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National Transport Commission
Level 3, 600 Bourke Street
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Sent by email: automatedvehicles@ntc.gov.au

Dear Sir/Madam

ACCC submission in response to the National Transport Commission public consultation paper on the automated vehicle safety reforms in Australia

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to respond to the National Transport Commission's (NTC) latest consultation on the regulatory framework for automated vehicles, the Automated Vehicle Safety Law.

The ACCC continues to support a robust, nationally consistent and integrated regulatory framework for automated vehicles based on a bespoke law and general safety duty that applies to the full life cycle of an automated driving system.

We are pleased to see the proposed regulatory framework includes a full suite of recall, compliance, and enforcement powers for the new national in-service regulator.

However, we remain concerned about regulatory gaps which are likely to have significant adverse implications for consumers, road users and pedestrians when automated vehicles are deployed on Australian roads, including:

- The lack of clarity as to which regulator will be responsible for recalls of not like-for-like after-market parts of an Automated Driving System;
- The lack of a statutory cause of action for injured persons to seek redress against an Automated Driving System Entity for breaches of the general safety duty; and
- The need for specific consumer compensation mechanisms where an Automated Driving System Entity's certification is suspended, cancelled or surrendered, and the Automated Driving System is no longer supported.

Overview

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (CCA), regulate national infrastructure and undertake market studies. The CCA also contains the Australian Consumer Law (ACL).

One of the ACCC's key roles in administering the CCA is to take action to protect consumers from unsafe goods and services.

The ACCC works collaboratively with other regulators and consumer protection agencies to identify and address the risk of serious injury and death from safety hazards in consumer products. The ACCC coordinates these efforts with other regulators to avoid duplication, consistent with the Government's Statement of Expectations.

How conventional road vehicles are currently regulated in Australia

Road vehicle regulation is currently a shared responsibility between the Commonwealth and state and territory governments.

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Infrastructure) regulates the safe first supply of conventional road vehicles under the *Road Vehicles Standards Act 2018* and the Australian Design Rules. This includes parts integrated into vehicles at first supply (e.g. engine, battery, braking system, suspension, lighting etc), accessories supplied at first supply (e.g. floor mats, jacks) and aftermarket replacement parts and accessories that are produced by the original vehicle manufacturer, referred to as 'like-for-like'. Like-for-like parts and accessories can include vehicle manufacturer's branded batteries, steering wheels, brake pads, lights, airbags, floor mats etc.

Once approved, vehicle safety is regulated by state and territory road transport authorities, with the Commonwealth Infrastructure Minister able to issue a compulsory recall for conventional vehicles and approved road vehicle components (also managed by Infrastructure).

The ACCC administers several mandatory standards and bans for vehicle accessories under the ACL (e.g. [child car restraints](#) and [tinted headlight covers](#)). The ACCC is also responsible for safety issues concerning aftermarket replacement parts or accessories that are not like-for-like, as these may also be consumer goods. Not like-for-like parts and accessories can replace vehicles parts supplied at first-supply, but can also include aftermarket accessories such as car seat covers, bike carriers, air fresheners etc.

The current Memorandum of Understanding (MoU) between Infrastructure and the ACCC outlines who is the Lead Agency for recalls and other safety issues for conventional road vehicles parts, aftermarket parts and accessories.

Improving the clarity of regulatory responsibilities

The NTC's proposed regulatory framework describes an Automated Driving System as (among other hardware and software components) comprising 'parts of the vehicle like steering and braking components'.

Some such components may also be available to consumers as replacement parts for conventional vehicles, for example replacement brake pads.

As per the current MoU, if these aftermarket components for conventional vehicles are like-for-like replacements, Infrastructure is the lead regulator for any safety recalls. If they are not like-for-like replacements (and meet the definition of 'consumer goods') the ACCC is the lead regulator.

However, the description of an Automated Driving System in the proposed framework implies that components that are not unique to automated vehicles, such as brake pads, could be defined as part of the Automated Driving System, meaning the new in-service regulator could also potentially be the lead regulator for any safety recalls.

Adding a third regulator (the new national in-service regulator) in relation to non like-for-like items used in both automated and conventional vehicles may compound the complexity of the current arrangements. This may result in confusion as to which regulator is responsible for safety recalls, and any associated communications with consumers and suppliers.

The ACCC suggests that the Automated Vehicle Safety Law should clearly describe which parts of an automated vehicle comprise the Automated Driving System and require that these parts be registered on the proposed automated vehicle register. This can help provide clarity for consumers, suppliers, repairers and regulators. The new in-service regulator would be responsible for safety issues in relation to registered Automated Driving System parts and accessories (both at first supply and aftermarket). To the extent that non like-for-like parts are integral to an Automated Driving System, these too should be the responsibility of the new in-service regulator due to the specialist expertise that regulator will hold.

Even with such an amendment, the ACCC recognises that the introduction of a third regulator in relation to vehicle component safety may lead to greater complexity and potentially uncertainty among suppliers, consumers and other stakeholders.

The ACCC appreciates that further clarity may be provided by an update to the current MoU with Infrastructure to include the new in-service regulator and looks forward to continuing our productive working relationship with Infrastructure.

Statutory cause of action

The ACCC has consistently advocated for the importance of a statutory cause of action in the Automated Vehicle Safety Law to provide a specific and clear legal pathway for individuals to seek redress if they are injured or suffer property damage because of a defective automated vehicle.

We support clear obligations on Automated Driving System Entities under the general safety duty in the Automated Vehicle Safety Law to ensure the safe operation of an Automated Driving System, underpinned by robust penalties for breaches of these obligations. The ACCC notes that the NTC's [2021 policy paper](#) mentions penalties are to be included in the Automated Vehicle Safety Law that provide for prosecution of breaches of the general safety duty in proportion to the degree of the breach.

However, these obligations and penalties need to be complemented by a specific statutory cause of action for consumers if injuries or deaths occur.

Automated vehicles will present some risk of harm to road users, pedestrians and possibly others upon entry to the market. To adequately protect the Australian public, a statutory cause of action is required from the commencement of the Automated Vehicle Safety Law, rather than when the new law is subject to review, years after risks have emerged.

The existing ACL provisions do not offer the same protections as a statutory cause of action in the Automated Vehicle Safety Law could.

For example, a third party (such as a pedestrian struck by an automated vehicle) would face challenges showing they fall within the meaning of a 'consumer' under the consumer guarantee provisions and available remedies are limited to repair, replacement or refund of the product. Compensation would generally be limited to the reduction in value of a product, recovery of repair costs or costs of travel, product testing and postage and handling.

Unlike in an incident involving a conventional vehicle, a third party injured by an automated vehicle may not currently be able to access motor accident injury insurance schemes, as

these do not appear to provide for an Automated Driving System being 'in control', and it is not clear that the ADS would be considered a 'driver' or performing the act of 'driving'.

The defective goods regime in the ACL does cover third party injury, however such actions must commence within 10 years of the goods being supplied. The average age of a passenger vehicle in Australia in 2023 was 11 years.

Manufacturer defences in the ACL were also not designed to address the unique challenges posed by the rapidly evolving nature of automated vehicle technology, particularly circumstances where a future software update is the cause of an injury or death and was not the software version installed at the time the automated vehicle was originally supplied.

Consumers seeking redress under the ACL may also face challenges attaching liability to an Automated Driving System Entity responsible for a defective Automated Driving System because the Automated Driving System Entity may not be the 'manufacturer' or 'supplier' of the automated vehicle that has caused injury, death or damage to property.

The right of action in the ACL also does not apply to liability for loss or damage caused to other goods, land, buildings or fixtures used for commercial purposes, for example if an automated vehicle was to cause damage to a commercial vehicle and the stock within it.

To ensure mechanisms for redress for persons injured or suffering property damage due to a defective automated vehicle are fit for purpose, the new Automated Vehicle Safety Law should contain a statutory cause of action tailored to the issues and requirements.

Suspension, cancellation or surrender of Automated Driving System Entity certification

The proposed regulatory framework should adequately protect a consumer's financial interests in circumstances when an Automated Driving System is disabled due to the suspension, cancellation or surrender of an Automated Driving System Entity's certification, or when the Automated Driving System becomes unsafe.


The consumer guarantee provisions of the ACL are not an appropriate mechanism for consumers who have been impacted by the disabling of an Automated Driving System. This is because any loss incurred by a consumer would need to be pursued individually or in a class action against a trader in a court or tribunal. The legal costs and time involved in pursuing this option are likely to limit a consumer's ability to enforce these rights.

The ACCC suggests the Automated Vehicle Safety Law should include measures to ensure consumers have access to remedies and other compensation for losses suffered. These may include mandatory insurance requirements for Automated Driving System Entities or third-party intermediary service providers that support an Automated Driving System in the event of Automated Driving System Entity insolvency.

Next steps

If you would like to discuss any aspect of the ACCC's submission, please contact Nick O'Kane, Acting General Manager, Risk Management & Policy, Consumer Product Safety Division at productsafetyadvocacy@accc.gov.au.

Yours sincerely



Catriona/Elizabeth Lowe
Acting Chair