

Submission to NTC In-service Safety RIS

The Australian Government Department of Infrastructure, Transport, Cities and Regional Development (the Department) welcomes the opportunity to comment on the *In-service Safety for Automated Vehicles Consultation Regulation Impact Statement (RIS)*. The Department thanks the National Transport Commission (NTC) for its work on this important project.

The Department consulted Australian Government departments including: the Treasury, the Department of Home Affairs, the Department of the Prime Minister and Cabinet and the Attorney General's Department. This submission builds on the Department's submission to the NTC's 2018 *Safety Assurance for Automated Driving Systems Regulation Impact Statement* and focuses on the following issues in the 2019 RIS:

- 1) the problem statement;
- 2) a mix of general and prescriptive duties;
- 3) scope of the proposed general safety duty;
- 4) Department's support for a nationally consistent approach;
- 5) staged approach to implementing regulatory reforms.

The Department agrees with the RIS's **problem statement**, that is, that the deployment of vehicles equipped with automated driving systems (ADSs) will introduce new in-service safety risks compared to traditional vehicles. Existing in-service safety mechanisms to manage conventional vehicles are not fit for purpose for ADSs. New and/or revised nationally consistent regulatory arrangements are needed to support the deployment of automated vehicles and realise their benefits.

We support the RIS's conclusion that "the regulatory framework could incorporate a **general safety duty**, together with some prescriptive rules" and performance-based regulation where appropriate. A general duty could be used by governments to support high-level objectives, such as improving the safety of vehicles equipped with an ADS. A general duties approach would need to be supported by prescriptive approaches, such as regulatory guidance materials for industry or prescriptive laws that could clarify and operate in conjunction with an overarching general duty. For example, prescriptive rules about on-road behaviour of an ADS may be appropriate. Prescriptive approaches could:

- 1) provide certainty to industry about the standard expected by governments;
- 2) alleviate community concerns about the safety and predictability of ADSs by setting reasonable expectations; and
- 3) avoid unintended or perverse outcomes.

The Department agrees in principle that the general safety duty should apply to the Automated Driving System Entity (ADSE). However, further analysis is required on a number of practical aspects, including whether the duty should extend to ADSE's executive officers or repairers.

The RIS advocates for extending personal criminal liability to executive officers. The RIS argues that such officers: could mislead regulators; have the potential to compromise the in-service safety of an ADS through management decision-making or by failing to exercise due diligence; and may not be appropriately incentivised by corporate sanctions to change their behaviour.

While these factors form part of establishing a case for government action,¹ a range of regulatory and non-regulatory options should be considered to address the likely in-service risks of ADS deployment. In particular, as a number of decisions about the safety of ADSs provided in Australia will likely be made by executive officers outside of Australia, it is unclear whether extending criminal liability to individuals in Australia would effectively deter corporate behaviour in other countries.

¹ Principle 1, *COAG Principles for Best-Practice Regulation*, p 21 of RIS.

We suggest further analysis is needed, including whether the requirements of COAG Guidelines for imposing personal liability on corporate officers would be satisfied;² the likely scope of proposed criminal offences; whether any reasonable defences would be appropriate and whether any non-regulatory approaches could be used to promote safety amongst corporate executives; and whether there are sufficient laws in place which deal with some of the conduct mentioned above. For example, it may already be an offence for an executive officer to provide false or misleading information to a regulator when seeking approval to supply an ADS in Australia (see Part 2, Division 9 of the *Road Vehicle Standards Act 2019*).

The RIS also suggests that further obligations and offence provisions for repairers may be justified because repairers potentially influence the safety of ADSs while conducting repairs. Further analysis is needed to examine how existing state-based schemes operate, including for motor vehicle repair licences, and whether these frameworks could be transitioned in a nationally consistent manner to address any in-service risks of ADS repairs. This work should consider the likely deployment timeframes for ADSs, consumer uptake and respective warranty periods of ADSs and ADS components.

The Department's position is that a **nationally consistent approach** to in-service safety is required and that the options with the highest net benefit, that is, Options 3 (new in-service safety duties enforced by a single national regulator through Commonwealth law) and 4 (new in-service safety duties enforced by a single national regulator through state or territory applied law), are the most viable way to achieve this.

How ADSs will evolve and be adopted is uncertain. Because of this, the Department advocates a **staged approach** to implementing new and/or revised in-service safety regulations and institutions that is in step with, and can adapt to: the pace of technological change; rates and nature of ADS uptake; and international regulatory approaches. We suggest the NTC develop an implementation road map that is informed by:

- 1) mapping the existing in-service safety regulations and institutional arrangements for vehicles without an ADS;
- 2) ways that these existing regulatory arrangements may need to adapt in the short to medium term;
- 3) identification of “pain points” and/or early, minimum steps regulators should take to prepare for large scale trials or early deployments;
- 4) consideration of how regulatory arrangements for vehicles without an ADS would sit with new regulatory arrangements for vehicles with an ADS;
- 5) analysis of different deployment models, such as mass penetration of privately owned ADSs, ride-share and fleet-based models; and
- 6) the related pieces of work NTC is leading, including on motor accident injury insurance, government access to cooperative-intelligent transport systems and automated vehicle data, and changing driving laws to support automated vehicles.

² Council of Australian Governments, 2012, *Personal Liability for Corporate Fault – Guidelines for applying the COAG Principles*.