

Mailing Address:
GPO Box 1555
Canberra ACT 2601

Address:
103 Northbourne Ave
Canberra ACT 2601

P 02 6247 7311
F 02 6257 5320
W www.aaa.asn.au

MEMBER OF



National Transport Commission
Level 3/600 Bourke Street
Melbourne VIC 3000

30 August 2019

Dear National Transport Commission

RE: In-service safety for automated vehicles consultation regulation impact statement

The Australian Automobile Association (AAA) welcomes the opportunity to respond to the National Transport Commission (NTC) *In-service safety for automated vehicles* consultation regulation impact statement (the Consultation RIS).

The AAA is the peak organisation for Australia's motoring clubs and their eight million members. The AAA advances the interests of all road users across Australia to ensure land transport networks are safe and sustainable, and that the cost and access to transport is fair for all Australians.

The AAA supports the NTC's goal of developing a regulatory system to support the safe, commercial deployment of automated vehicles at all levels of automation. Automated vehicles are expected to provide significant safety and societal benefits; however, it is important that new advanced technologies are deployed with a full understanding of their operation and that potential risks are managed appropriately.

The AAA is principally focused on ensuring there is appropriate regulation in place to build consumer confidence in automated vehicle technology, without adding unnecessary regulatory costs – as these costs are ultimately borne by the consumer.

To date, the AAA has preferred to support a staged approach to regulating automated vehicles, given the significant uncertainty regarding the vehicle technology and international regulatory environments. A staged approach will ensure Australian regulations are sufficiently flexible to adapt to changing technologies and reflect the most contemporary international standards and conventions. It also ensures regulatory decisions are made with quantitative evidence.

To date, the AAA has supported decisions by the Transport and Infrastructure Council (TIC), including the decisions to:

1. Require the Automated Driving System Entity (ADSE) to submit a Statement of Compliance that demonstrates how it will address principles-based safety criteria.
2. Ensure the ADSE is legally in control of a vehicle when the ADS is operating.

These decisions are important first steps in developing a regulatory system that can build confidence and trust in automated vehicles.

AAA position on in-service safety regulations for automated vehicles

Consumers need to be confident that automated vehicles are not only safe at first supply, but that the ADS and its components continue to operate safely throughout the life of the vehicle.

Given automated vehicles will undertake the dynamic driving task, the ADSE will have a greater in-service role than manufacturers supplying vehicles today. It is clear that existing rules and regulations must adapt to ensure those new roles are clearly understood and enforceable.

Recent decisions by TIC will place greater in-service safety responsibility on the ADSE. For instance, the safety criteria that an ADSE will need to comply with at first supply places several in-service obligations on the ADSE. The NTC stated in 2018 that: "an ADSE would need to maintain ongoing compliance with its Statement of Compliance while its ADS is in-service. As such, the ADS must operate in compliance with its self-certification statements in-service, and not just make these statements at first supply."¹

Furthermore, the decision to ensure the ADSE is legally in control of the vehicle when the ADS is engaged will place obligations on the ADSE to ensure the ADS is operating safely while on the road.

In addition to the above decisions, the new Road Vehicle Standards Act will provide the Commonwealth with additional powers to enforce ADSE conduct in the future. The new powers include issuing infringement notices, varying or suspending an approval, entering into enforceable undertakings, seeking injunctions, obtaining civil penalty orders, revoking approvals, and commencing criminal prosecutions.

Despite these positive steps, the AAA believes there is still a risk that:

1. State and territory governments could introduce regulations in response to incidents with automated vehicles, creating inconsistent in-service regulations
2. Enforcement actions will likely continue to be reactive to incidents, which could reduce confidence in new automated vehicle technology
3. Consumers will continue to be required to invest significant time and resources to seek redress for suspected breaches of current laws, such as Australian Consumer Law.

The AAA therefore supports consideration of additional options to ensure in-service regulation for automated vehicles is nationally consistent, can proactively manage issues before they emerge and can build consumer confidence in automated vehicle technology.

¹ National Transport Commission, *Safety assurance for automated driving systems: decision regulation impact statement*, November 2018, p. 52

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AAA position on options presented in the consultation RIS and a general safety duty

The Consultation RIS finds that options 2 (b), 3 and 4 offer the most positive cost-benefit outcomes. However, the AAA notes that the analysis relies on a set of assumptions that are subject to change, which makes it challenging to support one particular option presented in the Consultation RIS.

In fact, the PwC cost benefit analysis clearly identifies the significant uncertainties in the assumptions, stating: "...there is too much uncertainty surrounding automated vehicles and the future world in which they will be regulated to have a significant degree of confidence in the NPV values themselves."²

Despite these challenges in the assumptions, the AAA believes a general safety duty could provide additional safeguards to consumers in circumstances where issues are not captured by existing regulation.

A general safety duty could support a flexible approach as technology and international regulations evolve, and potentially remove the risk of state and territories developing inconsistent regulations, if applied nationally. At this stage, a general safety duty is preferable to more prescriptive laws, given the evolving nature of automated vehicle technology.

The AAA continues to offer in-principle support for a general safety duty, provided that:

1. It is applied consistently nationally
2. There is a full understanding of how the scope of a general safety duty would operate in conjunction with other in-service state/territory laws, to ensure there are clearly defined lines of responsibilities between federal and state/territory enforcement agencies
3. It does not impact on other current enforcement resources, including the ability of the Commonwealth to enforce the first supply safety criteria
4. Compliance costs borne by the consumer are minimised

In addition, the AAA also believes the NTC should investigate how a general safety duty will impact on a consumer's choice of repairer. If further obligations are placed on an ADSE through a general safety duty, the ADSE may place strict servicing and repair requirements on the whole vehicle. This could increase servicing costs and limit choice of repairer.

Given the uncertainties with automated vehicle technology and regulations, the AAA believes that any new in-service safety regulations should be subject to a review after a period of operation. This would ensure the potential risks are still relevant and that the new regulations are effective and don't unnecessarily increase compliance costs.

² PwC, *Regulation of automated vehicles when in-service: Cost-benefit analysis*, July 2019, p. 3

AAA position on a general safety duty applied to ADSE executive offices and repairers

At this stage, the AAA does not believe an additional general safety duty should be extended to ADSE executive officers, as they will be bound by the general safety duty applied to the ADSE under corporations law.

The AAA would support a more thorough assessment of issues relating to vehicle modifications, maintenance and repair of automated vehicles and the options available to minimise risk in the future, before supporting a general safety duty for repairers. The Consultation RIS highlights some potential risks; however, further evidence or assessment of the issues is required in order to make a considered response.

The AAA does support the introduction of a mandatory agreement that requires vehicle manufacturers to share service and repair information with independent operators. A mandatory agreement is necessary to support competition in the service and repair sector and enable consumers to choose the repairer they believe will give them the best possible value. A mandatory agreement will also ensure all vehicle repairers have access to the most up to date technical information when servicing and repairing vehicles.

The AAA thanks the NTC for the opportunity to provide input into this important reform area.

Yours sincerely

Michael Bradley
Managing Director

