

20 June 2018



SOUTH AUSTRALIAN FREIGHT COUNCIL



Attn: Automated Vehicle Team
National Transport Commission
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Dear Sir / Madam

RE: Safety Assurance for Automated Driving Systems

On behalf of the South Australian Freight Council's (SAFC) Executive Committee and Membership I thank you for the opportunity to comment on the 'Safety Assurance for Automated Driving Systems' Consultation RIS.

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 governments 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.

SAFC is pleased to see the NTC is continuing to move forward with support for vehicle automation in Australia by considering options for regulatory frameworks. We consider the progress and comprehensive analysis to date to be a benchmark that other regulatory change processes should aspire to.

In general, SAFC supports the NTC's contention that Option 4 is the best option to progress.

Options 1 and 2 do not deliver effective and comprehensive safety outcomes; and should be discarded on this basis. Options 3 and 4 are essentially identical in all respects, other than the inclusion of a primary safety duty in Option 4.

Primary safety duties have expanded across the transport regulatory sphere in recent years, and can be found in WHS law, the Rail Safety National Law and have recently been added to chain of responsibility provisions within the Heavy Vehicle National Law. They are well understood and supported by our industry.

While option 3 delivers a safety assurance system, it does not have the flexibility to address 'unknown unknowns' – the issues that will inevitably arise through the introduction of automated vehicles that have not been captured in their entirety at this stage. Despite the best efforts of the NTC and industry, it is almost inconceivable that no element will have escaped analysis and control at this stage of such a complex change to the Australian transport system. The primary safety duty in option 4 provides the means to address these issues as they arise.

We accept that there may be additional costs in adopting option 4 over option 3, but note the NTC's suggestion that these will be minor.

SAFC supports the inclusion of the 11 safety criteria to be addressed for acceptance of the Statement of Compliance.

SAFC would like to see greater detail in the RIS around criteria 10, Cybersecurity, (see 4.3.10) – or potentially see the NTC develop a separate paper on the cybersecurity regulatory regime for automated vehicles, even if this is not made public.

If the proponents of automated vehicles create a system that delivers zero unavoidable crashes and achieves every other benefit envisaged, these vehicles could still fail to be adopted by the public and industry if certainty around cybersecurity is not achieved. Indeed, one major cybersecurity/cyberterrorism incident involving automated vehicles could set the technology's comprehensive adoption back by a decade or more.

Protections must go beyond just the ADS 'black box' in the vehicle and datacenters that support the system as a whole. ADS designs and related materials must be protected. Personnel with the ability/authority/knowledge to modify and/or access an ADS should be checked to appropriate cybersecurity standards.

Indeed, this section of the Statement of Compliance should be assessed and approved by appropriate security and cybersecurity specialist agencies within the Commonwealth.

SAFC supports the inclusion of 4.4.3, Minimum Financial Requirements for ADSEs. Adding to these, SAFC contends that the provisions around this area must ensure that ADSEs do not become spin-off liability protection entities within complex corporate structures, with all of the liability but none of the company assets with which to pay out victims in the worst of situations. In essence, we do not want to see a situation where each automated vehicle retailer is 'ABC Motor Company' with a related 'ABC ADSE Company' that holds ADSE liability, but little else.

We note that Privacy concerns have been raised with the NTC (C.4.1), and that the NTC has chosen not to include this element in the 11 criteria or elsewhere as this is dealt with in Australia under separate legislation. While we agree with the NTC that privacy is not *specifically* a safety concern; it certainly *can* be in some instances.

The ADSE will be holding a record of where a vehicle (person) has gone and when.
This is both intensely personal and very valuable information.

- There are situations where knowledge of this information could put safety in jeopardy – for instance in domestic violence situations, knowing where a victim is living or goes regularly could put them at risk.
- Location information has a high value in terms of marketing.
- It would also be of immense value to competitors within the trucking industry, and competing sectors.

Australian Privacy Principle 6 provides that:

'If an APP entity holds personal information about an individual that was collected for a particular purpose (the primary purpose), the entity must not use or disclose the information for another purpose (the secondary purpose) unless:

- a. the individual has consented to the use or disclosure of the information;'*

SAFC is concerned that 'consent' could be buried in legal small print in purchase agreements or ADS related documentation, or could be provided on a 'take it or leave it' basis.

Australian Privacy Principle 7 prohibits the use of personal information for direct marketing, but also provides a wide range of exceptions that allow such activity in many instances.

We further note that the Australian Privacy Principles apply only to 'personal information', and that ADS data outputs may not be considered by the Courts to meet these criteria.

SAFC contends that ADS extracted information should only be available for the primary purposes for which it is created (as outlined in the RIS): Compliance & Enforcement, to determine whether an ADS was engaged at the time of an accident, or with a court order. De-identified and aggregated data is of lesser concern (however we emphasise that the data must be both de-identified and aggregated, as some companies have shown great ingenuity in re-identifying data through data matching techniques).

How these protections are achieved – whether through the ADS approval process, through the Australian Privacy Principles or via other means – is not as important to industry as the fact that they are achieved. This is a new area of privacy policy and technology policy, and **the framework that will protect Australian businesses and consumers should be tested for this specific purpose** before automated vehicles become widely available.

Again, we thank you for the opportunity to submit on this important matter. Should you wish to discuss any aspect of this submission, or require clarification of any matter raised, feel free to contact me by telephone on (08) 8447 0664 or Email:

knapp.evan@safreightcouncil.com.au .

Yours faithfully



Evan Knapp
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