VACC Submission

In-service safety for automated vehicles

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About VACC

The Victorian Automobile Chamber of Commerce (VACC) is Victoria's peak automotive industry association, representing the interests of more than 5,500 members in over 20 retail automotive sectors that employ over 50,000 Victorians.

VACC members range from new and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery), repairers (mechanical, electrical, body and repair specialists, i.e. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture), and automotive dismantlers and recyclers.

The VACC is also an active member of the Motor Trades Association of Australia (MTAA) and contributes significantly to the national policy debate through Australia's peak national automotive association.

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The Victorian Automobile Chamber of Commerce (VACC) welcomes the opportunity to comment on the consultation regulation impact statement (RIS) prepared by the National Transport Commission (NTC) and provides the following feedback to the questions raised in the RIS.

Q1. 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.

As far as is practicable, VACC believes that the consultation RIS identifies reasonably well the in-service safety risks, regulatory issues and responsibilities associated with the deployment of automated vehicles into Australia.

Whilst there are many unknowns and assumptions surrounding the impact and timing of automated vehicles, as illustrated in the cost-benefit analysis conducted by PwC, the consultation RIS captures in the main the key problems, stakeholders and their prospective roles regarding in-service safety. The RIS also identifies potential regulatory models and their merits, along with legislative issues that arise with the introduction of automated vehicles.

Overall, VACC believes that the deployment of automated vehicles in Australia would be best served and facilitated by a nationally consistent regulatory approach. This will ensure that ADSE's have one set of criteria to conform to, including the harmonisation of testing and maintenance requirements for in-service safety aspects of automated vehicles.

A nationally inconsistent regulatory approach will impose unnecessary costs on ADSE's to comply with standards, and this may act as a disincentive to sell their vehicles into the Australian market, which is a very small market in global terms. Also, having inconsistent or overlapping regulation between states and territories will result in unclear and uncertain safety obligations on vehicle repairers. A nationally consistent regulatory approach would also benefit licensed motor car traders (LMCTs) by ensuring a minimal impact to their compliance and obligations under the Motor Car Traders Act.

Q2. 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.

VACC believes that for the most part, the NTC has accurately identified the parties with an influence on the in-service safety of automated vehicles, as displayed in Figure 8 of the consultation RIS. There are however some additional parties that may play a key role and therefore warrant consideration. These include the following:

- ***Auction houses*** – a large proportion of motor vehicle sales are now conducted by auction houses, often electronically on-line. Unlike sales through LMCTs, sales through auction houses are largely unregulated and are exempt from the protections of the Australian Consumer Law. Auction houses can have an influence as they may supply vehicles with potential faults to consumers who may or may not be aware that a fault exists within the ADS, and therefore can pose a significant safety risk

- ***Vehicle Identification Validation Inspectors*** may also have an influence on the in-service safety of vehicles as they are required to check that a damaged vehicle has been repaired correctly and is safe for road use. They also confirm the identity of a vehicle and any parts used to repair it. In Victoria, this scheme is administered by VicRoads

- ***Vehicle Assessment Signatory Scheme (VASS)*** – the VASS is a scheme for the certification of modified, imported and individually constructed vehicles in Victoria. A vehicle modification beyond the VicRoads guidelines requires a VASS approval certificate, which can only be issued by an approved VASS signatory. VASS aims to ensure all modified, imported and individually constructed vehicles meet standards for registration in Victoria

Finally, the ***other road users*** category listed in Figure 8 of the RIS should also include alternative forms of mobility such as scooters (including mobility scooters used by persons with a disability) other motorized two-wheeled transport as well as industrial and military vehicles.

Q3. Have we accurately assessed each party's influence on the in-service safety of automated vehicles? If not, please provide details.

For the most part, the RIS has accurately assessed each party's influence on the in-service safety of automated vehicles. VACC however, disagrees with the level of influence allocated to certain parties in the RIS.

In particular, the role of second-hand dealers as having a 'Minor Influence' in the consultation RIS should be changed to that of a 'Moderate Influence' as second-hand dealers have obligations under the Motor Car Traders Act to ensure that vehicles are sold in a safe condition. Similarly, vehicle inspectors that are also considered 'minor influencers' in the RIS should be classed as 'Major-Moderate' as they have a specific duty to ensure the safe operation of the ADS in a vehicle.

Q4. Have we accurately described the regulation that already applies to relevant parties that would help ensure the in-service safety of automated vehicles?

In the main yes, however there are two central pieces of regulation that are have been omitted. These include the Motor Car Traders Act, and Motor Car Traders Regulations, both of which apply to new and second-hand motor vehicle dealers in relation to the in-service safety of automated vehicles sold by these parties.

Q5. 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?

There are definitely risks associated with second-hand ADS components, after-market modifications and the transfer of ownership of automated vehicles, that may not be adequately addressed by existing regulations.

Second hand components require adequate identification and testing to ensure that they are fit for purpose and are in good working order. In addition, these components may also require software updates either pre or post repair. After-market modifications can affect the operation of the ADS by placing components out of calibration, thereby causing a safety risk.

In regard to the transfer of ownership of automated vehicles, there is also the risk of an incorrect data transfer and/or fault notification arising from the vehicle manufacturer or repairer of choice, which can also impact on vehicle safety. These issues may require a strengthening of existing regulation to mitigate such risks.

Q6. Do you think the parties with an influence on in-service safety are sufficiently covered by Australia's current legal frameworks?

At present, most automotive trades in Australia are unlicensed, except in New South Wales and Western Australia which have some limited licensing requirements. As automated vehicles become increasingly integrated within private and government fleets, there will be a need for the licensing of automotive technicians working on ADS's as the consequence of having personnel without the necessary skills and equipment working on automated vehicles will place the safety of the vehicle owner and the general public at risk. Repairers and vehicle inspectors will require upskilling to ensure they can safely and correctly repair, modify, or update system software within automated vehicles. There may also be a need for an industry standard developed by industry via Standards Australia, to ensure consistency throughout Australia.

This also raises the issue of strengthening the legal frameworks by introducing criminal and civil liabilities for repairers and persons not adequately trained or unlicensed to perform repairs on ADS's, in order to ensure in-service safety.

The *New Car Market Study Report* released by the ACCC in December 2017, included a recommendation that a mandatory scheme be introduced compelling car manufacturers to share technical information with independent repairers. VACC supports the ACCC recommendation that there should be a legal obligation on vehicle manufacturers to make available all repair information, maintenance information, software downloads, and relevant training on these for independent repairers. This would ensure vehicles are serviced and maintained in accordance with manufacturers specifications and thus protect the safety of the public.

A further legal issue relates to the use or extension of the *Consumer Data Right* to automotive products and services. Extending the Consumer Data Right as such would allow individuals and businesses to access the plethora of vehicle data relating to them held by businesses. Vehicle owners would also be able to choose which party receives their vehicle data.

The ability to utilise data stored within a vehicle opens a new frontier for innovation, collaboration and unprecedented efficiency gains for workshop owners. Currently, telematics technology is causing aftermarket service providers significant uncertainty as the lack of regulatory intervention has led to unfair business practices and an un-level playing field regarding in-vehicle data access. Vehicle manufacturers claim they have the exclusive right to the telematics platform and the data generated by vehicle owners.

Vehicle manufacturers are utilising vehicle connectivity to offer differentiated service offerings, to the detriment of independent repairers. These service offerings include:

- Breakdown services that call for roadside assistance or recommend service locations, which are becoming a legal standard in many countries
- Predictive and planned maintenance – maintenance schedules can now be planned in line with the wear or usage of parts or modules of the vehicle, thus providing consumers with more safety and fewer breakdowns
- New digital services that can be purchased on demand by customers
- Upstreaming and remote issue resolution – vehicle issues can now be resolved using digital tools and over the air data exchange. This means that physical visits to repair shops are no longer required
- Spare parts can be delivered just in time

- Remote Diagnostics Systems – data gathered in the vehicle is used to diagnose engine problems, improve the maintenance of the vehicle, boost fuel efficiency and reduce costs.

The breadth of these issues illustrates the fact that there is a complex and disjointed network of parties responsible for in-service safety, and that the current legal framework requires strengthening in many areas to ensure all relevant parties are appropriately covered.

Q7. Do you think that a general safety duty to ensure the safe operation of the ADS 'so far as reasonably practicable' is appropriate to address the safety risks?

Whilst a general safety duty should be applied to relevant parties in the first instance, this on its own this may be insufficient in meeting community expectations regarding addressing the safety risks posed by automated vehicles. Supplementation of any general safety duty by additional prescriptive rules surrounding road use and the on-road behavior of ADS's may achieve better safety and regulatory outcomes to the satisfaction of the public.

A general safety duty however, is important in that it provides the flexibility required to capture a wide range of risks including new and emerging risks and allows for innovation and parties to adapt to change in an industry which is constantly evolving. It also enables parties to tailor the most cost-effective measures toward their own business.

Q8. If a general safety duty were introduced, which parties should it apply to?

A general safety duty should be applied to all major and moderate influencers, as identified in the consultation RIS, including repairers. A general safety duty would also need to be supported by criminal sanctions to help eliminate any unreasonable risks to public safety caused by the acts or omissions of these parties.

Q9. If a general safety duty were introduced, should it apply on public and private land (such as residential driveways)?

Yes, this would eliminate backyard operators who may lack the skills and equipment to perform recalibration of ADS's. A quick search on YouTube will result in several tutorials by back yard operators attempting to perform ADAS calibrations on modern day vehicles using makeshift target boards. The potential risk to humans is substantial, and under current laws it is unclear who is liable if something was to go wrong. Workplace Health and Safety (WHS) laws are not applicable to private land such as residential, so it may be difficult to prosecute individuals under negligence law.

If a vehicle performs a maneuver and subsequently causes an injury to a person or damage to property while on private land, the in-service regulator should be made aware of these types of incidents so that they can be investigated thoroughly.

Australia's consumer protection laws provide an avenue for injured persons to seek compensation for any breaches in safety standards. Section 138 of the ACL provides that a manufacturer will be liable, if because of their defective goods, a person suffers injury or death. Whilst this legislation offers protection against a manufacturer for safety defects, it does not deal with situations where a defect is caused by an unqualified person attempting to rectify or modify a vehicle, not realising the potential to cause a safety risk.

Q10. 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?

Ideally, both options should be available to affected individuals. Given the high cost of litigation, there should be affordable avenues for injured parties to seek legal redress in such matters.

Q11. Do you think there should be specific driving rules for ADSs like the Australian Road Rules, or would it be sufficient to simply require them to 'drive safely'?

Prescriptive driving rules may be required for ADS's, however this is an issue requiring much further investigation and analysis.

Q12. What approach to regulating the dynamic driving task for ADSs most efficiently achieves safe outcomes? Please provide reasons.

At a minimum, road safety could be enhanced by improving the consistency of road rules and vehicle standards nationally, through the Road Vehicle Safety Standards Act.

Q13. 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 functions and powers of the regulator to effectively manage in-service safety should include but not necessarily be limited to the following:

- Compliance
- Enforcement
- Education and training
- Cybersecurity
- Data recording and sharing

Q14. Have we accurately described the scope of the regulatory task? Please provide data and evidence where possible to support your answer.

The consultation RIS provides a reasonable summary of the regulatory task, however further investigation and analysis is required.

Q15. 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?

Yes, to all the above.

Q16. What are your initial views on how the regulator should be funded?

Unable to comment.

Q17. Have we adequately and accurately captured the key legislative implementation models for in-service safety of automated vehicles?

Yes.

Q18. 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.

Unable to comment.

Q19. Have we accurately described how each option could work, as well as the advantages and disadvantages of each option?

Yes.

Q20. Which option most effectively addresses the problem statement? Please consider your answer in conjunction with the PwC cost–benefit analysis.

Based on the four proposed options outlined in the RIS, Options 3 and 4 would be the preferred options for in-service safety of automated vehicles by the automotive service and repair industry, as most of the risks and inconsistencies associated with having multiple regulators are addressed.

Q21. 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)

Unable to comment.