



AUSTRALIAN
AUTOMOTIVE
DEALER
ASSOCIATION

SUBMISSION TO THE NATIONAL TRANSPORT COMMISSION

IN-SERVICE SAFETY FOR AUTOMATED VEHICLES

26 AUGUST 2019



CONTENT

Section 1: Foreword	3
Section 2: Background	4
Section 3: Issues for Discussion	5
Section 4: Answers to Questions	8
Section 5: Conclusion	12

FOREWORD

The Australian Automotive Dealer Association (AADA) is pleased to lodge this submission to the National Transport Commission (NTC) on its Regulation Impact Statement for in-service safety for automated vehicles.

The AADA supports the process of getting safety and liability protocols in place prior to the effective introduction of vehicles with ADS levels 3 to 5. However, our industry intelligence suggests that the timeframes available are actually quite short, and that such vehicles are likely to be introduced into the Australian market within 12 to 18 months. We would further note that this is potentially before the recently delayed implementation of the Road Vehicle Standards Act. Nevertheless, we remain ready to work with Government and other stakeholders to ensure that the Australian public is given full access to these exciting technologies when they become commercially available.



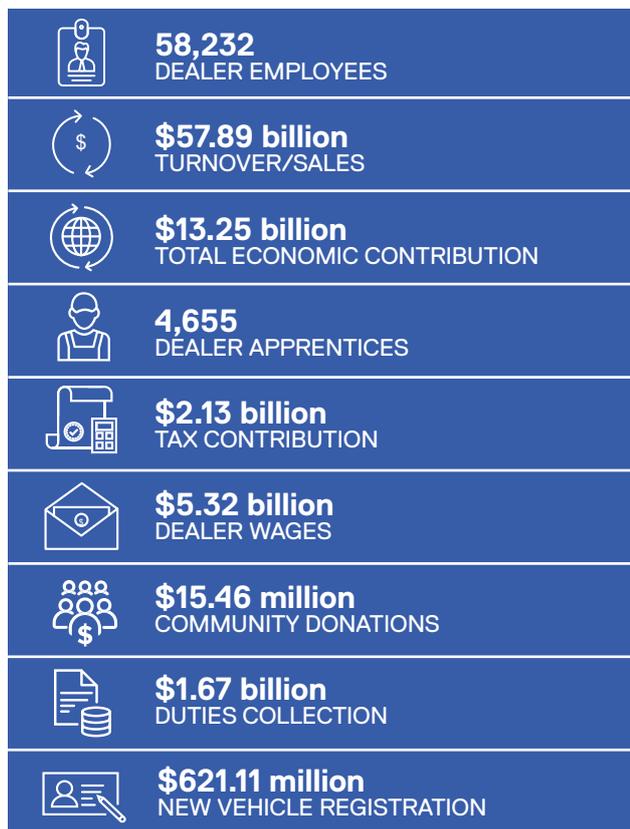
James Voortman
Chief Executive Officer



BACKGROUND

The AADA is the peak industry advocacy body exclusively representing franchised new car Dealers in Australia. Our members total around 1,500 franchised new car Dealers that operate more than 3,000 new vehicle outlets.

The automotive retail sector in Australia is one of the most competitive in the world. Around 68 brands offer more than 380 models for sale in a relatively small market of about 1.2 million units annually (less than 1.5 per cent of global demand).



ISSUES FOR DISCUSSION

Concessional Path of Entry for Vehicles onto the Register of Approved Vehicles

The AADA understands that the decision to make the Automated Driving System Entity (ADSE) the entity that will certify the ADS as able to safely perform the dynamic driving task was made at ministerial level. Under these arrangements, the vehicle Manufacturer that holds Type Approval to distribute the vehicle in Australia is determined to be the ADSE for that vehicle.

Type Approval is the path by which the bulk of passenger vehicles are imported into Australia. The remainder (about two per cent) are brought in under the Concessional Path. Under the Road Vehicles Standards Act (RVSA) the Specialist and Enthusiast Vehicle Scheme (SEVS) outlines several criteria for the importation of such vehicles. Such importations can, and often are, transacted by private individuals or independent importers. It is unclear how such individuals could be accommodated within the ADSE construct or be able to certify to the capabilities of the ADS-equipped vehicle being imported.

Options

The AADA concurs that, of the options presented for discussion in the RIS, OPTION 3 (national legislator, with Commonwealth legislation) presents the most compelling case.

General Safety Duty vs Prescriptive Rules

The AADA believes that general safety duties are appropriate for ensuring the safety of the ADS (hardware and software) over the lifetime of the system, while prescriptive rules are appropriate for managing the operations of the ADS (e.g. road rules).

We remain, however, uncertain how the general safety duty would be deployed and kept meaningful when vehicle Manufacturers and their distributors may enter and then leave the Australian vehicle market, amalgamate, or even disappear altogether over the expected lifespan of any ADS.

RECOMMENDATION 1

That the ADSE arrangements be reconsidered to accommodate the private importation of vehicles into Australia as authorised by the RVSA.

Section 3

Modifiers

Section 4.3.8 of the RIS highlights the role of modifiers as being either repairers or registered vehicle owner. The AADA would note the role that third-party software developers would have in facilitating such modifications to achieve unique and potentially dangerous operational parameters. Such apps already exist for current vehicles such as the [VCDF tool](#) that lets the user change critical parameters in their vehicle. It is incredibly powerful and dangerous in the wrong hands because it allows diagnostic and coding of the system.

Repairers

The AADA represents new car Dealers that almost invariably also operate maintenance and repair facilities for the vehicles they sell. As such they are deemed to have a major influence on the in-service safety of ADS-equipped vehicles.

Repairers would be expected to be subject to a general safety duty but are likely to be constrained on their actions by the directions given by the registered vehicle owner and, in the case of franchised operations such as new car Dealers, by their franchisors.

RECOMMENDATION 2

That the providers and distributors of any software able to modify ADS parameters are brought into the regulatory scheme, particularly if the software is available to the wider public and not just licensed repairers.

RECOMMENDATION 3

That effective limits be placed on the general safety duty applicable to repairers.

Section 3

ADSE Executive Officers

The RIS document makes it clear that the purpose of including ADSE Executive Officers as separate agents in the ADS environment is to be able to sheet home criminal responsibility to specific individuals. The document emphasises this by using the Volkswagen diesel scandal as an example, where senior executives of the company faced criminal prosecution for their decisions in that regard.

It is unclear whether the 'ADSE Executive Officers' are meant to be such officers in Australia, or those in the overseas head office. If the former, these officers are merely local administrators with little or no influence on major policy or technological decisions made in the company headquarters. If the latter, these officers are clearly beyond the jurisdiction of the legislation. Furthermore, it is unclear whether the ADSE are the officers at the time the vehicle was manufactured, or at the time that the relevant incident came to light, which could be many years after manufacture.

Overall, the AADA believes that, while the intention is admirable, any attempt to apportion criminal responsibility to an Executive Officer of a major overseas vehicle Manufacturer is likely to be ineffective.

Jurisdictional Issues – Remote Drivers

The RIS highlights the potential role that remote drivers may have as either fallback drivers, or operators for ADS at level 3 or 4. The AADA recommends that legislation should seek to ensure that such remote drivers can only operate from within the Australian jurisdiction, to ensure that they remain clearly subject to the relevant road rules. Further, given that Road Rules are still a State responsibility and are not uniform across Australia, the legislation should specify whether the remote driver is subject to the Road Rules at their physical location, or of those where the ADS is physically located.

ANSWERS TO QUESTIONS

- 1. To what extent has the consultation RIS fully and accurately described the problem to be addressed, including the in-service safety risks? Please provide detailed reasoning for your answer.**

The RIS has failed to consider the concessional path of entry for vehicles into Australia, which puts into question the identity of the ADSE and safeguards prescribed for that entity. This is important because some two per cent of vehicles are currently imported through the concessional path, and this is likely to increase as the RVSA makes that entry path clearer and easier to use.

- 2. Have we correctly identified the parties with an influence on the in-service safety of automated vehicles and accurately described their role? If you identify additional parties, please explain what their role is.**

ADSE Executive Officers. It is unclear whether this refers to the company headquarters or to the Australian subsidiary. It is further unclear what the circumstances would be if the company closes its Australian operations and what residual responsibility would remain.

- 3. Have we accurately assessed each party's influence on the in-service safety of automated vehicles? If not, please provide details.**

New car Dealers are almost universally also repairers who remain responsible for service and maintenance of the vehicles

they sell. It is therefore not useful to separate the two roles. Their joint influence is rated as 'major'.

Modifiers need to be clarified. The registered owner may carry out the modification, but this is made possible by third-party tool or software manufacturers and distributors.

- 4. Have we accurately described the regulation that already applies to relevant parties that would help ensure the in-service safety of automated vehicles?**

No. For Dealers major questions remain about the regulation and management of data arising from the operation of ADS, the ownership and sharing of that data, and what access will be provided to it. The AADA understands that Treasury is now seeking a stand-alone legislative solution to the sharing of maintenance and repair information. It is unclear whether ADS-derived data will be included in that arrangement.

- 5. Do you think there are any new risks posed by second-hand ADS components, after-market modifications or the transfer of ownership of automated vehicles, which may not be adequately addressed by existing regulation designed for conventional vehicles?**

Yes. Aftermarket modification is already an issue for non-ADS equipped vehicles. Current aftermarket tools and software

Section 4

can already change engine or braking performance. Similar software could conceivably change how an ADS behaves in the event of an accident, with potentially fatal circumstances for bystanders or other road users.

6. Do you think the parties with an influence on in-service safety are sufficiently covered by Australia’s current legal frameworks?

Current relevant legal frameworks are limited to the Australian jurisdiction. Any attempt to bring ADSE Executive Officers into the liability regime would require an attempt at global jurisdiction.

7. Do you think that a general safety duty to ensure the safe operation of the ADS ‘as far as reasonably practicable’ is appropriate to address the safety risks?

Yes, with the understanding that the extent of ‘reasonably practicable’ will be shaped by case law.

8. If a general safety duty were introduced, which parties should it apply to?

It is the view of the AADA that a general safety duty should be applied solely to entities involving in supplying, repairing, or modifying the hardware or software that make up the ADS.

9. If a general safety duty were introduced, should it apply on public and private land (such as residential driveways)?

It should apply to both public and private land but limited to environments in which the ADS is expected to operate safely. In other words, it should apply to, say, roads, but not swamps.

10. Should people injured by breaches of the general safety duty have a cause of action, or should the ability to enforce a general safety duty be limited to a regulator?

The AADA understands that it is the intention of the Government to cover accidents involving ADS-equipped vehicles under the Compulsory Third Party Insurance. In such circumstances, it would be proper for the regulator to be the sole enforcer of a general safety duty.

11. Do you think there should be specific driving rules for ADSs like the Australian Road Rules, or would it be enough to simply require them to ‘drive safely’?

Road Rules are designed to deal with human capabilities such as reaction times and attention spans. ADS-equipped vehicles – in environments where they are not likely to encounter human drivers – should be simply required to drive safely.

Section 4

12. What approach to regulating the dynamic driving task for ADSs most efficiently achieves safe outcomes? Please provide reasons.

N/A.

13. What functions and powers does the regulator need to effectively manage in-service safety? Would these differ depending on whether the regulator is enforcing a general safety duty, or only prescriptive duties?

The AADA believes that the regulator should have powers to force specific ADS-equipped vehicles off the road, to mandate recalls, updates or repairs, and to enforce compliance with driving rules and constraints.

14. Have we accurately described the scope of the regulatory task? Please provide data and evidence where possible to support your answer.

N/A.

15. Have we accurately captured the benefits of the regulator being:

a) a government body or an independent body?

b) a national body or state and territory level bodies?

c) an existing body or a new body?

N/A.

16. What are your initial views on how the regulator should be funded?

The AADA is of a view that the regulator should be funded through levies on the sale and operation of ADS.

17. Have we adequately and accurately captured the key legislative implementation models for in-service safety of automated vehicles?

N/A.

18. Do you think there are any transitional or constitutional issues that could arise when Australia establishes a national law for automated vehicles? If so, please explain what the issues are, and if they differ depending on the legislative implementation model used.

N/A.

19. Have we accurately described how each option could work, as well as the advantages and disadvantages of each option?

N/A.

Section 4

- 20. Which option most effectively addresses the problem statement? Please consider your answer in conjunction with the PwC cost–benefit analysis.**

The AADA recommends that OPTION 3 (single regulator under Commonwealth legislation) as the most likely to result in a secure, coherent and effective take up of ADS-equipped vehicles into the Australian market.

- 21. Is there another option, or combination of options, which could more effectively address the problem statement? In particular, please consider whether there is a preferable combination of the elements of each option (governance arrangements, duties, legislative implementation).**

N/A.



CONCLUSION

The arrival of truly autonomous vehicles onto Australia's roads is a challenge across a wide number of fronts. It requires a fundamental rethinking of many aspects of the way we do things in this country. Like the growth of the internet, its future effects likely cannot be even glimpsed yet.

The AADA commends the work being undertaken to get the legislative framework in place as a matter of urgency. Whatever shape that legislative framework eventually takes, we hope that it will be both flexible and robust to absorb the pressures that unexpected and rapid technological advances will place upon it.

We would be happy to meet with you to discuss our submission. If you require further information or clarification in respect of any matters raised, please do not hesitate to contact a member of the AADA team.

James Voortman

Chief Executive Officer

M: 0452 535 696

E: jvoortman@aada.asn.au

Brian Savage

Chief Operations Officer

M: 0418 377 594

E: bsavage@aada.asn.au

Alexander Tewes

Policy Manager

M: 0418 425 820

E: atewes@aada.asn.au



AUSTRALIAN
AUTOMOTIVE
DEALER
ASSOCIATION

CANBERRA OFFICE

Level 3, 10 National Circuit, Barton ACT 2600
PO Box 4409 Kingston ACT 2604

MELBOURNE OFFICE

Level 3, Suite 12, 150 Albert Road,
South Melbourne VIC 3205

E info@aada.asn.au

aada.asn.au