



Australian Government

Department of Infrastructure, Transport, Regional Development and Communications

NOT GOVERNMENT POLICY

Submission to National Transport Commission

Discussion Paper: A national in-service safety law for automated vehicles

March 2021



The Australian Government Department of Infrastructure, Transport, Regional Development and Communications (the Department) welcomes the opportunity to provide comment on issues canvassed in the *National In-service Safety Law for Automated Vehicles Discussion Paper* (the discussion paper). The Department thanks the National Transport Commission (NTC) for its work on this project to date.

In preparing this submission, the Department consulted with the Treasury, the Department of the Prime Minister and Cabinet, the Department of Home Affairs, and the Attorney-General's Department. This submission builds on the Department's previous submissions to the 2018 *Safety Assurance for Automated Driving Systems: Consultation Regulation Impact Statement* (RIS) and the 2019 *In-service safety for automated vehicles Consultation RIS*.

The Department's submission addresses the following key questions in the discussion paper, to help inform consideration of the matters raised:

- Are recalls appropriate to remove automated driving systems (ADSs) from roads, where there is no automated driving system entity (ADSE) or a significant ADS safety issue identified, and should the in-service regulator have recall powers (questions 6 and 14)?
- Who should be responsible for in-service ADS modifications (questions 8 and 9)?
- What are the key relationships between the in-service regulator and other regulators (questions 23, 24, 25 and 26)?
- Should the in-service regulator have additional regulatory functions (question 10)?
- Which in-service legislative approach will best achieve Ministers' reform outcomes (question 30)?

Background and context – existing regulatory framework and reform decisions

Infrastructure and Transport Ministers have agreed to work towards a nationally consistent approach to safety for automated vehicles when they are operating on Australian roads. This approach will include a national regulator and national law that will establish a general safety duty on the companies responsible for the safe operation of automated driving systems (ADSs).

Vehicle safety in Australia is currently regulated:

- 1) at the Commonwealth level, through setting national standards that road vehicles must meet when they are first supplied to the Australian market (first supply); and
- 2) by state and territory governments, through registration and roadworthiness schemes, which require vehicles to continue to comply with the national standards while they are on the road (in-service). State and territory governments also regulate the on-road behaviour of drivers with road rules and driver licensing schemes.

As part of its role in setting national standards for road vehicles, the Department, in consultation with the NTC and state and territory governments, is developing the safety



requirements that will apply to road vehicles with ADSs when they are first supplied to the Australian market. The Department notes its regulatory role, in relation to first supply, is out of scope for the NTC discussion paper.

Does the in-service regulator require specific regulatory powers – e.g. recall powers etc. (questions 6 and 14)?

In chapters 4 and 5, the discussion paper presents several scenarios on whether road vehicle recall powers are an appropriate means by which to remove unsafe ADSs from roads. Both voluntary and compulsory recalls may be suitable tools as part of a risk-based approach to address significant safety issues in ADSs.

Voluntary recalls are used regularly by suppliers to rectify an identified or potential safety issue within their vehicles. In the ADS context, if a supplier identifies an issue with an ADS which could cause injury or non-compliance, they may voluntarily recall the ADS and must provide notice to the responsible Minister with details of the issue. The appropriate recall action could involve a physical repair or an ‘over-the-air’ software update.

If the responsible Minister considers one or more suppliers have not taken satisfactory action to prevent injury or to rectify non-compliance of an ADS (or ADSE), the Minister may issue a compulsory recall notice. A recall notice will specify the actions one or more suppliers are required to take in response to an identified or potential safety issue or a non-compliance issue. Notices may recall vehicle types or components, disclose information to the public about the danger of the potential issue, or inform the public about the action the supplier intends to take.

Compulsory recalls may be better viewed as a last resort measure where a manufacturer is not taking appropriate action to prevent potential injury or rectify a substantive instance of non-compliance with the national road vehicle standards. Suppliers can incur fines of up to \$1,165,000 for failure to comply with recall notices.

Currently, the Department is responsible for administering vehicle recalls, however, the legislative powers to issue and enforce compulsory recalls sit within the *Competition and Consumer Act 2010*. When the *Road Vehicles Standards Act 2018* (the RVSA) commences in July 2021, these powers will be administered by the Department. The RVSA provisions will largely mirror the current provisions in the *Competition and Consumer Act 2010* in that there will be a framework for both compulsory recalls (initiated by the responsible Minister) and voluntary recalls (initiated by a manufacturer (‘suppliers’ under the RVSA)).

In chapter 7, the discussion paper raises potential limitations of the recall powers under the RVSA, including that they may not cover ADSs which do not have an applicable type approval (for example, an after-market ADS installation or a lapsed type approval) or where there is no ADSE. The Department will continue to work with the NTC as well as state and territory governments to examine whether there are any gaps in the recall powers as provided under the RVSA and the *Australian Competition and Consumer Act 2010*, and whether any new regulatory powers are required.



Who should be responsible for in-service ADS modifications (questions 8 and 9)?

The NTC is seeking views on how to best manage different types of in-service ADS modifications and ensure in-service vehicle safety. The Department agrees with the NTC (chapter 7) that existing and future regulators should adopt a risk-based approach to managing safety issues that arise while ADSs are operating on roads.

The Department notes any risk-based approach chosen would need to consider who is best placed to manage a potential or actual safety issue, and identify the appropriate regulatory response. In most cases, the Department agrees the ADSE is best-placed to assume ultimate responsibility for the risks of in-service modifications.

Chapter 5 of the discussion paper considers different types of in-service modifications that could be made to automated vehicles and proposes three options to manage the safety risk. Of the options put forward in the discussion paper and scenarios raised, the Department agrees the in-service regulator would be best placed to regulate in-service modifications and to mitigate the risks of variables between individual vehicles, such as wear and tear. Further work is required to better understand the feasibility and risks associated with modifications that involve the supply and installation of standalone or ‘aftermarket ADSs’.

What are the key relationships and information flows between the in-service regulator and other regulators (questions 23, 24, 25 and 26)?

The NTC seeks information on other government regulators and agencies who will interact or exchange information with the in-service regulator. In the discussion paper, the NTC has identified a number of primary government regulators and agencies that will need to engage with the in-service regulator. The Department agrees the NTC has identified the key information flows, noting that as work on in-service arrangements progresses, further necessary information flows may be identified.

A key consideration in progressing the in-service safety work is better understanding the interface between the regulatory arrangements for automated vehicles when they are first supplied to the Australian market and once they are operating on roads. The Department agrees it will be important to establish arrangements to facilitate information flows between new and existing regulators (chapter 10). The Department suggests considering how existing arrangements might also be augmented to be fit-for-purpose for automated vehicles, and any applicable ‘lessons learned’ from other comparable regulatory frameworks that would assist regulators to deal with safety issues, including in the context of the Department’s role as first supply regulator and, if the need arises, to administer recalls of ADSs.

Should the in-service regulator have additional regulatory functions – e.g. reporting, crash investigations (question 10)?

As a general approach, the Department considers there would be merit in exploring use of ‘no fault’ investigations of automated vehicle safety incidents, particularly in the early phases of deployment while uptake is relatively low. Such investigations may assist with identifying the nature of automated vehicle safety incidents (for example, whether they are one-off or



fleet-wide issues) and over time, creating a body of knowledge and expertise upon which future regulatory frameworks can be built.

Chapter 6 proposes an entity such as the Australian Transport Safety Bureau (ATSB) conduct no fault investigations, working alongside state and territory police and the in-service regulator. The Department notes the Productivity Commission's report on its inquiry into National Transport Regulatory Reform canvasses a range of matters, including a potential role for the ATSB in investigating automated vehicle crashes. An Australian Government response to the Productivity Commission's report is pending.

The Department encourages the NTC and state and territory governments to further consider whether mandatory reporting requirements on ADSEs for ADS faults and modifications should be included in the automated vehicle safety law. These types of reporting requirements are in place in other jurisdictions, such as California, and would help the in-service regulator in managing in-service ADS risks in high uncertainty environments.

Which in-service legislative implementation approach will best achieve Ministers' reform outcomes (question 30)?

The Department agrees that, while the legislative options outlined in chapter 11 of the discussion paper – that is, implementation through a Commonwealth law (with complementary changes to state and territory laws) or an applied state or territory law – have practical differences, both are capable of implementing Infrastructure and Transport Ministers' agreed objective of a nationally-consistent approach to managing the safety of automated vehicles on Australian roads.

The cost-benefit analysis undertaken for the NTC's 2019 *In-service safety for automated vehicles Consultation RIS*, found that the Commonwealth law approach would result in higher net benefits than an applied law approach. These findings were largely based on the greater degree of national consistency that a Commonwealth law approach is likely to provide. There are a number of key policy decisions to be considered by Ministers in 2021 and the Department will continue to be guided by the evidence.

Next steps and further work required

The Department welcomes the work the NTC is currently progressing around mapping the existing and proposed in-service safety regulations, as well as the institutional arrangements needed to support information flows between regulators.

The Department encourages further work be done on identifying the existing regulatory arrangements that may need to adapt in the short to medium-term to accommodate commercial deployment of automated vehicles. This further work will support Ministers in considering and agreeing the legislative implementation approach.