

27 August 2019

Attention: Automated Vehicle Team

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

By email: automatedvehicles@ntc.gov.au

Dear Automated Vehicle Team

Submission responding to the National Transport Commission's In-Service Safety for Automated Vehicles: Consultation Regulation Impact Statement

Introduction

The Law Institute of Victoria (the 'LIV') welcomes the opportunity to provide feedback to the National Transport Commission (the 'NTC') on its Consultation Regulation Impact Statement for *In-Service Safety for Automated Vehicles* (the 'RIS').

The LIV understands the RIS seeks a response to the 21 consultation questions outlined in the paper. The LIV will limit its response to the overarching benefits for introducing proactive measures and for having a transparent and national regulator for in-service safety.

We propose to draw your attention to our paramount concern prior to providing broader feedback in relation to the consultation questions.

Inherent need for prioritisation of safety and protection

As illustrated in the LIV's response to the NTC's *RIS Consultation Regulation Impact Statement: Safety Assurance for Automated Driving Systems* dated May 2018, the LIV's paramount concern is that the endorsed option in the current RIS prioritises safety and offers the highest level of protection for consumers and road users, in particular ensuring the preservation of the full spectrum of insurance rights.

Section 3.2 & 3.3 of the RIS

The LIV notes section 3.2 and 3.3 of the RIS which outlines the risk of market failure to deliver a socially desirable level of safety risk management. The LIV submits that the broader social and safety costs must remain the overriding principle in design and implementation of regulations on after-market services for automated vehicles, and that any entities involved in in-service safety need to be captured by any new regulations or legislation.

The LIV submits that any prescriptive rules should be considered carefully as any regulations on ADSEs and other parties require the flexibility and elasticity to evolve as technology advances. The LIV is concerned that too much rigidity in the system will discourage innovation and permit loopholes, and consequently it is possible that we may create further market failure when it comes to safe technology in automated vehicles.

The LIV submits that it is imperative that an automated vehicle is not just safe on the day it is released to market, but for every day that it is in service until the end of its life.

The options outlined by the NTC

- Option 1: Current approach (the baseline option) – does not introduce any new safety duties or obligations for in-service safety of automated vehicles.
- Option 2: introduces new in-service safety duties which are enforced by state and territory regulators under state and territory laws based on a national model law.
 - Option 2a: includes prescriptive safety duties; or
 - Option 2b: includes a general safety duty.
- Option 3: introduces new in-service general safety duties enforced by a single national regulator through Commonwealth law.
- Option 4: introduces new in-service general safety duties enforced by a single national regulator through state or territory applied law.

The preferred option:

The NTC has concluded that a general safety duty should apply to both ADSEs and their executive officers, as well as potential repairers (including the spare part supply chain) to ensure the safe operation of ADS. Furthermore, the NTC has preferred a national regulator over any state or territory based compliance.

The LIV refers to its submission to the NTC's *Consultation Regulation Impact Statement: Safety Assurance for Automated Driving Systems* dated May 2018 whereby the LIV submits that in considering which regulatory option would be preferable, the paramount criteria should be:

- Safety, including ongoing safety over the lifespan of the vehicle as well as certainty about responsibility for testing, validating, and managing safety risks; and
- Accountability and probity, including transparency of decision making and the existence of an entity to be legally liable for the automated driving system.

In accordance with these paramount criteria the LIV supports options which require a general safety duty for any entity responsible for maintenance or repair of an automated vehicle with a national regulator for consistency, namely option 3 or option 4.

1. Safety

The LIV's position, as in its previous submissions, is that the safety of road users is paramount in considering any measures for regulating automated vehicles.

As noted by the LIV in its previous submissions, there are future risks that may arise as a result of a failure to closely regulate ASDEs to ensure optimal safety outcomes. The LIV submits that the inclusion of a general safety duty should ensure that ADSEs and other entities are always obligated and responsible to guarantee a high base level safety standard for automated vehicles. Further, defining which entities are encompassed within the regulations should be as broad as necessary to ensure that the highest standard of safety is maintained.

Of significance to the LIV is that the general safety duty captures new technology for in-service safety as it comes to market and provides a proactive approach to compliance of automated vehicles from importation to vehicle disposal.

In accordance with transparent decision making and safety, the LIV submits that that a nationally uniform approach (by way of a single national regulator) is important for not only minimizing safety risks but ensuring consistency in compliance and regulation for the safe manufacturing and service of automated vehicles during its lifetime.

2. Accountability

Consistent with previous submissions, the LIV supports the position that state-based compensation schemes such as the Transport Accident Commission in Victoria should maintain their status as the statutory insurer for personal injuries suffered due to transport accidents (whether caused by an ADS or human driver).

Thus, the LIV submits that there must be rights for individuals to seek compensation if the regulations are breached by parties who are responsible for in-service safety of an automated vehicle. Further to that, those rights must ensure that individuals are not "worse off" financially or procedurally as a result of new in-service safety regulations. The procedural steps to access compensation must be focused

on simplifying the system for injured parties and promote transparency and certainty in accessing compensation.

Lastly, as with previous submissions, the LIV re-iterates the requirement that an ADSE must provide evidence that it has a corporate presence in Australia and that it fulfils minimum financial requirements. The LIV submits that any corporate presence in Australia and financial accountability must be an *ongoing* requirement for ADSEs, ensuring that the rights of consumers and road users are protected throughout the life of the vehicle with a right of recourse against a legally liable and financially viable entity in Australia.

The LIV thanks the NTC for the opportunity to provide submissions in respect of this consultation.

Please contact me or Irene Chrisafis at ichrisafis@liv.asn.au or by telephone on +61 3 9607 9386 or Michaela Kennedy at mkenedy@liv.asn.au or by telephone on +61 3 9607 9315 if you wish to discuss any aspect of this letter further.

Yours sincerely,



Stuart Webb
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