5 Review and Amendment

This Code will be reviewed and may be amended from time-to-time to recognise:

- (a) changes in responsibilities within Federal government departments;
- (b) amendments to the ACL or to any other applicable Statutory Enactment;
- (c) the applicable provisions of any new Statutory Enactment;
- (d) changes in any other applicable law;
- (e) changes in the structure, objectives or functions of FCAI or changes in the Australian automotive industry; or
- (f) any other matter or circumstance which affects, or could affect, the interpretation or operation of this Code.

3 ASSIGNMENT OF RESPONSIBILITY

Each Member must assign responsibility for the initiation, conduct and supervision of Safety Recalls and for the handling of such other matters concerning the Member and the Member Products as may arise from time to time under this Code to a particular and readily identifiable department or group (the "Member's Recall Department") within the Member's organisation.

4 ESTABLISHMENT OF PROCEDURES

Each Member must establish and maintain within its organisation such procedures that will enable the Member to properly and effectively comply with the provisions of this Code, the ACL and the applicable Statutory Enactments.

5 INVESTIGATION RELATING TO SAFETY DEFECTS

If a Member has reason to believe (based on information or advice received either from within or from outside the Member's organisation) that a Safety Defect exists, or may exist, in any model, type or category of the Member's Product, the Member must immediately commence an investigation to determine whether the Safety Defect exists.

The Member must ensure that the investigation is carried out without undue delay and in manner which will enable the Member to determine properly and promptly whether the Safety Defect exists and, if the Safety Defect is found to exist, the nature of the Safety Defect and the Member's Products in which the Safety Defect exists.

In carrying out the investigation the Member must investigate and consider:

- (a) the information or advice received, the incident or incidents (Incidents) which may point to the existence of a Safety Defect and the reported number and frequency of the Incidents;
- (b) when, and the circumstances in or under which, the Incidents have occurred or may occur;
- (c) the consequences of the Incidents occurring; and
- (d) any other relevant facts and circumstances.

If such investigations and considerations do not confirm that the Safety Defect does or does not exist, the Member must determine the likely possibility of occurrence. If the investigations and considerations with respect to the possibility of occurrence do not confirm that the Safety Defect does or does not exist the Member must conclude that a Safety Defect does exist for the purposes of this Code in the relevant model, type or category of the Member's Products.

6 OBLIGATION TO CONDUCT A SAFETY RECALL

6.1 General obligation

Subject to Clause 6.2, if, as a result of the investigations and considerations referred to in Clause 5, a Safety Defect is found to exist in any model, type or category of the Member's Products the Member must conduct a Safety Recall in accordance with the provisions of this Code.

6.2 Exception

If a Member discovers a Safety Defect in any model, type or category of the Member's Products and the Member, before the Member's Products are delivered to the Customer, eliminates the Safety Defect from those Member's Products the Member is not obliged to conduct a Safety Recall in respect of the Member's Products in accordance with this Code.

7 IDENTIFICATION OF RECALL PRODUCTS AND DETERMINATION OF MANNER OF RECTIFICATION

If pursuant to Clause 6.1 a Member is required to conduct a Safety Recall the Member will, without undue delay;

- (a) identify by Vehicle Identification Number (VIN) (of if that number is not applicable or available, by serial or like number), built date (if applicable) and/or by such other identifying particulars as are available or as reasonably can be obtained, each of the Member's Products in which the Safety Defect exists or may exist (Recall Products); and
- (b) determine the manner in which the Recall Products are to be rectified (if rectification is required) so as to eliminate the Safety Defect there from.

8 PREPARATION FOR SAFETY RECALL

When the Member has identified the Recall Products and determined the manner in which the Recall Products in which the Safety Defect is found to exist and are to be rectified the Member must:

- (a) Having regard to the nature of the Safety Defect and/or the urgency for rectification of the Recall Products in which the Safety Defect is found to exist, determine the steps which are to be taken by the Member to notify Customers of the Safety Recall and in particular the Member must prepare:
 - (i) from such records and sources (including where appropriate, NEVDIS) as are available to the Member, a list containing the names and addresses of the Customers of the Recall Products;
 - (ii) a notice to the Member's Dealers informing them of the Safety Recall and of the actions which the Member and the Member's Dealers are to take in initiating and conducting the Safety Recall;
 - (iii) if required by Clause 12, an advertisement in the form set out, and containing the information called for, in Schedule 3; and

- (iv) a notice to Customers of the Recall Products containing the information called for in Schedule 3;
- (b) If the Member considers it necessary or desirable, having regard to the nature of the Safety Defect and/or the urgency for rectification of the Recall Products in which the Safety Defect is found to exist, the Member may prepare a news release, for distribution to the electronic and/or print media, containing such information as is necessary to inform Customers of the Safety Recall and of the actions which they should take. Further, if the Member, having regard to all of the relevant circumstances, deems it necessary or desirable, the Member may prepare, or arrange for the preparation of, an appropriate commercial and/or advertisement in relation to the Safety Recall for showing on, and/or broadcasting by, the television channels and/or radio stations which are likely to be watched and/or listened to by Customers of the Recall Products.

9 AVAILABILITY OF PARTS AND RECALL SERVICE INSTRUCTIONS

When the Member has identified the nature of the Safety Defect and the Recall Products and determined the manner in which the Safety Defect will be rectified, the Member must take such actions as are necessary to ensure that the Member's Dealers have, or will have at the appropriate time, the parts, assemblies and/or materials and the technical and other instructions required to rectify the Safety Defect is when the Customers present the Recall Product.

10 PUBLICATION OF SAFETY RECALL

When the Member is in position to release the Safety Recall, the Member must without undue delay:

- (a) furnish the notice referred to in Clause 8(a)(ii) to the Member's Dealers;
- (b) if required by Clause 12, publish an advertisement in the form set out, and containing the information called for in Schedule 3;
- (c) if deemed appropriate by the Member, make the news release referred to in Clause 8(b) available to the media and/or arrange for the commercial and/or advertisement referred to in Clause 8(b) to be shown and/or broadcast by the appropriate television channels and/or radio stations;
- (d) mail or e-mail, or arrange for the Member's Dealers to mail or e-mail, the notice referred to in Clause 8 (a)(iv) (Original Notice) to all known Customers of the Recall Products being the Customers included in the list prepared in accordance with Clause 8 (a)(i); and
- (e) if deemed appropriate contact, or arrange for the Member's Dealers to contact, the Customers of the Recall Products by telephone, e-mail, text message by personal visit or other appropriate means.

11 COMPLIANCE WITH THE ACL

11.1 Notification to the Minister and VSSB – Refer Schedule 2.

11.1.1 Having regard to the mandatory requirements of section 128 of the ACL, the Member must, within two (2) days of releasing a Safety Recall, give notice in writing to the Minister:

- (a) stating that the Recall Products are subject to a Safety Recall;
- (b) if the Recall Products contain a Safety Defect or have a dangerous characteristic, setting out the nature of that Defect or characteristic;

- (c) if a reasonably foreseeable use or misuse of the Recall Product is dangerous, setting out the circumstances of that use or misuse;
- (d) if the Recall Product does not, or is likely to not, comply with a Safety Standard that is in force in respect of that Recall Product, setting out the nature of the non-compliance, or the likely non-compliance;
- (e) if an Interim Ban or Permanent Ban on the Recall Product is in force, stating that fact;
- (f) including a copy, or the relevant details, of any notice, advertisement, commercial and/or news release relating to the Safety Recall which is to be published or distributed by the Member;
- (g) if not included in the information furnished under paragraph (a) to (e) above, including a brief description of the Recall Product and of the manner in which the Recall Product can be identified; and
- (h) if not included in the information furnished under paragraph (a) to (e), including a brief description of the Safety Defect and of the manner in which it will be rectified;

11.1.2 Although not required by the ACL, the Member must forward to the Federal Transport Minister and to VSSB without undue delay a copy of the notice referred to in Clause 11.1.1.

11.2 Notice to Parties Outside Australia and the Minister

11.2.1 Where a Member initiates a Safety Recall under this Code and the Member has supplied or supplies any of the Recall Product to another Person outside Australia, the Member must, in accordance with the mandatory requirements of section 128(4) and section 128(5) of the ACL, as soon as practicable after the supply of such Recall Product to that other Person give a notice in writing to that other Person:

- (a) stating that the Recall Products are subject to a Safety Recall;
- (b) if the Recall Products contain a Safety Defect or have a dangerous characteristic, setting out the nature of that Defect or characteristic;
- (c) if a reasonably foreseeable use or misuse of the Recall Product is dangerous, setting out the circumstances of that use or misuse;
- (d) if the Recall Product does not, or is likely to not, comply with a Safety Standard that is in force in respect of that Recall Product, setting out the nature of the non-compliance, or the likely non-compliance; and
- (e) if an Interim Ban or Permanent Ban on the Recall Product is in force, stating that fact.

11.2.2 Within ten (10) days after the giving of the notice referred to in Clause 11.2.1 the Member must provide the Minister and VSSB with a copy of that notice in accordance with the mandatory requirements of section 128(6) of the ACL.

11.3 Customer's Failure to Respond

11.3.1 Failure to Respond to Original Notice

If a Customer of a Recall Product fails to respond to the Original Notice (being the notice referred to in Clause 10.1(d)) or fails to return the Recall Product for inspection and, where appropriate, rectification, within a period of ninety (90) days (or such longer or shorter period as is appropriate in the circumstances) after the mailing of the Original Notice to the Customer (the end of the period in either case being referred to herein as the Relevant Date) and if on the Relevant Date the Member:

- (a) knows or has good and sufficient reason to believe that the name and address of the Customer of the Recall Product have not changed, the Member must send, or arrange for the Member's Dealer to send, by mail or e-mail, a second notice (the Second Notice) to the Customer containing an appropriate reference to the Original Notice, the information called for in Schedule 3 and such other information as the Member deems appropriate in the circumstances; or
- (b) does not know, or is uncertain, of the name and/or address of the Customer of the Recall Product, the Member without undue delay, if the Recall Product is a Vehicle, must request NEVDIS or the relevant Vehicle Registration Authority (or if the Recall Product is not a Vehicle, such other source is as available to the Member) to supply the Member with the Customer's name and/or as the case may be, address. If in response to such request the Member receives the Customer's name and/or, as the case may be, address, and
 - (i) the Customer's name and address, which the Member then has are identical with the name and address to which the Original Notice was mailed, the Member without undue delay must send, or arrange for the Member's Dealer to send, by mail, a Second Notice to the Customer; or
 - (ii) the name and/or address is/are different from the name and/or address to which the Original Notice was mailed, the Member without undue delay must (if it has not already done so) send, or must arrange for the Member's Dealer to send, by mail, a notice (the Second Notice) to the Customer making appropriate reference to the mailing of the Original Notice, the information called for in Schedule 3 and such other information as the Member deems appropriate in the circumstances.

11.3.2. Failure to Respond to Second Notice

If a Customer of a Recall Product fails to respond to the Second Notice or fails to return the Recall Product for inspection and, where appropriate, rectification, within a period of ninety (90) days (or such longer or shorter period as appropriate in the circumstances) after the mailing of the Second Notice to the Customer (the end of the period in either case being referred to herein as the Second Relevant Date), the Member without undue delay, if the Recall Product is a Vehicle must request NEVDIS or the relevant Vehicle Registration Authority (or if the Recall Product is not a vehicle, such other source as is available to the Member) to supply the Member with the Customer's name and/or, as the case may be, address. The Member without undue delay must send, or arrange for the Member's Dealer to send, by registered post the third notice (Third Notice) to the customer containing appropriate reference to the First Notice and the Second Notice, the information called for in Schedule 3, and such other information as the Member deems appropriate in the circumstances.

If the Member obtained the Customer's names and addresses used when sending both the Original Notice and the Second Notice from NEVDIS (or the relevant Vehicle Registration Authority) and both the Original Notice and the Second Notice were sent by registered post then the requirement for a Third Notice will not apply.

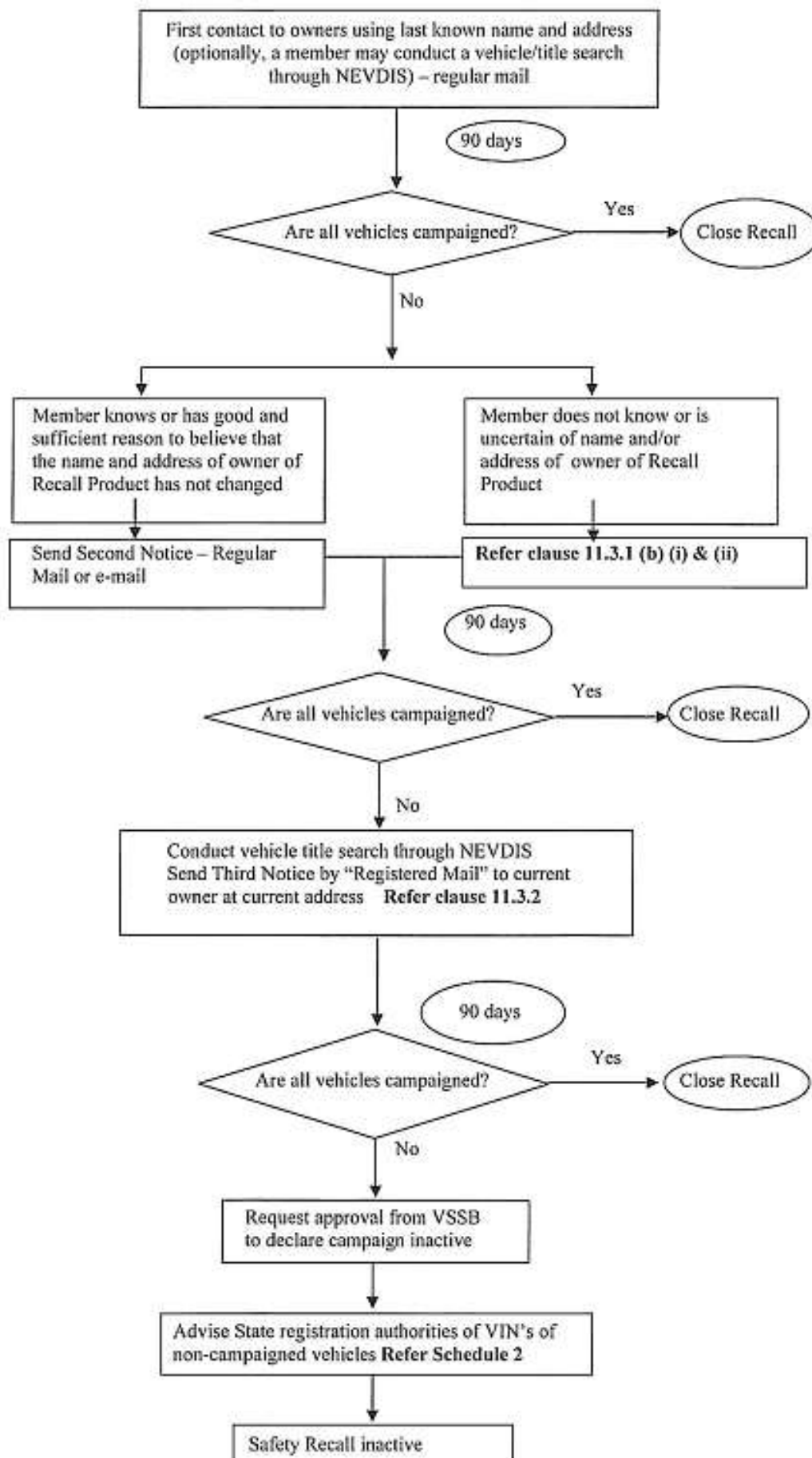
11.3.3 Failure to Respond to Third Notice

If a Customer of a Recall Product being a Vehicle fails to respond to the Third Notice, or to have the Recall Service carried out on the Recall Product, the Member, at the expiration of the period of ninety (90) days (or such longer period as is appropriate in the circumstances) after the mailing of the Third Notice to the Customer, must advise the Vehicle Registration Authority in the State or Territory in which the last known address of the Customer is located:

- (a) the existence and the relevant details of the Safety Recall;
- (b) of the identifying particulars of the Recall Product;
- (c) of the fact that the Customer has failed to respond to the Safety Recall and to have the Recall Service carried out on the Recall Product; and
- (d) for those Customers identified in clause (c), the Customer's Vehicle Identification Number (VIN) shall be provided to the Vehicle Registration Authority in electronic database format.

11.3.4. Prior Disposal of Recall Product

If a Customer of a Recall Product to whom an Original Notice has been sent advises the Member or the Member's Dealer that prior to the required Recall Service being carried out on the Recall Product the Customer disposed of the Recall Product (other than for the purpose of the Recall Product being made into scrap), or if the Member otherwise becomes aware of the disposal of the Recall Product by the Customer (other than for the purpose of the Recall Product being made into scrap) prior to the Recall Service being carried out on the Recall Product, the Member, after taking such actions as are necessary and appropriate in the circumstances to obtain the correct name and address of the present Customer of the Recall Product must initiate the Safety Recall action in respect of the Recall Product by undertaking Safety Recall action as per Clause 11.3.1 (b).



12 CUSTOMERS' NAMES AND/OR ADDRESSES UNKNOWN

If the names and/or the addresses of Customers of Recall Products are unknown to the Member or to the Member's Dealers (for example, where the names and/or addresses of the original, or subsequent, purchasers of Recall Products have not been recorded at the time of the original, or the subsequent, sale of the Recall Products or where the Recall Products have not been registered with the relevant Vehicle Registration Authorities or any other available source), and such names and/or addresses or other contact details cannot be reasonably obtained, the Member must use reasonable endeavours to inform the Customers of the Recall Products of the Safety Recall and of the relevant details of the Safety Recall by an advertisement in the form set out, and containing the information called for in Schedule 3, in an appropriate newspaper or in an appropriate trade, consumer or other publication and, if the Member deems it appropriate, having regard to the circumstances of the case, by an appropriate news release to the media and/or by an appropriate television commercial and/or radio advertisement.

13 ADVICE TO SUPPLIERS OF MEMBER'S PRODUCTS

If any of a Member's Products has, or could have, a Safety Defect and the Member's Products were obtained by the Member from a third party, the Member must advise that third party of the existence, or possible existence, of the Safety Defect as soon as possible after the existence, or possible existence, of the Safety Defect is established. Where the Member deems it appropriate the Member must seek the assistance of the third party in determining the nature of the Safety Defect and the manner in which it will be rectified. The Member must advise the third party of the Member's decision to conduct a Safety Recall in respect of such Member's Products as soon as possible after that decision is made by the Member.

14 RECTIFICATION OF RECALL PRODUCTS

The Member will carry out, or ensure that the Member's Dealers or a person authorised by the Member carry out as soon as is practical the Recall Service on each Recall Product delivered to the Member, or to the Member's Dealer, by a Customer. Such Recall Service must be carried out free of charge to the Customer. As part of the Recall Service, the Member or, as the case may be, the Member's Dealer, must, if the Recall Product is a Vehicle, record on the Recall Product, in accordance with the procedure set out in Schedule 5, the fact that the Recall Service has been carried out on the Recall Product.

15 DESTRUCTION OF DEFECTIVE PARTS

The Member must ensure that all Member's Parts having a Safety Defect and which are in, or come into, the Member's possession or control are destroyed or rendered incapable of use or re-use unless they are reworked and made safe and the Member must instruct the Member's Dealers and, where appropriate the Member's suppliers, to act in the same manner.

16 SUBSTANTIAL CHANGE IN SAFETY RECALL

The Member must promptly notify the Minister and VSSB, if there is any substantial change in the nature or scope of a Safety Recall.

17 SAFETY RECALL FILE

Each Member must maintain a file relating to each Safety Recall conducted by the Member and must record therein so much of the information called for in Schedule 4 as is relevant. Such file must be kept up to date and in form and manner which will enable it to be reviewed without undue difficulty.

18 PERIODIC NOTIFICATION TO VSSB

Each Member must, unless otherwise agreed between the Member and VSSB, provide to VSSB;

- i) Within fourteen days after the end of each calendar month for a period of twelve months following the release of the safety recall as provided by Clause 10 of this Code; and
- ii) Within fourteen days after the end of each three month period (quarterly) following the expiration of the period referred to in (i) above for a period of twenty four months; and
- iii) Within fourteen days after the end of the twelve month period (yearly) following the completion of the period referred to in (ii) above;

details of all active Safety Recalls then being conducted by the Member. Such details must include:

- (a) the name or number assigned by the Member to each Safety Recall being conducted by the Member;
- (b) the number of Recall Products involved in each such Safety Recall;
- (c) the number of Recall Products on which the Recall Service under each such Safety Recall has been carried out during the previous month (or such longer period as is agreed to by VSSB) and since the commencement of the Safety Recall; and
- (d) such other information as VSSB may reasonably require.
- (e) Contact details can be found in Schedule 2.

19 COMPLETION OF SAFETY RECALL

- 19.1 If a Member is unable for any reason beyond the Member's reasonable control to carry out, or to have the Member's Dealers carry out, the Recall Service on all of the Recall Products included in a Safety Recall within a reasonable period after taking the actions required by Clause 11 to notify Customers of the Recall Products of the Safety Recall, the Member may seek approval from VSSB to make inactive the Safety Recall.
- 19.2 If a Member or Member's Dealers carry out the Recall Service on all Recall Products, the Member must advise VSSB that the Safety Recall is closed.
- 19.3 If for any reason a Safety Recall has not been made inactive or closed by a Member prior to the expiration of three (3) years from the commencement date of the Safety Recall, the Safety Recall is deemed inactive, provided that all of actions required by Clause 11 with respect to the Safety Recall have been taken by the Member, with effect from the third anniversary of the commencement date of the Safety Recall subject to the Member taking steps to ensure that Recall Products presented to the Member or the Member's Dealers after the date of inactivation or closure of the Safety Recall will have the appropriate Recall Service carried out on them.

20 DISPUTES

If a dispute relating to the operation of, or to any matter arising under or with respect to, this Code is brought to the attention of a Member by the Minister, VSSB, FCAI or any other Person the Member must, without prejudice to the Member's rights and remedies under the ACL or any relevant Statutory Enactment or otherwise at law, use reasonable endeavours to resolve the dispute as promptly as is practical in the circumstances by negotiation with the party initiating the dispute and any other Person or member which has become involved in the dispute. If the dispute cannot be resolved by negotiation it may become necessary, depending upon its nature and the

attitude of the Member or other Person involved in the dispute, to have the dispute resolved by utilising the rights and remedies which are available under the ACL and/or any other relevant Statutory Enactments or otherwise at law.

21 AUDIT

Information and records maintained by the Member of reported defects in their Products intended to be used for the investigations referred to in Clause 5 must be made available to the Minister (or staff acting on behalf the Minister) or VSSB at reasonable notice for the purposes of audit.

The Safety Recall file referred to in Clause 17 must be made available to the Minister (or staff acting on behalf the Minister) or VSSB at reasonable notice for the purposes of audit.

SCHEDULE 1

MEMBERS

Ateco Automotive Pty Ltd	Audi Australia Pty Limited
BMW Australia	BMW Motorrad Australia
BRP Australia Pty Ltd	Citroen
Federation of Automotive Products Manufacturers	Ferrari Australasia Pty Ltd
Fiat Chrysler Group	Ford Motor Company of Australia Limited
GM Holden Ltd	Harley-Davidson Australia Pty Ltd
Haval Motors Australia Pty Limited	Honda Australia Pty Ltd
Honda Australia MPE Pty Ltd	Hyundai Motor Company Australia Pty Ltd
Isuzu UTE Australia Pty Ltd	Jaguar Land Rover Asia Pacific
John Sample Automotive Pty Ltd	Kawasaki Motors Pty Ltd
Kia Motors Australia	KTM Australia
KYMCO Australia and New Zealand	Lexus Australia
Mazda Australia Pty Limited	Mercedes-Benz Australia / Pacific Pty Ltd
Mitsubishi Motors Australia Ltd	N F Importers Pty Ltd
Nissan Motor Company (Australia)	Peter Stevens Importers
Peugeot Automobiles Australia	Porsche Cars Australia Pty Ltd
Proton Cars Australia Pty Limited	Renault Cars Australia
SAIC Motor Australia Pty Ltd	Sime Darby Motors Group
Skoda Australia	Subaru (Aust) Pty Limited
Suzuki Australia Pty Limited	Suzuki Motorcycles Australia
Tesla Motors Inc.	Toyota Motor Corporation Australia Limited
Victory Motorcycles Australia Pty Ltd	Volkswagen Group Australia Pty Ltd
Volvo Car Australia Pty Ltd	Yamaha Motor Australia Pty Ltd

SCHEDULE 2

GOVERNMENT MINISTERS AND AUTHORITIES NAMES AND ADDRESSES

Address for mandatory notification under the Australian Consumer Law

The Hon Michael McCormack
Minister for Small Business
C/o –
Hazard Management
Hazard Analysis and Management Section
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Email: recalls@accc.gov.au

Phone: 02 6243 1262

Website: <https://www.productsafety.gov.au/contact-us/for-retailers-suppliers/submit-a-recall>

Address for notification to enable each recall to be monitored according to the requirements of this Code

General Manager
Vehicle Safety Standards Branch
Department of Infrastructure and Regional Development
GPO Box 594
CANBERRA ACT 2601

Email: recalls@infrastructure.gov.au

Phone: [02 6274 6274](tel:0262746274)

The ACCC and Department's preference is for recall correspondence to be provided electronically, rather than by post or fax. The ACCC provides an online interface for notifying of safety recalls. Submitting a recall notification through the ACCC online system satisfies the requirement to notify the Minister.

Both the ACCC and Department should be notified of a new recall. Only the Department needs to be provided periodic notification (see section 18).

SCHEDULE 3

CONTENT AND FORMAT OF SAFETY RECALL ADVERTISEMENTS AND NOTICES TO CUSTOMERS

1. The advertisement referred to in Clause 8(a)(iii) and the notice referred to in Clause 8(a)(iv) (the Original Notice) and the notice referred to in Clause 11.3.1(a) (the Second Notice) must contain:
 - (a) the name and address of the Member;
 - (b) a clear and unambiguous description of the Recall Products;
 - (c) instructions explaining how Customers can identify the Recall Products;
 - (d) a description of the Safety Defect;
 - (e) a warning as to the possible or likely effect of the Safety Defect on the Recall Products and the possible or likely consequences of driving, operating or using a Recall Product which has a Safety Defect;
 - (f) details of any limitations on or with respect to driving, operating or using a Recall Product pending the carrying out of the Recall Service on the Recall Product;
 - (g) the date on which the Safety Recall is to commence;
 - (h) the place(s) at which a Customer can have the Recall Service carried out on the Customer's Recall Product;
 - (i) where and from whom (providing where practicable the name and telephone number(s) of an office or department) information with respect to the Safety Recall can be obtained; or
 - (j) any other information or warning which the Member considers necessary or desirable in the Circumstances.

2. A Safety Recall advertisement which is to be published in the print media must:
 - (a) be printed within a border of the kind and style depicted below;
 - (b) have as its heading the words "Vehicle Safety Recall" or, as the case may be, "Vehicle Part Safety Recall" printed in bold type;
 - (c) include the Member's logo in a readily visible size in a prominent position;
 - (d) be of a width of at least two columns and of a depth of not less than 10cm;
 - (e) be published in a conspicuous position (preferably in the news, editorial or feature article section) and where possible on a facing page of the publication.

- 3. Any media release and any electronic and/or print media commercial or advertisement of the kind contemplated in Clause 8(b) must contain so much of the information called for in paragraph 1 above as is relevant and reasonable in the circumstances.

Style of Border referred to in Paragraph 2(a)



SCHEDULE 4

SAFETY RECALL FILE

The Safety Recall file must contain and record the following:

- the dates of commencement and completion of the investigation referred to in Clause 5;
- brief particulars of the matters which led the Member to investigate whether a Safety Defect existed or could exist;
- the date on which a decision whether to conduct a Safety Recall was made and brief reasons for the decision;
- particulars of the Safety Defect;
- particulars of the Recall Products;
- particulars of the manner in which the Recall Products in which the Safety Defect is found are to be rectified;
- date of commencement of Safety Recall;
- a copy of each notice given pursuant to Clause 10 and the date each such notice was given;
- a copy of any notice or advice given pursuant to Clauses 11 or 13 and the date on which each notice or advice was given;
- copies (or, where necessary, details of the content) of each advertisement, commercial or news release published and/or distributed pursuant to Clauses 11 or 12 and the date of each publication and/or distribution;
- the names and addresses and any other relevant particulars of the Customers of the Recall Products;
- particulars of contacts made with each Customer of a Recall Product; (some or all of this information may be kept in files maintained by the Member's Dealers for the purpose)
- particulars of the Recall Products on which the Recall Service has been carried out;
- date(s) on which action is taken pursuant to Clause 11.2 and 11.3;
- date(s) on which action is taken pursuant to Clause 13;
- details of any substantial change in the Safety Recall, a copy of any notice given pursuant to Clause 16 and the date such notice was given;
- copies and dates of any information furnished pursuant to Clause 18;
- a copy of any approval given by the Minister or the Minister's Department for the purposes of Clause 19;
- the date of, and the reasons for, the termination of the Safety Recall;
- particulars of the Customers who did not respond to the Safety Recall;
- details of any dispute in relation to the Safety Recall and the outcome thereof;
- any other matters which the Member deems necessary or desirable to record.

SCHEDULE 5

RECORDING OF RECALL SERVICE CARRIED OUT ON A VEHICLE

For the purpose of recording on a Recall Product, being a Vehicle that the Recall Service has been carried out on that Recall Product under the relevant Safety Recall the following procedure must be followed:

The Member or, as the case may be, the Member's Dealer must:

- (a) Use a sticker, plate or decal ("Plate") of a suitable size with a border similar to the border depicted in Schedule 3 to record the required information
- (b) Determine whether a single Plate is to be used for each Safety Recall, or whether one large Plate is to be used to provide for a number of Safety Recalls.
- (c) Locate the Plate on the right hand front A pillar of the Recall Product, or if there is insufficient room at that location, on the B pillar.
 - (i) In relation to motorcycles, the Plate must be located on the frame under the seat.
- (d) Record sufficient information on the Plate to identify the Safety Recall (such information may be in the form of a Code consisting of a maximum of seven characters) and the fact that the Recall Service under the Safety Recall has been carried out.
- (e) If a Member has a database that can be searched by VIN by the Member or Members Dealer indicating which Recall Services have been conducted on the Vehicle. The actions of providing a physical sticker plate or decal (Clauses (a) to (d)) are not required.