

# Communication 1

*NB: out of respect, the names and email addresses of recipients may be redacted.*

**Sent on:**

October 22, 2018

**Sent from:**

Henrik Moller

**Sent/copied to:**

Nissan representatives

MOT representatives

NZTA representatives

*Flip The Fleet* authors team

**Subject line:**

Nissan Leaf 2013-2016 brake system failures: a request for your urgent attention

**Attachment:**

MY2013-2015 Leaf Brake Issue.PDF

**Body of the email:**

Dear colleagues

We write to draw your attention to a mounting number of Nissan Leaf 2013-2016 brake failure instances in New Zealand and to request your immediate investigation and answers to several questions as outlined in the attached memo.

Yours sincerely,

Henrik Moller

(On behalf of *Flip the Fleet*, *EVs Enhanced*, Joe Bennett and Donald Love)

**Henrik Moller**

Professor Emeritus, Centre for Sustainability: Agriculture, Food, Energy, Environment – Kā Rakahau o te Ao Tūroa (CSAFE)

University of Otago

PO Box 56

Dunedin

64-3-4730024 (Home)

64-27-2268688 (Mobile)

Skype Address: henriksportable

Email: [henrik.moller@otago.ac.nz](mailto:henrik.moller@otago.ac.nz), [henrik@ecosystemsconsultants.co.nz](mailto:henrik@ecosystemsconsultants.co.nz)

## Communication 2

*NB: out of respect, the names and email addresses of recipients may be redacted.*

**Sent on:**

October 24, 2018

**Sent from:**

Fergus Gammie, Chief Executive, New Zealand Transport Agency

**Sent/copied to:**

Henrik Moller

**Subject line:**

RE: Nissan Leaf 2013-2016 brake system failures: a request for your urgent attention

**Attachment:**

none

**Body of the email:**

Dear Mr Moller,

On behalf of Fergus Gammie we would like to acknowledge receipt of your email and memo. Mr Gammie has asked for an investigation into your request and he will respond as soon as possible.

Kind regards,  
Bernice

**Bernice McLaughlin**/ Executive Assistant to the Chief Executive

Chief Executive's Office

*(contact details redacted)*

## Communication 3

*NB: out of respect, the names and email addresses of recipients may be redacted.*

**Sent on:**

October 26, 2018

**Sent from:**

John Manley, Managing Director, Nissan New Zealand Limited

**Sent/copied to:**

Nissan representatives  
MOT representatives  
NZTA representatives  
Executive Director of the Motor Industry Association  
*Flip The Fleet* authors team

**Subject line:**

RE: Nissan Leaf 2013-2016 brake system failures: a request for your urgent attention

**Attachment:**

none

**Body of the email:**

Good afternoon Henrik,

In response to your letter Nissan New Zealand can confirm there are no outstanding safety recalls in country of origin relating to 2013-2016 Nissan LEAF.

Kind regards,

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**John Manley**

Managing Director

NISSAN NEW ZEALAND LTD

*(contact details redacted)*

## Communication 4

*NB: out of respect, the names and email addresses of recipients may be redacted.*

**Sent on:**

October 29, 2018

**Sent from:**

Henrik Moller

**Sent/copied to:**

Nissan representatives  
MOT representatives  
NZTA representatives  
Minister of Transport, Rt Hon Phil Twyford  
Associate Minister of Transport, Rt Hon Julie-Anne Genter  
*Flip The Fleet* authors team

**Subject line:**

Nissan Leaf 2013-2016 brake system failures: a second request for your urgent attention

**Attachment:**

MY2013-2015 Leaf Brake Issue.PDF

**Body of the email:**

Dear John,

Thank you for your prompt response. However, we feel that your answer is inadequate.

As you know, a safety recall related to brake system failures was issued in both Canada and the United States for MY2013-2016 Nissan Leafs which we believe have a functionally identical braking system to the Leafs in New Zealand. That safety recall has a "Stop Sale Condition" - meaning, any dealers holding stock of such vehicles are prohibited by law from selling them until the remedy is performed.

Clearly, this is evidence of a serious safety issue. We do not understand why New Zealand citizens (both drivers, and in this case, pedestrians and cyclists) should not be similarly protected. We believe that the New Zealand public will ask the same overall question.

As notified to you previously, our plans to make a public statement around this issue by Friday 2nd of November are still in place. We foresee that when our research becomes public, these are the topics around which we anticipate questions will be asked related to the MY2013-2016 Nissan Leafs:

1. Are you aware of any other instances of brake failure in these cars in New Zealand (over and above the five failures you've documented in your memo) ?
2. Do you agree that a significant risk exists and must be remedied as soon as practicable?
3. Do the symptoms described in the five case studies so far match Nissan's understanding of an underlying cause for brake failure in these cars overseas?

4. If brake firmware upgrades 'B' or 'C' for these cars are currently being deployed in other countries, but are not available via Nissan New Zealand authorised service centres, would Nissan be willing to make these updates available here in New Zealand?
5. Does the firmware 'B' upgrade fix the brake failure problem entirely, or is the 'C' upgrade needed?
6. Will a firmware upgrade resolve this issue completely?
7. What should affected owners do now to remove the risk?
8. Should owners continue to use their car? In other words, are the 2013-2016 Leafs safe to drive?
9. When a failure is experienced, can the car be stopped by exerting extreme pressure on the brake pedal? And/or would you recommend application of the parking brake?
10. When travelling on the open road at 100 km/h, what is the estimate for the increase in the stopping distance when the brake system goes into failure mode?
11. Who is responsible for installing and paying for the fix?
12. How will the risk be managed for affected vehicles already in New Zealand but not yet sold?
13. How will the risk from affected vehicles that have not yet been imported to New Zealand be managed?
14. More generally, how can NZ owners and dealers be alerted and protected from other faults that will arise from time to time in EVs that were imported?

We consider that including Nissan's answers to some or all of the above questions in our communications will aid in getting a full, detailed and factually correct message across.

In view of the public safety concerns, we have copied in the Minister of Transport, Rt Hon Phil Twyford, and the Associate Minister of Transport, Rt Hon Julie-Anne Genter, and re-attach our original memo from 22 October 2018.

Many thanks for considering our renewed request for detailed responses to our questions.

Yours sincerely,

Henrik Moller

(On behalf of *Flip the Fleet*, *EVs Enhanced*, Joe Bennett, Mark Nixon and Donald Love)

## Communication 5

*NB: out of respect, the names and email addresses of recipients may be redacted.*

**Sent on:**

October 31, 2018

**Sent from:**

John Manley, Managing Director, Nissan New Zealand Limited

**Sent/copied to:**

Nissan representatives  
MOT representatives  
NZTA representatives  
Minister of Transport, Rt Hon Phil Twyford  
Associate Minister of Transport, Rt Hon Julie-Anne Genter  
*Flip The Fleet* authors team

**Subject line:**

RE: Nissan Leaf 2013-2016 brake system failures: a second request for your urgent attention

**Attachment:**

none

**Body of the email:**

Good afternoon Henrik,

Further to your email below, and prior to you releasing your assertions, we advise the following:

In October 2015 Nissan Motor Company conducted a Voluntary Service Campaign on MY2013-2015 LEAF (ZE0) vehicles produced in the U.S. and sold in the U.S. and Canada to reprogram the e-ACT Electrically-driven Intelligent Brake Control Unit (“electronic brake booster”) with updated software.

**Reason for Action:**

When an affected vehicle is parked in extremely cold (negative 20 Celsius) temperature conditions for a prolonged period of time, upon startup, the brake warning lamp may illuminate and the brake system may switch to a special “assist mode.”

In this mode, the brakes are operational, but may require more pedal effort.

In February 2016 Nissan Motor Company reclassified this campaign as a Voluntary Recall Campaign in order to accelerate the completion rate. There was no change in the identified concern or its effects on the vehicle and for the customer.

In April 2016 Nissan conducted a Voluntary Service Campaign on Nissan LEAF (ZE0) MY2013 – MY2015, produced in NMUK (United Kingdom) plant and sold in European Nordic markets. These markets were:

- Denmark

- Estonia
- Finland
- Latvia
- Lithuania
- Norway
- Sweden

**Reason why the action was restricted to the nominated markets:**

Detailed investigation on climate conditions across other markets, including Japan and UK, has determined that they do not experience the consistent climatic conditions (negative 20 Celsius) for the issue to occur.

Accordingly none of the Nissan LEAF units imported into NZ will be impacted by the above.

We trust this now provides an adequate response.

Kind regards,

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**John Manley**  
Managing Director  
(*contact details redacted*)

## Communication 6

*NB: out of respect, the names and email addresses of recipients may be redacted.*

**Sent on:**

November 2, 2018

**Sent from:**

Henrik Moller

**Sent/copied to:**

Nissan representatives  
MOT representatives  
NZTA representatives  
Minister of Transport, Rt Hon Phil Twyford  
Associate Minister of Transport, Rt Hon Julie-Anne Genter  
*Flip The Fleet* authors team

**Subject line:**

Nissan Leaf 2013-2016 brake system failures: a third request for your urgent attention

**Attachment:**

none

**Body of the email:**

Dear John,

Thank you for your email confirming the campaigns that were undertaken in the US, Canada and Europe to address failures under very cold conditions. We agree that this update is not an appropriate remedy for New Zealand.

Regardless of the current status of Nissan's service campaigns and recalls in various countries, we are aware that people both in New Zealand and overseas are still experiencing brake failure in 2013-2016 Leafs containing either the original firmware 'A' version or the later firmware 'B' version offered during a recall or service campaign (refer Note 1 below for evidence).

We are aware of a 'C' firmware version for brake control units of this era that has been applied as a firmware update to some Leafs in Japan. There is also a 'C' version in new brake modules in the USA and UK, that may have also been fitted when a firmware 'B' version was found to continue to cause faults.

We don't know that the firmware 'C' version is a solution to the problems being experienced here and abroad, but it is clearly a later version and we optimistically hope that Nissan or Hitachi engineers managed to solve the issues experienced in 'A' and 'B' firmware versions in this 'C' version. Given that a 'C' update was also applied in production Leafs built February 2016 or later and that we haven't had any reports of these failing, this seems like a positive initial sign.

If you believe that there is a chance that this firmware 'C' version will improve the situation in terms of the reliability of the brake system, is it something that could be made available in New Zealand?

Kind regards

Henrik

**Henrik Moller**

Professor Emeritus, Centre for Sustainability: Agriculture, Food, Energy, Environment – Kā Rakahau o te Ao Tūroa (CSAFE)  
University of Otago  
PO Box 56  
Dunedin

64-3-4730024 (Home)  
64-27-2268688 (Mobile)

Email: [henrik.moller@otago.ac.nz](mailto:henrik.moller@otago.ac.nz), [henrik@ecosystemsconsultants.co.nz](mailto:henrik@ecosystemsconsultants.co.nz)

**Note 1: Summary of evidence indicating that the overseas recalls and service campaigns may not remedy failures in warmer climates**

We understand that the ex-Japan and ex-UK Leafs found in New Zealand operate functionally identical brake systems to those used in the US, and we have therefore included reported brake problems in the US in our research.

The US *National Highway Traffic Safety Administration* (NHTSA) has collated many recorded events for the Leaf categorised as service brake complaints. Some of these events took place after the Voluntary Recall Campaign was carried out (i.e., with firmware 'B' version loaded) where the braking failures continued to occur in states with climates similar to New Zealand. The official records can be accessed from:

- <https://www.nhtsa.gov/vehicle/2013/NISSAN/LEAF#complaints> for 11073355, 10939716, 10916686
- <https://www.nhtsa.gov/vehicle/2014/NISSAN/LEAF#complaints> for 10864296
- <https://www.nhtsa.gov/vehicle/2015/NISSAN/LEAF#complaints> for 11063955, 10790507

## Communication 7

*NB: out of respect, the names and email addresses of recipients may be redacted.*

**Sent on:**

November 7, 2018

**Sent from:**

Hon James Shaw, Acting Associate Minister of Transport

**Sent/copied to:**

Henrik Moller

**Subject line:**

FW: Nissan Leaf 2013-2016 brake system failures: a second request for your urgent attention

**Attachment:**

none

**Body of the email:**

Dear Henrik

On behalf of Hon James Shaw, Acting Associate Minister of Transport, thank you for your email of 29 October 2018.

Your email will be placed in front of the Minister for his information.

Kind regards

**Prisca Gain | Private Secretary - Administration**

**Office of Hon James Shaw**

Acting Associate Minister of Transport

Bowen House, Parliament Buildings, Wellington 6160

## Communication 8

*NB: out of respect, the names and email addresses of recipients may be redacted.*

**Sent on:**

November 23, 2018

**Sent from:**

David Crawford, Chief Executive, Motor Industry Association

**Sent/copied to:**

Dima Ivanov (Flip The Fleet), John Manley (Nissan NZ)

**Subject line:**

RE: URGENT - confidentiality related question - please respond by 4pm

**Attachment:**

none

**Body of the email:**

Dima – The questions being asked by Flip the Fleet have industry wide implications and do not just pertain to reportedly technical issues around the Nissan Leaf. It is a precedent that concerns the new vehicle sector that owners of used imported vehicles believe, or it appears they believe, NZ distributors should, at their time and cost, support recalls and warranties for vehicles they have had not imported, have no financial gain from (their sale in NZ), have not complied and may or may not have parts, or knowledge of how to service those models.

We are not opposed to owners seeking advice and assistance, which may be charged for by the distributor. It is the lobbying and expectation by Flip the Fleet and others that implies a NZ distributor should support and pay for recalls of used imported vehicles that concerns us. They might choose to, but it is not how NZ law is constructed, and with good reason.

Our position is based on the following:

- Under the Fair Trading Act the supplier of a product or good into NZ is considered to be the manufacturer of that product or good (this includes vehicles) and is responsible for all associated warranties including recalls of that product. In the case of used imported vehicles this is not the overseas manufacturer or their NZ distributor. Legal responsibility sits with the importer of record through their supply chain to the dealer that sold the used imported vehicle.
- Further, when a used imported vehicle is imported into NZ and completes Customs clearance the vehicle is then presented for NZTA entry compliance by the importer of the vehicle, not by the NZ distributor or the overseas manufacturer.
- For the sake of clarity and to emphasise my point, in the case of used imported Nissan Leaf's, Nissan NZ have not imported any of these vehicles. In law they have no responsibility nor moral obligation to manage recalls for these vehicles. Nissan NZ have never complied these vehicles, do not have line of sight of each vehicle, does not hold technical information or other supporting information for these vehicles and has no financial interest in them, let alone never receiving any financial gain by their sale in NZ.
- Also for the sake of clarity you can replace Nissan NZ's name in the bullet point above with any other NZ distributor of used imported vehicles for each brand.

However, we understand and appreciate if you are trying to establish the veracity of technical concerns about a particular make and model then we understand why you would want to seek advice from the NZ distributor of that brand. In doing so, it is our expectation than owners of these vehicles understand there is no obligation on the distributor to put it right (should it be shown there is a problem) for used imported vehicles free of charge. The NZ distributor may choose to, but there is no obligation as of right for them to do so. They are fully entitled to charge for their time and parts cost.

Whether it is Nissan NZ in the case of imported Leaf's or any other brand responding to technical questions, it is important to note that their manufacturing parent sell vehicles into some very litigious countries. When a NZ distributor provides answers from their manufacturing parent they do not do this flippantly. Issues are taken seriously and answers given are provided after full and proper consideration of the issues.

Kind regards  
David Crawford  
Chief Executive Officer, MIA  
*(contact details redacted)*