



**FEDERAL
CHAMBER OF
AUTOMOTIVE
INDUSTRIES**

FCAI submission in response to:

DITRDCA consultation on Automated Vehicles Safety Reforms

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FEDERAL CHAMBER OF AUTOMOTIVE INDUSTRIES
Level 1, 59 Wentworth Avenue
KINGSTON ACT 2604



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1. INTRODUCTION

The Federal Chamber of Automotive Industries (FCAI) welcomes the opportunity to continue to provide its views on the regulatory framework that will support the safe use of automated vehicles on Australian roads.

We understand that this round of consultation builds on previous work and that it focuses on specific aspects of the regulatory framework relating to:

- the remote operations of Automated Driving Systems (ADS),
- the management of repairers, maintainers, and modifiers of ADSs,
- the consumer understanding of the ADS capabilities,
- the obligations for users of ADS-equipped vehicles, and
- the controls to potentially enable the early deployment of ADSs before the regulatory framework is in place.

We also note the intent of the Department (DITRDCA) and the National Transport Commission (NTC) to proceed with amending the Road Vehicles Standards Act (RVSA) and drafting both the Commonwealth Automated Vehicle Safety Legislation (AVSL) Bill and model Australian Road Rules once this consultation is completed and inputs considered. The target of 2026 for the development and passing of the AVSL is ambitious considering the complexity of setting, coordinating, and resourcing the complete regulatory framework but the content of this consultation clearly demonstrates the progress made in the last 12-18 months.

The FCAI is the peak Australian industry organisation representing over 60 global automotive brands who design, manufacture, import, distribute and sell light duty passenger vehicles, light commercial vehicles, and motorcycles in Australia across more than 380 models supported by almost 4,000 dealers. Our members are listed on our [website](#).

We bring together our members through various committees in compliance with the Competition and Consumer Act 2010 (Cth) to consider changes to our legislative and regulatory environment, develop industry-wide positions or perspectives, and drive collective initiatives for the benefits of our members and the broader industry where relevant.

Our Mission *“To drive a collaborative environment where innovative technologies improve Australian lives through mobility”* aims at delivering on our Vision of *“A future where mobility, communications and energy technologies integrate to enhance Australian living standards”*. We see Automated Vehicles (AVs) as an integral part of our transport ecosystem’s future as they hold the potential of significantly and positively impacting road safety and driver / passenger experience.

Our members are primary actors in the development and deployment of AVs considering their technical know-how, engineering capabilities and manufacturing

infrastructure, their established brands, distribution networks, customer bases, and their financial investments in the domain. Globally, our members are expanding on current Advanced Driver-Assistance Systems (ADAS) at Level 2 of automation and developing Level 3 and Level 4 automated solutions towards a longer-term potential for fully autonomous vehicles.

We congratulate the Department and the NTC for their leadership since 2015 in progressively developing the AV regulatory framework as it helps provide regulatory certainty to industry and position Australia as a potential fast follower market.

The objective of setting the AV regulatory framework ahead of the technology being introduced in the market fully aligns with FCAI and its members' unwavering focus on vehicle and road user safety.

FCAI is also of the view that the regulatory development efforts required to enable AVs are worth pursuing actively, not only to align the Australian market with other developed economies, but also to ensure Australians get access in a timely manner to the best available technologies that improve their environment, safety, mobility, productivity and their comfort. Our members welcome the regulatory clarity, consistency and certainty that the Department and the NTC are aiming to establish. Having a regulatory framework in place early can serve as an enabler and appeal to AV developers and producers.

Our submission contains responses to each of the consultation questions. The key points of our submission are as follows:

- We generally support the proposed automated vehicle regulatory framework in that a safety-first proactive approach provides certainty to consumers and other road users, and align with the goals of FCAI and its members. However, we note that the proposed model puts significant emphasis on administrative processes that support the proactive and continuous monitoring throughout the ADS lifecycle beyond pre-market approval. Other markets may have taken to date a more progressive approach to this monitoring and maintain a lighter touch until specific problems are identified as to not stifle innovation and deployments. Questions therefore remain as to the extent the proposed model may miss to entice prospective ADSEs in bringing their products to the Australian market. Considerations should be given to tailoring the AVSL requirements to the risks of different levels of automation, and possibly even business models (ownership vs commercial services) and in-market volume, with an initial focus on Level 3 technologies.
- We welcome the flexibility suggested throughout the consultation papers for legislative instruments to be used to set the detailed requirements of the ADSE and ADS certification processes.
- We support the Department's decision and efforts to harmonise with United Nations (UN) standards relevant to ADSs as they are developed.

- We note and support the Department's decision to change the ADSE certification body from the first-supply regulator under the RVSA to the new in-service regulator under the AVSL. As stated in the consultation papers, *"this will ensure that ADSE certification is assessed by the regulator with specialist skills, and that will have an ongoing relationship with ADSEs"*. Consideration should be given to aligning as much as possible ADSE and RAWs certifications with a view to avoid duplication of requirements and reduce administrative burden where possible.
- Ultimately, state and territories are under no obligation to adopt the model law absolutely, nor without modifications or additions unique to their own jurisdiction. FCAI members would want to ensure the ADS-equipped vehicles they release to market can be used consistently across borders from day one of vehicle sale. Further clarity from ITMM beyond the current in-principle agreement of national consistency of the state and territory road traffic legislations towards a more formally agreed and synchronised timeline would be highly beneficial to prospective ADSEs.
- Roadworthiness requirements and inspection regimes for conventional vehicles are currently not consistent between states and territories. Periodic vehicle inspections for roadworthiness are arguably even more important in the context of automated vehicles (AVs). It is critical that nationally consistent vehicle roadworthiness technical standards and assessment procedures get developed and enforced.
- We do not support the concept of aftermarket in the sense of retrofitted ADS undertaken by a different party than the RAV-approved entity itself or a contracted party of the RAV-approved entity, at least in the early stages of AV deployment. Aftermarket ADS installations present major risks and we believe it is best to restrict such practice until such time as the market capabilities develop to avoid increasing consumer concerns and unknown risks on regulators.
- ADSEs should have complete discretion as to who they authorise to undertake ADS repairs, maintenance and modifications, at least in the early stage of AV deployment. We do not support a requirement on ADSE to have to authorise any / all ADS repairers, maintainers and modifiers until such time there is a nationally consistent regulation of repairers, maintainers and modifiers with training requirements and an accreditation regime. We also do not support the concept that ADSE would need to authorise, oversee or take responsibility for individual repair / maintenance / modification works.
- We are also not supportive at this stage of allowing non-ADS-related repairs, maintenance or modifications on ADS-equipped vehicles to be undertaken by non-ADSE-authorised businesses as the ADS is too intricately linked with the many various components of the vehicle. We are of the view that opening to broad competition needs to be done progressively and in close collaboration with the collective of the ADSEs once the AV market has developed. Sharing of information from ADSE to repair / maintenance / modification businesses would best be incorporated in the AVSL (under Transport), rather than the existing MVIS legislation (under Treasury).

- As submitted in the consultation on the overall regulatory framework in August 2021, we maintain that Automated Vehicles should only be allowed entry to Australia under the type-approval process. Concessional entry pathways are unnecessary and introduce complexities that do not necessarily support the same levels of safety and obligations required of ADSEs under the type-approval pathway. It also exposes Australia to used vehicle importation without the safety rigour of the type-approval pathway.
- Automated vehicles are subject to a complex web of existing and potential regulations, extending beyond the proposed AVSL. The Department, and the future in-service AV regulator, should drive a coordinated and holistic approach to AV regulation where the AVSL is the central reference point, prioritise streamlining regulations and minimise duplication between the AVSL and other relevant frameworks.
- Considering multiple consultations have taken place over the last 10 years or so on different aspects of the AV regulatory framework, industry would welcome the opportunity to review the whole proposed regulatory framework before the AVSL Bill gets tabled through the legislative process. Consultation on the exposure draft of the AVSL would be most appreciated.

Most if not all of our members' R&D, testing and expertise on Automated Vehicles reside overseas and is subject to stringent confidentiality due to global and domestic market competition and other forces at play. AVs have been a long-held ambition and still hold many technical, business, regulatory and societal interrogations for all parties, including our members. As a matter of fact, we note that several of the questions covered by this consultation have not even been considered in markets that have started regulating operations of ADSs.

In this context, our perspectives on AVs will continue to develop and may even at times change. FCAI is committed to rallying its members along the regulatory development journey and providing timely insights to the Department and the NTC as our views mature and our members' plans to bringing AVs to market develop.

We remain available to both the Department and the NTC for further discussions and to explore any opportunities to facilitate collaboration with our membership with the view to effectively position Australia as a fast follower in AV deployment.

2. RESPONSE TO THE CONSULTATION QUESTIONS

Making sure the ADS is safe when it enters the market

- 1 What are the benefits and drawbacks of different corporate presence requirements?
- 2 How would a requirement for the corporation to be an Australian registered company impact business models of potential ADSEs?

FCAI members are authorised importers of new motor vehicles which are distributed in Australia, and therefore members of the Registered Automotive Workshop Scheme (RAWS) administered under the Road Vehicle Standards Act 2018 (RVSA).

Consequently, most if not all FCAI members fall under Option 1 as Australian registered companies with their centre of operations in Australia (assuming “*centre of operations*” means headquarters, key management of the Australian registered business, rather than manufacturing and R&D obviously not happening in AU currently).

We support proposed option 1 and assume this requirement would not prevent some ADSE functions to be undertaken overseas when it may not be technically or financially viable for prospective ADSEs to hold some core technical expertise in Australia. Information on overseas dependencies could be requested as part of the ADSE certification process.

- 3 How suitable are the matters we propose to include in an ADSE’s safety management system? Should other matters be considered?

We support the concept of ADSE’s safety management system and on-going review.

We also support the idea of the in-service AV regulator developing industry guidance and setting out detailed requirements in legislative instruments rather than the AVSL. It is expected that the in-service AV regulator will facilitate close collaboration both with individual ADSEs and with the collective of ADSEs and their representative industry associations. Caution will be needed as to the use of ADSE-specific commercial advantages in industry-wide guidance, the benefits and costs for

changing requirements, and the timeframes for ADSE to bring existing or new vehicle models to compliance.

4 Are there are other matters that the law enforcement and emergency services interaction protocol should account for?

We support the concept of the law enforcement and emergency services interaction protocol (LEESIP) and agree for the suggestion to have its minimum requirements included in a legislative instrument.

We are of the view that the LEESIP requirements should vary based on the ADS certification with consideration of the level of automation of the vehicles, the possibility of vehicle remote operations, and possibly even the business models considered (ownership vs commercial services). This may well be addressed in the legislative instruments, but such intent is not quite visible at this stage. For instance:

- Level 3 ADS-equipped vehicles will likely put the responsibility on the fallback-ready user to manually manage the interaction with law enforcement and emergency services. These vehicles would logically have lower LEESIP requirements.
- Specific interactions with law enforcement or emergency services might also fall outside the defined Operating Design Domain (ODD) of a Level 4 automated vehicle.

We assume ADSE and ADS information accessible to law enforcement and emergency services would be protected by standard information management requirements that these agencies operate under. It would be useful to confirm the relevance of these existing requirements and processes to the AV context.

5 Do the certification procedures for aftermarket installations of an ADS adequately manage safety risks or should other matters be considered?

We support the approach to ADS upgrade / enablement by the RAV-approved entity on the basis that there is no dilution of ADSE responsibilities. However, we do not support the concept of aftermarket in the sense of retrofitted ADS undertaken by a different party than the RAV-approved entity itself or a contracted party of the RAV-approved entity, at least in the early stages of AV deployment.

Aftermarket ADS installations present major risks as it will be extremely difficult to ascertain if and how retrofitting an aftermarket ADS onto a vehicle impact the compliance of the other parts of the vehicle with national Road vehicle standards. At any level of automation, an aftermarket ADS will by definition need to interact with core vehicle systems like steering, acceleration, and braking system. Their installation would impact obligations like warranty, consumer guarantees, and recalls, likely leaving consumers in disarray between parties rejecting responsibilities

on one another. In practice, we maintain that the performance of the ADS cannot be separated from the whole vehicle. The ADS outputs, given certain pre-defined inputs, cannot be contextualised without evaluating the vehicle performance. For example, the actuator and certain control units within the vehicle will be affected by the ADS – and the outcome in one vehicle brand may be slightly different to another. Given the complexity of the New Assessment/Test Methods currently being discussed at the GRVA in Geneva and the fact that the assessment is performance/outcome-based, the approval authority would have to develop a robust approval process that does not require taking the whole vehicle into consideration. We do not believe this is feasible in practice or worthwhile considering especially in the early stages of AV deployment.

The aftermarket ADSE would not be an appropriate party to advise on the impact its proposed aftermarket ADS may have on the rest of the vehicle components. The entity originally responsible for the vehicle import and registered on the RAV would be best placed to undertake this due diligence but would not have any interest in doing so outside of a contractual arrangement with the aftermarket ADSE.

We believe it is best to restrict the practice of retrofitted ADS (with appropriate penalties), until such time as the market capabilities develop to avoid increasing consumer concerns and unknown risks on regulators.

Consideration could be given to how existing regulations around second-stage of manufacture may be used to support aftermarket ADS approvals and installations but, in our view, would require close engagement with the RAV-approved entity (and most likely a contractual or partnership agreements between the two).

Keeping the ADS safe when it is on-road

6 Are there other modifications that should be considered significant? Is there other information an ADSE should provide when seeking authorisation for a significant modification?

We support the proposed requirements regarding ADSE having to seek authorisation before significant modification of the ADS where the modification changes how or when the ADS performs the driving task. We note that what fall under “*significant modifications*” would be captured in a legislative instrument and be subject to changes over time, accompanied with due consultation with industry.

We also support the proposed requirements for the ADSE having to keep and make accessible to the regulator as required a log of all in-service ADS modifications.

7 What are your views on the proposed additional AVSL measures to manage the safety risks of repairs, maintenance and modifications?

a Are the risks arising from repairs to an ADS different enough to the risks arising from repairs to a conventional vehicle to require additional regulatory measures?

Unequivocally yes, there are significant differences between the risks associated with repairs to ADS-equipped vehicles and those associated with conventional vehicles, warranting additional regulatory measures for repair businesses. FCAI actually argues that this difference already exists in relation to ADAS and is not appropriately addressed, likely reducing the potential safety benefits of ADAS in operational vehicles.

Key reasons to differentiate repairs to ADS-equipped vehicles compared to repairs to conventional vehicles:

- ADS are far more complex than traditional vehicle systems, involving intricate software, sensors, and algorithms. Repairing or modifying these systems will require specialised knowledge and expertise that most traditional mechanics may not possess and will take significant time to penetrate the workforce as we currently see with EV training required for repair and maintenance of Electric Vehicles. Incorrect repairs could lead to malfunctions, compromising the safety and functionality of the ADS.
- ADS directly impact the safety of the vehicle and its occupants, as they can control critical functions like steering, braking, and acceleration. Errors in repairs could have severe consequences, potentially leading to accidents and injuries. ADSs – and even ADAS today – are safety critical systems.

- ADS rely heavily on software updates and calibrations to function correctly. If repairs are not done in conjunction with proper software updates or if incompatible software is installed, it can cause the ADS to malfunction or behave unpredictably.
- ADS collect and process large amounts of data. Repairs may compromise the security of the AV data, put users' privacy at risk and impair the regulatory management of the vehicles.

b Is express authorisation of repairers, maintainers and modifiers a suitable approach to manage the risks of unqualified parties working on an ADS?

Yes, to prevent unqualified parties working on an ADS, a model where ADSEs authorise the businesses and technicians allowed to undertake repairs, maintenance or modifications on ADS-equipped vehicles is required. Critically, at least in the early stage of AV deployment, our view is that ADSEs need to have complete discretion as to who they authorise to undertake these services based on the businesses and tradespeople they will have directly trained. FCAI members would likely look to first work with their authorised network of dealers, repairers and service providers and build on their existing contractual and partnership agreements to best monitor and control risks relating to the repair and maintenance of ADS-equipped vehicles.

Requiring ADSEs to provide an authorisation pathway to any repairers or service providers would be a major deterrent to launching ADS-equipped vehicles in the Australian market as it would introduce significant risks and costs. We also argue that in the early stages of AV deployment, such express requirement would not provide value to end consumers, risk not aligning the industry skills to where the consumer demand will be, and consequently increase prices as the different parties would look to recover their training and qualification costs across a low demand for these services. The appetite of independent repairers to get involved early on in servicing ADS-equipped vehicles would also be very minimal. As we have been witnessing over the last few years and continue to witness with regard to the repair and maintenance of electric vehicles, it takes significant time for new skills to penetrate the workforce, especially when they relate to completely new capabilities compared to the traditional mechanical skills. We believe it is critical to let the AV market develop before considering regulatory measures that will open the repair and maintenance of ADS-equipped vehicles to broader competition.

FCAI is not suggesting putting unfair restriction to competition. FCAI and its members value the services of independent repairers and service providers and works very closely with them by providing vehicle technical information, repair methodologies, access to genuine replacement parts and other services. We ultimately want to ensure the consumer has choice and vehicles are maintained to an optimal level of service. Our current view is motivated by ensuring safety, clarity of liabilities and consumer protection at all times while not leaving the Australian market behind other developed markets. To note, FCAI and its members work closely with the broader automotive repair and aftermarket industry and have been instrumental in the development of the Motor Vehicle Information Scheme (MVIS) and the

establishment of its scheme adviser AASRA. FCAI is also involved on the Board of the Australian Mining and Automotive Skills Alliance (AUSMASA) with the aim to deliver a responsive VET system that builds a skilled and resilient workforce.

As mentioned in our August 2021 submission to the Department, *“in most States and Territories (except NSW and WA), there are no obligations or qualifications required to be met for most automotive service and repair businesses and nor is there any licensing regime for automotive technicians”*. In this context, we do not support a requirement on ADSE to have to authorise any / all ADS repairers, maintainers and modifiers until such time there is a nationally consistent regulation of repairers, maintainers and modifiers. This regulation will need to include training and certification requirements and a licensing / accreditation regime supported by regular audits and inspections of repair businesses to ensure compliance with regulations and standards. The motor trade regulations available in states like NSW and WA would logically form the basis for this national regulation.

Consideration will need to be given in the development and timing of AV-related requirements applicable to the automotive repair and aftermarket industry to the broader changes happening in the automotive industry. The rapid uptake of electric vehicles and the need for specialised training and qualifications to provide repair and maintenance services on high-voltage automotive systems has placed significant pressure on this industry in recent years. As Electric Vehicles market share continue to grow, this pressure is expected to remain for some time. Upskilling of the broad automotive workforce should logically focus on EV skills first, followed by ADAS skills and ultimately ADS skills.

For clarity, we need to add that we are not supportive at this stage of regulating for non-ADS-related repairs, maintenance or modifications on ADS-equipped vehicles to be undertaken by non-ADSE-authorised businesses as the ADS is too intricately linked with the many various components of the vehicle. This would best be discussed with individual ADSEs as part of the ADS certification process.

We acknowledge however that non-ADS-related repairs, maintenance or modifications on ADS-equipped vehicles should be the first area to open to broader competition in due course, before allowing services on the ADSs themselves.

- c What is an appropriate balance between the level of control or discretion an ADSE has over who it authorises to work on its ADSs, and the level of responsibility placed on either the ADSE or the repairer, maintainer or modifier doing that work?

As per our response to the previous question, we are of the view that, in initial AV deployment stage, ADSEs need to have the authority to decide who can undertake repairs, maintenance or modifications on any ADS-equipped vehicles.

In this model, ADSEs would be responsible to provide training and support to their authorised service providers, provide them with the necessary software / hardware

equipment and technical information, and set a level of compliance and verification of these service providers.

It would also be the responsibility of the ADSE to clearly inform consumers (at the point of sale and throughout the ADS design life) as to where they can access services for their automated vehicles and what the related conditions may be.

On the other hand, authorised service providers will be required to comply with the ADSE instructions. Authorised repairers / maintainers / modifiers would ultimately remain responsible for the scoping and quality of the work they undertake and have to provide information back to the ADSEs on the services they have undertaken.

In this arrangement, we support the concept of ADSEs being responsible to collect information about all ADS services and make this information available to the in-service AV regulator as required and in respect of privacy obligations.

We trust the contractual arrangements between ADSEs and their authorised service providers, as well as existing consumer protections would be sufficient to manage any consumer risks. Considering the technical complexity of the matter, the in-service AV regulator may be best placed to provide an avenue to manage and investigate any disputes or issues between ADSEs and their authorised service providers.

d Should the AVSL require that an ADSE not unreasonably withholds authorisation, and that it shares necessary information? For what reasons should an ADSE reasonably be allowed to withhold authorisation?

We are unsure as to how the model described in our responses to question 7b and 7c would translate in the AVSL. It may be too early and limiting to include strict requirements on ADSEs in the early stage of AV deployment in our market. No other market has yet to our knowledge regulated aspects relating to the repair, maintenance and modifications of ADS-equipped vehicles beyond high-level principles.

However, fair competition is important to consumer choice and a dynamic market.

To allow the close monitoring of this issue and open to competition progressively when it is safe to do so, ADSEs could be required as part of their certification process to:

- explain how they provide clarity to consumers as to where they can access repair / maintenance services for their vehicles and appropriate assurance / reporting / auditing with regards to pricing to ensure fair pricing practice.
- explain the dependencies between ADS and non-ADS parts of the vehicles, and provide advice on the impact of these dependencies (or lack thereof) on the vehicle repairability approach.
- include information as to how the ADSEs intend to open it progressively to competition, with on-going reporting obligations. As mentioned previously, non-ADS-related repairs, maintenance or modifications on ADS-equipped vehicles

should be the first area to open to broader competition in due course, before allowing services on the ADSs themselves.

The sharing of information relating to ADS-equipped vehicles should be restricted to only ADSE-authorised service providers and as such may not require specific requirements at this stage in the AVSL.

When opening to broader competition, requirements regarding the sharing of information from ADSE to repair / maintenance / modification businesses would be best incorporated in the AVSL, rather than the MVIS legislation. The current MVIS legislation has not been designed to cover this need and has proactively excluded *“information relating to an automated driving system of a scheme vehicle”* (see clause 57BD-2-h) where *“an automated driving system is a system which has a SAE level of 3 or greater under the Surface Vehicle Information Report J3016 published by SAE International”*. From our intimate knowledge of the MVIS having participated to its development and practical application, a key issue from an AV viewpoint is that the MVIS legislation falls within the portfolio of the Federal Treasury Minister with a primary focus on market competition. The limited technical expertise that surrounds the MVIS legislation would constrain the deployment of AVs, add administrative burden for their compliance, and possibly even undermine the AVSL.

There are however lessons to be learned from the MVIS legislation to the benefit of the AVSL. For instance, to the suggestion that *“A requirement to share information would be consistent with the Motor Vehicle Information Scheme, which applies to conventional vehicles”*, we invite the Department to consider the effectiveness of the scheme to date and the different pathways that exist in the automotive industry for the sharing of vehicle technical information.

As presented in the publicly available AASRA annual reports, a very small proportion of service providers use the facilities of the MVIS legislation to access the technical information they need. FCAI is of the view that most service providers call on data aggregators to obtain this information; additional services that these data aggregators offer (e.g. parts catalogue, repair scoping and pricing support, technical diagnostic support etc) also contribute to a more compelling value proposition than service providers accessing the raw information directly from the individual OEMs. Data aggregators may well be best placed to support independent service providers (outside of the initially ADSE-authorised ones) for automated vehicles.

Further on the sharing of information relating to ADS-equipped vehicles, we question the suitability of the automated vehicle register to identify ADSE parts. There is a risk of overload / confusion, especially for consumers, if the register aims to be the repository of all information for all ADS stakeholders. It may be best to leave to the ADSE to make this information available by their own means initially.

- e Should the AVSL include safety duties for repairers, maintainers and modifiers of ADSs? If so, how suitable are the proposed elements of the safety duty on repairers, maintainers and modifiers?

Yes, safety duties on repairers, maintainers and modifiers are paramount as ADSEs cannot be held responsible for the scoping and quality of work done by authorised service providers. We support at a minimum the proposed safety duties for authorised repairers, maintainers and modifiers who undertake work on an ADS to:

- perform repairs, maintenance and modifications with care for their own safety and the safety of others affected by their acts or omissions.
- perform the work in accordance with the ADSE's authorisation and following the ADSE's instructions.
- otherwise ensure their actions do not affect the safety of the ADS, so far as reasonably practicable.

These duties should be subject to reporting, auditing and enforcement which the in-service AV regulator should undertake (in addition to any auditing ADSEs may undertake within their agreed contractual relationships with their authorised service providers).

As mentioned previously, prior to opening the repair, maintenance and modification of ADS-equipped vehicles to broader market competition, a nationally consistent regulation of repairers, maintainers and modifiers will be required. This regulation will need to include training and certification requirements and an accreditation regime supported by regular audits and inspections of repair businesses to ensure compliance with regulations and standards. State-based regulations – rather than the AVSL – may be the most appropriate option to host these requirements considering existing regulations in NSW and WA.

- f How may the proposed additional measures for repairs, maintenance and modifications affect business models for both ADSEs and repairers, maintainers and modifiers?

We believe that the arrangement we have described in our previous responses for the early stage of AV deployment would deliver benefits on safety and consumer protection far greater than the competition constraints on the repair industry, while not stifling the deployment of automated vehicle solutions in our market.

We maintain that putting requirements on ADSEs to provide an authorisation model to any repairers or service providers would be a major deterrent to launching ADS-equipped vehicles in the Australian market.

8 Are there measures we should consider to manage the consumer impacts of an ADS being disabled due to suspension, cancellation or surrender of certification?

There are existing relevant protections in the Australian Consumer Law (ACL) that would apply in the case of an ADS being disabled due to suspension, cancellation, or surrender of certification, and also in relation to misleading information provided to consumers as covered in question 12.

Key provisions of the ACL of relevance include:

- **Consumer Guarantees:** The ACL provides automatic guarantees that apply to all goods and services sold to consumers in Australia. These guarantees include:
 - > **Acceptable quality:** The ADS should be fit for its intended purpose and perform safely and reliably. If the ADS is disabled, it may not meet this guarantee.
 - > **Fitness for disclosed purpose:** If the consumer relied on the manufacturer's description of the ADS capabilities when purchasing the vehicle, and those capabilities are no longer available, this guarantee may be breached.
- **False or Misleading Representations (Section 29):** If the manufacturer made specific claims about the ADS that are no longer true due to the disablement, this could constitute false or misleading representations.
- **Unconscionable Conduct (Section 21):** If the manufacturer's conduct in disabling the ADS is considered to be particularly harsh or unfair to consumers, it could potentially be considered unconscionable conduct.
- **If a consumer's rights under the ACL have been breached, they may be entitled to remedies such as:**
 - > Repair, replacement, or refund if the vehicle is not of acceptable quality or fit for purpose due to the disabled ADS.
 - > Compensation for any losses or damages suffered as a result of the disabled ADS, such as the cost of alternative transportation or the loss of value of the vehicle.
 - > Injunctions for the reinstating of the ADS functionality or providing alternative solutions to affected consumers.

We acknowledge that the ACL does not look to specifically address the unique challenges posed by automated vehicles and that additional measures to manage consumer impacts may be needed over time. We recommend reviewing in further detail the applicability and associated penalties of the ACL to the automated vehicles context and considering a soft approach in the early stage of AV deployment to strike the right balance between consumer protection and innovation.

Considerations would need to be given to the particular case of an ADS / ADSE certification being suspended or cancelled because of a non-compliance with requirements added by the regulator after the initial certification should the ADSE have reasonable grounds for not adapting its solutions or processes.

9 For how long should ADSEs be required to retain data? Should there be different periods for different types of information?

We support a consistent approach with record keeping requirements under the Road Vehicle Standards Rules and the Corporations Act 2001 as suggested.

10 Are there risks associated with information management that are not covered in these proposals?

ADSEs need strong confidence on how regulators and other stakeholders involved throughout the ADS life will be managing and storing information noting the sensitive nature of the ADSE information. Appropriate rules, certifications, tracking, auditing and enforcement are needed around ADSE/ADS information management.

This is paramount in the early stage of AV deployment as any ADSE offering will likely hold a significant commercial and reputational sensitivity, and only ADSE-authorised service providers should be allowed to intervene on ADS-equipped vehicles.

11 What are your views on the proposed additional AVSL measures to manage the safety risks of remote operation of a vehicle with an ADS?

- a How are companies using or planning to use remote operations as part of ADS deployment, and what business models are likely to be used? Which parties will have an influence on the safety of remote operation?
- b Do you agree with the proposed scope of remote operations to be managed under the AVSL, and if not, which forms of remote management do you consider should be managed under the AVSL?
- c Should an ADSE have responsibility for the safety remote operation performed to support its ADS? Should we consider other models for allocation of safety responsibility for remote operation?
- d What duties should be placed on an ADSE or on other entities for remote operations?
- e Should remote operators be subject to a safety duty, or any other requirements, under the AVSL?
- f What specific skills or proficiencies should be required of remote operators?
- g Should the AVSL require that remote operations centres be located in

Australia? What are the advantages and disadvantages of this?

We are not in a position to provide specific advice on if, when and how FCAI members plan to use remote operations as part of their ADS deployment. We expect our members to first have interest in Level 3 solutions before Level 4.

However:

- We support the suggestion to give the ADSE the ability to choose to be the entity responsible for remote operation or to allow for a separate entity to take responsibility for ensuring the safety of remote operation. FCAI members may prefer to delegate / outsource the remote operations of their ADS. Flexibility of the AVSL in this direction would foster a more adaptable environment that enables the emergence of innovative business models and facilitates the deployment of AV solutions.
- We agree with the need to regulate the use of remote operations under the AVSL, including placing safety duty and other obligations (relating to cybersecurity, security, service resilience and availability, operators capabilities, and compliance with road traffic laws) on remote operators. The AVSL should add assurances beyond the contractual relationship that may be put in place between an ADSE and its remote operations partners. This is consistent with our proposed approach to authorised repairers, maintainers and modifiers.
- We also support the idea of the AVSL requiring for any remote operation of automated vehicles to be performed from within Australia.

12 Should an ADSE be required to ensure certain technical information is provided to consumers to inform purchasing decisions?

FCAI members are supportive of a consistent, clear and understandable set of technical information being made available to consumers to inform their purchasing decisions.

General obligations / high-level principles could be included in the AVSL but detailed guidance would be best developed and kept up-to-date between regulators and industry. Considerations should be given to the collaborative development of:

- regulatory guidelines: the Australian Competition and Consumer Commission (ACCC) can issue guidelines and interpretations that provide further guidance on how the Australian Consumer Law should be applied in specific situations. The in-service AV regulator could have similar powers for the purpose of AVs.
- industry codes of conduct developed in consultation with the in-service AV regulator and relevant industry bodies like FCAI, and with advice from ACCC as required.

- collaboration with consumer advocacy groups: Euro NCAP for instance is actively collaborating with industry stakeholders and regulatory bodies to develop standardised testing protocols and assessment criteria for automated driving technologies.

SAE levels of automation should be used with caution as they may not always speak to consumers. They form an engineering standard that continues to be discussed within the automotive industry itself (e.g. <https://www.mobileye.com/blog/hands-off-eyes-off-taxonomy-for-automated-driving/>).

We support the concept of automated vehicle register but we note that it may not be effective to gather all information relating to an ADS through a single user interface when different stakeholders will be after different information and access to this information may need to be securely managed. The automated vehicle register may not be the most appropriate medium for consumers; in-vehicle information may be more appropriate when the vehicle is in operations.

13 Should the AVSL include offences in relation to misrepresenting vehicle capabilities?

In addition to existing protections in the ACL (e.g. section 18 on Misleading or Deceptive Conduct), we believe that general obligations / high-level principles could be included in the AVSL to set the frame of how ADSEs are to represent their vehicle capabilities. Detailed guidance would be best developed and kept up-to-date between regulators and industry in the form of an industry code of conduct or regulatory guidelines.

We note that the UK Society of Motor Manufacturers & Traders (SMMT) has developed and published its [Guiding Principles for Automated Vehicles Marketing](#). FCAI and its members will explore a similar option and would welcome collaborating on this matter with the Department and the ACCC.

Strong penalties are however desirable to sanction any entity that would market Automated Driving Systems without appropriate ADSE or ADS certifications. We are supportive of specific offences being defined in the AVSL if the ACL is not considered sufficient to deter such approach.

14 Are there other measures needed to address consumer risks?

Information provided by ADSE to vehicle owners cannot be substituted to driver training and licencing requirements. ADSEs cannot reasonably guarantee that ADS information they will make available to consumers and users (e.g. in the form of inputs into the automated vehicle register, user manuals and other online user information, supported by ADSE customer call centres and dealers at the point of

sale) will be understood, used in practice or passed on to potential subsequent owners and drivers of the vehicles.

Considerations should be given by the road agencies (possibly under the coordination of the Austroads Registration and Licensing Task Force) for new vehicle classes, modified driver testing requirements (including new theoretical knowledge tests about AV technology, safety protocols, and ethical considerations, as well as practical assessments of a person's ability to monitor and respond to AV systems), improved driver education, graduated licencing approach and international harmonisation.

We understand that other countries are exploring the introduction of new license classes specifically for operating AVs. For instance, in 2023, the UK Department for Transport launched a call for evidence on potential changes to the driver licensing regime.

The loss of ADS functionalities due to changes to road infrastructure or road rules changes is discussed in our response to question 17. The loss of ADS / ADSE certification as a result of additional regulatory requirements set after the initial certification also poses hard-to-foresee consumer and ADSE risks, as mentioned in our response to question 8.

How people will interact with an ADS

- 15 What are your views on how we should approach laws for human user obligations in vehicles with highly or fully automated driving features?
- a Which types of vehicle control and seating configurations are being considered or developed by industry for vehicles with highly or fully automated driving features? Can vehicle control/seating design help to determine the obligations for users of these vehicles?
 - b In vehicles with higher levels of driving automation that are configured with manual driving controls, should there be specific requirements about seating position when the ADS is engaged? Do you support any of the options identified, or propose any other options?
 - c How should licensing requirements apply to users of vehicles with highly and fully automated driving features with accessible manual controls? Do you support any of the options identified, a combination of options, or propose any other options?
 - d How should drug and alcohol restrictions apply to users of vehicles with highly and fully automated driving features? Do you support any of the options identified, a combination of options, or propose any other options?
 - e Do you think there should be a requirement to always have a person capable of driving travelling in a vehicle with highly or fully automated features? Why or why not?
 - f Do you support permitting a person seated in the driving position in vehicles with highly or fully automated driving features to undertake secondary activities? Do you support any of the options identified, a combination of options, or propose any other options?
 - g How should non-dynamic driving task obligations be assigned or shared in vehicles with highly and fully automated driving features? Do you agree with our analysis?

We currently anticipate that – for the foreseeable future – FCAI members will keep manual driving controls accessible from the traditional driver's seat in highly automated vehicles intended for private and business ownership. This is also referred to as dual-mode vehicles. Until the technology in highly automated vehicles matures and proves its reliability in all scenarios, human drivers will remain an essential safeguard.

On this basis, our below response focusses on highly automated vehicles used in a private / business ownership model.

We are of the view that driver capability and licencing requirements should continue to apply when a person is in a driving position accepted as part of the ADS certification, at all times and regardless of the automation mode of the vehicle. This is to safely cater for instances when the ADS reaches the limits of its operational design domain, ensure consistency with vehicles of lower automation, guarantee optimal accountability and responsibility in the operations of highly automated vehicles and keep building public trust.

Driver presence/location requirements and restrictions on passenger movement during trips are best evaluated and regulated as part of the individual ADS certification process, independent of whether the vehicle has manual controls. ADSEs would be expected to provide specific information in their ADS certification application on what is allowed under which circumstances, how the ADS will communicate the in-vehicle requirements to the passengers and help monitor their compliance, etc.

Regarding secondary activities that the person seated in the driving position of a highly automated vehicles are allowed to undertake, our current preference is for the outcomes-based approach proposed as option 2 *“to prohibit performing an activity that impedes an effective takeover, taking into account instructions provided by the ADSE to ADS users through the vehicle’s human–machine interface”*. We believe this approach keeps all parties involved and responsible, best caters for differences in individuals’ capabilities, and leaves for the ADSEs to proactively define the limitations that apply to the person in the driving seat in light of the ADS capabilities. It is acknowledged that this approach would require the ADSE to explain as part of their ADS certification how they intend to appropriately inform the person in the driving seat of the ADS specific limitations prior to ADS activation.

We support for non-driving obligations to be assigned to the person in the driving seat but note the ADSs could provide a level of assistance for specific obligations (e.g. verifying that all passengers have their seatbelt). ADSEs should explain as part of their ADS certification how their solutions support the person in the driving seat in meeting in any non-driving obligations.

16 Do you support third-party interference offences being included in both the AVSL and state and territory law?

We support the proposed change to include third-party interference offences both in the Commonwealth AVSL and in state and territory law to enable enforcement actions that may be required fleet-wide or in more than one jurisdiction and to further assist with national consistency.

We agree with the broad prohibitions listed in the *“Third-party interference with an ADS”* paper but refer to our responses to questions 5 and 7. In particular, in early

stages of AV deployment, the following activities should be considered third-party offences:

- Retrofit of an ADS by a different party other than the RAV-approved entity itself or a contracted party of the RAV-approved entity.
- Any repair, maintenance or modification on an ADS-equipped vehicle by a non-ADSE-authorised businesses, regardless of whether those services relate to ADS parts or not, and to the exception where the ADSE expressly allows in its ADS certification specific non-ADS-related services to be undertaken by non-authorised businesses.

We agree with the safety duty obligations on ADSEs to consider and protect against third-party interference with their ADSs. This is best addressed by aligning the ADRs and future AVSL with international standards and best practice (e.g. UN Regulation No. 155 and ISO/SAE 21434:2021 Road vehicles — Cybersecurity engineering).

17 Do you support the proposed automated vehicle regulatory framework as a whole, and are there any barriers to its implementation?

We generally support the proposed automated vehicle regulatory framework in that a safety-first proactive approach provides certainty to consumers and other road users, and align with the goals of FCAI and its members.

However, the proposed model puts significant emphasis on administrative processes where other markets may have taken to date a more progressive approach. Questions therefore remain as to the extent the proposed model may miss to entice prospective ADSEs in bringing their products to the Australian market.

We acknowledge that part of this concern may be addressed through industry consultation and collaboration for the development of the legislative instruments that will indeed contain the detailed requirements of the AVSL. **Considerations should be given to tailoring the AVSL requirements to the risks of different levels of automation**, and possibly even business models (ownership vs commercial services) and in-market volume. The risks in Level 3 ADS-equipped vehicles already in operations in other markets and with the mandatory presence of a capable and licenced fallback ready-user are significantly lower than with Level 4 ADS-equipped vehicles.

We understand that the decision to place **due diligence obligations on ADSEs' executive officers** has been made in the June 2020 Decision regulation impact statement. The European Union and UK regulations do not seem to include similar obligations. If not consistent with other markets, this approach could impact and delay the FCAI members' decisions to import automated vehicles to Australia.

We would welcome further discussions with the Department to better understand its concerns and how alternative options could be designed.

In the status quo, further clarity would be appreciated on the potential criminal or civil penalties that may apply to ADSEs' executive officers under their due diligence obligations.

We understand that state and territory laws are to be amended to cater for automated vehicles and that the National Transport Commission is leading the development of a model law in close collaboration with the states and territories to ensure national consistency under the leadership of the Infrastructure Transport Ministers gathered at ITMM.

Ultimately, state and territories are under no obligation to adopt the model law absolutely, nor without modifications or additions unique to their own jurisdiction. Uncertainty remains as to the level of national consistency that will be reached between the states and territories, and when individual states and territories will proceed with their own legislative processes. FCAI members would want to ensure the ADS-equipped vehicles they release to market can be used consistently across borders from day one of vehicle sale. This is particularly important for Level 3 ADSs and the associated fallback-ready user obligations.

Further clarity from ITMM beyond the current in-principle agreement of national consistency towards a more formally agreed and synchronised timeline would be highly beneficial to prospective ADSEs. This clarity is paramount for FCAI members to trigger the product planning decisions required for the import of ADS-equipped vehicles.

It is now commonly agreed that it is the responsibility of ADSEs to develop automated vehicles that are capable of operating within the allowances and constraints of the existing physical infrastructure and to openly communicate the limitations of the automated vehicles in their operational design domain.

With AVs expected to continuously evolve (through technological improvements and variations of ADS in-service performance outside a regulated maintenance regime) and the road environment also subject to changes (e.g. changes to road rules, changes to road infrastructure standards, varying levels of road maintenance), there remains questions as to how AVs and road environment will interface and interact over time.

We appreciate this is a very complex interface with significant constraints for the entities responsible for the road infrastructure and road traffic legislations. The implications for ADSEs and consumers should however not be overlooked or underestimated.

We are of the view that **new inter-governmental processes need to be adopted to institute road rule changes in a nationally consistent manner**. Road rule changes would need to go through a consultation process allowing the in-service AV regulator

and the ADSEs themselves to input in the cost benefit analysis. Where changes are required, appropriate timeframes to implement hardware and software changes and cost allocations should be determined. Should rule changes be implemented that render an ADS inoperable, indemnification of the ADSE and its existing ADS consumers should be considered.

The in-service AV regulator should play an active role in advocating for ADS-enabling road infrastructure improvements based on the evidence ADSEs provide from their ADS operations. This role should be acted in the AVSL and look to cover any other infrastructure AVs may rely on (e.g. telecommunications, positioning). Further work could be undertaken now by the Department and NTC to set the necessary mindset and collaboration framework with infrastructure managers.

The ADSE and ADS certification processes rely on the sharing of key pieces of information with the regulators as well as close relationships to manage complex, potentially high impact and / or unforeseen risks and issues during the life of the ADS-equipped vehicles. In this context, the regulators, especially the in-service AV regulator, will have access to detailed and commercially sensitive information. **Consideration should be given to the level of information genuinely required for certification and how the regulators will ensure its on-going security.**

Prospective ADSEs may be deterred from the Australian market should there not be sufficient assurance on the security of their information or unjustified data sharing requirements for detailed ADS information that could be subject to ADSE intellectual property or seen as competitive advantage (e.g. requirement for *“a description of the components that make up an ADS to be included on the automated vehicle register”*).

The in-service AV regulator will also need to apply particular care in the on-going development of industrial guidance to manage the **potential conflict between improving overall practice and using individual ADSE’s Intellectual Property or competitive advantage**. We assume that the in-service AV regulator will establish strong communication channels both with individual ADSEs, and with the collective ADSEs and relevant industry bodies representing ADSEs and the broader automotive industry.

Automated vehicles are subject to a complex web of existing and potential regulations, extending beyond the proposed AVSL. This regulatory complexity warrants close monitoring, as it could discourage AV adoption or impede their efficient operation and management.

To address this, the Department, and the future in-service AV regulator, should drive **a coordinated and holistic approach to AV regulation, prioritise streamlining regulations and minimise duplication between the AVSL and other relevant frameworks**. The AVSL is expected to serve as the central reference point for AV

regulation, with proactive efforts made to integrate AV considerations into other regulatory developments. This includes active participation in the [Privacy Act review](#) and on-going discussions on the [application of the Telecommunications Act to connected and automated motor vehicles \(CAVs\)](#). While acknowledging the significance of privacy and telecommunications regulations, FCAI members are often concerned that general / cross-industry regulations may not fully address the unique context of vehicle technologies and the broader goals of enhancing road safety and productivity.

On the privacy requirements applicable to AVs, we agree with the need for the Department to conduct ***“further privacy impact assessment to ensure the settings in the AVSL are fit for purpose”***. This should be shared with industry and done in consideration of the on-going Privacy Act review process as significant changes can be expected from the current Act (1988).

The consultation papers state that *“the introduction of ADSs to vehicles mean that standards for roadworthiness assessment will need to be updated to support state and territory management of automated vehicle roadworthiness. The technical standards and assessment procedures will be updated”*.

Roadworthiness requirements and inspection regimes for conventional vehicles are currently not consistent between states and territories. Roadworthiness certificates are mandatory in some states for transfer of registration, or recommended for buyers' peace of mind in others, with variations between jurisdictions as to the technical scope of the roadworthiness inspections, the age or mileage of the vehicles that roadworthiness inspections may apply to or the validity period of such certificates.

Considering the inherent complexity of ADSs and the consequences their malfunctions or degradations can have, periodic vehicle inspections for roadworthiness are arguably even more important in the context of automated vehicles (AVs) compared to conventional vehicles. It is critical that **nationally consistent vehicle roadworthiness technical standards and assessment procedures** get developed and enforced. Consideration will need to be given to the broader range of systems, including software, sensors, data security, and cybersecurity, available in ADS-equipped vehicles as compared to conventional vehicles where inspections tend to primarily focus on mechanical components.

Beyond their in-service safety benefits, these standards and procedures would help:

- build public trust and confidence in AV technology by demonstrating that these vehicles are subject to rigorous safety checks.
- address the legitimate concerns consumers will have as to the performance and value of second-hand ADS-equipped vehicles. This is quite similar to the challenge facing battery electric vehicles at the moment with the lack of standard battery state of health methodology that can assess the vehicle residual performance and value, and may well impact the uptake of these new technologies.

- capture invaluable information on on-going ADS performance in addition to the ADSEs' own monitoring and reporting requirements.

Automated Vehicles should only be allowed entry to Australia under the type-approval process. Concessional entry pathways are unnecessary and introduce complexities that do not necessarily support the same levels of safety and obligations required of ADSEs under the type-approval pathway. It also exposes Australia to used vehicle importation without the safety rigour of the type-approval pathway.

Regarding the process for suspension or cancellation of an ADSE certification:

- we agree in-principle with the proposed approach to allow the in-service regulator to apply the suspension or cancellation across all ADSs or specified types of ADS. We feel these powers are quite broadly defined at this stage and we therefore recommend for more specific conditions or triggers to be set.
- with regard to the period set by the regulator for an immediate suspension, we invite the Department to include the opportunity for the ADSEs to recover their certification as soon as the necessary fixes or assurances have been provided. In some instances – subject to the regulator's due consideration, it may not be necessary to wait to the end of the set suspension period noting the impacts on consumers' use of their assets and on ADSE reputation.

Managing automated vehicle safety before the regulatory framework is in place

- 18 Are measures needed to prevent vehicles with an ADS from being provided to the market before the automated vehicle regulatory framework is in place? Which option or options is most suitable?

FCAI deploys all possible efforts to make its membership aware of the current and proposed regulatory framework around Automated Vehicles. Our members are focused on ensuring the safety and compliance of their operations and products. We trust our members will follow the regulatory requirements at all times and will not look to introduce any automated vehicles to the market without due approvals. We believe the import of ADS-equipped vehicles will be a conscious and planned decision for our members once the framework or interim arrangements allow for these vehicles to operate.

However, we do not oppose a risk-mitigating measure to be established in the form of a restriction in the RVSA type approval process for an ADS-equipped vehicle to be disabled before it could be provided in the Australian market (with the exception of those vehicles that may be covered by an approved trial). Such restriction would guarantee a levelled playing field and avoid any unregulated deployment that could damage the broader industry.

Consideration needs to be given to the applicability of this restriction for concessional entry pathways, especially with regard to second-hand imported vehicles.

- 19 Is it necessary to restrict aftermarket installation of an ADS, or use of an ADS to approved trials only, before the automated vehicle regulatory framework is in place?

As per our response to question 5, we do not support the concept of aftermarket in the sense of retrofitted ADS undertaken by a different party than the RAV-approved entity itself or a contracted party of the RAV-approved entity, at least in the early stages of AV deployment. Aftermarket ADS installations present major risks and we believe it is best to restrict such practice until such time as the market capabilities develop to avoid increasing consumer concerns and unknown risks on regulators.

This view extends logically to ADS aftermarket installation before the regulatory framework is in place. We therefore support the idea of interim restrictions that states and territories could introduce in that regard.

20 What are the barriers to more complex and large-scale trials in Australia? How could trial arrangements be improved? Should there be provision in the AVSL for interim certification to support trials?

In a global context where investments in automated vehicle technologies have been largely rationalised in recent years and where prospective ADSEs tend to focus on deployments in proximity of their development and manufacture sites, it is likely to be challenging for Australia to attract industry players in large scale trials.

Beyond the regulatory uncertainty that the Department and NTC are actively working to address, the main barrier to automated vehicles trials from the perspective of the FCAI membership is the limited industry interest and capacity to undertake trials which do not clearly provide the pathway towards commercialisation.

Introducing provisions for interim certification of Automated Driving System Entities (ADSEs) can reduce this commercial uncertainty for automotive brands. Such interim ADSE / ADS certifications would serve as a regulatory sandbox and come with strict and controlled conditions (e.g. limitations on the volume of AVs that would be allowed to be deployed under each certification).

To balance safety and innovation, it may be advisable to initially focus on technology solutions that have already been introduced in other markets such as Level 3 AVs (conditional automation). We note that Europe has authorised specific Level 3 use cases [since 14 July 2022](#) as have some US states.

This would be the opportunity for the Department and other stakeholders to test in practice some of the regulatory concepts envisaged for the AVSL, and ultimately position Australia as a fast follower.



CONTACT

For more information contact:

Richard Delplace

Director Emerging Technologies

E [email address removed]

M [phone number removed]

FCAI.COM.AU