

9 July 2018

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

Via On-line Submission

Dear Sir/Madam,

Thank you for the opportunity to respond to the consultation questions contained within the Safety Assurance for Automated Driving Systems Consultation Regulation Impact Statement (RIS), dated May 2018.

We congratulate NTC on the methodical and comprehensive nature of the analysis contained within the RIS.

Maurice Blackburn has been a proud contributor to this important ongoing conversation, and we are pleased to be able to offer our expertise in road safety matters for the benefit of the Commission.

Our responses to the consultation questions in the RIS appear below:

1. To what extent has the consultation RIS fully and accurately described the problem to be addressed?

Maurice Blackburn is satisfied that the consultation RIS has accurately described the problem to be addressed, and has provided sufficient detail for responders to understand the key issues.

2. What other factors should be considered in the problem statement?

No response to this consultation question.

3. Has the consultation RIS provided sufficient evidence to support the case for government intervention?

Maurice Blackburn is satisfied that the RIS has provided sufficient evidence to support the case for government intervention.

We believe that regulation, via a new legislative framework, is necessary to reduce uncertainty – for ADSEs, for distributors, for vehicle owners and for government.

4. To what extent have the community and industry expectations of a regulatory response been accurately covered?

Maurice Blackburn is satisfied that the RIS has appropriately captured and described community and industry expectations of a regulatory response.

5. Are the four options clearly described? If not, please elaborate.

Maurice Blackburn is satisfied that the four options are clearly described, and provide sufficient information for responders to make an informed decision.

6. Are the proposed safety criteria and obligations on ADSEs (detailed in chapter 4 and Appendix C) sufficient, appropriate and proportionate to manage the safety risk?

Maurice Blackburn agrees with the proposed safety criteria and obligations placed on ADSEs, as described in Appendix C.

We would, however, suggest that NTC consider tightening obligations in relation to the installation of system upgrades, as detailed in section C.1.8 of appendix C, page 84 of the RIS.

Maurice Blackburn submits that the safety assurance system should reflect that:

- When system upgrades are installed, the owner of the vehicle should not be able to choose not to install the upgrade; and
- A testing regime should be embedded to ensure that error-free installation of the upgrade has occurred.

Maurice Blackburn submits that the distributor, their service providers and mechanics should need to be licensed to carry out such works.

We further submit that an onus be placed on the vehicle owner to periodically ensure that all relevant system upgrades have been actioned. We submit that the NTC should give consideration as to what form this regular compulsory verification could take place, such as:

- A compulsory annual inspection, carried out by an independent and licensed inspector, or
- As part of the registration process, or
- As part of regular processes to ensure vehicle roadworthiness.

We recognise that under the current system with non-automated vehicles, the requirements of the distributor, the manufacturer and the owner in relation to after-market upgrades varies depending on the seriousness of the recall. We submit that system upgrades for automated vehicles should be given the highest level of obligation, given the potentially devastating impacts of non-compliance.

In relation to the obligations spelled out in sections C.3.2 and C.3.3 found on pages 88 and 89 of the RIS respectively – relating to corporate presence in Australia and minimum financial requirements – Maurice Blackburn notes that there is currently no mention that these requirements must be ongoing. Ongoing obligations will be critical to ensure accountability and liability of the ASDE should a defect be detected after release to market. We submit that this should be made more apparent in the obligations.

7. Are there any additional criteria or other obligations that should be included?

No response to this consultation question.

8. Do you agree with the impact categories and assessment criteria? If not, what additional impact categories or assessment criteria should be included?

Maurice Blackburn is satisfied with the description of the impact categories and assessment criteria, and offers no additional comment on this consultation question.

9. Has the consultation RIS captured the relevant individuals or groups who may be significantly affected by each of the options? Who else would you include and why?

Maurice Blackburn believes that the RIS appropriately captures relevant individuals and groups who may be impacted by the proposed changes, and makes no additional comment on this consultation question.

10. Does our analysis accurately assess the road safety benefits for each reform option? Please provide any further information or data that may help to clearly describe or quantify the road safety benefits.

Maurice Blackburn is satisfied that the analysis accurately assesses the road safety benefits for each option, and offers no additional comment on this consultation question.

11. What additional safety risks do you consider the primary safety duty in option 4 would address compared with option 3?

No response to this consultation question – but we refer NTC to our response to consultation question 20.

12. Does our analysis accurately assess the uptake benefits for each reform option? Please provide any further information or data that may help to clearly describe or quantify the uptake benefits.

Maurice Blackburn is satisfied that the analysis accurately assesses the uptake benefits for each option, and offers no additional comment on this consultation question.

13. Does our analysis accurately assess the regulatory costs to industry for each reform option? Please provide any further information or data that may help to clearly describe or quantify the regulatory costs.

Maurice Blackburn is satisfied that the analysis accurately assesses the regulatory costs to industry for each option, and refers NTC to our response to consultation question 14.

14. Are there any specific regulatory costs to industry that we have not considered?

Maurice Blackburn submits that the analysis provided in the RIS sufficiently and accurately assesses the costs to industry for each reform option.

We ask the NTC to remain mindful, in any considerations relating to the potential financial costs to Government or industry, of the broader social and safety costs. These are described well in section 2.2 of the RIS:

“Broader unaccounted for social costs (or externalities) include the cost of traffic congestion (loss of productivity for those caught in a crash), other road users’ pain and suffering, emergency responder and clean-up costs, medical treatment costs, lost workforce participation and road asset damage”. (p.17)

We submit that the possible social costs should be considered paramount when evaluating competing social, industry and regulatory costs of safety assurance systems.

We agree with the assessment in section 2.2 that:

“Without specific safety regulation and effective after-market mechanisms (such as insurance and legal liability), there is a risk of market failure to deliver a socially desirable level of safety risk management”. (p.17)

15. Does our analysis accurately assess the costs to government for each reform option? Please provide any further information or data that may help to clearly describe or quantify the costs to government.

Maurice Blackburn is satisfied that the analysis accurately assesses the costs to government for each option, and offers no additional comment on this consultation question.

16. Does our analysis accurately assess the flexibility and responsiveness for each reform option? Please provide any further information or data that may help to clearly describe or quantify the flexibility and responsiveness of the options.

Maurice Blackburn is satisfied that the analysis accurately assesses the flexibility and responsiveness for each option, and offers no additional comment on this consultation question.

17. Do you consider the relevant factors and conditions for government in choosing an option to be valid? Are there any factors and conditions you do not agree with?

Maurice Blackburn is satisfied that the relevant factors and conditions for government in choosing an option are valid, and offers no additional comment on this consultation question.

18. Do you agree with our view on the relevant factors and conditions for government in choosing an option?

Yes.

19. Has the consultation RIS used an appropriate analytical method for assessing the benefits and costs of the options? What else should be considered?

Maurice Blackburn is satisfied that the RIS has used an appropriate analytical method for assessing the costs and benefits of each option, and offers no additional comment on this consultation question.

20. On balance, do you agree that the preferred option best addresses the identified problem? If not, which option do you support?

We agree with the assessment of NTC, as noted on page 48 of the RIS:

“We consider option 4 clearly provides the greatest road safety benefits based on the road safety assessment criteria.”

Maurice Blackburn submits that Options 1 and 2 – the two options based on retaining the current regulatory regime - are unsuitable as the existing regulatory regime is not sufficiently robust to adequately cater for the management of automated cars.

We believe that the legislative safety assurance system described in Option 3 is vastly more fit-for-purpose than the preceding options.

Our support for Option 4 is conditional on the following:

The safety assurance system under this option must be as extensive as that described for Option 3 with the addition of the primary safety duty – as opposed to any version of Option 4 that contains a weakening of the safety assurance system and then relying on the primary safety duty as a catch-all.

21. How does your choice of option better address the problem than the preferred option?

No response to this consultation question.

Once again, thank you for the opportunity to respond to these important matters.

Should you wish to discuss our comments above, or any other matter related to the introduction of an appropriate legislative and regulatory regime for the introduction of automated vehicles in Australia, please do not hesitate in contacting me via:

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Yours faithfully,



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