

Regulatory options for **automated vehicles**



Executive Summary

Discussion Paper
May 2016

Report outline

Title	Regulatory options for automated vehicles
Type of report	Discussion paper
Purpose	For stakeholder consultation
Abstract	<p>The purpose of this paper is to seek stakeholder feedback on options to address regulatory barriers to increased vehicle automation. The discussion paper:</p> <ul style="list-style-type: none">• identifies key issues based on a comprehensive legal audit of Commonwealth, state and territory legislation• summarises stakeholder feedback to the NTC issues paper, Regulatory barriers to more automated road and rail vehicles (NTC, 2016); and• discusses potential options to address the identified issues.
Submission details	<p>Submissions will be accepted until Monday 4 July 2016 online at www.ntc.gov.au or by mail to:</p> <p>Att: Automated Vehicle Team National Transport Commission Level 15/628 Bourke Street Melbourne VIC 3000</p>
Key words	automated vehicle, regulation, Australian Design Rules, vehicle standards, Australian Road Rules, liability, privacy, security
Contact	<p>National Transport Commission Level 15/628 Bourke Street Melbourne VIC 3000 Australia</p> <p>Ph: +61 (03) 9236 5000 Email: enquiries@ntc.gov.au Website: www.ntc.gov.au</p>
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Executive Summary

Automated vehicles offer the possibility of fundamentally changing the transport task and society. It is likely this technology can improve road safety, mobility, productivity and environmental outcomes. However, to unlock these benefits, governments need to remove unnecessary legal barriers, support on-road trials and provide for the safe operation of automated vehicles.

The project aims to:

- understand how current regulations can support increased vehicle automation;
- identify legal barriers to automated vehicles; and
- support a nationally consistent regulatory framework for automated vehicles.

This paper:

- identifies key barriers to automated vehicles based on a comprehensive audit of relevant Commonwealth, state and territory legislation (the annex to this paper contains this audit)
- discusses options to address these key barriers
- summarises stakeholder feedback to the National Transport Commission (NTC) issues paper: *Regulatory barriers to more automated road and rail vehicles* (NTC, 2016).

In assessing how current regulations can support increased vehicle automation, we have considered three levels of technology use:

1. On-road trials and demonstrations.
2. Automated driving that requires a human driver.
3. Automated driving that does not require a human driver.

After the consultation period for this paper, we will prepare reform recommendations for Australia's transport ministers about how to regulate automated vehicles. We intend to submit these to the Transport and Infrastructure Council meeting in November 2016. The reform recommendations will focus on addressing immediate regulatory barriers, and point to decisions that may need to be made by ministers in the future.

Following this meeting we will publish a final policy paper presenting the Council's decisions on our recommendations.

Your views on the regulatory options for automated vehicles will be crucial in allowing us to make the best, most-informed recommendations, and we strongly encourage you to make a submission. Submissions will be accepted until **Monday 4 July 2016**.

We are seeking feedback on the issues, proposed approaches and the timing of reforms.

Who we are

The NTC is an inter-governmental agency charged with improving the productivity, safety and environmental performance of Australia's road, rail and intermodal transport systems. As an independent statutory body, the NTC develops and submits reform recommendations for approval to the Transport and Infrastructure Council, which comprises Commonwealth, state and territory transport, infrastructure and planning ministers.

Automated vehicles are an important part of our work program because they are expected to have a significant impact on transport networks. Our work in this area began in 2015 after the Transport and Infrastructure Council asked us to identify regulatory barriers to safely introducing more automated road and rail vehicles in Australia.

Why reform is needed

Vehicle manufacturers are progressively introducing increased levels of automated driving controls in their vehicles. Automated vehicles could significantly improve road safety outcomes by preventing crashes and reducing deaths and serious injuries, yet the technology cannot be fully used unless our current regulations are reformed. Lack of certainty relating to who or what is in control of an automated vehicle, and the concept of the *driver* in legislation, are the key regulatory barriers to more highly automated vehicles.

Australian governments already regulate the design and use of road vehicles. While our regulations may need to be adapted to support the safe operation of automated vehicles, including the removal of unnecessary barriers, policy-makers also need to consider the uncertain safety outcomes associated with different applications of automated driving. Automated vehicles will operate in a mixed environment, containing a variety of automated vehicle types and conventional vehicles.

The Australian Government has responsibility for design rules for new vehicles, but state and territory governments have jurisdiction over in-service vehicle standards, road rules, enforcement, registration and licensing. There is a risk that this complex regulatory framework will result in inconsistent regulation of automated vehicles across states and territories. There is also a risk that regulations will be inconsistent with relevant international standards and conventions. This would constitute a significant barrier to the introduction of automated vehicles in what is primarily an import-based market.

Different levels of vehicle automation

There are different levels of vehicle automation. The policy issues and regulatory barriers discussed in this paper depend on the level of vehicle automation. These are:

1. **Partially automated** means that the automated driving system may take control of steering, acceleration and braking in defined circumstances, but the human driver must continue to monitor the driving environment and the driving task, and intervene if requested.
2. **Conditionally automated** means that the system drives the vehicle for sustained periods of time. The human driver doesn't have to monitor the driving environment, but must continue to monitor the automated driving system, intervene if requested and be the fallback for the dynamic driving task.
3. **Highly automated** means that the system drives the vehicle for sustained periods of time in some situations, or all of the time in defined places, and the human driver does not have to monitor the driving environment and the driving task, or intervene if something goes wrong.
4. **Fully automated** means that all aspects of the driving task and monitoring of the driving environment and the dynamic driving task are to be undertaken by the vehicle system. The vehicle can operate on all roads at all times.

Each chapter in this paper specifies whether the issues addressed are near, medium or long term, or could be adapted over time, and the relevant level of automated driving (based on SAE International Standard J3016 Levels of Automated Driving – see **Chapter 3**).

Automated trains

The NTC was also tasked with identifying any regulatory barriers associated with more automated trains. We found that there are unlikely to be regulatory barriers to the introduction of more automated trains in Australia because the rail sector has adopted an accreditation model based on operators satisfying the relevant regulator that they have the competency and capacity to manage the identified risks. This approach was supported in the stakeholder feedback to the issues paper *Regulatory barriers to more automated road and rail vehicles* (NTC, 2016).

For these reasons, the NTC proposes that no further analysis of automated rail is required at this time.

Regulatory barriers to commercial deployment

The NTC has identified a number of regulatory barriers to more highly automated vehicles. Because the introduction of automated vehicles is subject to the development of technology and adoption by the market, we cannot know the order in which different applications of automated driving will be commercialised. Therefore we cannot be certain at this point just which regulatory barriers should be removed as a priority, and which should be deferred until there is greater market certainty and technology maturity.

Nonetheless, based on stakeholder feedback to the issues paper and an analysis of market trends, it is reasonable to forecast that reforms can address the regulatory barriers in a staged approach based on what is:

1. likely to be seen in the near term – commence work on reforms as soon as possible
2. likely to be seen in the medium term – commence work on reforms within two years
3. likely to be seen in the longer term – commence work on reforms within three to five years
4. those issues that could benefit from clarification now, but could also be adapted over time as the technology and market matures.

Chapter 13 sets out the rationale for the timing and sequencing of proposed reforms. Many of the regulatory barriers can be managed through existing exemption processes until there is large-scale commercial deployment of highly automated vehicles. The issues that should be prioritised in the near-term relate to supporting on-road trials and clarifying the meaning of control and proper control, because the market is preparing to undertake trials from 2016 and possibly deploy vehicles with conditional automation by 2020.

Figure A presents the key issues discussed in this paper, proposed approaches and the potential timing of reforms.

Figure A: Regulatory issues with automated vehicles – timeframes, issues and proposed approach

NEAR-TERM REFORM		Commence as soon as possible
Issue or barrier	Proposed approach	
Potentially inconsistent conditions for on-road trials in states and territories	Governments introduce national guidelines to support a consistent approach to state-based exemptions for on-road trials.	
Lack of clarity as to who or what is in control of a vehicle that is conditionally automated	Governments develop national enforcement guidelines that clarify the meaning of control and proper control.	
Lack of clarity as to what proper control means for conditionally and highly automated vehicles		
Outcomes: Australia supports on-road trials for any level of automation. Australia supports the commercial deployment of conditional and highly automated vehicles on public roads.		
MEDIUM-TERM REFORM		Commence reforms within 2 years
Issue or barrier	Proposed approach	
Regulatory mechanisms ensure automated vehicles are operated safely by an automated vehicle system entity	Governments implement a safety assurance framework to oversee the deployment of automated vehicles in conjunction with removing legal barriers.	
The definition of driver in many laws requires a human driver	Governments expand the meaning of driver in relevant legislation to include an automated driving system; and to ensure that a legal entity is responsible for the automated driving system.	
Some obligations of the human driver could not be met by an automated vehicle		
It is difficult to identify who is responsible for a highly automated vehicle when control can alternate between the human driver and automated driving system	Enforcement agencies continue current approach – in the event of an offence, agencies take action against the human driver or registered owner. Governments further investigate options as the technology and market develops.	
Outcome: Australia supports the commercial deployment of highly and fully automated vehicles.		
LONGER-TERM REFORM		Commence reforms within 3 to 5 years
Issue or barrier	Proposed approach	
Current vehicle standards assume a human driver	Adopt new ADRs for automated vehicles in step with the development of international standards.	
Outcome: Australia continues to maintain international consistency in vehicle standards and supports non-traditional vehicle designs through exemptions whilst standards develop.		
CLARIFY THEN REFINE		Commence as required
Issue or barrier	Proposed approach	
Vehicle modifications in highly and fully automated vehicles could be a higher risk	Governments support industry development of modification standards that address automated vehicle issues.	
Lack of clarity as to who is liable for a crash	Continue current approach – rely on existing liability regimes to resolve liability issues on a case-by-case basis, plus governments support the development of industry guidance.	
Potential or perceived threat to privacy	Continue current approach – regulate privacy protection through Commonwealth and state-based privacy principles.	
Outcome: Australia maintains consistent approaches to privacy, liability and safety, whilst monitoring for new risks.		

Priority barriers to address in the near term

- **potentially inconsistent rules for *on-road trials* in states and territories:** successfully testing automated vehicles on public roads will ensure they can operate safely on the network alongside other vehicle types and road users, including vulnerable road users. States and territories have road traffic exemption powers to allow on-road trials. They can also close roads to public access. Enabling legislation has been passed in South Australia. Other jurisdictions have determined that they can support on-road trials under current legislative instruments.

At issue is the extent to which regulatory requirements for trials, including insurance, and access to data and driver training, will be consistent across jurisdictions. There is a risk that in Australia a patchwork of trial conditions and processes will deter industry investment in automated vehicle trials, increasing trial costs and making Australia less competitive and innovative compared to other countries contending for automated technology investment.

> see **Chapter 4.**

- **lack of clarity as to who or what is in *control* of a vehicle that is conditionally automated:** vehicles that are conditionally automated will perform driving tasks, but still require the human driver to monitor the automated driving system and to be the fallback for the dynamic driving task. The human driver won't have to monitor the driving environment. Does the driver in this situation have control of and legal responsibility for the vehicle? Resolving this issue will clarify responsibility for compliance with road rules and enforcement, and help resolve liability issues. This will help provide certainty for industry, governments, consumers and the community.

> see **Chapter 5.**

- **lack of clarity as to what *proper control* means for conditionally and highly automated vehicles:** the road rules require the driver to have *proper control* of the vehicle. Enforcement agencies currently interpret *proper control* of a vehicle travelling at speed on a public road to mean that the human driver has at least one hand on the steering wheel. This is likely to become outdated in the context of the changing nature of how control is defined. At issue is how governments can ensure that the intent of the *proper control* rule is maintained if different automated vehicles have various requirements for human drivers.

> see **Chapter 5.**

Priority barriers to address in the medium term

- **there are no regulatory mechanisms to ensure automated vehicles are operated safely by an automated vehicle system entity:** like other vehicles, automated vehicles will be subject to vehicle standards and road rules. However, driver licencing requirements will not apply to automated vehicles that do not have a human driver. If the legal barriers are removed, governments may seek regulatory oversight of automated vehicles to ensure they operate safely on the road network.

> see **Chapter 6.**

- **the definition of *driver* in many laws requires a human driver:** in many laws, the current definition of *driver* means a human driver, yet in more advanced automated vehicles, there will not be a human driver some of the time or all of the time. Without a human driver, these vehicles could not currently be deployed without the relevant exemptions from the road rules and other laws. If no action is taken, advanced automated vehicles could not operate in Australia.

> see **Chapter 7.**

- **some obligations of the driver could not be met by an automated vehicle:** some laws may simply not be relevant for highly and fully automated vehicles that do not have a human driver, such as drink driving and fatigue laws. The intent of other laws will continue to be relevant, but could be amended to take into consideration automated vehicles and to ensure that those legal obligations are transferred to other relevant parties (such as a vehicle operator or occupant). This could include obligations of the driver to assist in the event of an accident causing death or serious injury; to provide vehicle documentation relating to vehicle mass or dimensions, or the requirement to obey an instruction of an authorised officer.

If these laws are not amended to take automated vehicles into consideration, it is uncertain that current driver requirements would apply to highly or fully automated vehicles, or how automated vehicles could comply with these laws.

> see **Chapter 7**.

- **it could be difficult to identify *who is responsible* for a highly automated vehicle when control can alternate between the human driver and automated driving system:** some automated vehicles are likely to be controlled by the automated driving system only some of the time, for example a vehicle that only operates in “highly automated” mode on motorways. This is likely to create operational challenges for enforcement agencies interacting with automated vehicles. There is currently uncertainty about what data agencies will be able to access to assess whether a vehicle’s automation function was operating, and whether such data can and should be made available to other entities, such as insurers.

> see **Chapter 8**.

Priority barriers to address in the longer term

- **current *vehicle standards* assume a human driver:** the highest levels of driving automation will have no requirements for human driving, monitoring or intervention. These vehicles are “self-driving” and will carry only passengers or freight or run empty. These automated vehicles potentially have the highest societal benefits, particularly in terms of economic productivity (no human drivers) and mobility (they could be used by unlicensed passengers). They are also unlikely to need human driver-related features that are currently required by law in the Australian Design Rules (ADRs) and in-service vehicle standards, including requirements for steering wheels, control panels, mirrors and brake pedals.

To continue to require manufacturers to include these features when they are not required to operate the vehicle safely would be an unnecessary cost and barrier to the introduction of highly and fully automated vehicles. If new vehicle standards were not introduced in due course, these vehicles could not operate in Australia without an exemption.

There are also key components of automated vehicles that are not currently included in ADRs, such as security, data management and communications protocols. ADRs provide a mechanism to ensure that these components are adequately considered in a standardised way, but the Australian Government and manufacturers also seek to ensure that Australia is aligned with UN Regulations and that we do not introduce new requirements before there is certainty at the international level.

> see **Chapter 9**.

Issues that could benefit from clarification now, but could be adapted over time

- **vehicle modifications in highly and fully automated vehicles could be a higher risk:** automated vehicles will increasingly rely on sensor technology and software to operate safely. In highly and fully automated vehicles there will not necessarily be a human driver or occupant to intervene if the technology fails. There is therefore a greater risk that vehicle modifications, including over-the-air software updates, non-commercial (“back yard”) modifications and after-market fitments, could significantly undermine the integrity of vehicle operating systems. Yet governments today rely primarily on self-regulation and roadside enforcement to ensure compliance with in-service vehicle standards. At issue is whether this level of oversight will continue to be sufficient in the future, or whether increased regulatory oversight of vehicle modifications is necessary to manage the higher risk
 - > see **Chapter 10.**
- **lack of clarity as to *who is liable for a crash*:** liability is well established in law, but assigning fault could be more complex. If complexity increases, liability risks could prevent the rollout of automated vehicles or severely reduce their functionality or scope of operations, if manufacturers become highly cautious. Liability issues include who should have prima facie responsibility for highly and fully automated vehicles, whether insurer access to data should be regulated, current limitations on road manager liability and whether people involved in crashes with automated vehicles would be eligible for compulsory third-party insurance compensation.
 - > see **Chapter 11.**
- **potential or perceived threat to *privacy*:** public perceptions about automated vehicles will be impacted by how the personal information of consumers is handled and whether there are clearly defined privacy protections. To protect consumers and provide market certainty, government access to automated vehicle data may warrant additional legislative privacy protections.
 - > see **Chapter 12.**

Regulatory options for automated vehicles

The role of government is a key issue in the deployment of automated vehicles. Should the evidence indicate that automated vehicles offer safety, mobility, productivity or environmental net benefits, a case exists that governments should at a minimum ensure that existing laws are not a barrier to their introduction.

A number of existing laws in Australia, including road rules and vehicle standards, are barriers to more automated vehicles, and this discussion paper addresses these barriers. However, the immediate removal of current legal barriers – without additional regulatory oversight – would enable any automated vehicles to operate without road transport agencies being satisfied that these vehicles can operate safely against any risk assessment or criteria.

Like other road vehicles today, more highly automated vehicles can be regulated by ADRs, in-service vehicle standards, registration and road rules. Also, industry is incentivised to provide safe products through consumer law and product liability. At issue is whether automated vehicles need *additional* government oversight, or whether the safe operation of automated vehicles can be managed by the private sector within the current framework.

Figure B illustrates this choice in broad terms – it shows groups of issues or barriers that need to be addressed, and a variety of ways in which they could be addressed. The thinner wedges – starting with industry self-regulation – indicate areas of lesser government oversight, whereas the thickest wedge represents the most government oversight – the implementation of a safety assurance framework that allows governments to oversee the deployment of automated vehicles, for example through regulatory mechanisms such as an automated vehicle registration process or licensing.

An important consideration is the extent to which the general community, reflected in the decision-making of governments, accepts risks associated with automated vehicles. If the community's risk appetite is low and it thus expects automated vehicles to be low-risk, the case for regulatory oversight is strong. If the community is willing to accept a higher risk to attain overall benefits, the case for regulatory oversight is weak. Other factors include market failures, such as incentives to breach, or a systemic compliance problem.

Figure B: Regulatory options for automated vehicles – potential types of government oversight of the market entry and safety performance of automated vehicles



Broadly speaking, the following regulatory options for automated vehicles provide a clear choice between the approaches described in **Figure B**. The NTC is seeking feedback on the questions below.

Chapter 4: Supporting on-road trials

How should governments support on-road trials?

Option 1: continue current approach – rely on exemptions, granted on a case-by-case basis, or

Option 2: Option 1, plus support industry development of a code of practice to undertake on-road trials; or

Option 3: Option 1, plus introduce national guidelines to support a consistent approach to on-road trials; or

Option 4: development of uniform legislation to support on-road trials, applied in state and territory road safety laws.

The NTC supports Option 3.

Question 1a: Do you agree that automated vehicle trials should be supported with national guidelines? If not, why?

Question 1b: What key conditions should be included in any national guidelines?

Chapter 5: The changing meaning of *control* and *proper control*

How should the meaning of *control* and *proper control* be adapted for automated vehicles?

Option 1: continue current approach – industry develops its position on the meaning of *control* and *proper control* and the concept is tested in the courts, or

Option 2: national enforcement guidelines are developed by governments that clarify a policy position on the meaning of *control* and *proper control* for automated vehicles, or

Option 3: the Australian Road Rules and state and territory traffic laws are amended to clarify the meaning of *control* and *proper control* for automated vehicles.

NTC supports Option 2.

Question 2a: Do you agree that issues of *control* and *proper control* should be addressed through national enforcement guidelines? If not, why?

Question 2b: How should *control* and *proper control* be defined?

Chapter 6: Safety assurance for vehicles that do not require a human driver

What is the optimum role of governments to ensure the safe operation of automated vehicles that do not require a human driver?

Option 1: governments amend the current regulatory framework by removing barriers for more highly automated vehicles to enter the market, and allow industry to self-regulate the safe operation of automated driving functions, or

Option 2: governments implement a national safety assurance framework to oversee the deployment of automated vehicles that do not require a human driver, in conjunction with removing legal barriers.

The NTC supports Option 2.

Question 3a: Do you agree that governments should oversee the safe operation of automated vehicles through the development of a national safety assurance framework? If not, why?

Question 3b: What objectives and criteria should such a framework include?

Chapter 7: The changing meaning of *driver* and *driving*

How should governments respond to the legislative definition of the terms *driver* and *driving*?

Option 1: continue current approach – rely on exemptions, granted on a case-by-case basis, or

Option 2: expand the meaning of *driver* in relevant legislation to:

- include an automated driving system; and
- ensure that a legal entity must be responsible for the automated driving system; and
- ensure that the intent of the law can apply to an automated driving system.

The NTC supports Option 2.

Question 4a: Do you agree that the definition of *driver* and *driving* should be amended in relevant legislation? If not, why?

Question 4b: What should be the legal obligations of the entity responsible for the automated driving system?

Question 4c: Are there additional legislative regimes that use the definition of *driver* that should be considered in any future reforms of the definition?

Chapter 8: Identifying responsibility for a vehicle at a point in time

How will enforcement agencies interact with automated vehicles and determine who was responsible for a vehicle at a point in time?

Option 1: enforcement agencies continue current approach – in the event of an offence, agencies take action against the human driver or registered owner, or

Option 2: enforcement agencies collaborate with industry to develop technology interfaces that enable police to identify automated vehicles and also identify who was responsible for a vehicle at a point in time, or

Option 3: amend state and territory road safety and traffic legislation to deem the automated driving system entity of a highly automated vehicle to be responsible for vehicle-related offences.

The NTC supports Option 1.

Question 5: Do you agree that the driver or registered owner should be deemed responsible for the actions of the automated vehicle, and for governments to further investigate options as the technology and market develops? If not, why?

Chapter 9: Vehicle design and standards

How should governments approach the issue of vehicle standards for highly and fully automated vehicles?

Option 1: continue current approach – rely on exemptions, granted on a case-by-case basis, until international standards are developed, or

Option 2: adopt new ADRs that support highly and fully automated vehicles.

The NTC supports Option 1. In the longer term, governments should adopt new ADRs and in-service vehicle standards for automated vehicles, in step with the development of international standards.

Question 6: Do you agree that governments should continue to rely on vehicle standards exemptions at this point in time? If not, why?

Chapter 10: Vehicle modification and in-service compliance

How should governments respond to the potential risks that in-service non-compliance and vehicle modification could have on an automated driving system?

Option 1: continue current approach – rely on the current regulatory framework to detect and manage non-compliance with in-service vehicle standards, or

Option 2: governments support industry development of modification standards that address automated vehicle issues, or

Option 3: develop national legislation to administer an automated vehicle licensing modification regime, developed as part of the deployment framework for automated vehicles.

The NTC supports Option 2.

Question 7: Do you agree with the development of industry-led standards to address modification of automated vehicles? If not, why?

Chapter 11: Liability

How should governments support the resolution of liability and insurance complexities?

Option 1: continue current approach – rely on existing liability regimes to resolve liability issues on a case-by-case basis, or

Option 2: Option 1, plus governments support the development of industry guidance, including information about liability and education campaigns, or

Option 3: governments agree to develop nationally-consistent legislation for some or all of the following areas:

- 3a: clarify legal liability for automated vehicle parties, based on levels of automation
- 3b: regulate third-party access to automated vehicle event data information for prescribed purposes
- 3c: harmonise road manager liability provisions
- 3d: address compulsory third-party insurance issues and potential barriers.

The NTC supports Option 2.

Question 8: Do you agree that governments should support industry-led guidance to address automated vehicle liability issues? If not, why?

Chapter 12: Privacy

How should governments support the protection of personal information?

Option 1: continue current approach – regulate privacy protection through Australian Privacy Principles and state-based Information Privacy Principles, or

Option 2: Option 1, plus governments and industry develop best-practice guidance for automated vehicles, or

Option 3: governments legislate access to automated vehicle data, including identifiable location information.

The NTC supports Option 1, until the privacy risks of automated vehicles are established.

Question 9: Do you agree that personal information generated by automated vehicles should continue to be regulated by privacy principles and with no additional legislative controls at this time? If not, why?

Additional consultation questions

Question 10: Do you agree with the proposed approach to use different automated vehicle classification systems depending on the purpose for which they are used? If not, why?

Question 11: Are there other issues that we have suggested are out of scope or that have not been identified, and which you think should be considered as part of the NTC project? If so, why?

Question 12: Do you agree with the staged approach to reform and the suggested timeframes to address the identified issues? If not, why?

How to make a submission

We are seeking submissions on this discussion paper by **Monday 4 July 2016**.

To make an online submission, visit www.ntc.gov.au and select "Submissions" from the top navigation menu. Or post your comments to:

Att: Automated Vehicle Team
National Transport Commission
Level 15/628 Bourke Street
Melbourne VIC 3000
Australia

Where possible, you should provide evidence to support your views, such as data and documents.

Unless you clearly ask us not to, the NTC will publish your submission online. However, we will not publish submissions that contain defamatory or offensive content.

The *Freedom of Information Act 1982* (Cwlth) applies to the NTC.

