

# National Transport Commission

A national in-service safety law for automated vehicles

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Automated Vehicle Team  
National Transport Commission  
Level 3  
600 Bourke Street  
Melbourne VIC 3000

Australian Motorcycle Council  
GPO Box 1895 Adelaide SA 5001

<http://www.amc.asn.au>  
[committee@amc.asn.au](mailto:committee@amc.asn.au)

## **About Australian Motorcycle Council Inc.**

The Australian Motorcycle Council (AMC) was formed in 1982 and is the peak body for motorcycle road riders in Australia.

The objectives of the Council are to:

- Promote and improve all aspects of road safety concerning motorcycling in Australia
- Promote, improve and protect the use of motorcycles in Australia, recognising their environmentally beneficial place in urban and land transport planning and systems
- Promote and improve at all levels the full knowledge, awareness, understanding and acceptance of motorcyclists' welfare and safety needs in Australia

The AMC wishes to thank the National Transport Commission for this opportunity to make a submission in response to a national in-service safety law for automated vehicles.

Should you require further information on the information contained within this submission, please feel free to contact the AMC committee@amc.asn.au or Brian Wood at 02 9804 6638.

Regards,

Brian Wood  
Chair of the AMC's sub-committee on Automated Vehicles

## Discussion Paper questions

**Question 1:** What prescriptive duties under the general safety duty should be included in the AVSL to manage in-service safety risks? (page 30)

Response: Given the infancy and novelty of the industry, it is not possible, at this stage, to predict all areas where prescriptive duties may be beneficial. However, those listed in Table 2 appear to adequately cover possible prescriptive duties.

**Question 2:** What matters relating to compliance with a general safety duty are better suited to guidance than being prescribed in the AVSL? Should this guidance have legislative force? (page 31)

Response:- The AMC is unable to provide comment on what guidelines could be developed. In the first instance, any guidelines should not have legislative force as the best regulatory approach is still emerging

**Question 3:** Are existing and proposed regulatory frameworks (state and territory laws, first - supply requirements and general safety duty obligations) sufficient to address third-party interference with an ADS? If not, should interference with the safe operation of an ADS be a specific offence, and how should this offence be enforced? (page 32)

Response:- Interference with an ADS should be a specific offence under State law. The ADSE needs to have in place systems to detect that third parties are interfering with their ADS to defeat interlocks that are provided to ensure the ADS operates safely. If an ADSE detects possible interference with their ADS, then they need to report this to the relevant State authorities providing evidence as to which third parties have been detected interfering with their ADS. The ADSE's systems need to include monitoring the internet and other media for devices or techniques used to defeat their safety interlocks and to implement software changes to render the devices and techniques ineffective.

**Question 4:** Should the law provide a specific defence for Australian ADSE executive officers who rely on information provided by others, like a parent company, when discharging their due diligence duty? (page 37)

Response:- Yes

**Question 5:** Please provide your views on the transfer of responsibilities for an in-service ADS from an ADSE to a new entity.(page 45) - Should an ADSE be able to transfer responsibility for an in-service ADS to a new entity?

Response:- Yes

-If so, what powers should the in-service safety regulator have for approving the transfer?

Response:- The AMC supports Option 1. The AMC recognises that there could be a major impact on consumers if there isn't a ADSE responsible for the ADS and ADS is prevented from engaging either temporarily or permanently.

**Question 6:** If there is no new entity to take responsibility for an ADS when an ADSE exits the market, are recall (including disengagement) under the RVSA and recourse under the Australian Consumer Law appropriate measures?

Response:- Yes

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Is there any role for the in-service regulator? (page 46)

Response:- Yes, to ensure that the ADS is not reborn, resurrected and that vehicles exit the market by instructing State authorities to cancel registration.

**Question 7:** What should the role of the in-service regulator be for modifications made by an ADSE to an in-service ADS that changes its ODD or the level of automation? (page 53)

Response:- The in-service regulator should assess the modified ADS against the statement of compliance safety criteria. This should apply for not only software changes but also changes in system critical hardware such as sensors.

**Question 8 :** How should in-service modifications made by parties other than an ADSE to vehicles to make them automated vehicles be managed? Consider:

- vehicle manufacturers modifying vehicles to become automated vehicles while in service
- businesses that supply and install aftermarket ADSs
- individuals installing aftermarket ADS kits. (page 57)

Response:- The AMC supports Option 2 for vehicle manufacturers and commercial ADS.

Individuals should not be permitted to install aftermarket ADS kits

**Question 9:** Are there any gaps in the regulation and proposed regulation of in-service modifications that the NTC has not identified? Are there other options that should be considered? (page 57)

Response:- In-service modification provisions need to consider hardware changes not just software changes and support the introduction of aftermarket components.

**Question 10:** Do you agree that the additional functions the NTC has identified may need to be undertaken by the regulator to ensure in-service safety? (page 65)

- Reporting
- Crash investigations (for enforcement, with a specialist agency like the ATSB to undertake no-blame investigations)
- Accreditation
- Regulatory approvals

Response:- Yes

**Question 11:** Accreditation provides an alternate pathway for an entity to enter the market. Are there other purposes for which accreditation should be used in the in-service framework? (page 65)

Response:- None that the AMC can identify.

**Question 12:** Do you agree with the functions the regulator is likely to perform in the initial phase following commencement of the AVSL? (page 66)

Response:- Yes

**Question 13:** Are the proposed compliance and enforcement powers proportionate to meet the objective of safely operating automated vehicles in Australia? (page 74)

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Response:- Yes

**Question 14:** Do you consider that the in-service regulator should have any of the following powers? (page 74)

- Recall powers

Response:- Yes

- Power to suspend the operation of an ADS until a safety issue is resolved by the ADSE

Response:- Yes

- Power to permanently suspend an ADSE from operating its ADS. In what circumstances would such a suspension be warranted?

Response:- Yes, the circumstances being when the ASDE is unable or unwilling resolve the safety issue. If the suspension isn't permanent then the safety issue will continue to affect public safety.

**Question 15:** Do you consider that additional prescriptive requirements may be needed to support a risk-based approach to compliance and enforcement under the AVSL? Please provide examples. (page 74)

Response:- None that the AMC can identify

**Question 16:** Please share your views on the illustrative penalties set out in appendix B. (page 74)

Response:- The AMC is unable to provide comment.

**Question 17:** Has the NTC identified the additional powers that may be required by the in-service regulator in addition to the baseline powers provided in the Regulatory Powers (Standard Provisions) Act 2014(Cwlth)? (page 78)

Response:- As far as the AMC can determine

**Question 18:** Are there other roadside enforcement issues relating to automated vehicle in-service safety that the NTC should consider? (page 84)

Response:- what is an individual involved in an incident to do? Will an AV be required to stop after a collision so a third party is able to identify the vehicle and the fall back ready driver?

**Question 19:** How should ADSEs advise on their ADS's interaction with roadside enforcement agencies?

Response:- By regular reporting of interactions with roadside enforcement agencies and third parties to the in-service regulator

Should the AVSL require the ADSE to provide a law enforcement interaction protocol to the in-service regulator and/or roadside enforcement agencies? (page 84)

Response:- Yes, it need s to be a standard protocol for all ADSE's

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**Question 20:** Do you agree that when a breach of road traffic laws occurs and: (page 89)  
-the ADS is engaged, or

-a roadside enforcement agency forms a reasonable belief that the ADS was engaged at the time of the breach that the incident should be treated as a potential breach of the general safety duty and not handled through the infringement system for human drivers?

Response:- Yes

**Question 21:** Do you agree that when a breach of a road traffic law occurs and a roadside enforcement agency forms a reasonable belief that the remote driver was in control of the vehicle at the time of the breach, that the incident should be referred to the in-service regulator and not handled through the infringement system for human drivers?89

Response:- Yes

**Question 22:** Do you agree that when a breach of road traffic laws occurs and: (page 89)

-it is unclear to a roadside enforcement agency which entity is in control of the vehicle at the time of a road traffic law breach, or

-a road safety camera detects a road traffic law breach

that the infringement notice be issued in the first instance to the human driver or registered owner/operator with a process to nominate the ADS or remote driver as the driver if required?

Response:- Yes

Are there other approaches that should be considered?

Response:- None that the AMC can identify

**Question 23:** Are the interactions between the in-service regulator and other regulators and agencies accurately described? (page 95)

Response:- Yes

**Question 24:** Are there other agencies that the in-service regulator will need to interact with? (page 95)

Response:- None that the AMC can identify.

**Question 25:** Are there other information types, purposes or parties relevant to the in-service regulator's access to information? (page 103)

Response:- Consideration needs to be given to third parties involved in property damage crashes so as to enable the third party to identify who was in control of the vehicle so they can obtain compensation. For privacy reasons, currently Police divulge only minimal information on the owner or driver of a vehicle involved in crashes. In some cases this leaves a third party unable to identify the first party so as to be able to claim compensation.

It is noted that the German Road Traffic Act requires that information must be disclosed to any third party where the vehicle was involved in an accident and the third party has

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plausible facts that the data is needed to assert, satisfy or defend claims resulting from an accident. ( Appendix E page 145)

**Question 26:** Have the key information flows that the in-service regulator needs to be a party to been identified? Are there others that you suggest? (page 104)

Response: Third parties wishing to claim compensation for crashes.

**Question 27:** Do the proposed information access powers meet the objectives of the in-service regulator?

Response:- As far as the AMC can determine.

Are there other statutory powers for information access that the regulator will require to support its compliance and enforcement functions? (page 109)

Response:- Not that the AMC can identify

**Question 28:** Do you agree that a specific power authorising collection, use and disclosure of personal information is required in the national law and in state and territory legislation? (page 112)

Response:- yes

**Question 29:** What privacy protections may be needed around the collection, use and disclosure of ADS-derived personal information? (page 112)

Response:- While privacy protections are required, information must be disclosed to any third party where the vehicle was involved in an accident and the third party has plausible facts that the data is needed to assert, satisfy or defend claims resulting from an accident.

**Question 30:** Do you agree with the differences outlined between the legislative implementation approaches? Which approach will best achieve the reform outcomes? (page 124)

Response:- The AMC does not have the expertise to make an informed response.

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