

Contact officer: Neville Matthew  
Contact phone: [REDACTED]



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

23 Marcus Clarke Street  
Canberra ACT 2601  
GPO Box 3131  
Canberra ACT 2601  
tel: (02) 6243 1111  
www.accc.gov.au

Sent by email: [automatedvehicles@ntc.gov.au](mailto:automatedvehicles@ntc.gov.au)

## **ACCC submission in response to the National Transport Commission discussion paper on the regulatory framework for automated vehicles in Australia**

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to respond to the latest discussion paper as the National Transport Commission (NTC) progresses its consultation on the regulatory framework for automated vehicles and the new national safety law for automated vehicles (the Automated Vehicle Safety Law (AVSL)). We also refer to our previous submissions to the NTC in relation to automated vehicles.

### **Overview**

The ACCC supports a robust, nationally consistent and integrated regulatory framework for automated vehicles that applies over the life cycle of an automated driving system (ADS). The new regulatory framework should implement best practice in regulatory design, including drawing on the expertise of existing specialist regulators, and avoiding duplication with existing regulatory regimes.

While some steps toward best practice have been taken, the ACCC is concerned that the proposed framework still presents regulatory gaps and design elements which are likely to have significantly adverse implications for consumers. We urge the NTC to address these concerns by:

- equipping the in-service regulator with recall powers to ensure it has the full range of compliance and enforcement powers to address safety issues for automated vehicles
- providing a statutory cause of action for injured persons to avail themselves of redress against an Automated Driving System Entity (ADSE) for breaches of the general safety duty, and
- having adequate and specific consumer compensation mechanisms where an ADSE exits the market and the ADS is no longer supported.

### **Regulatory gaps and fragmentation**

There are a number of regulatory gaps in the proposed framework. We note the Department of Infrastructure, Transport, Regional Development and Communications (the Department of Infrastructure) will be responsible for regulating automated vehicles at first-supply and will have recall powers for vehicles that enter the market through the first-supply process. The in-service regulator will be responsible for approving aftermarket devices and in-service modifications for automated vehicles. However, neither the Department of Infrastructure nor the in-service regulator is being given recall powers to address safety issues beyond first supply.

Under the proposed framework, this creates regulatory gaps as the following are not subject to recall obligations if found to be unsafe:

- aftermarket devices installed to automate a conventional vehicle
- modifications to enhance or alter automated features of an in-service automated vehicle, and
- vehicles supplied with a dormant ADS that is approved and activated after the first-supply process.

Already, the regulation of automated vehicles is divided between two specialist regulators – the Department of Infrastructure and the in-service regulator. Yet, it is also contemplated that there will be roles for other regulators, including the ACCC under the ACL. We understand that the NTC does not intend to recommend a recall power for the in-service regulator, at least until the Department of Infrastructure and the ACCC have looked at expanding the recall powers and coverage of the *Road Vehicle Standards Act 2018* (RVSA) and the Australian Consumer Law (ACL).

Expanding the ACL and expecting the ACCC to be a third specialist regulator is an inappropriate mechanism to address these regulatory gaps. This would further fragment the regulatory framework, leading to inefficiencies and increasing risks for consumer safety. Consistent with the Government's Statement of Expectations for the ACCC, the ACCC is intent on avoiding the duplication of regulatory oversight.

The policy objective would be best addressed by equipping a single specialist regulator with the relevant technical and specialist expertise, supported with appropriate powers to perform all the functions necessary to regulate automated vehicles. This should include recall powers. Alternatively, the Department of Infrastructure could fulfil this function.

A fragmented regulatory system will create supplier confusion, business uncertainty, increase compliance costs and will be more challenging to administer. Ongoing interagency coordination will be needed to reconcile this fragmentation which will increase overall costs, particularly where the necessary specialist expertise sits within the two other regulators and not the ACCC. These issues can be avoided by ensuring the specialist in-service regulator has a full range of regulatory compliance and enforcement tools available to perform their role.

### **Statutory cause of action**

We note the NTC proposes to await completion of reviews of the state-based motor accident injury insurance schemes before considering whether to include a statutory cause of action for injured persons in the AVSL. To adequately protect consumers, this issue should be considered before the commencement of the AVSL. Motor vehicle injuries are subject to specific insurance schemes. It is unclear why the same considerations would not similarly apply to injuries resulting from accidents in automated vehicles.

The ACL does not offer the same protection as a statutory cause of action would nor could it replace existing state-based motor accident injury insurance schemes, even as an interim measure. We believe that the general safety duty under the AVSL imposes a positive obligation on the ADSE to ensure the safe operation of its ADS, and this should be complemented by a specific statutory cause of action for consumers to access if injuries occur.

### **Exit of ADSEs**

The NTC should ensure the framework contains adequate protections for consumers where there is no longer an ADSE to support an ADS, if, for instance, after supplying an ADS in a vehicle, and the ADSE exits the market, no longer supporting that ADS. The first-supply corporate obligations proposed under the framework, such as the minimum financial requirements will offer some protection, however additional measures are required to ensure

access to compensation for loss suffered. This may include mandatory insurance requirements for ADSEs or third party intermediary service providers that support an ADS in the event of ADSE insolvency. As noted above, we do not consider that individual consumers will be able to seek satisfactory redress under the ACL. We recommend that the NTC examines further bespoke options for inclusion in the regulatory framework at this stage, rather than waiting for the first review of the AVSL.

### **Next steps**

We look forward to continuing to liaise with the NTC on the matters raised in this submission. If you would like to discuss this further, please contact Neville Matthew, General Manager, Risk Management and Policy, Consumer Product Safety Division, on [REDACTED] or at [REDACTED]

Yours sincerely



Rod Sims  
Chair