

18 December 2020

**Attn:** Automated Vehicle Team  
National Transport Commission  
Level 3/600 Bourke Street  
Melbourne VIC 3000

[automatedvehicles@ntc.gov.au](mailto:automatedvehicles@ntc.gov.au)

Dear Sir / Madam

**RE: National In-Service Safety Law for Automated Vehicles**

On behalf of the South Australian Freight Council's (SAFC) Executive Committee and Membership I thank you for the opportunity to comment on the national in-service safety law for automated vehicles.

SAFC is the State's peak, multi-modal freight and logistics industry group that advises both the Federal and State governments on industry related issues, and is funded by both government and industry. SAFC represents road, rail, sea and air freight modes and operations, freight services users and assists the industry on issues relating to freight logistics across all modes.

In our view, the introduction of automated vehicles is going to be a generation-defining challenge for transport agencies and regulators. We appreciate the open and comprehensive consultation the NTC has conducted over several years into this critical change.

We further appreciate the short extension the NTC has provide us in this instance.

Answers to the questions posed in the discussion paper can be found below.

Again, I thank you for the opportunity to provide a submission on this important topic. Should you wish to discuss any element of this submission further, please feel free to contact me on (08) 8447 0664 or via email [knapp.evan@safreightcouncil.com.au](mailto:knapp.evan@safreightcouncil.com.au).

Yours Sincerely,



**Evan Knapp**  
Executive Officer, SA Freight Council.



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

SAFC supports the idea that the prescriptive duties under the general safety duty should aim to maintain safety for all road users as far as is reasonably practicable. Such prescriptive duties are similarly found in the Heavy Vehicle National Law (HVNL)<sup>1</sup> and the Rail Safety National Law (RSNL).<sup>2</sup>

SAFC supports the potential prescriptive duties outlined in the RIS on pages 29 & 30. In addition, prescriptive duties should relate to:

- System data generation, recording and accessibility requirements (knowing when the ADS is engaged, recording this data for various purposes including crash investigations, providing access to authorised officers and entities [such as law enforcement] within reasonable timeframes).

Normally, SAFC supports prescriptive duties being held entirely in legislation; however in this instance – noting the infancy of the technology – we support adding the ability to add further prescriptive duties through regulation.

**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?*

SAFC feels that it is unlikely that existing and proposed regulatory frameworks would be sufficient to fully address third-party interference with an ADS, and that a specific set of offences should exist to prevent this interference.

As with other enforcement measures within transport law (i.e. HVNL, RSNL) it is appropriate that a 'reckless' category with criminal (jail term) penalties is included.

However, we also note that in the most extreme cases current criminal law would likely be applicable (e.g. murder, attempted murder, and potentially terrorism charges for malicious hacking of an ADS with the intent to kill).

**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?*

SAFC agrees that provisions should be made to protect ADSE executive officers who rely upon information from other bodies such as the parent company, providing they do not have additional information that suggests the original information is false (a whistle-blower report, evidence of ADS malfunction that contradicts a statement by a parent company etc).

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<sup>1</sup>[https://www.legislation.sa.gov.au/LZ/C/A/HEAVY%20VEHICLE%20NATIONAL%20LAW%20\(SOUTH%20AUSTRALIA\)%20ACT%202013/CURRENT/2013.36.AUTH.PDF](https://www.legislation.sa.gov.au/LZ/C/A/HEAVY%20VEHICLE%20NATIONAL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202013/CURRENT/2013.36.AUTH.PDF)

<sup>2</sup>[https://www.legislation.sa.gov.au/LZ/C/A/Rail%20Safety%20National%20Law%20\(South%20Australia\)%20Act%202012.aspx](https://www.legislation.sa.gov.au/LZ/C/A/Rail%20Safety%20National%20Law%20(South%20Australia)%20Act%202012.aspx)

**Question 5:** *Please provide your views on the transfer of responsibilities for an in-service ADS from an ADSE to a new entity. Should an ADSE be able to transfer responsibility for an in-service ADS to a new entity? If so, what powers should the in-service safety regulator have for approving the transfer?*

SAFC notes that the transfer of responsibilities from one ADSE to another ADSE/other entity is fraught with danger. Therefore, SAFC feels that there is little cause to support the ability to transfer responsibilities for an in-service ADS unless an incredibly strong case was made for such provisions to exist, and in a very limited set of circumstances. Circumstances ‘where an ADSE...no longer wants to fulfil its obligations with respect to an ADS<sup>3</sup>’ should not meet this criterion. In the few cases where transfer could be contemplated (like genuine bankruptcy, not caused by restructuring), the new ADSE would need to have all the same responsibilities and capabilities of the original ADSE without exception.

We worry that an ADSE could use the suggested provisions to stop supporting an automated vehicle that has been sold in the marketplace on the reasonable assumption it will continue to operate until the owner chooses to cease its operation. 50-year-old cars operate on our roads every day – but an ADSE may not wish to support its ADS for this long. What happens to this vehicle, that may work perfectly well in all other ways? Owners of an ADS enabled vehicle cannot be reasonably left with, effectively, a large mass of scrap metal by the actions of an ADSE.

The illustrative obligations and offence provisions currently indicate that when ADSE is transferred, that the in-service regulator must be notified in a ‘timely manner’. During the transfer time, there would hence be no active ADSE so the ADS in these vehicles would not be able to be legally functional – which obviously poses serious concerns for operators of these vehicles, relying on them for business income and to complete contracts.

It is therefore the strong opinion of the SAFC that if transfers are to be allowed, or in the case of ADSE liquidation or similar, notification to the in-service regulator should come before the responsibility changes hands/the transfer process begins. Foreign Investment Review Board (FIRB) proceedings operate similarly, and could be used as a guide.

**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 Road Vehicle Standards Act 2018 (Cwlth) and recourse under the Australian Consumer Law appropriate measures? Is there any role for the in-service regulator?*

Firstly, owners of an ADS enabled vehicle can not be reasonably left with, effectively, a large mass of scrap metal by the actions of an ADSE. **ADSE’s should be required to insure against this risk.**

SAFC agrees that where there is no new entity to take responsibility for an in-service ADS when an ADSE exits the market, recall or similar measures under the Road Vehicle Standards Act and Australian Consumer Law would be required.

Specific compensation measures are also required. Forcing vehicle owners to rely on just Australian Consumer Law is inadequate, given the high risk and high impact of such an occurrence. ACL would not offer adequate remedies in the case of bankruptcy, for example.

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<sup>3</sup> RIS, Page 40

**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?*

SAFC supports option 1 – that the in-service regulator has a regulatory approval function for in-service modifications.

**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.*

SAFC challenges whether in-service modifications made by parties other than the ADSE should be allowed at all. This practice seems incredibly complex and fraught with risk, as well as being incredibly difficult to regulate and control. If this was to be allowed, an ADSE would need to be immediately established/take control and a stringent system would need to be in place to monitor this kind of modification.

From a risk standpoint, would an ADSE be willing to take on responsibility for a modification or aftermarket installed system? Could they even meet the standard of the General Duty – safety so far as is reasonably practicable – in this instance? Would the fact that they had not installed the system themselves lower the standard of what is reasonably practicable, therefore lowering safety outcomes? How could an ADSE be certain the system was installed and operating effectively? How could the in-service regulator?

For all of these reasons, SAFC is incredibly hesitant about allowing these kinds of modifications to occur. Introducing an ADS without the scrutiny of the first supply network carries far too many risks to be allowed.

However, an already established ADSE, controlling the particular vehicles ADS, could reasonably be permitted to modify an ADS with appropriate approvals from the in-service regulator, to the same standard as first supply.

**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?*

SAFC does not, in principle, support in-service modifications made by parties other than the original ADSE.

**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? These are; Reporting, Crash investigations (for enforcement, with a specialist agency like the ATSB to undertake no-blame investigations), Accreditation, and regulatory approvals*

SAFC agrees that the additional functions identified by the NTC may need to be undertaken by the regulator to ensure in-service safety. Specialist regulators have historically worked well in the transport industry – such as, but not limited to, the ONRSR and NHVR.

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

SAFC agrees with the suggested functions of the regulator in the initial phase of the AVSL.

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

SAFC feels that the proposed compliance and enforcement powers are proportionate to meet the objective of safe automated vehicle operations in Australia. It is clear that they are built upon the powers granted to other transport safety regulators established in Australia.

**Question 14:** *Do you consider that the in-service regulator should have any of the following powers? Recall powers, Power to suspend the operation of an ADS until a safety issue is resolved by the ADSE, Power to permanently suspend an ADSE from operating its ADS. In what circumstances would such a suspension be warranted?*

The power to suspend the operation of an ADS until a safety issue is resolved by the ADSE could pose serious risks to commercial entities which would rely upon their vehicles to operate their business.

There is a considerable difference here from the HVNL example provided. When an authorised officer grounds a vehicle under the HVNL, it is the person that has created the risk to safety that suffers. When an ADSE is ordered to turn off an ADS, it is the vehicle owner/user who suffers.

We recognise that there may be times when such serious issues are discovered that such an act must be taken in the interest of safety.

However, SAFC strongly suggests that if the regulator had the ability to permanently suspend an ADSE from operating its ADS, then automatic compensation functions ought to exist to protect the businesses which rely on the ADS to operate their business and keep the supply chain moving. Compensation for the entity with primary right of use (the 'owner' or the 'lessor', perhaps) should also exist in the event of permanent suspension.

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

This penalty structure appears to match those of the RSNL and HVNL which, based on the information that SAFC has access to, seems appropriate in this instance.

SAFC notes that the requirements around ADSE transferability and reporting need significant reform and that this would need to be reflected in the illustrative penalties. See our above comments for more information on the issues arising in this area.

**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)?*

As far as can be determined at this time, the NTC has identified all additional powers that could be required by the in-service regulator. SAFC notes that it is absolutely vital that the regulator be recognised as a law enforcement entity in order to enabling the sharing of critical safety enforcement information – a modification now being made to the HVNL.

**Question 19:** *How should ADSEs advise on their ADS's interaction with roadside enforcement agencies? Should the AVSL require the ADSE to provide a law enforcement interaction protocol to the in-service regulator and/or roadside enforcement agencies?*

SAFC agrees that some form of interaction protocol ought to exist between ADSE's and in-service regulators and roadside enforcement agencies. This information should be freely shared between the entities to ensure maximum safety for all road users.

**Question 20:** *Do you agree that when a breach of road traffic laws occurs and: 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?*

SAFC agrees that if it is reasonable to believe that the ADS was engaged at the time of the breach then the incident should be treated as a potential breach of the general safety duty. Such incidents not be treated as an infringement by human drivers as, presuming the ADS was engaged, they were not in control of the vehicle.

**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?*

Yes.

**Question 22:** *Do you agree that when a breach of road traffic laws occurs and: 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? Are there other approaches that should be considered?*

We do not agree. It seems that it would be simplest to issue infringement notices to the ADS operator, as they would have the best access to data that indicates whether the ADS was in control of the vehicle or not at the time of the breach. In the case where it was not in control, it would then be possible for the ADS/remote driver to electronically nominate the human driver instead with the engagement data as proof of a lack of liability.

Indeed, it may be possible to completely automate this 'query – check – respond with records' process, making it take seconds instead of potentially weeks or months. Why would the law force the slow, current system to take precedence, when a fast, automated system could operate more effectively and at a higher evidentiary standard?

**Question 27:** *Do the proposed information access powers meet the objectives of the in-service regulator? Are there other statutory powers for information access that the regulator will require to support its compliance and enforcement functions?*

The proposed information access powers seem to be similar to those found in other similar documents such as the NHVL. As far as can be determined by the SAFC, the proposed powers meet all the objectives of the in-service regulator.

**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?*

SAFC agrees in principle that a specific power which authorises the collection, use, and disclosure of personal information (in certain specified circumstances) would be required in order to protect the information of ADV users and related entities. This is not an area that is well served by being unregulated.

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

SAFC firmly believes that limitations on the collection, use, and disclosure of ADS-derived personal data should be prescriptive. That is to say, there ought to be a blanket ban on all information use, and disclosure with clearly defined exceptions. ADS-derived data should only be used for the purpose of tracking breaches and for safety monitoring, and must not be shared with third parties under any circumstances.

Exceptions to this rule could reasonably include for example, sharing of aggregated information with transport agencies and universities for the purpose of traffic management and research. Outside of this, data must only be shared between certified law enforcement agencies with the sole intention of enforcing road safety and regulations.

It must be completely illegal to share this information for commercial or advertising purposes, and for any purpose that could be of detriment to commercial security for the businesses which access ADS vehicles.

These protections would need to be closely monitored and enforced at all times.