Canadian Vehicle Manufacturers' Association (CVMA)

Statement by Mark Nantais, President

To the

Senate Standing Committee on Transport and Communications

Bill S-2, An Act to amend the Motor Vehicle Safety Act and to make a consequential amendment to another Act

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Victoria Building, Room 2

Canadian Vehicle Manufacturers' Association
170 Attwell Drive, Suite 400
Toronto, ON M9W 5Z5
(416) 364-9333
mnantais@cvma.ca

Deputy Chair and Honourable Senators, I appreciate the opportunity to appear before you on Bill S-2.

My name is Mark Nantais, President of the Canadian Vehicle Manufacturers' Association which for 90 years has represented the leading manufacturers who assemble vehicles here in Canada. Our members are FCA Canada Inc., Ford Motor Company of Canada, Limited and General Motors of Canada Company; who together are responsible for approximately 60% of Canadian auto production[1] .

CVMA members share the Bill S-2 objectives to further protect the safety of Canadians and provide additional regulatory flexibility to support the introduction of advanced safety technologies and other innovations. Our members invest significant resources in innovation, research, development and proactive introduction of new technologies and comprehensive safety systems that assist in avoiding collisions and provide advanced protection to vehicle occupants.

In particular, we support the Bill S-2 amendments that provide a clear, more rigorous and transparent process for exercising a number of Ministerial Powers to Order, recognition of the rapid pace of technological change through enhanced ability to provide exemptions to standards where new technologies provide equivalent or increased safety benefit relative to those that conform to prescribed standards, and extended time limits for interim orders that can be used to promptly align Canadian requirements already enacted by other governments.

We have identified three priority areas of concern that have practical and business operational implications, particularly since the Bill includes the ability to delegate some existing and new Ministerial powers contemplated in the amendments.

First, *Section 10.61, Power to prohibit offering for sale – defect or noncompliance*.

We support the policy objective of prohibiting sale of non-compliant or defective vehicles. However, manufacturers do not directly control the retail sale of vehicles to consumers. NEW vehicles are sold wholesale to the new car dealers which, as independent business entities,

[1] Polk, Aug. 2016

take ownership of the vehicle and makes the final sale to the retail customer. CVMA members advise dealers not to sell vehicles with open recalls until the remedy is completed and Dealers may also be subject to significant legal liability should they chose to sell a vehicle under recall.

The proposed Power inappropriately places the onus on the vehicle manufacturer or importer to exercise an authority over privately owned independent businesses that is out of the manufacturer's immediate control. In our view, it is completely malapropos to hold manufacturers or importers criminally responsible for the actions of independently owned and operated new car dealers.

Accordingly, we recommend that the Power to prohibit the offering for sale should be revised to the Power to order vehicle manufacturers and importers to issue a notice to Dealers to remedy the vehicle prior to first retail sale.

Next, *Section 8.1 Power to order tests, analyses or studies.*

We recognize that Transport Canada is proposing this unique to Canada power to address the need in certain cases to collect information quickly for the purpose of verifying non-compliance or defects where information is not being provided voluntarily. However, the current language is very broad and has the risk of being mis-used beyond the specific intent to order *any* test, analyses, or study in *any* scenario.

The language needs to be updated to clarify that the intent of this provision is to order tests, analysis or studies to verify non-compliance and include the notion of reasonableness. Suggested language changes are outlined in our written submissions.

Third, *Section 10.4(1), Correction Date.*

CVMA members strive to provide the most accurate and up-to-date recall information to vehicle owners. The Act currently requires that an initial recall notification letter be sent to vehicle owners no later than 60 days following the notification to Transport Canada. If the parts required to repair the vehicle are not immediately available, a follow-up notification letter is sent to vehicle owners when parts become available.

As required by the Act, a company will notify the Minister of a recall '*upon becoming aware of a defect or noncompliance*'. Often, at this preliminary stage of a recall, information on availability of repair parts may not be available.

In the preliminary stages of a recall or with complex recalls, estimates of the date for parts availability may be revised multiple times - theoretically requiring companies to send a new notice each time a new estimated date is established. The proposed requirement to provide an estimated correction date will create unrealistic consumer expectations and / or potentially misleading information; ultimately desensitizing the public to the importance of the original notification and undermining public confidence in the system.

Stipulating this requirement in the Act prevents leveraging communication technologies that may be better suited for providing information in a more timely manner; such as VIN based recall lookup tools on the Internet that our members have in place.

This new requirement is not needed in the Act and can be addressed under existing Section 15 of the Motor Vehicle Safety Regulations which defines all the information required in the notice to the Minister and the notice to vehicle owners.

Transport Canada has the authority to request information to confirm the earliest correction date under Section 11(1)(a) of the Act. The proposed requirement for earliest date could be added to Section 15 of MVSR and could also include a requirement for a company to provide, upon request, any information or documents that the Minister considers necessary for verifying that the date provided is the earliest date by which the correction can be available. Furthermore, there is active development is underway on regulations necessary to implement certain Bill C-31 amendments and other tools to enhance the provision of information to consumers.

In closing, CVMA members are committed to ensuring the safety of Canadians and want to ensure that the proposed amendments are able to meet the objectives as set out in the Act, in a practical and implementable manner.

Thank you, I would be pleased to address any questions you may have.

Canadian Vehicle Manufacturers' Association: Priority Concerns for Bill S-2

The Canadian Vehicle Manufacturers' Association (CVMA) is the industry association representing Canada's largest manufacturers of light and heavy duty motor vehicles. The CVMA's membership includes FCA Canada Inc.; Ford Motor Company of Canada, Limited; and General Motors of Canada Company.

CVMA shares and supports the government's objective to enhance the safety of Canadians and to provide additional regulatory flexibility to support the introduction of advanced safety technologies and other vehicle innovations.

CVMA is pleased that the government has considered the input provided in response to the amendments contained in Bill C-31 and proposed in Bill C-62 and the additional discussions on potential amendments to the Act such as:

- Inclusion of a rigorous process for the exercising of a number of Ministerial Powers to Order is a very positive development and will provide clarity and transparency for all
- Ability to provide exemptions for new features that are equivalent to or better than those that conform to prescribed standards
- Extending the time limit for interim orders which would assist with alignment of regulations with existing requirements enacted by a foreign government

However, CVMA has identified three areas of priority concern in Bill S-2 that need further clarification or modification to make a more effective piece of legislation, particularly since the proposal also includes the ability for the Minister to delegate some existing and new powers contemplated in the amendments. These changes do not affect the safety aims of the legislation and allow for a more streamlined and effective implementation.

Priority item 1: Section 10.61, Power to prohibit offering for sale – defect or noncompliance

New vehicles are sold wholesale by the manufacturer or importer to the new car dealers which, as independent business entities, take ownership of the vehicle and makes the final sale to the retail customer. CVMA members advise dealers not to sell vehicles with open recalls until the remedy is completed and Dealers may also be subject to significant legal liability should they chose to sell a vehicle under recall.

In the U.S., NHTSA has authority to fine a Dealer and as such, they prohibit the Dealer from offering for sale a vehicle with a safety or non-compliance recall that has not been completed.

However, in Canada, the definition of a *company* in the Act does not include persons who sell vehicles directly to the public. As such, automobile dealers, who are the entities that manage the sales of vehicles to the public, are not governed by the Act or its regulations.

As written, the Order power inappropriately places onus on the manufacturer / importer to exercise authorities they do not have with respect to privately owned independent businesses that are out of their immediate control. While the due diligence defense may apply, it remains inappropriate to hold manufacturers / importers criminally responsible for the actions of an independent business.

The purpose of the MVSA is intended to regulate the **<u>manufacture and importation</u>** of motor vehicles and motor vehicle equipment to reduce the risk of death, injury and damage to property and the environment. It is not structured to cover potential commercial business issues that may arise between manufacturers / importers and Dealers.

Following discussions with CVMA, Transport Canada has clarified that the prohibition does not include promotion activities prior to offering for sale which is a positive improvement.

CVMA Recommendation:
The order power should be for companies to issue a notice to the Dealer to remedy prior to sale. We suggest the following changes be made to the proposed language:

Power to prohibit offering for sale—defect or noncompliance
10.61 (1) The Minister may, by order, require a company <u>*to notify the person ("Dealer") who obtained the vehicle from the company*</u> to ensure that any defect or non-compliance in a vehicle or equipment is corrected before the vehicle is offered for sale to the first retail purchaser, in accordance with any terms and conditions specified in the order.

For greater certainty
(2) For greater certainty, a company is not prohibited from doing any promotion activities prior to offering for sale any vehicle or equipment under subsection (1).

<u>Priority item 2: Section 8.1, Power to order tests, analyses or studies</u>

While the language in the bill appears to have similarities with certain authorities in the Canada Consumer Product Safety Act (CCPSA), vehicles are highly regulated, self-certified and monitored by rigorous quality control systems and dedicated enforcement and compliance auditing, which is very different from products regulated under the CCPSA.

There does not appear to be similar U.S. authority with DOT or NHTSA to compel manufacturers to perform tests, creating a disharmony that is contrary to broader government goals of legislative and regulatory alignment.

CVMA believes that the current legislative language is very broad and could be misused beyond its intent to order <u>any</u> test, analysis and beyond cases of suspected non-compliance (i.e. could move audit responsibilities onto the company). In meetings with CVMA, Transport Canada has indicated that the intent of the provision is to address the need in certain cases to collect

information quickly for the purpose of verifying non-compliance or defects where information is not being provided voluntarily.

Despite these reassurances, this could be clarified, including adding language on the notion of "reasonableness"

CVMA Recommendation:

Update the language to clarify that the intent is to verify non-compliance and include the notion of reasonableness as follows:

Power to order tests, analyses or studies
8.1(1) ~~The Minister may, by order, require any~~ ***If a*** company that applies a national safety mark to any vehicle or equipment, sells any vehicle or equipment to which a national safety mark has been applied or imports any vehicle or equipment of a class for which standards are prescribed ***does not voluntarily conduct tests, analyses, or studies on vehicles or equipment in order to obtain information related to defects, or to verify non-compliance with this Act as requested by the Minister after consultation with the Minister, the Minister may, by order, require that company to***
(a) conduct ***reasonable*** tests, analyses or studies on the vehicle or equipment in order to obtain information related to defects, or to verify ***non-***compliance with this Act, that the Minister considers necessary; and
(b) provide the results to the Minister in the time and manner that the Minister specifies.

Priority item 3: Section 10.4(1), Correction Date

As written, this part of the legislation would potentially drive 3 or more notifications to each owner for a single recall. The proposed amendment requires a company to provide an *estimated* date for the earliest date when parts and facilities are expected to be available in the initial notice to the vehicle owner. If the date is not available, then the company is required to send a second notice to owners as soon as an *estimate* of earliest repair date is available. This date could be some time in the future, and a company would need to send a *third* notice once the parts are available.

In the preliminary stages of a recall or with complex recalls, estimates of the date for parts availability may be revised multiple times - theoretically requiring companies to send a new notice each time a new estimated date is established. The proposed requirement to provide an estimated correction date will create unrealistic consumer expectations and / or potentially misleading information; ultimately desensitizing the public to the importance of the original notification and undermining public confidence in the system. This is counter to Transport Canada's intent of addressing complaints from consumers.

Section 11(1)(a) of the current Act gives Transport Canada the authority to ask for information to confirm that the earliest availability date is factual. Transport Canada could add the requirement for provision of the date in the Defect Information requirements in section 15 of the MVSR and could also add the requirement to require a company to provide, upon request, any information or documents that the Minister considers necessary for verifying that the date specified by the company under subsection 15 is the earliest date by which the parts and facilities that are necessary to correct a defect or non-compliance are expected to be available, in that section as well based on the authority in 11(1)(a) of the existing Act.

All other requirements for notification are in the Motor Vehicle Safety Regulations (Section 15), not the Act which provides authority to prescribe in regulations what is in the notice of defect in Section 10. This provides improved flexibility to adapt notifications to new and developing communications in the future.

There is currently ongoing regulatory development activity on how to provide consumers more information and in a timely manner as a result of Bill C-31 amendments to MVSA.

In addition, there are also existing provisions in the MVSA (Section 10.3) that requires a company that gives notice to the Minister in respect of a vehicle, as provided in regulations, to make information available for the vehicle in respect of which the notice was given.

CVMA does not support “as soon as it has been determined” [10.4 (2)] as it creates even more owner mailings that may further desensitize owners to recall notifications and does not provide any safety improvements. There needs to be a reasonable compromise that balances the need to provide information in a timely manner with the ability to provide a remedy while recognizing the limitations on parts availability.

CVMA Recommendation:

Notification content requirements should remain in Regulations, as they are now, and any new requirements should be implemented through Regulation for consistency and improved flexibility. We suggest that proposed Section 10.4 should be struck out.

~~Correction date~~

~~10.4 (1) The notice given by a company under paragraph 10(1)(b) or 10.1(1)(b) shall specify the earliest date by which the parts and facilities that are necessary to correct the defect or non-compliance are expected to be available.~~

~~Notice~~

~~(2) Despite subsection (1), if the company cannot reasonably specify the earliest date at the time the notice is sent, the company shall send the notice without that date. The company shall send a subsequent notice that provides the earliest date as soon as it has been determined.~~

~~Copy for Minister~~

~~(3) The company shall immediately provide the Minister with a copy of any notice referred to in subsections (1) and (2).~~

~~Power to require information~~

~~(4) The Minister may, by order, require a company to provide, in the manner and within the period specified in the order, any information or documents that the Minister considers necessary for verifying that the date specified by the company under subsection (1) or (2) is the earliest date by which the parts and facilities that are necessary to correct a defect or non-compliance are expected to be available.~~