



**APPLICABILITY OF STATE AND TERRITORY ROADSIDE  
ENFORCEMENT POWERS TO AUTOMATED VEHICLES**

**REPORT FOR THE NATIONAL TRANSPORT COMMISSION**

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## **Conflict of Interest Declarations**

Mark Brady is a PhD candidate at QUT supervised by Kieran Tranter and Belinda Bennett. The research conducted in this report is not related to his PhD studies. René Cornish is a PhD candidate at QUT supervised by Kieran Tranter and Anna Huggins. The research conducted in this report is not related to her PhD studies.

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## **Disclaimer**

This report provides information of a general nature only and does not constitute the provision of legal advice.

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## Executive Summary

This report is intended to assist the National Transport Commission (NTC) in considering the extent and adequacy of roadside enforcement powers in the context of automated vehicles (AVs).

State and territory roadside enforcement officers will be at the frontline in dealing with increasing automation of the national vehicle fleet. The NTC has acknowledged that ‘the on-road operation of automated vehicles will create unique challenges for enforcement agencies’.<sup>1</sup>

Current state and territory policing, road and vehicle laws – including the Heavy Vehicle National Law (HVNL) – empower officers to interact with vehicles, drivers and traffic for a range of purposes. These powers have developed over a century of regulation and policing of the motor vehicle. There are concerns that these powers will not be adequate to ensure the safety of an increasingly automated vehicle fleet. There are concerns about:

- powers to stop and interact with AVs
- powers to investigate crashes involving AVs
- powers to enforce road rules and vehicle compliance rules with AVs
- powers to access information from AVs relating to data of automated driving functions
- powers of roadside enforcement agencies to share and disclose vehicle information and data with other entities
- difference in powers between the states and territories.<sup>2</sup>

This report provides a body of knowledge on the current state and territory roadside enforcement powers in the context of AVs. It was found that:

- Powers to stop and interact with AVs are diverse. These powers are granted for specific purposes and are generally directed at the ‘driver’ of a vehicle. There are complexities and uncertainty about how these powers will apply to AVs. There are also substantial differences in the extent and wording of the powers between the states and territories.
- Powers to investigate crashes involving vehicles are well established and seem likely to be adequate to investigate crashes involving AVs.

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<sup>1</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, National Transport Commission (2021), <https://www.ntc.gov.au/sites/default/files/assets/files/NTC-policy-paper-national-in-service-safety-law-for-AVs.pdf>, p. 94.

<sup>2</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Discussion Paper*, National Transport Commission (2020), <https://www.ntc.gov.au/sites/default/files/assets/files/NTC-Discussion-Paper-national-in-service-safety-law-for-AVs.pdf>, pp. 79–96.

- Powers to enforce road rules and vehicle compliance rules with AVs are generally similar in the states and territories. A key issue is the existing distinction between light vehicles and heavy vehicles, with the powers over heavy vehicles being more expansive and adaptable to AVs.
- Powers to access information from AVs relating to data of automated driving functions are also available in state and territory laws. These powers generally include powers to gather data from vehicles and from premises. The extent and scope of these powers differ across states and territories. Further, some of the powers are dependent on a ‘driver’ of a vehicle.
- Powers of roadside enforcement agencies to share and disclose vehicle information and data with other agencies exist within state and territory laws. However, these powers are often limited to specific circumstances or to specific entities. There is no nationally consistent framework for state and territory roadside enforcement agencies to share and disclose vehicle information and data.

## Glossary

ACT	Australian Capital Territory
ADS	Automated Driving System
ADSE	Automated Driving System Entity
AV	Automated vehicle
AVSL	Automated Vehicle Safety Law
COAG	Council of Australian Governments
DDT	Dynamic driving task
IGA	Intergovernmental Agreement on Heavy Vehicle Regulatory Reform
ISR	In-service Safety Regulator
HVNL	Heavy Vehicle National Law
ICE	Internal combustion engine
MaaS	Mobility as a Service
MDL	Mass, dimension and loading
NTC	National Transport Commission
NHVR	National Heavy Vehicle Regulator
NSW	New South Wales
ODD	Operational Design Domain
PU	Penalty Unit
TCA	Transport Certification Australia
TfNSW	Transport for NSW
SAE	Society of Automotive Engineers



# Introduction

## 1 Overview

This report has been prepared to assist the National Transport Commission (NTC) in considering the extent and adequacy of roadside enforcement powers in the context of automated vehicles (AVs). It forms a body of knowledge to inform the NTC in developing the compliance and enforcement tools required to support a national comprehensive framework to address the safety of AVs.

AVs are significant for Australia's transport future. They have the potential to enhance safety, reduce trauma and increase the carrying capacity of infrastructure. There are significant health, economic and environmental benefits from AV adoption. However, AVs come with risks. Recent overseas reports of fatalities from vehicles while a form of automated driving may have been engaged<sup>3</sup> have reinforced the necessity of a safety orientated framework for the in-service operation of AVs. The national safety framework for AVs involves two strategies. The first is 'first-supply' standards for AVs under the *Road Vehicle Standards Act 2018* (Cth).<sup>4</sup> The second is the development of the automated vehicle safety law (AVSL), providing for an in-service regulatory environment. Core to the regulatory environment is the identification of Automated Driving Systems (ADS) and the requirement for an Automated Driving System Entity (ADSE) to be responsible for the ADS over its life-cycle.<sup>5</sup> The proposed AVSL will:

- provide a general safety duty on ADSEs for the safe operation of an ADS
- provide due diligence obligations on executive officers of the ADSE to support the ADSE's compliance with its general safety duty
- establish a national regulator for in-service safety (in-service safety regulator or ISR) to regulate ADSEs, their executive officers and remote drivers (teleoperators).<sup>6</sup>

As noted in the NTC's recent policy paper on in-service safety:

The in-service regulator's key function will be to ensure regulated parties assure the safety of an ADS over its life cycle. It will have a range of functions and powers to

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<sup>3</sup> "Tesla denies car was driverless in fatal crash that killed two men in the United States," ABC News (Web Page), updated 21 April 2021, 2021, accessed 15 May, 2021, <https://www.abc.net.au/news/2021-04-28/tesla-model-s-driverless-fatal-crash-elon-musk-houston/100099668>.

<sup>4</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, p 11.

<sup>5</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, pp 5–6.

<sup>6</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, p 11.

ensure safety risks are comprehensively addressed. It will use these tools to take a proactive and risk-based approach to compliance and enforcement to ensure safety risks are managed efficiently.<sup>7</sup>

The NTC has identified the following functions of the proposed regulator: monitoring of compliance with the general safety duty; education and guidance about automated vehicles; enforcement of compliance with the AVSL; engagement with states and territories; research; development of standards; and customer service.<sup>8</sup> Other possible functions identified by the NTC include: reporting on the operation of the AVSL; providing expertise on automated vehicles to assist in crash investigations; accreditation; and regulatory approval of modifications.<sup>9</sup> As the AVSL and the proposal for a national in-service safety regulator are both part of work currently being undertaken by the NTC, further analysis of the scope of the AVSL and the role and functions of the national regulator is outside the scope of this report.

State and territory enforcement officers (generally police and transport department officials) will play an integral role in supporting in-service safety by addressing road safety issues of AVs. Officers will need to monitor AVs' compliance with the road rules and their safe interaction with other road users. They will need to interact with AVs on the road, at the roadside and after a crash, and intervene in cases of road traffic law breaches. It would be expected that state and territory roadside enforcement officers would be the “eyes and ears” that identify, report and/or action observable ADS safety issues’,<sup>10</sup> and report and interact with other agencies and entities such as the ISR.

State and territory enforcement officers already have a range of powers to interact with vehicles and drivers. These powers are generally located within legislation and regulations concerned with policing, road and vehicle management laws, and under the Heavy Vehicle National Law.

There are some concerns that these powers will not be adequate to ensure safety of an increasingly automated vehicle fleet, including:

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<sup>7</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, pp 23–24.

<sup>8</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, p 69.

<sup>9</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, pp 69–70.

<sup>10</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, pp 93–4.

- powers to stop and interact with AVs
- powers to investigate crashes involving AVs
- powers to enforce road rules and vehicle compliance rules with AVs
- powers to access information from AVs relating to data of automated driving functions
- powers of roadside enforcement agencies to share and disclose vehicle information and data with other entities<sup>11</sup>
- differences in powers between the states and territories, and how this might affect nationally consistent AV regulation.

This report outlines these existing powers and considers their extent and adequacy in the context of AVs.

## 2 Scope and Structure of the Report

The report was precisely scoped by agreement between the NTC and QUT to focus on four components.

<p><b>A</b></p> <p><b>State and territory roadside enforcement powers</b></p>	<p>The extent and adequacy of state and territory roadside enforcement powers to:</p> <ol style="list-style-type: none"> <li>1 intercept and safely stop an automated vehicle</li> <li>2 access data for roadside enforcement and crash investigation purposes, including: <ol style="list-style-type: none"> <li>a. who was in control of a vehicle at a point in time (the automated driving system or the human)</li> <li>b. the level of automation engaged</li> <li>c. any transition requests to the human driver</li> <li>d. data on factors causing or contributing to a breach of a road traffic law or crash, including access to event data recorder information</li> </ol> </li> <li>3 disable an ADS pending further investigation by the in-service regulator</li> <li>4 refer safety incidents (where an automated driving system was engaged) to the ADSE for further investigation and action</li> <li>5 refer safety incidents to the in-service regulator.</li> </ol>
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<sup>11</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Discussion Paper*, National Transport Commission (2020), <https://www.ntc.gov.au/sites/default/files/assets/files/NTC-Discussion-Paper-national-in-service-safety-law-for-AVs.pdf>, pp 79–96.

<b>B</b> <b>HVNL enforcement powers</b>	Existing legal powers for authorised officers under the HVNL to: 1 stop and inspect a heavy vehicle 2 access information and ADS Data for HVNL investigation, compliance or enforcement 3 disclose information gathered under HVNL powers to other agencies.
<b>C</b> <b>Gap analysis</b>	Analysis of whether these powers are suitable for ensuring the safe operation of automated vehicles on the road and identification of gaps (if they exist).
<b>D</b> <b>Substantive differences</b>	Whether, and by how much, these powers differ <i>in substance</i> between different Australian states and territories

*Figure 1: Scope of work*

These components inform the structure of this report.

The **state and territory roadside enforcement powers** are mapped in Part A. All states and territories provide authorised officers from police and transport agencies with broad powers in relation to vehicles and drivers. These powers are usually provided within a specific context, such as enforcing the road rules, investigating crashes or checking vehicle compliance. There are also provisions that allow vehicle information and data to be disclosed to other entities. A significant issue is that many of the powers are directed to a ‘driver’ of a vehicle, which might be problematic in the context of AVs. Generally, these powers are clustered in legislation and regulations dealing with policing, roads and vehicles. The core powers identified are provided in Appendix 1.

The **HVNL enforcement powers** are detailed in Part B. The HVNL is a collaborative scheme between the Commonwealth and the states and territories (excluding Western Australia and the Northern Territory, which are not participating in the HVNL). In each participating jurisdiction, the HVNL provides a suite of powers that support authorised officers with respect to investigation, monitoring and enforcement. In addition, there are several provisions granting power to the NHVR to deal with information. The powers identified are provided in Appendix 2.

The **gap analysis** is provided in Part C. It is shown that state and territory roadside enforcement powers are generally insufficient to adequately support the in-service safety of AVs. While there are adaptable powers relating to stopping and dealing with individual vehicles, significant challenges exist in relation to the access and sharing of data generated by AVs. It is also

identified that the powers available to roadside enforcement of the HVNL in relation to heavy vehicles have greater adaptability to AVs than the general state and territory roadside powers.

The **Substantive Differences** analysis is presented in Part D. Significant diversity is identified between the type, scope and application of state and territory enforcement powers.

### 3 Classification of Automated Driving Systems

In Australia, the NTC has adopted the Society of Automotive Engineers (SAE) classification for automated driving.<sup>12</sup> The SAE *Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles J-3016* (SAE J-3016) defines automated driving as involving a ‘vehicle driving automation systems that perform part or all of the dynamic driving task (DDT) on a sustained basis’.<sup>13</sup> The SAE J-3016 classification sets out levels of automation, ranging from 0 to 5, that describe the different responsibilities toward the dynamic driving task (DDT). The SAE levels of automation start at level 0, zero automation, where the human driver has full control over the vehicle, and go through to Level 5, full automation, where the human driver has zero input to the DDT.

The concept of DDT is important to understanding the SAE standards, AVs and ADS. The SAE defines the DDT as:

All of the real-time operational and tactical functions required to operate a vehicle in on-road traffic, excluding the strategic functions such as trip scheduling and selection of destinations and waypoints, and including, without limitation, the following subtasks:

1. Lateral vehicle motion control via steering (operational).
2. Longitudinal vehicle motion control via acceleration and deceleration (operational).
3. Monitoring the driving environment via object and event detection, recognition, classification, and response preparation (operational and tactical).
4. Object and event response execution (operational and tactical).

<sup>12</sup> National Transport Commission, *Automated Vehicle Program Approach*, National Transport Commission (2020), <https://www.ntc.gov.au/sites/default/files/assets/files/Automated%20vehicle%20approach.pdf>, pp 8, 19.

<sup>13</sup> Society of Automotive Engineers, ‘Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles J3016\_202104’ (web page), 2021, accessed 10 June, 2021, [https://www.sae.org/standards/content/j3016\\_202104](https://www.sae.org/standards/content/j3016_202104).

5. Manoeuvre planning (tactical).

6. Enhancing conspicuity via lighting, sounding the horn, signalling, gesturing, etc.  
(tactical).<sup>14</sup>

An overview of the SAE classification is provided in Figure 2. The levels describe the capacities of driver assistance and automated driving technologies. It does not describe AVs. In this report, reference to a level of automation refers to the SAE classification. A critical feature of the SAE classifications is the operational design domain (ODD), which refers to the driving environment within which the ADS is designed to function. For example, common ODDs are highways or congested environments.

*Figure 2: SAE's taxonomy for terms related to driving automation systems*

Name		Execution of steering and acceleration/ deceleration	Monitoring of driving environment	Fallback performance of DDT	System capability (driving modes)
<b>Human driver monitors the driving environment</b>		Human driver	Human driver	Human driver	n/a
<b>0</b>	<b>No Driving Automation</b>				
<b>1</b>	<b>Driver Assistance</b>	Human driver and system	Human driver	Human driver	Some driving modes
<b>2</b>	<b>Partial Driving Automation</b>	<b>System</b>	Human driver	Human driver	Some driving modes
<b>ADS monitors the driving environment</b>		System	<b>System</b>	Human driver	Some driving modes
<b>3</b>	<b>Conditional Driving Automation</b>				
<b>4</b>	<b>High Driving Automation</b>	System	System	<b>System</b>	Some driving modes
<b>5</b>	<b>Full Driving Automation</b>	System	System	<b>System</b>	All driving modes

The SAE standard also defines ADS as ‘the hardware and software that are collectively capable of performing the entire DDT on a sustained basis, regardless of whether it is limited to a specific ... ODD; this term is used specifically to describe a Level 3, 4, or 5 driving automation

<sup>14</sup> *Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles*, J3016\_202104, (USA and Switzerland: Society of Automotive Engineers, 2021), 3.10, p 9 [spelling as in original].

system.’<sup>15</sup> The focus of this report is therefore on vehicles with ADS levels 3–5 (which we refer to as AVs).

There are nuances in the relationship between the human driver and the ADS at each level that affects the adaptability of roadside enforcement powers. This is discussed in detail in Part A2 below.

In a level 3 ADS, described as conditional automation, the ‘user’ is the ‘fallback-ready user’. This means that even when the ADS is operating, the user is required to respond to ADS prompts to resume driving when the level 3 ADS has reached the limits of its ODD or when the ADS requires assistance. The user is also required to respond where there is an evident vehicle system failure, irrespective of whether the ADS prompts the fallback-ready user to resume driving. It would be assumed that manufacturers of AVs with a level 3 ADS would equip the vehicle with the familiar human DDT vehicle controls orientated towards an identifiable driver’s seat. It would be expected that AVs with level 3 ADS would not operate without a user sitting in the driver’s seat.

A level 4 ADS, described as high driving automation, will be capable of operating the vehicle for all or part of the journey. In contrast to level 3, at level 4 the ADS does not require the user to be the fallback-ready user. This means that if the ODD of the level 4 ADS is limited to part of a given trip, rather than require the user to take on the DDT when the ODD limit is reached, the ADS will perform the DDT fallback and achieve minimal-risk condition. For example, if the level 4 ADS ODD is for highway driving and the vehicle has reached the end of the highway driving portion of the journey, the system would notify the user to take on the DDT. If the user fails to respond – for example (as provided in the SAE standard) if the user is asleep<sup>16</sup> – the ADS will be the fallback and navigate the vehicle to a safe place to park. It is possible that vehicles with a level 4 ADS might be diverse in the ways they provide for user control. As the user is not the fallback-ready user, it is possible that a vehicle with a level 4 ADS may not to be equipped with the familiar user controls clustered around a driver’s seat. This is particularly the case for a level 4 ADS that is designed to operate the vehicle through complete trips (for example, a shuttle bus that operates on a set route). It would be expected that AVs with a more limited ODD level 4 ADS would, like level 3, have the familiar controls and an obvious driver’s

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<sup>15</sup> Society of Automotive Engineers. *Short Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles*, p 6.

<sup>16</sup> *Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles* J3016\_202104, (USA and Switzerland: Society of Automotive Engineers, 2021), 5.5. p 31.

seat. This is because outside of the ODD in which the ADS operates at level 4, the user would (from a practical perspective) need to be the driver of the vehicle as in a conventional vehicle.

A vehicle with a level 5 ADS ‘can perform the entire DDT and DDT fallback ... on all driver-manageable on-road operating situations vehicles’ and is ‘considered fully automated’.<sup>17</sup> The occupants are considered passengers. Again, there is diversity in how an AV could be manufactured with a level 5 ADS. It is possible that AVs with a level 5 ADS will have no capacity for the passenger(s) to interact with the ADS. This might be likely in automated public transport vehicles (such as automated buses), or in automated mobility as a service (MaaS) systems, where there could be strong reason not to allow passengers the capacity to interact with the ADS. However, it is also possible that an AV with a level 5 ADS could have the capacity to be driven like a conventional vehicle or at a lower level of automation. It could be possible that this will be the situation for privately owned light vehicles – that the vehicle will have a level 5 ADS, but it will be the decision of the user to activate it. In these circumstances such a vehicle would still require the familiar vehicle controls for the user to drive the vehicle.

In summary, AVs are vehicles with an ADS. An ADS is defined as the system capable of level 3, 4 or 5 automated driving. The levels relate to the capability of the ADS to undertake the DDT and whether the fallback for the DDT is the ADS or a human user.

#### 4 Are Automated Vehicles ‘Vehicles’ Under Australian Law?

A preliminary issue is whether AVs fit the definition of vehicle or motor vehicle for the purposes of Australian law. All states and territories provide definitions of what is considered a vehicle for the purposes of policing, road and insurance laws. In many jurisdictions, there is a common definition in one Act that is then adopted by other Acts.<sup>18</sup> Across the states and territories, there is a strong consistency in the definitions of ‘motor vehicle’ and ‘vehicle’.

Section 4 *Road Transport Act 2013* (NSW) defines ‘motor vehicle’ as ‘a vehicle that is built to be propelled by a motor that forms part of the vehicle’.<sup>19</sup> ‘Vehicle’ is defined as ‘(a) any description of vehicle on wheels (including a light rail vehicle) but not including any other vehicle used on a railway or tramway, or (b) any description of tracked vehicle (such as a bulldozer), or any description of vehicle that moves or revolving runners inside endless

<sup>17</sup> *Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles* J3016\_202104, (USA and Switzerland: Society of Automotive Engineers, 2021), p 24.

<sup>18</sup> Mark Brady et al., ‘Automated Vehicles and Australian Personal Injury Compensation Schemes’, *Torts Law Journal* 24, no. 1 (2017). 42, 57–60.

<sup>19</sup> *Road Transport Act 2013* (NSW) s 4 **motor vehicle**.



tracks’.<sup>20</sup> This is similar to the definitions in South Australia, Tasmania, Victoria, Queensland, Western Australia, the ACT and the Northern Territory.<sup>21</sup> In summary, a motor vehicle is a vehicle with an internal motor, and a vehicle generally has wheels (or tracks) but is not used on rails. The current trajectory on the automation of vehicles is unlikely to lead to a machine that is outside these definitions. For the purposes of this report, it is assumed that AVs will be ‘motor vehicles’ and ‘vehicles’ for state and territory roadside enforcement powers.

## 5 Limitations

The research for this report was undertaken in May and June 2021. The research was predominately desk-based, doctrinal legal research to understand the sufficiency of Australian roadside enforcement powers to interact with and manage the safety risks of automated vehicles. Doctrinal legal research concerns the forensic examination of existing legislation and case law to identify inadequacies, redundancies and inconsistencies. It involves a two-stage process: first, a detailed and close search and identification of relevant legislative provisions and case law; and second, the interrogation of the identified law to identify (a) degrees of coherence and consistency as system of law and (b) adequacy of the identified law in responding to novel factual circumstances.<sup>22</sup>

The first stage was undertaken by the researchers in consultation with the NTC to identify the core legislation and regulations in each state and territory that provided for roadside policing powers. This preliminary review identified the legislations and regulations extracted in Appendixes 1 and 2 (identified laws). The researchers used the most recent reprint available from the authorised state and territory repository. The identified laws were then reviewed by one researcher to extract possible powers. This extraction process was guided by the criteria in the scope of work. This process was repeated by a second researcher and the results combined to produce the identified powers. The lists of identified powers were provided to the NTC for consultation and advice. The findings from this process are in Parts A and B.

The second stage involved the analysis of the adequacy of the identified powers in relation to AVs. This was guided by the scope of work and the researchers’ own knowledge and expertise

<sup>20</sup> *Road Transport Act 2013* s 4 (NSW) **motor vehicle**.

<sup>21</sup> *Motor Vehicles Act 1959* (SA) s 5(1); *Vehicle and Traffic Act 1999* (Tas) s 3; *Road Safety Act 1986* (Vic) s 3(1); *Transport Operations (Road Use Management) Act 1995* (Qld) Schedule 4; *Road Transport (General) Act 1999* (ACT) dictionary; *Motor Vehicles Act 1949* (NT) s 5; *Road Traffic (Administration) Act 2008* (WA) s 4.

<sup>22</sup> Terry Hutchinson and Nigel Duncan, ‘Defining and Describing what we do: Doctrinal legal research’, *Deakin Law Review* 17, no. 1 (2012), 83.

around AVs and recent examinations of the adequacy of regulatory and enforcement regimes for AVs.<sup>23</sup> The results of this process are in Parts C and D. Draft findings of C and D were circulated to the NTC for feedback and advice.

There are three limits on the findings of this report. First, it is not a complete mapping of all the powers in state and territory laws that allow authorised officers to direct or access vehicles. Most state and territory legislation contains specific powers in relation to vehicles or powers of general application that could apply to AVs. For example, section 150 of the *Health Act 1937* (Qld) allows ‘inspectors’ to stop and inspect vehicles.<sup>24</sup> This power is conditional if an inspector suspects ‘on reasonable grounds, or is aware, that a thing in or on a motor vehicle may provide evidence of an offence against’<sup>25</sup> the Act. The Act, as it is amended, only deals with prescription drugs. Conceivably if an inspector considers that an AV may provide evidence of an offence in relation to prescription drugs, then the power is enlivened. The power is limited to supporting the regulatory regime established by the Act. These specific, supporting powers generally were not included in the identified powers extracted and analysed for this report.

The second limitation relates to the extraction and analysis process. Due to the time window for the project, this was conducted over a two-week period. To mitigate relater bias and errors, the process was undertaken twice by two different researchers. This process of double coding is an established method to mitigate risks of inter and intra-relater errors.<sup>26</sup> Further there were several rounds of consultation with the NTC in delineating and confirming the identified laws and identified powers. This report forms a body of knowledge that can form the basis for further consultation with transport stakeholders. There remains the possibility that some pertinent powers have not been identified; however, through the process of double coding and consultation, there is confidence that the most relevant roadside powers in each jurisdiction have been identified and considered.

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<sup>23</sup> Law Commission and Scottish Law Commission, *Automated Vehicles: Consultation Paper 3 – A Regulatory Framework for Automated Vehicles. A Joint Consultation Paper*, Law Commission and Scottish Law Commission (2020), <https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2021/01/AV-CP3.pdf>; Jordan Blair Woods, ‘Autonomous Vehicles and Police De-Escalation’, *Northwestern University Law Review* 114, no. 1 (2019), 75; Elizabeth E Joh, ‘Automated Seizures: Police Stops of Self-Driving Cars’, *New York University Law Review* 94 (2019) 113; Bill Canis, *Issues in Autonomous Vehicle Testing and Deployment*, Congressional Research Service (Washington, 2021), <https://fas.org/sgp/crs/misc/R45985.pdf>.

<sup>24</sup> *Health Act 1937* (Qld) s 150(1), (2).

<sup>25</sup> *Health Act 1937* (Qld) s 150(1), (2).

<sup>26</sup> Robert G Orwin and Jack L Vevea, ‘Evaluating Coding Decisions’, in *The Handbook of Research Synthesis and Meta-Analysis*, ed. Harris Cooper, Larry V Hedges, and Jeffrey C Valentine (New York: Russel Sage Foundation, 2009), 177–85.

The third relates to the accuracy of the identified laws. The text of the legislation and regulations analysed were the latest in force reprints available from the official repositories as at 19 May 2021. Any amendments not incorporated into that reprint or coming into force after 19 May 2021 have not been considered.

## 6 Findings

The first finding concerns the overall landscape of powers across the states and territories. There is a clear distinction in the scope and adaptability to AVs between the general roadside enforcement powers and the more specific powers in relation to heavy vehicles. As a generalisation, the enforcement powers applicable to light vehicles tend to manifest a respect for the vehicle as private property that individuals should be able to enjoy with minimal interference. Roadside powers to stop vehicles and to gather information from and about vehicles tend to be narrow and circumscribed. Most often, the power is enlivened only if an authorised officer suspects that an offence has been committed. This can be seen to reflect foundational principles concerning private property and civil policing. Heavy vehicles, particularly under the HVNL, but also under the general police powers and road traffic laws, are regulated through a more interventionalist approach. Reflecting public interest in safe heavy vehicle operations, more powers are available to authorised officers and regulators to engage with vehicles and access information. Similarly, the public interest in safe public transport systems means that there are also more expansive powers available on the basis of whether the vehicle is heavy (such as a bus) or light (a taxi or rideshare vehicle). These divisions mean that, in considering the regulation of AVs, consideration needs to be given to not only the type of AV (light vehicle or heavy vehicle) but also its use (private or commercial).

The second finding is that the state and territory roadside enforcement powers are highly diverse. The states and territories have generally acted independently over 100 years, leading to the ad hoc development of powers. A power such as compelling persons to disclose who was driving a vehicle is expressed differently and has different preconditions, and is exercised by different authorised officers across the states and territories. Further, many of the roadside powers appear to be responses to specific public policing concerns such as hooning or noise from vehicles. The enactment of roadside policing powers in response to specific community concerns has been a feature in the states and territories.<sup>27</sup> One jurisdiction might have

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<sup>27</sup> Neil Morgan, 'Capturing Crims or Capturing Votes? The Aim and Effects of Mandatories', *University of New South Wales Law Journal* 22(1) (1999) 267.

expansive roadside powers over a particular form of driving or vehicle modification that is not replicated in other states and territories. In the context of AV regulation, there is a lack of symmetry of powers between the states and territories. This could potentially lead to very different outcomes, depending on the legislative provisions in the particular jurisdiction.

A third finding is that most powers are addressed to or are in the form of directions to a driver. It was found that the understanding of ‘driver’ in state and territory law involves a definition of a person driving. ‘Driving’ or ‘drive’, where specified, tend to be defined in terms of a person in control of a vehicle. The state and territory interpretation laws all define ‘person’ to include a corporation. While the ADSE is proposed to be a corporation<sup>28</sup> and a person for the definition of ‘driver’ in state and territory law, the ADS is not a person. This means that for AVs where the ADS is performing the DDT, there is no ‘driver’ as currently conceived in state and territory laws to which roadside enforcement powers can be directed. This is the ‘driver’ dilemma for state and territory roadside enforcement powers. Australia’s transport ministers have agreed that ‘the ADSE is in control of a vehicle when that vehicle’s ADS is operating in automated mode’.<sup>29</sup> However, to ensure continuity and adequacy of roadside enforcement powers in the context of increasing automation of the national transport fleet, attention may need to be given to the definition of ‘driver’ in state and territory road, traffic and policing laws.

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<sup>28</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, pp 30, 45

<sup>29</sup> National Transport Commission, *Automated Vehicle Program Approach*, p 12.

## Part A: State and Territory Roadside Enforcement Powers

### 1 Overview

The states and territories have extensive powers to engage at the roadside with vehicles and drivers. These have emerged piecemeal over 110 years of regulating motor vehicles on public roads.<sup>30</sup> The long development of these powers has meant that there is little uniformity in how the powers are expressed or which Act they are located within. The substantive differences between the state and territory roadside powers are provided in Part D. This Part considers the adaptability of the core roadside powers to AVs. Four groups of powers are examined:

- interception and stopping an AV
- access to data for roadside enforcement and crash investigation purposes
- powers to disclose information
- powers in relation to passenger transport.

In surveying and considering these powers, a fundamental issue emerged relating to the applicability of state and territory roadside enforcement powers to AVs – the term ‘driver’. For example, one of the core powers considered is the power of enforcement officers to stop a vehicle. The general statutory formulation of the stopping power is relatively uniform. Under section 40H of the *Road Traffic Act 1961* (SA):

- (1) An authorised officer may, for the purpose of or in connection with exercising other powers under a road law, direct—
  - (a) the *driver* of a vehicle to stop the vehicle;<sup>31</sup>

The driver is the addressee of the power to stop. The driver is the intermediate between the authorised officer’s direction and the vehicle. Within the established paradigm of human-controlled vehicles, this is unproblematic drafting. After 110 years with the motor vehicle, the use of the terms ‘drive’, ‘driver’ and ‘driving’ to denote a human controlling the speed, steering, braking and course of a motor vehicle is highly enculturated in law, in everyday language and in experience. This is the critical ‘disruption’ of AVs in potentially severing the

<sup>30</sup> The Australian states were early innovators in providing legal frameworks regulating vehicles and drivers, with most jurisdictions introducing dedicated Motor Vehicle Acts to provide for registration of vehicles, licensing of drivers and the introduction of safety obligations. Kieran Trante, ‘“The History of the Haste-Wagons”: The *Motor Car Act 1909* (Vic), Emergent Technology and the Call for Law’, *Melbourne University Law Review* 29, no. 3 (2005), 843.

<sup>31</sup> *Road Traffic Act 1961* (SA) s 40H [emphasis added].

deeply held connection between a vehicle and human driver. Prima facie an ADS within an AV is neither a ‘person’ nor a ‘corporation’, and as such does not fit within the existing state and territory definitions of a ‘driver.’ If there is no entity that meets the formal definition of a ‘driver’ then the officer does not have the power. Given the significance of this issue – the ‘driver’ dilemma – it is discussed first.

## 2 The ‘Driver’ Dilemma

The ‘driver’ dilemma is that many state and territory roadside enforcement powers are addressed to a ‘driver’ of a vehicle. Under state and territory laws, a driver is defined as a ‘person’.<sup>32</sup> ‘Person’ is usually not defined within state and territory road, traffic and vehicle laws; however, state and territory interpretation Acts define ‘person’ as a ‘natural person’ or a corporation.<sup>33</sup> ‘Drive’ and ‘driving’ are defined in various ways throughout state and territory laws. Generally, there are phrases such as ‘be in control of the steering, movement or propulsion of a vehicle’.<sup>34</sup> This definition seems consistent with the SAE’s definition of DDT. The issue for AVs is that where the ADS is engaged, it is responsible for the DDT. The ADS is doing the ‘driving’ as understood in state and territory law. However, the ADS cannot be the ‘driver’ as understood by state and territory laws. The ADS is neither a person nor a corporation. Formally, in the strict words of the legislative formulations of roadside enforcement powers, there is no ‘driver’ of an AV when the ADS is operating. The vehicle will still be ‘driven’ as understood in state and territory law by the ADS. However, as the ADS is not a ‘person’ it cannot be a driver under the legislation. This is a different question from the technical issue of how roadside enforcement might communicate an instruction to an ADS.<sup>35</sup> The issue is not the technical means to interact with an AV but the legal power to do so.

<sup>32</sup> *Road Traffic Act 1961* (SA) s 5 **driver of a vehicle**; *Road Transport Act 2013* (NSW) s 4 **driver**; *Transport Operations (Road Use Management) Act 1995* (Qld) Schedule 4 **driver**; *Motor Vehicle Act 1949* (NT) s 5(1) **driver**; *Road Safety Act 1986* (Vic) s 3(1) **driver**; *Road Transport (General) Act 1999* (ACT) Dictionary **driver**; *Road Traffic (Administration) Act 2008* (WA) s 4 **driver**; *Traffic Act 1925* (Tas) s 33(1); *Police Powers (Vehicle Interception) Act 2000* (Tas) s 3 **driver**.

<sup>33</sup> *Acts Interpretation Act 1915* (SA) s 4 **person or party**; *Acts Interpretation Act 1954* (Qld) s 32D(1); *Interpretation Act 1987* (NSW) s 12; *Interpretation of Legislation Act 1984* (Vic) s 38 **person**; *Interpretation Act 1984* (WA) s 5 **person**. *Interpretation Act 1978* (NT) s 17 **person**. *Legislation Act 2001* (ACT) s 160(1). ‘Person’ is not defined under the Tasmanian interpretation Act, although it does deem criminal offences to apply to corporations as well as ‘individual persons’: *Acts Interpretation Act 1931* (Tas) s 35(1).

<sup>34</sup> *Road Transport Act 2013* (NSW) s 4 **drive**. See also *Road Traffic Act 1961* (SA) s 5 **drive a vehicle**; *Transport Operations (Road Use Management) Act 1995* (Qld) Schedule 4 **drive**; *Motor Vehicle Act 1949* (NT) s 5(1) **drive**; *Road Safety Act 1986* (Vic) s 3(1) **drive**; *Road Transport (General) Act 1999* (ACT) Dictionary **drive**; *Road Traffic (Administration) Act 2008* (WA) s 4 **drive**. ‘Drive’ is not defined under Tasmanian legislation.

<sup>35</sup> The draft *Vehicle Standard (Australian Design Rule 90/01 – Steering System) 2021*, which is currently at public consultation, contains a number of provisions setting out how the ADSE and ADS should interact

This is a fundamental issue regarding AVs. As canvassed, it is anticipated that many AVs will have an ADS mode that can be switched on or off. Even where the ADS is engaged, the level of the ADS could vary based on user choice or by the ODD. It is entirely likely that roadside enforcement officers could be presented with a vehicle that could be driven entirely by the human in the driver's seat, or by an ADS at level 3, 4 or 5. Many of the enforcement powers are directed to a 'driver'. The fact that, *prima facie*, under the legal definitions of 'driver' the ADS cannot be a driver makes the applicability of these powers highly uncertain and formally dependent on the immediate factual circumstance of the vehicle and the level at which the user had set the ADS. It also brings to the forefront the need for roadside enforcement officers to access data from an ADS, particularly on whether the ADS was engaged at a specific time, the level at which it was engaged, and whether it had been requesting the fallback-ready user (if engaged at level 3) to intervene, or had switched to fallback DDT mode (if at level 4 and 5).

There are some possible interpretations and existing provisions in state and territory law that might work around this issue of the driver for AVs. The first is that some powers, especially concerning gathering information about a vehicle, are addressed more broadly to include owners or passengers of vehicles. In addition, often enforcement powers concerning heavy vehicles include the 'operator' as an addressee of power.<sup>36</sup> These powers, with a broader set of addressees, would not be affected by a legal determination regarding whether the ADS is the driver.

Second, for AVs with a level 3 ADS in operation, there is a practical argument that the 'fallback-ready user' may be considered the 'driver' for roadside enforcement purposes and particularly responding to directions to stop. Level 3 is conditional autonomy. As identified in the SAE standard, at level 3 the fallback-ready user will be required to be ever-ready to respond to intervention requests from the ADS. In addition, the fallback-ready user would also be obliged to be aware of the vehicle and take back the DDT if they determine that the ADS is not responding appropriately to the driving environment. The NTC has recommended that there should be a national approach with respect to driving laws so that when the ADS is engaged it is 'in control' and the ADSE is 'responsible for compliance with dynamic driving task

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with roadside enforcement officers and agencies, including the ADSE providing access to ADS and vehicle data (3.2.34); notification to the fallback user that there has been an instruction from an enforcement officer and the ADS taking steps to pass the DDT to the fallback user (3.4.14); and an ADSE must describe how the ADS will interact with enforcement officers and agencies and provide data on interaction in real time (4.2.25). See 'Australian Design Rule Development Program and Public Comment' (web page), 2021, accessed 21 June 2021, [https://www.infrastructure.gov.au/vehicles/design/adr\\_comment.aspx](https://www.infrastructure.gov.au/vehicles/design/adr_comment.aspx).

<sup>36</sup> See Part B(3.3).

obligations’.<sup>37</sup> However, for practical purposes the supervision expected of a fallback-ready user of a level 3 ADS AV could mean they would be considered ‘in control’ of the vehicle, especially if directed to stop in emergency situations or in situations involving the safety of others. Where a Level 3 ADS AV is in operation, the fallback-ready user will be seated in the driver seat and have the power to interrupt the ADS and take responsibility of the DDT for the vehicle. There could be circumstances where a roadside enforcement officer instructs a level 3 ADS AV to stop and the ADS does not respond. It would be unconvincing for the fallback-ready user – who has the role of intervening and the means to immediately take over the DDT – to subsequently claim that they were under no obligation to intervene and stop the vehicle because at the time that the stop command was issued, they were not the ‘driver’ – the ADS was. This suggests that with a level 3 ADS it is possible that the existing understanding of ‘driver’ in state and territory roadside enforcement powers could be sufficient to apply to the fallback-ready user when a level 3 ADS is engaged. This argument does blur the lines between who is the ‘driver’ of an AV when the ADS is performing the driving task in the context of the exercise of roadside enforcement powers. This argument is made in the specific context of the roadside enforcement powers and not in relation to other understandings of the ‘driver’ for purposes of the road rules or for determining liability.

Furthermore, it is possible that this argument might also extend to the user when a level 4 ODD limited ADS is engaged for the purposes of the application of roadside enforcement powers to AVs. However, such arguments will become more complex depending on the ODD and possibly the physical layout of the AV’s cabin.

Third, the argument could be made that the ADSE is the driver for the purposes of enforcement. As noted, the current proposal is that the ADSE will have an overarching general safety duty and will be deemed to be a ‘driver’ when the ADS is engaged.<sup>38</sup> Notwithstanding this proposed reform, under existing state and territory laws there is a strong argument that the ADSE should be considered the driver for enforcement purposes. The enforcement powers generally relate to two contexts: first, interacting with a vehicle in an emergency or where the safety of vehicle occupants and other road users is paramount; and second, information-gathering powers in relation to investigation of both general criminal offences and offences under the road, traffic

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<sup>37</sup> National Transport Commission, *Changing Driving Laws To Support Automated Vehicles Policy Paper*, p 3, recommendation 3.

<sup>38</sup> National Transport Commission, *Changing Driving Laws To Support Automated Vehicles Policy Paper*, p 3, recommendation 3; National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, p.15.



and vehicle laws. The first relates to giving enforcement officers adequate powers to ensure safe roads. The second relates to investigations, particularly to breaches of road, traffic and vehicle law, that usually would be focused on dangerous or unsafe use of a vehicle. In both contexts, safety is a paramount consideration. There are strong purposive justifications, reinforced by the proposed existence of the general safety duty on ADSEs, that when an ADS was responsible for the DDT of a vehicle, the ‘driver’ for enforcement purposes, particularly in relation to investigative powers, could reasonably be assumed to be the ADSE.

Fourth, there are some explicit amendments in state and territory law clarifying the ‘driver’ of an AV for enforcement purposes. In Victoria, the *Road Safety Act 1986* (Vic) has explicitly been amended to ensure that there is a deemed ‘driver’ of an AV. In section 3AB, the ‘ADS permit holder’ is deemed to be the driver ‘at any time when the vehicle is operating in automated mode’ and the ‘supervisor assigned by the ADS permit holder ... is taken to be driving ... when the vehicle is operating other than in automated mode’.<sup>39</sup> Further, provision is made for deeming a driver in an AV that is being operated outside of a permit. The driver is deemed to be either ‘a person who is seated in the driver seat at a time when the vehicle is being used on a highway’ or ‘a person who has any control over the performance of the dynamic driving task at a time when the vehicle is being used on a highway’.<sup>40</sup> In New South Wales (NSW), a provision exists for the Minister to direct by legislative order, for the specific purposes of a trial, the entity to be considered the driver for road, traffic and vehicle law purposes.<sup>41</sup> In making this determination, the Minister may consider the entity approved to conduct the test, the supervisor of the vehicle as nominated by the approved entity, the owner of the trial vehicle or ‘no person’.<sup>42</sup> No specific orders seem to have been made. The South Australian automated vehicle trial framework provides no guidance in relation to the driver of an AV.<sup>43</sup>

The Victorian deeming provisions in section 3AB(3) of the *Road Safety Act 1986* (Vic) appear to provide some structure in relation to the driver of an AV when operated outside the formal trial processes. However, this seems to be limited to a conception of an AV with a level 3 ADS. The wording deems the ‘driver’ to be the person in ‘the driver seat’ or with ‘any control over

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<sup>39</sup> *Road Safety Act 1986* (Vic) ss 3AB(2)(a),(b).

<sup>40</sup> *Road Safety Act 1986* (Vic) ss 3AB(3)(a), (b).

<sup>41</sup> *Road Transport Act 2013* (NSW) s 148S.

<sup>42</sup> *Road Transport Act 2013* (NSW) s 148S(2). Also included are categories of person prescribed by statutory rules. To date there do not seem to have been orders made under this section.

<sup>43</sup> *Motor Vehicles Act 1959* (SA) Part 4A.

the performance of the dynamic driving task’.<sup>44</sup> In this, the Victorian provision reflects and possibly reinforces the potential argument that for the application of roadside enforcement powers to vehicles with a level 3 ADS, the fallback-ready user may be considered the driver. However, the definition assumes a vehicle that has in-cabin controls for human control of a vehicle. It is possible that some level 4 or 5 ADS equipped vehicles will not have this equipment. This Victorian provision is potentially only a transitory approach, clarifying in the context of the currently available vehicles with some AV capacity that the human occupant remains the driver for road, traffic and vehicle laws. It does not provide additional guidance on how to connect the term ‘driver’ in existing law to the ADS and ADSE.

The ‘driver’ dilemma means that the application of many state and territory roadside enforcement powers to AVs is currently ambiguous and uncertain. As detailed in Part C, the existence of the ‘driver’ dilemma is a significant gap in the adequacy of state and territory roadside enforcement powers.

### **3 Power to Intercept and Stop Vehicles**

The legal basis to stop a vehicle is one of the primary roadside enforcement powers in state and territory laws. The requirement for roadside enforcement officers to be able to stop vehicles is central to ensuring a safe road and transport system, and also a basic requirement for general law enforcement. It would be expected that there will remain strong justifications for roadside enforcement officers to be able to stop AVs.

In each state and territory, there are multiple provisions that allow officers to stop vehicles. However, there is no single, unified or comprehensive suite of powers enabling the stopping of vehicles. Instead, there are patchwork and often overlapping powers granted to stop vehicles under the different policing, traffic and vehicle laws in each state and territory. Further, these powers can sometimes be highly specific with respect to a particular function or mischief targeted. Accordingly, some states and territories tend to have multiple pathways to stop vehicles, while other jurisdictions have relatively few powers to stop vehicles.

#### *3.1 When Can Vehicles be Stopped?*

There is no general power to stop vehicles in Australia, and powers to stop vehicles in each state or territory are enlivened only in specific situations. Currently, the power to stop vehicles is granted to authorised officers in three circumstances. The first centres around safety

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<sup>44</sup> *Road Safety Act 1986* (Vic) ss 3AB(3)(a), (b).

concerns, where a vehicle presents a danger to property, its occupants or the public. The second is linked to criminal law, where an authorised officer suspects criminal activity, or the commission of a criminal offence may be associated with the vehicle. The third is related to transport, where the road transport or heavy vehicle laws are enlivened.

The first context that allows for stopping vehicles is where a significant safety risk exists to persons or property. For example, section 7 of the *ACT Road Transport (Safety and Traffic Management) Act 1999* (ACT) provides grounds to stop vehicles where, ‘a person must not drive a motor vehicle furiously, recklessly, or at a speed or in a way that is dangerous to the public, on a road or road related area’.<sup>45</sup> In NSW, a vehicle may be stopped where there is a risk to safety. For example, the ‘powers to stop vehicles and erect roadblocks’<sup>46</sup> are enlivened where the senior police officer suspects on reasonable grounds,<sup>47</sup> that:

circumstances exist on or in the vicinity of that road, road related area, place or school that are likely to give rise to a serious risk to public safety and the exercise of the powers may lessen the risk.<sup>48</sup>

In South Australia, grounds to stop vehicles exist where there may be safety concerns with respect to a vehicle. For example, authorised officers may stop vehicles where ‘the officer suspects on reasonable grounds that the vehicle has deficiencies’.<sup>49</sup> Safety concerns provide grounds to stop vehicles in Tasmania where an officer holds a reasonable belief that a person ‘is or may be endangering the property, life or safety of another person; or (b) it is necessary to establish the roadblock or use the vehicle immobilising device for the protection of life or property’.<sup>50</sup>

The second context that allows the stopping of vehicles is where an officer suspects that the vehicle has a connection with criminal activity. For example, in section 209 of the *Crimes Act 1900* (ACT), the stopping power is enlivened ‘where a police officer suspects, on reasonable grounds, that ... a thing relevant to a serious offence or a thing stolen or otherwise unlawfully obtained, is in or on a conveyance’.<sup>51</sup> In NSW under the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), the stopping power is enlivened where:

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<sup>45</sup> *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s7(1).

<sup>46</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s37.

<sup>47</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s37(2).

<sup>48</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s37(2)(b).

<sup>49</sup> *Road Traffic Act 1961* (SA) s 145.

<sup>50</sup> *Police Powers (Vehicle Interception) Act 2000* (Tas) s 5(1).

<sup>51</sup> *Crimes Act 1900* (ACT) s 209(1)(a).

- (a) the vehicle (or a vehicle of the specified class of vehicles) is being, or was, or may have been, used in or in connection with the commission of an indictable offence and the exercise of the powers may provide evidence of the commission of the offence.<sup>52</sup>

In the Northern Territory, under the *Police Administration Act 1978* (NT), the connection to criminal activity is more specific where:

A member of the Police Force may, without warrant, stop, detain, and search the following: (a) an aircraft, ship, train or vehicle if the member has reasonable grounds to suspect that a dangerous drug, precursor or drug manufacturing equipment may be found on or in it.<sup>53</sup>

Similar provisions with respect to specific criminal activity exist in South Australia. For example, a police officer can stop a vehicle where:

there is reasonable cause to suspect that – (i) there are stolen goods; or (ii) there is an object, possession of which constitutes an offence; or (iii) there is evidence of the commission of an indictable offence.<sup>54</sup>

South Australia provides that roadblocks may also be set up to stop a vehicle where a vehicle contains a person ‘suspected of having committed a major offence; or (b) who has escaped from lawful detention’.<sup>55</sup> Tasmania similarly provides grounds to stop vehicles where an officer holds a reasonable belief that a person ‘has committed an offence punishable upon indictment’.<sup>56</sup> Victoria provides grounds for police to use vehicle immobilising devices:

- (a) to prevent the use of the vehicle by a person for the purpose of escaping from lawful custody or avoiding arrest; or
- (b) to stop or assist in stopping a vehicle in connection with the pursuit of the vehicle by police officers; or
- (c) to stop or assist in stopping a vehicle from entering a place on or near a road or road related area at which –
  - (i) there is a public gathering; or
  - (ii) a non-road activity within the meaning of section 99B is being conducted.<sup>57</sup>

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<sup>52</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 37(2)(a).

<sup>53</sup> *Police Administration Act 1978* (NT) s 120C.

<sup>54</sup> *Summary Offences Act 1953* (SA) s 68(1).

<sup>55</sup> *Summary Offences Act 1953* (SA) ss 74B(2), 74BAA(1).

<sup>56</sup> *Police Powers (Vehicle Interception) Act 2000* (Tas) s 5(1)(a)(i).

<sup>57</sup> *Road Safety Act 1986* (Vic) s 63B(1).

Victoria also provides power to stop vehicles for suspected breaches of mass, dimension and loading (MDL).<sup>58</sup> In Western Australia, grounds to stop vehicles may be enlivened to investigate or prevent harm to a person. For example, a vehicle may be stopped:

If an officer reasonably suspects –

- (a) that a vehicle is carrying a thing relevant to an offence; or
- (b) that a vehicle is a thing relevant to an offence; or
- (c) that a vehicle is carrying a person against whom an offence may have been, or may be being, committed; or
- (d) that an offence has been, is being, or is about to be, committed in a vehicle.<sup>59</sup>

Western Australia also provides grounds to stop vehicles where there may have been a serious event in a vehicle, defined as ‘a fire, an explosion, or the presence of any article, substance or gas, that is likely to endanger the safety of people or cause serious damage to property’.<sup>60</sup>

The third context where authorised officers have powers to stop vehicles is under traffic and vehicle laws. Powers to stop vehicles under traffic and vehicle legislation usually centre around contravention of specific rules or regulations relating to the road rules or compliance with vehicle-related obligations with respect to loads or roadworthiness. For example, the Northern Territory provides the power to stop vehicles in contravention of the traffic law, where an authorised officer ‘has reason to believe that a vehicle is being driven in contravention of regulation 23, 24 or 24A, the officer may direct the driver ... to stop the vehicle’.<sup>61</sup> In Queensland, grounds to stop arise where an ‘officer reasonably believes the driver has just committed, or is committing, an offence against the Queensland Road Rules, section 154(1) or 156(1)’<sup>62</sup> and ‘for enforcing a transport Act or the Heavy Vehicle National Law (Queensland)’.<sup>63</sup> However, not all states and territories provide grounds to stop vehicles that are specific with regard to contravention of particular rules or regulations. For example, in South Australia, authorised officers can stop a vehicle ‘for the purpose of or in connection with exercising other powers under a road law’.<sup>64</sup> In Western Australia, grounds to stop vehicles are

<sup>58</sup> *Road Safety Act 1986* (Vic) Division 3.

<sup>59</sup> *Criminal Investigations Act 2006* (WA) s 39(1).

<sup>60</sup> *Criminal Investigations Act 2006* (WA) s 37(1).

<sup>61</sup> *Traffic Regulations Act 1999* (NT) s 25(1).

<sup>62</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 31(1)(c).

<sup>63</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 60(3)(a).

<sup>64</sup> *Road Traffic Act 1961* (SA) s 40H(1).

provided to police officers ‘for the purpose of or in connection with exercising other powers under a road law’.<sup>65</sup> In Victoria, there is a general obligation on ‘drivers’ in section 59(1) of the *Road Safety Act 1986* (Vic) to stop vehicles when requested by a police or departmental officer.<sup>66</sup>

In summary, the grounds to stop vehicles are available to authorised officers or police officers where officers have a reasonable belief that there is a safety risk, or that there is a connection to criminal activity, or where the road and traffic legislation is enlivened. When vehicles are automated, similar concerns may still exist where vehicles are unsafe through mechanical failure or deterioration, or where criminal offences involve the use of automated vehicles, or where road and traffic legislation require vehicle inspection or stoppage. The obvious issue for many of these powers is that they fall within the ‘driver’ dilemma of being addressed to the driver of the vehicle. As discussed in Part A(2), this could seriously limit the effectiveness of these powers if a highly formal and legalistic interpretation of driver is adopted.

### 3.2 Who Can Stop Vehicles?

In all states and territories, roadside powers to stop vehicles are vested in ‘authorised officers’ defined within each jurisdiction.<sup>67</sup> Authorised officers are conferred powers under their respective transport or police powers legislation in each state and territory.<sup>68</sup> The description of who is authorised also varies between jurisdictions. For example, in the ACT, an authorised person is ‘a person who is, under a regulation made under this Act or the *Road Transport (General) Act 1999*’,<sup>69</sup> whereas in NSW an authorised person is described as, ‘(a) a police officer, or (b) a person who is appointed by Transport for NSW (TfNSW) as an authorised officer for the purposes of the provision in which the expression is used’.<sup>70</sup> In the Northern Territory, the power to stop vehicles includes ‘a police officer, an officer, or an officer of a

<sup>65</sup> *Road Traffic (Administration) Act 2008* (WA) s 39(2).

<sup>66</sup> *Road Safety Act 1986* (Vic) s 59(1).

<sup>67</sup> *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s 44; *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 3; *Road Rules 2014* (NSW) Dictionary; *Road Transport Act 2013* (NSW) s 4; *Traffic Regulations Act 1999* (NT) s 9(8); *Police Powers and Responsibilities Act 2000* (Qld) schedule 6; *Transport Operations (Road Use Management) Act 1995* (Qld) schedule 4; *Motor Vehicles Act 1959* (SA) s 5; *Road Traffic Act 1961* (SA) s 5; *Summary Offences Act 1953* (SA) s 74BAA(4); *Vehicle and Traffic Act 1999* (Tas) s 3; *Road Safety Act 1986* (Vic) ss 63B(1), 84C, 191H; *Criminal Investigations Act 2006* (WA) s 3; *Road Traffic (Administration) Act 2008* (WA) s 4; *Road Traffic Code 2000* (WA) s 3.

<sup>68</sup> *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s 4; *Road Rules 2014* (NSW) r 4; *Traffic Regulations Act 1999* (NT) s 81B; *Transport Operations (Road Use Management) Act 1995* (Qld) s 20; *Road Traffic Act 1961* (SA) ss 5, 35; *Motor Vehicles Act 1959* (SA) s 5; *Vehicle and Traffic Act 1999* (Tas) s 3; *Road Safety Act 1986* (Vic) s 3; *Road Traffic Act 1974* (WA) s 3.

<sup>69</sup> *Road Transport (Safety and Traffic Management) Act 1999* (ACT) Dictionary **authorised person**.

<sup>70</sup> *Road Rules 2014* (NSW) r 4 Dictionary.

competent authority’,<sup>71</sup> while Queensland deems every police officer to be an authorised officer,<sup>72</sup> along with ‘officers and employees of the public service’<sup>73</sup> and ‘other persons prescribed under a regulation’.<sup>74</sup> In Western Australia, officer ‘means a police officer or a public officer or both, as the case requires’,<sup>75</sup> while in Victoria an authorised officer can be ‘an employee in the Department authorised in writing by the Secretary under section 112’,<sup>76</sup> or a police officer,<sup>77</sup> or an inspector under the HVNL.<sup>78</sup> In Tasmania, ‘authorised officer’ means ‘a person authorised by the Commission under section 9(2) of the *Traffic Act 1925*’.<sup>79</sup> The definition of ‘authorised’ is not consistent across Australia, and it is interesting to note that the NSW definition also comes with the caveat:

This definition is not uniform with the corresponding definition in the Dictionary of the Australian Road Rules. However, the Australian Road Rules allow another law of this jurisdiction to make provision for who is an authorised person. Different definitions may apply in other Australian jurisdictions.<sup>80</sup>

Although the authority may be instituted differently across jurisdictions, all authorised officers have some form of roadside power to stop vehicles. In some situations, this may require the use of force to stop a vehicle.

### 3.3 *Use of Force Against Persons to Stop Vehicles*

The power to use force against persons to stop a vehicle is reserved for police officers in each jurisdiction. For example, in Western Australia, section 72 of the *Road Traffic (Administration) Act 2008* (WA) provides ‘power to use force against persons to be exercised only by police officers’<sup>81</sup> and similarly, section 41H of the *South Australian Road Traffic Act 1961* (SA) provides ‘use force against persons to be exercised only by police officers’.<sup>82</sup> In NSW, the power to use force is relatively broad where:

<sup>71</sup> *Traffic Regulations Act 1999* (NT) s 25(1).

<sup>72</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 20(1).

<sup>73</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 20(1)(a).

<sup>74</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 20(1)(b).

<sup>75</sup> *Criminal Investigations Act 2006* (WA) s 3.

<sup>76</sup> *Road Safety Act 1986* (Vic) s 3.

<sup>77</sup> *Road Safety Act 1986* (Vic) s 84C.

<sup>78</sup> *Road Safety Act 1986* (Vic) s191H.

<sup>79</sup> *Vehicle and Traffic Act 1999* (Tas) s 3.

<sup>80</sup> *Road Rules 2014* (NSW) r 4 Dictionary, **authorised person**.

<sup>81</sup> *Road Traffic (Administration) Act 2008* (WA) s 72.

<sup>82</sup> *Road Traffic Act 1961* (SA) s 41H.

It is lawful for a police officer exercising a function under this Act or any other Act or law in relation to an individual or a thing, and anyone helping the police officer, to use such force as is reasonably necessary to exercise the function.<sup>83</sup>

The actual wording supporting powers to use force varies across jurisdictions. For example, in the Northern Territory, while not expressly mentioning the use of force against persons, the requirement is that authorised officers use ‘the force, that is necessary and reasonable in the circumstances’<sup>84</sup> or that a ‘police officer may use any reasonable force and assistance in exercising a power under this section’.<sup>85</sup> In Queensland, the power to use force against persons provides:

It is lawful for a police officer exercising or attempting to exercise a power under this or any other Act against an individual, and anyone helping the police officer, to use reasonably necessary force to exercise the power.<sup>86</sup>

The power to use force against a person in the context of stopping an AV might seem marginal. However, as the power in all states and territories is not limited to the problematic term ‘driver’ and is instead directed to ‘persons’ or ‘individuals’, it clearly applies to force against a user or occupant of an AV. In a context where the AV has capacity for the occupants to disable the ADS, dictate to the ADS or take over the DDT from the ADS, this power might aid in the stopping of an AV where the ADS or its occupants have not complied with a police officer’s direction to stop. Although the use of force against persons is worded similarly across most jurisdictions, the use of force against property appears to be somewhat context-dependent across the states and territories.

### 3.4 *Use of Force Against Property to Stop Vehicles*

In contrast to the use of force against persons, the power to use force against property to stop a vehicle may be exercised by any person satisfying the definition of authorised officer in most schemes. The power to use force allows an officer to legally effect the stopping of a vehicle even if the vehicle is damaged in the process. A situation could easily be imaged where roadside officers might need to damage an AV to stop it. There are further powers relating to the use of immobilisation devices to stop vehicles considered below in Part A(3.5). In the ACT, the *Road Transport (Safety and Traffic Management) Act 1999* (ACT) provides that police officers ‘may

<sup>83</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 230.

<sup>84</sup> *Police Administration Act 1978* (NT) s 119A(2).

<sup>85</sup> *Traffic Act 1987* (NT) s 29AF(3).

<sup>86</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 615(1).



use the force that is necessary and reasonable in the circumstances’,<sup>87</sup> while NSW again deems it ‘lawful for a police officer ... to use such force as is reasonably necessary’.<sup>88</sup> In Queensland, there are dedicated provisions around the use of force against property, which are expressly separate from those granting power to use force against persons:

- (1) It is lawful for a police officer or law enforcement officer, and anyone helping the police officer or law enforcement officer, to use reasonably necessary force when exercising or attempting to exercise a power under—
  - (a) this Act, including, for example, powers under a surveillance device warrant or covert search powers under a covert search warrant; or
  - (b) another Act.

*Examples—*

- 1 Forced entry may be necessary to execute a search warrant and seize items.
- 2 Forced entry may be needed for covert entry to a place to install a surveillance device.
- 3 Force may be used to stop vehicles.

- (2) This section does not apply to the use of force against an individual.<sup>89</sup>

In South Australia, the use of force against property depends on the context in which it is used. For example, the power to enter and move unattended vehicles provides that an ‘officer or person authorised by the officer may use reasonable force’,<sup>90</sup> whereas the power to move unattended vehicles where danger is present allows the ‘officer or person authorised by the officer may use reasonable force to the extent reasonably necessary for the purpose of entering or removing the vehicle’.<sup>91</sup> Western Australia, while not expressly mentioning power to use force against property, provides that where a vehicle is unattended:

The officer or person authorised by the officer may use reasonable force to do any or all of the following –

- (a) open unlocked doors and other unlocked panels and objects;
- (b) gain access to the vehicle, or its engine or other mechanical parts, to enable the vehicle to be moved;
- (c) enable the vehicle to be towed.<sup>92</sup>

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<sup>87</sup> *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s 10(3)(d).

<sup>88</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 230.

<sup>89</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 614.

<sup>90</sup> *Road Traffic Act 1961* (SA) s 40M(4).

<sup>91</sup> *Road Traffic Act 1961* (SA) s 40N(7).

<sup>92</sup> *Road Traffic (Administration) Act 2008* (WA) s 45(4).

However, in Western Australia the power is not so limited when moving a vehicle that is unattended or broken down where there is danger or obstruction: ‘The officer or person authorised by the officer may use reasonable force to the extent reasonably necessary to prevent or minimise the harm or risk or prevent or remove the obstruction.’<sup>93</sup> Again, the powers to use force against property expand depending on the context and the potential seriousness of the harm that may be caused.

### 3.5 Directions to Stop a Vehicle

As noted, in each state and territory there are provisions that allow for the stopping of vehicles, usually in the form of directions given to the ‘driver’ of a vehicle, or the ‘person in control’ of a vehicle.<sup>94</sup> This is a situation where the ‘driver’ dilemma is evident. In relation to conventional human-driven vehicles, a person is always likely to be located in or near a vehicle, and can therefore be given direction by an authorised officer to stop the vehicle. This may be communicated to a driver or person in control of a vehicle in a variety of ways, through hand signals,<sup>95</sup> visually,<sup>96</sup> orally,<sup>97</sup> via audible alarm signals<sup>98</sup> or by some other means.<sup>99</sup> For example, under section 64A(5) of the *Road Safety Act 1986* (Vic):

direction to stop means any action taken by a police officer, or a protective services officer on duty at a designated place, to indicate to a driver of a motor vehicle that he or she must stop the motor vehicle, including but not limited to the following –

<sup>93</sup> *Road Traffic (Administration) Act 2008* (WA) s 46(7).

<sup>94</sup> *Crimes Act 1900* (ACT) ss 209(2)(a), 210(d)(ii); *Road Transport (Safety and Traffic Management) Act 1999* (ACT) ss 5C; 10BA(1)(c); *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) ss 36A, 37; *Road Transport Act 2013* (NSW) s148C; *Motor Vehicle Act 1949* (NT) s 64(a); *Police Administration Act 1978* (NT) ss 119A (3)(a), 120C(a); *Traffic Regulations Act 1999* (NT) s 25(a); *Police Powers and Responsibilities Act 2000* (Qld) ss 31(1)(a), 60, 74J, 75(1); *Transport Operations (Road Use Management) Act 1995* (Qld) ss 31(1), 32(1), 35C(1), 47; *Motor Vehicles Act 1959* (SA) s 98P(3)(b)(ii); *Road Traffic Act 1961* (SA) ss 40H(1), 40L(1), 40Z(2), (3), 41; *Summary Offences Act 1953* (SA) ss 68, 74B; *Police Offences Act 1935* (Tas) s 37N; *Police Powers (Public Safety) Act 2005* (Tas) ss 19(1), 21; *Police Powers (Vehicle Interception) Act 2000* (Tas) ss 7, 11; *Vehicle and Traffic Act 1999* (Tas) s 46(1); *Road Safety Act 1986* (Vic) ss 63B(1), 84G(1); *Criminal Investigations Act 2006* (WA) ss18(2), 35(1); *Road Traffic Act 1974* (WA) s 93(a); *Road Traffic (Administration) Act 2008* (WA) ss 39, 43; *Road Traffic Code 2000* (WA).

<sup>95</sup> *Police Powers and Responsibilities Regulation 2012* (Qld) Schedule 7; *Road Safety Act 1986* (Vic) s 64A(5)(a).

<sup>96</sup> *Road Safety Act 1986* (Vic) s 64A(5)(b).

<sup>97</sup> *Road Traffic Act 1961* (SA) ss 40L, 41; *Road Traffic (Administration) Act 2008* (WA) s 43(1).

<sup>98</sup> *Road Safety Act 1986* (Vic) s 64A(5)(b)(iii).

<sup>99</sup> *Road Transport (Safety and Traffic Management) Act 1999* (ACT) ss 5C(b), 7A(1)(i); *Road Rules 2014* (NSW) s 304; *Traffic Regulations Act 1999* (NT) s 25(1); *Police Powers and Responsibilities Act 2000* (Qld) ss 31(1)(a), 59(1); *Police Powers and Responsibilities Regulation 2012* (Qld) s 17(1), Schedule 7; *Transport Operations (Road Use Management) Act 1995* (Qld) s 33(3A); *Road Traffic Act 1961* (SA) ss 40L(1), (2), 41; *Vehicle and Traffic Act 1999* (Tas) s 46(1); *Road Safety Act 1986* (Vic) s 64A(5); *Road Traffic (Administration) Act 2008* (WA) s 39(2), s 43; *Road Traffic Code 2000* (WA) s 273(2).

- (a) the giving of hand signals or the display of signs by the police officer or protective services officer;
- (b) the—
  - (i) flashing of headlights of; or
  - (ii) use of red and blue flashing lights on; or
  - (iii) sounding of an alarm, siren or other warning device from –
 a motor vehicle that is being driven by a police officer in the course of his or her duties as a police officer.

In Queensland, Schedule 7 of the *Police Powers and Responsibilities Regulation 2012* (Qld) sets out the police hand signals pictorially.<sup>100</sup> In Western Australia, under the *Road Traffic (Administration) Act 2008*, a direction ‘may be given orally, in writing or in any other manner’.<sup>101</sup> In all jurisdictions, a person to whom directions have been given then has a responsibility to stop the vehicle<sup>102</sup> as directed to do so,<sup>103</sup> and there usually are penalties for failure to comply with directions.<sup>104</sup> For example, the ACT *Road Transport (Safety and Traffic Management) Act 1999* (ACT) provides that:

A person commits an offence if –

- (a) the person is driving a motor vehicle; and
- (b) a police officer asks or signals the person to stop the motor vehicle; and
- (c) the person fails to comply with the police officer’s request or signal as soon as practicable.<sup>105</sup>

This is a clear example of the ‘driver’ dilemma in the application of roadside enforcement powers to AVs. In directing the ‘driver’ and not ‘persons’ or ‘individuals’, the powers seemingly would not apply to occupants of an AV. In AVs with a level 3 ADS, there might be the interpretation, discussed in Part A(2), that the fallback-ready user could be regarded as the

<sup>100</sup> *Police Powers and Responsibilities Regulation 2012* (Qld) Schedule 7.

<sup>101</sup> *Road Traffic (Administration) Act 2008* (WA) s 60(1).

<sup>102</sup> *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s 5C; *Road Rules 2014* (NSW) s 304(1); *Police Powers (Vehicles) Act 1998* (NSW) s 10; *Motor Vehicle Act 1949* (NT) s 64; *Traffic Regulations Act 1999* (NT) s 25(1); *Police Powers and Responsibilities Act 2000* (Qld) s 59(1).

<sup>103</sup> *Police Powers and Responsibilities Regulation 2012* (Qld) s 17(1); *Vehicle and Traffic Act 1999* (Tas) s 46(2).

<sup>104</sup> *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s 5C; *Road Transport Act 2013* (NSW) s 154(6); *Motor Vehicle Act 1949* (NT) s 65(1); *Police Powers and Responsibilities Act 2000* (Qld) s 60(2); *Transport Operations (Road Use Management) Act 1995* (Qld) s 32(5); *Road Traffic Act 1961* (SA) ss 40H(5), 40Y(5); *Vehicle and Traffic Act 1999* (Tas) s 46(2); *Police Powers (Vehicle Interception) Act 2000* (Tas) ss 7(2),(3); *Road Safety Act 1986* (Vic) s 64A(1); *Road Traffic (Administration) Act 2008* (WA) s 44.

<sup>105</sup> *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s 5C.

driver when enforcement officers give directions to stop. The fallback-ready user will be seated in the driver's seat and be under the general obligation to supervise the ADS and the driving environment, and intervene if required. However, for AVs with a level 4 and/or level 5 ADS, even assuming that the AV has capacity for occupants to interact with an ADS and facilitate compliance with a stopping directive, occupants are not covered by the wording of the direction powers. Unlike fallback-ready users, occupants would not need to be seated in the driver's seat or be attentive to requests to intervene and/or vehicle system failures. Furthermore, even if an occupant wants to comply with the direction, it is possible that an AV with a level 4, and particularly a level 5 ADS, might not have in-cabin controls.

Where there is no immediate human person able to make the AV stop, or where there may be a need to stop the progress of an unoccupied, unidentified or out-of-control AV, provisions around giving directions to stop may prove problematic. Roadside powers to compel a person, or driver, to stop rely on there being a 'driver' or 'person' as defined in the Acts, to whom such a direction may be given which may not readily translate into a context involving an AV. In the ACT, the operative terminology used is 'person'. For example, under the ACT *Road Transport (Safety and Traffic Management) Act 1999*, a person commits an offence where 'the person fails to comply with the police officer's request or signal as soon as practicable'.<sup>106</sup> In NSW, a person is guilty of an offence where '(a) the person is subject to an operative direction under subsection (2), and (b) the person engages in conduct that results in a contravention of the direction'.<sup>107</sup> Directions may be given to a driver in NSW,<sup>108</sup> the Northern Territory,<sup>109</sup> Victoria,<sup>110</sup> South Australia,<sup>111</sup> Tasmania,<sup>112</sup> Western Australia<sup>113</sup> and Queensland.<sup>114</sup> However, Queensland also provides for directions to be given to a 'person in control' of a vehicle.<sup>115</sup> For example, the *Transport Operations (Road Use Management) Act 1995* (Qld) provides that an 'authorised officer, who is not a police officer, may require the person in control of a private

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<sup>106</sup> *Road Transport (Safety and Traffic Management) Act 1999* (ACT) ss 5C(c).

<sup>107</sup> *Road Transport Act 2013* (NSW) s 169A(7).

<sup>108</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 36A

<sup>109</sup> *Motor Vehicle Act 1949* (NT) s 64; *Traffic Regulations Act 1999* (NT) s 25(1).

<sup>110</sup> *Road Safety Act 1986* (Vic) s 64A(1).

<sup>111</sup> *Road Traffic Act 1961* (SA) ss 40H(1)(a), 40L(1); *Motor Vehicles Act 1959* (SA) s 98P(3)(b)(ii); *Summary Offences Act 1953* (SA) s 74BAA(1).

<sup>112</sup> *Vehicle and Traffic Act 1999* (Tas) s 46(1); *Police Powers (Vehicle Interception) Act 2000* (Tas) s 7(2).

<sup>113</sup> *Road Traffic (Administration) Act 2008* (WA) ss 39(2), 43; *Road Traffic Code 2000* (WA) s 273(1)(a).

<sup>114</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 59(1).

<sup>115</sup> *Police Powers and Responsibilities Act 2000* (Qld) ss 60(1), 67(2), 68(1); *Transport Operations (Road Use Management) Act 1995* (Qld) ss 31(1), 32(1), 33(2)(a).

vehicle to stop the vehicle’.<sup>116</sup> Victorian powers to stop tend to refer mainly to the vehicle.<sup>117</sup> For example, under section 84I of the *Road Safety Act 1986* (Vic), ‘Impoundment or immobilisation of a motor vehicle’, if a motor vehicle is seized or surrendered, a police officer may:

- (b) cause the motor vehicle to be immobilised (whether by wheel clamps, a steering wheel lock or any other means) for the balance of the designated period –
- and may do anything else reasonably necessary to impound or immobilise the motor vehicle.<sup>118</sup>

Where vehicles are automated, there may not be a person who can readily be located to be given such a direction, and the ability to stop such a vehicle may most appropriately fall within the power to immobilise vehicles given to authorised officers in each jurisdiction.<sup>119</sup> In these circumstances, the immobilisation of vehicle powers appears broad enough to satisfy the stopping of a potentially rogue automated vehicle or, where that fails, the power to create a roadblock may be used.<sup>120</sup> Additionally, in some circumstances, roadblocks may be the only way to halt the progression of a runaway AV. Where checkpoints, roadblocks or tyre-deflation devices are used, they are contingent upon the potential seriousness of the harm that may be caused by the vehicle or its occupants. This is usually based on some form of reasonableness, as assessed by the authorised officer in each situation.<sup>121</sup>

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<sup>116</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) ss 31(1).

<sup>117</sup> *Road Safety Act 1986* (Vic) ss 63B, 84J.

<sup>118</sup> *Road Safety Act 1986* (Vic) s 84I(b).

<sup>119</sup> *Crimes Act 1900* (ACT) ss 209(2)(a), 210(d)(ii); *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s 44; *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 37(1); *Road Transport Act 2013* (NSW) s 148C; *Police Powers and Responsibilities Act 2000* (Qld) s 74J(2); *Transport Operations (Road Use Management) Act 1995* (Qld) ss 31, 47(3); *Summary Offences Act 1953* (SA) ss 74B, 74BAA; *Police Offences Act 1935* (Tas) s 37N; *Police Powers (Public Safety) Act 2005* (Tas) s 21; *Police Powers (Vehicle Interception) Act 2000* (Tas) ss 7, 11; *Road Safety Act 1986* (Vic) ss 63B(1), 84C, 84G; *Criminal Investigations Act 2006* (WA) ss 18, 19.

<sup>120</sup> *Crimes Act 1900* (ACT) ss 209(2)(a), 210(d)(ii); *Road Transport (Safety and Traffic Management) Act 1999* (ACT) s 44; *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 37(1); *Road Transport Act 2013* (NSW) s 148C; *Police Powers and Responsibilities Act 2000* (Qld) s 74J(2); *Transport Operations (Road Use Management) Act 1995* (Qld) ss 31, 47(3); *Summary Offences Act 1953* (SA) ss 74B, 74BAA; *Police Offences Act 1935* (Tas) s 37N; *Police Powers (Public Safety) Act 2005* (Tas) s 21; *Police Powers (Vehicle Interception) Act 2000* (Tas) ss 7, 11; *Road Safety Act 1986* (Vic) ss 63B(1), 84C, 84G; *Criminal Investigations Act 2006* (WA) ss 18, 19.

<sup>121</sup> *Crimes Act 1900* (ACT) s 209(1); *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 36(1); *Traffic Regulations Act 1999* (NT) s 25(1); *Police Powers and Responsibilities Act 2000* (Qld) s 74J(1)(b); *Transport Operations (Road Use Management) Act 1995* (Qld) ss 31(1)(b); *Summary Offences Act 1953* (SA) s 74B(2), 74BAA(1); *Police Powers (Public Safety) Act 2005* (Tas) s 19(1); *Road Safety Act 1986* (Vic) s 84F(1); *Criminal Investigations Act 2006* (WA) ss 18(2), 19(1).

## 4 Access to Vehicle Information and Data for Roadside Enforcement and Crash Investigation Purposes

A patchwork of state and territory enforcement powers exists regarding accessing information from or about vehicles. Three clusters of these powers are particularly relevant in the context of AVs. First, there are powers that allow roadside enforcement officers to gather information to identify the ‘driver’ of the vehicle. Although the ‘driver’ dilemma is a factor in the application of this power to AVs, it could be used to gather information from ‘persons’ who might have knowledge about who was in control of an AV. Second, various powers are available to gather data from a vehicle, particularly in relation to investigations of offences. These powers include the gathering of data directly from vehicles, but also entering onto premises to gather data. It would be anticipated that access to vehicle information and data from an ADS or ADSE would be highly relevant in the context of compliance and enforcement of road, traffic and vehicle laws in relation to AVs. Third, some states and territories have specific additional powers available with respect to crash investigations that would allow access to ADS data if an AV were involved in a crash. A significant factor in relation to the adaptability of the access of data powers and crash investigation powers is that they are not affected by the ‘driver’ dilemma. Finally, in addition to these three clusters of powers, Victoria and NSW have specific powers in relation to ADS data as part of the legislative framework for conducting trials of AVs.

### 4.1 Powers to Determine Identity of ‘Driver’

A number of state and territory roadside powers are specifically directed to determining the identity of drivers of vehicles by directly asking persons. This power could be particularly relevant for AVs with level 3 ADS, limited ODD level 4 ADS and dual-mode level 4 and 5 ADS (that is, a vehicle where the occupant can choose to engage the ADS) to determine whether the occupant or ADS was driving the vehicle at a specific time. The ‘driver’ dilemma is a significant factor in the scope and application of this power to AVs. Nevertheless, even if the ADS is not considered a ‘driver’, the wording of the power in some states could extend to third parties in some situations.

The most adaptable formulation of this power is in South Australia under section 74AB of the *Summary Offences Act 1953* (SA). It vests in ‘police officers’ the power to ‘ask a person questions for the purpose of obtaining information that may lead to the identification of the person who was driving, or was the owner of, a vehicle on a particular occasion or at a particular

time’.<sup>122</sup> This power is particularly expansive. It is not limited by suspicion of an alleged offence and nor is it limited to drivers, owners or passengers of a vehicle. As ‘person’ is defined in the *Acts Interpretation Act 1915* (SA) to include a body corporate,<sup>123</sup> it could be directed to an ADSE to provide data stored on or from an ADS.

Western Australia provides that where a vehicle has caused bodily harm to a person, the person in possession or control of a vehicle must assist police to determine the identity of a driver.<sup>124</sup> In other states and territories, the power to require identity is conditioned on the suspicion of an alleged offence. In Queensland, under section 55 of the *Police Powers and Responsibilities Act 2000* (Qld), a police officer can require disclosure of ‘information that will identify or help identify the person who was in control of the vehicle’<sup>125</sup> where the police officer reasonably suspects a contravention of the *Transport Operations (Road Use Management) Act 1995* or the Heavy Vehicle National Law (Queensland).<sup>126</sup> The range of persons from whom the information can be requested is broad, including the owner, a person in possession of the vehicle or ‘a person who may reasonably be expected to be able to give the information’.<sup>127</sup> In the context of AVs, an ADSE could reasonably be expected to be such a person.<sup>128</sup>

In Western Australia, section 34 of the *Road Traffic (Administration) Act 2008* (WA) allows that if there is an alleged offence under ‘written law’ relating to ‘driving or being in charge of a vehicle’,<sup>129</sup> then a ‘police officer’ can request a ‘responsible person to give information which may lead to the identification of the driver or person in charge of the vehicle at the time of the alleged offence’.<sup>130</sup> The responsible person is defined as ‘a person to whom the possession or control of the vehicle was entrusted at the time of the alleged offence’.<sup>131</sup> Unlike the South Australian and Queensland versions of this power, the Western Australian definition of ‘responsible’ limits the power to parties inside the vehicle. While this could include occupants of an AV (as arguably having ‘possession’ of the vehicle), it does not seem to extend to other persons (such as pedestrians and other road users) or those who might have observed the vehicle and the alleged offence. Further, there is a significant issue with regard to whether this would extend to the ADSE. When

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<sup>122</sup> *Summary Offences Act 1953* (SA) s 74AB.

<sup>123</sup> *Acts Interpretation Act 1915* s 4 **person or party**.

<sup>124</sup> *Road Traffic Act 1974* (WA) s 57.

<sup>125</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 55(2).

<sup>126</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 55(1).

<sup>127</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 55(2)(c).

<sup>128</sup> Relying on the *Acts Interpretation Act 1954* (Qld) s 32D(1).

<sup>129</sup> *Road Traffic (Administration) Act 2008* (WA) s 34(2)(a).

<sup>130</sup> *Road Traffic (Administration) Act 2008* (WA) s 34(2)(b).

<sup>131</sup> *Road Traffic (Administration) Act 2008* (WA) s 34(1).

the ADS is engaged, the issue is whether it could be assumed that the ADSE is the ‘a person to whom the possession or control of the vehicle was entrusted to’. If the answer is yes, then the ADSE could be called upon to provide information. A further complication could be if the ADS was not enabled, and an AV was involved in an offence. In that situation, it could be that the ADSE is not a responsible person for the purposes of this power.

In NSW, under section 14 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), a police officer can require drivers, passengers and owners to disclose the identity of drivers, passengers and owners<sup>132</sup> where there is suspicion ‘on reasonable grounds that a vehicle is being, or was, or may have been used in or in connection with an indictable offence’,<sup>133</sup> or for a dangerously defective vehicle under the *Road Transport Act 2013* (NSW).<sup>134</sup> There are two significant limitations in relation to the NSW power in relation to AVs. The first is that in being limited to drivers, passengers and owners, like the Western Australian provisions, it probably would not cover ADSEs. The second is the indictable offence requirement. Generally, offences under the NSW road, traffic and vehicle laws are not indictable. For this power to be enlivened in the context of AVs, there needs to be suspicion of a serious driving-related offence, such as negligent, furious, reckless or menacing driving,<sup>135</sup> or dangerous driving causing death or grievous bodily harm.<sup>136</sup>

The situation is similar in the Northern Territory. Under section 9 of the *Traffic Regulations 1999* (NT), if an ‘authorised person’<sup>137</sup> believes that the vehicle has been used in an offence against the *Motor Vehicle Act 1949* (NT), they can compel ‘drivers’, ‘persons’ and ‘owners’ to disclose ‘information ... that may identify the driver of the vehicle or assist in investigating the alleged offence’.<sup>138</sup> At one level, this is potentially more adaptable to AV regulation than the NSW provision as, like the Western Australian provisions, it covers ‘regulatory’ traffic offences in addition to the serious road crimes. In apply beyond drivers and owners to ‘persons’ it could extend to include an occupant of an AV where the ADS was operational.

<sup>132</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 14.

<sup>133</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 14(1). ‘indictable offences’ are defined under s 3 *Criminal Procedure Act 1986* (NSW) as offences that may be prosecuted on indictment. These are usually serious offences with a possible maximum penalty of exceeding two years’ imprisonment.

<sup>134</sup> *Road Transport Act 2013* (NSW) s 78.

<sup>135</sup> *Road Transport Act 2013* (NSW) ss 117, 118.

<sup>136</sup> *Crimes Act 1900* (NSW) ss 52A–52AB.

<sup>137</sup> This is defined broadly as ‘police officer, an inspector, an officer or any other person who by or under an Act is authorised to require a person to produce a driver's licence or give his or her personal particulars’: *Traffic Regulations 1999* (NT) s 9(8) **authorised person**.

<sup>138</sup> *Traffic Regulations 1999* (NT) ss 9(1–3).



Other states and territories have further complexities in relation to compelling disclosure of driver identity in relation to AVs. Under section 37G of the *Police Offences Act 1935* (Tas), a ‘police officer’ can demand ‘all such information as the officer requires as to the identity and whereabouts of the driver or any occupant of the vehicle’.<sup>139</sup> This power is enlivened where there is an alleged offence by a person against ‘any State or Commonwealth legislation’, but only where the alleged offence involves the person as ‘the driver or an occupant of the motor vehicle’.<sup>140</sup> The power is further limited by only applying to the owner or ‘registered operator’ of a motor vehicle.<sup>141</sup> This power, with the same constraints, is reproduced in relation to clamping of vehicles and vehicles at roadblocks.<sup>142</sup> Through articulating the disclosure of identity power as addressed to owners, the Tasmanian provisions are not particularly well adapted to AVs where a clear relationship between driver and owner cannot be assumed.

In summary, South Australia has the most adaptable roadside enforcement power directed towards determining the identity of drivers, in that it is not limited by the range of persons from whom that information can be requested nor by needing a suspicion of an offence to be enlivened. The way that the power is articulated in Queensland is also reasonably adaptable to determining the identity of the driver of an AV. Requiring suspicion of a road, traffic or vehicle offence would remain a relevant consideration with respect to AVs, and the power extends beyond the categories of owner and drivers to include occupants of AVs or other road users. All the other states and territories have less adaptable articulations limited by offences, as in NSW, or more limited to ‘owners’ or drivers, as in Tasmania and the Northern Territory. Victoria and the Australian Capital Territory do not seem to have specific roadside enforcement powers directed to determining the identity of drivers.<sup>143</sup>

#### 4.2 Access to ADS Operation Data

Aside from the specific powers provided in the Victorian *Road Safety (Automated Vehicles) Regulations 2018* (Vic) (discussed in Part A(5)), there are no direct powers in state and territory law concerning access to ADS operation data, such as the level of automation engaged by the vehicle at a specific time, or whether transition requests have been made to the fallback-ready user, or for level 4 and 5 ADS whether fallback DDT mode had been engaged. When

<sup>139</sup> *Police Offences Act 1935* (Tas) s 37G(1).

<sup>140</sup> *Police Offences Act 1935* (Tas) s 37G(1).

<sup>141</sup> *Police Offences Act 1935* (Tas) s 37G(1).

<sup>142</sup> *Police Offences Act 1935* (Tas) s 37N(11)(a–c); *Police Powers (Vehicle Interception) Act 2000* (Tas) s 8.

<sup>143</sup> The *Road Safety Act 1986* (Vic) s 63 provides a general power to police officers or officer, or a protective services officer to enter vehicles to determine the identity of drivers. This does not seem to allow the gathering of information from another person who was the driver at a particular time.

considering access to ADS operational data, the location of the possible data is also significant. ADS operational data may be stored onboard the AV and possibly accessed through powers authorising the gathering of information from vehicles. In addition, ADS data might be transmitted and stored in a repository under the control of the ADSE. In that context, power to access premises and take vehicle-related data would be relevant.

All states and territories law provide police with powers to inspect and take evidence from a vehicle in the context of general law enforcement and criminal investigations. These powers allow inspection and removal of evidence in relation to serious offences, often without a warrant.<sup>144</sup> For example, as part of the vehicle-stopping power in section 36(3) of the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), a police officer may seize and detain:

- (a) all or part of a thing that the police officer suspects on reasonable grounds is stolen or otherwise unlawfully obtained, and
- (b) all or part of a thing that the police officer suspects on reasonable grounds may provide evidence of the commission of a relevant offence [indictable offence<sup>145</sup>], and
- (c) any dangerous article, and
- (d) any prohibited plant or prohibited drug in the possession or under the control of a person in contravention of the *Drug Misuse and Trafficking Act 1985*.<sup>146</sup>

The existence of the power is obviously important for law enforcement and criminal investigations. It could be used to access ADS data in the highly specific and circumscribed situations where it might provide evidence of an offence, such as positioning data that might place an AV at a crime site. However, this power does not seem very adaptable to accessing ADS data in and of itself. It is a power directed to support the investigation of serious criminal offences. As a power to support roadside enforcement of AVs, these general investigatory

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<sup>144</sup> *Crimes Act 1900* (ACT) s 209; *Police Administration Act 1978* (NT) s 119(3); *Police Powers (Public Safety) Act 2005* (Tas) ss 19, 25; *Criminal Investigations Act 2006* (WA) ss 21, 35; *Police Powers and Responsibilities Act 2000* (Qld) s 36 *Summary Offences Act 1953* (SA) s 68(1); *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 36. In Western Australia there is a further power in relation to 'data access orders' obtained from a magistrate to secure data from a 'target person' in relation to investigation of a serious offence (an offence carrying a maximum penalty of five years' or more imprisonment) *Criminal Investigations Act 2006* (WA) Part 7. In Victoria there does not seem to be a distinct power in relation to vehicles; rather vehicles can be searched under general search and seizure powers *Victoria Police Act 2013* (Vic) s 264 and under the *Road Safety Act 1986* (Vic) Part 9 Inspections and searches concerning heavy vehicles.

<sup>145</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 35.

<sup>146</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 36(3).

powers are marginal. The offences under the road rules, traffic laws and vehicle compliance laws are generally minor, and would not usually enliven these powers.

States and territories also have a range of powers specific to road, traffic and vehicle compliance and investigation of related offences that allow searching of vehicles and premises and the taking of information. There is diversity regarding the scope and articulation of these powers. Queensland has quite expansive powers vested in police officers to gather information about a vehicle, which are adaptable to accessing ADS data. Under section 54 of the *Police Powers and Responsibilities Act 2000* (Qld), ‘police officers’ have general powers to make ‘any reasonably necessary inquiry, investigation, inspection, examination, or test for establishing whether or not an offence under the *Transport Operations (Road Use Management) Act* or the Heavy Vehicle National Law (Queensland) has been committed’.<sup>147</sup> It is unclear whether this power extends to data held within an ADS or a repository. Some guidance can be identified in section 64(2)(e) that authorises a police officer, when enforcing the *Transport Operations (Road Use Management) Act 1995* (Qld) and the HVNL (Qld) ‘to copy, or take an extract from, a document in the vehicle’.<sup>148</sup> This power is expanded by section 56, which allows ‘any reasonably necessary inquiry, investigation, inspection, examination or test ... to obtain information about a vehicle’.<sup>149</sup> Furthermore, these powers extend to access to a place, and can involve the use of reasonable force if authorised by an Inspector (or higher rank).<sup>150</sup> Narrower powers are also available under the *Transport Operations (Road Use Management) Act 1995* (Qld) to ‘authorised officers’ for ‘monitoring or enforcing compliance’<sup>151</sup> of the Act; they may enter premises and take copies of information, including digital information.<sup>152</sup> However, these powers are more limited, as entry requires consent or a formal warrant.<sup>153</sup> Similar authorised officers can access vehicles if there may be an offence under a ‘transport Act’<sup>154</sup> and take copies of information,<sup>155</sup> particularly digital

<sup>147</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 54(1). Power is further clarified as extending beyond ‘inspections’ in section 64.

<sup>148</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 64(2)(e). There are also further powers for extracting data held on smart licences (s 197E); however, the definition of ‘smart card authority’ is narrow and not likely to be understood as data held in an ADS.

<sup>149</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 56.

<sup>150</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 57.

<sup>151</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 30(2).

<sup>152</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) ss 30(2), 30B, 40.

<sup>153</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) ss 26(1)(a), (b) and 29. There is a further set of more expansive powers in relation to vehicles and dangerous goods: ss 26A, 26B, 30A, 40A.

<sup>154</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 35 Schedule 4 **transport Act** defined to include the *Transport Operations (Road Use Management) Act 1995* (Qld) and *Motor Accident Insurance Act 1994* (Qld). It does not seem that the HVNL (Qld) is a ‘transport Act’ for the purposes of these powers.

<sup>155</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 35(2).

information.<sup>156</sup> As with the powers under *Police Powers and Responsibilities Act 2000* (Qld), provided the precondition for the powers are met, they could possibly be used to access ADS operational data from an AV and possibly from the premises of the ADSE. These Queensland provisions are noteworthy because they seem to apply to all vehicles, not just heavy vehicles.

In South Australia, Division 5 of the *Road Traffic Act 1961* (SA) allows for ‘authorised officers’ to inspect vehicles and copy information stored in the vehicles that is required to be stored because of an ‘Australian road law’.<sup>157</sup> There are further powers to direct a responsible person to produce any records required to be kept under an Australian road law, or ‘any records comprising transport documentation of journal documentation’,<sup>158</sup> or information ‘about a vehicle’,<sup>159</sup> and to inspect and search premises.<sup>160</sup> Supporting these powers, there is express authority allowing for the seizure of digital devices or the copying of digital information.<sup>161</sup> As with the Queensland provisions, these provisions seem reasonably adapted to accessing ADS data, provided that the purpose is in relation to compliance or investigation of breaches of Australian road laws. Further, these powers apply to all vehicles and do not seem to be limited to heavy vehicles.

Other states and territories have more limited powers. The Northern Territory allows for ‘inspectors’ and police officers to inspect vehicles ‘for any purposes’ of the *Motor Vehicle Act 1949* (NT), but no specific powers in relation to accessing vehicle data or entry onto premises to access data.<sup>162</sup> In Tasmania, under the *Vehicle and Traffic Act 1999* (Tas), police or authorised officers can seize any ‘device or document’ during a vehicle inspection or from premises.<sup>163</sup> This is limited to offences under that Act, which generally relate to loads and sales of vehicles. In Western Australia, the *Road Traffic (Administration) Act 2008* (WA) also provides for inspections of vehicles, including ‘access and download of information’<sup>164</sup> and the search and seizure of evidence from premises.<sup>165</sup> These powers also seem limited to load, defects and mass requirements specifically in relation to heavy vehicles.<sup>166</sup> For these narrower

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<sup>156</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 35(2)(e).

<sup>157</sup> *Road Traffic Act 1961* (SA) s 40Q.

<sup>158</sup> *Road Traffic Act 1961* (SA) s 40W(1).

<sup>159</sup> *Road Traffic Act 1961* (SA) s 40X.

<sup>160</sup> *Road Traffic Act 1961* (SA) ss 40S, 40T.

<sup>161</sup> *Road Traffic Act 1961* (SA) s 41E.

<sup>162</sup> *Motor Vehicles Act 1949* (NT) s 128.

<sup>163</sup> *Vehicle and Traffic Act 1999* (Tas) ss 49, 51, 52.

<sup>164</sup> *Road Traffic (Administration) Act 2008* (WA) s 52(3)(d).

<sup>165</sup> *Road Traffic (Administration) Act 2008* (WA) s 55.

<sup>166</sup> *Road Traffic (Administration) Act 2008* (WA) Part 4 Division 5. See also *Road Traffic (Vehicles) Act 2012* (WA).

powers to be used to access ADS data, the context for the accessing must relate to the relevant vehicle law and the offences specific to vehicles within that law. These are related predominately to commercial heavy vehicles where issues of load, weight and noise have been the focus of regulation. These seem quite limited. The focus on load, weight and noise relates to the physical vehicle, and not necessarily data about the driving of the vehicle. Indeed, it is possible that an ADS in a heavy vehicle would not contain any data relating to these established concerns. As such, these powers seem ancillary to accessing ADS data even from heavy vehicles. Further, the heavy vehicle context of this power suggests that these powers would be highly marginal to accessing ADS data from light AVs.

There does seem greater possible adaptability of existing state and territory powers to access ADS data in relation to heavy vehicles. In Victoria, police or authorised officers have broad powers to inspect heavy vehicles and search for and copy ‘any documents relating to the vehicle, or the use of the vehicle, that are accessible electronically from equipment located in or on the vehicle’.<sup>167</sup> Further, there are supporting powers to enter buildings, inspect, search and copy ‘documents’ that might otherwise be located in or on a vehicle.<sup>168</sup> There are further provisions empowering the copying of digital information.<sup>169</sup> This power in relation to entering premises and taking information, including digital information, is also available in the ACT.<sup>170</sup> There are similar powers with respect to accessing information in or about heavy vehicles in NSW, where ‘automatic data’ is collected and made available through ‘monitoring devices’.<sup>171</sup>

Victoria also has some miscellaneous provisions relating to recovering data from engine management systems.<sup>172</sup> These seem focused mostly on evidence for hooning and illegal vehicle modification, and are not sufficiently general to apply to ADS data. Further, engine management systems generally are conceived as part of an internal combustion engine (ICE). With the electrification of vehicles occurring parallel with automation, these powers are possibly technologically limited. An ADS is a very different entity from an engine management system, with the ADS controlling all the vehicle functions in fulfilling the DDT. An engine management system only controls combustion parameters within an ICE.

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<sup>167</sup> *Road Safety Act 1986* (Vic) ss 3 **inspector** 114(2)(e)(ii), 115(3)(c–d).

<sup>168</sup> *Road Safety Act 1986* (Vic) ss 121–2.

<sup>169</sup> *Road Safety Act 1986* (Vic) ss 147.

<sup>170</sup> *Road Transport (Safety and Traffic Management) Regulation 2017* (ACT) s 61.

<sup>171</sup> *Road Transport Act 2013* (NSW) Part 6.1.

<sup>172</sup> *Road Safety Act 1986* (Vic) s 79A and *Road Safety (General) Regulations 2019* (Vic) Part 3 division 8.

In summary, the state and territory powers in relation to accessing data from an ADS are fragmented. Where ADS data could be evidence of a serious criminal offence, general police powers are articulated broadly enough to cover the access and copying of ADS data from an AV or a repository at a ADSE's premises. However, these powers relate to serious criminal investigations, not compliance or breaches of road, traffic and vehicle laws. While there are further, more specific powers in each state and territory, particularly directed to gathering information for road and vehicle law compliance, these are not uniform. Queensland and South Australia have comprehensive powers that could cover accessing ADS data for both light vehicles and heavy vehicles, and from both the ADS directly and repositories at ADSE premises. However, in the other states and territories these powers are more circumscribed. A particular distinction is that there are more available powers to access ADS data from heavy vehicles and about heavy vehicles from premises in a wider set of circumstances than for light vehicles.

#### 4.3 Access to ADS Data in Crash Investigations

Some states and territories provide additional information-gathering powers in relation to vehicle crash investigations. In Queensland, police have expansive powers to investigate 'relevant vehicle incidents',<sup>173</sup> which are defined broadly as 'an incident on a road' that 'caused death or injury to a person, animal or damage to personal or real property'.<sup>174</sup> These powers include powers to obtain information about a vehicle, information about the cause of the crash and the power to ask any person for this information.<sup>175</sup> They also include power to enter premises and take information.<sup>176</sup> Given that any crash involving an AV would enliven this power (as it would be expected that there would be baseline damage to property such as the AV itself), it does seem sufficiently adaptable to access ADS data (from the vehicle or at a premise) or require an ADSE to disclose information. In South Australia, investigation of 'accidents', defined as 'a collision between 2 or more vehicles; or any other accident or incident involving a vehicle in which a person is killed or injured, property damaged, or animal ... is killed or injured',<sup>177</sup> is one of the circumstances that enlivens the suite of powers under Division 5 of the *Road Traffic Act 1961* (SA). These powers, like the Queensland equivalent, could allow recovery of ADS data from vehicles, premises or an ADSE as part of a crash investigation.

<sup>173</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 56.

<sup>174</sup> *Police Powers and Responsibilities Act 2000* (Qld) Schedule 6 **relevant vehicle incident**.

<sup>175</sup> *Police Powers and Responsibilities Act 2000* (Qld) ss 56(1), (2).

<sup>176</sup> *Police Powers and Responsibilities Act 2000* (Qld) s 57.

<sup>177</sup> *Road Traffic Act 1961* (SA) s 5 **accident**.

The flexibility of the Queensland and South Australia crash investigation powers means they become available from a low threshold of an accident involving any amount of property damage. This would conceivably cover any crash involving AVs, as the AV as property would be damaged. In other jurisdictions, there are higher thresholds before more expansive crash investigatory powers are available. In NSW, police officers have extensive investigatory powers<sup>178</sup> if an accident is a declared crime scene (where there has been a death or serious injury to a person).<sup>179</sup> These powers seem sufficiently broad to allow access to ADS data. Further, in NSW there is a legislative framework for the conducting of ‘transport safety investigations’ in relation to passenger transport crashes.<sup>180</sup> This involves expansive powers in relation to the gathering of evidence, including the power to subpoena documents and call witnesses.<sup>181</sup> However, these investigations relate to mass transit such as bus, rail and ferry services,<sup>182</sup> and potentially apply only to crashes involving AVs being used to provide bus services. The Northern Territory does not have dedicated crash investigation powers, but if an accident could have involved an offence with a maximum period of imprisonment of six months, the site or the accident and the vehicles could be a declared crime scene,<sup>183</sup> enlivening broad evidence-gathering and preserving powers.<sup>184</sup> Tasmania also lacks express crash investigation powers, but the *Polices Offences Act 1935* (Tas) provides a variety of powers at crime scenes and serious incident sites.<sup>185</sup> The other states and territories do not have clear additional powers in relation to crash investigation.

#### 4.4 Existing AV Data-gathering Powers

Victoria, NSW, and South Australia each have a legislative framework for the trial and testing of AVs.<sup>186</sup> The South Australian law has no specific provisions dealing with ADS data. The Victorian framework is the most comprehensive with regards to the gathering and storing of data in relation to trial AVs. Specifically, under regulation 18 of the *Road Safety (Automated Vehicles) Regulations 2018* (Vic), ‘ADS permit holders’ are required to keep extensive records of ADS operation during a trial<sup>187</sup> and must make those records available to ‘any police officer

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<sup>178</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 95.

<sup>179</sup> *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 95.

<sup>180</sup> *Passenger Transport Act 2014* (NSW) Part 8.

<sup>181</sup> *Passenger Transport Act 2014* (NSW) ss 144, 145.

<sup>182</sup> *Passenger Transport Act 2014* (NSW) s 133.

<sup>183</sup> *Police Administration Act 1978* (NT) s147J.

<sup>184</sup> *Police Administration Act 1978* (NT) s147N.

<sup>185</sup> *Polices Offences Act 1935* (Tas) ss 63A(1), 63C(1).

<sup>186</sup> *Road Safety Act 1986* (Vic) Part 3A; *Road Transport Act 2013* (NSW) Part 5.6; *Motor Vehicles Act 1959* (SA) Part 4A.

<sup>187</sup> *Road Safety (Automated Vehicles) Regulations 2018* (Vic) r 18(1).

for the purposes of law enforcement and accident investigation'.<sup>188</sup> Further obligations are with the 'permit holder' to notify authorities if a 'serious incident' occurs during an ADS trial.<sup>189</sup> A 'serious incident' includes an accident of the AV, a speeding offence, specific road rule offences, unauthorised access to the ADS or failure of the ADS 'that would impair the reliability, security or operation of that automated driving system'.<sup>190</sup>

In NSW, as in Victoria, the entity approved to conduct the trial must notify authorities if the AV has had a crash or if there was an incident that 'has or could have caused significant property damage, serious injury or death'.<sup>191</sup> Further, there is an obligation to 'provide any information in relation to the trial' as requested by authorities.<sup>192</sup>

#### 4.5 Access to ADS Data Through the Surveillance Devices Laws

Each state and territory has some form of surveillance device legislation.<sup>193</sup> In relation to an ADS, the most appropriate definition within the surveillance device laws is 'data surveillance device'. A 'data surveillance device' is generally defined in the relevant Acts as:

any device or program capable of being used to record or monitor the input of information into or output of information from a computer but does not include an optical surveillance device.<sup>194</sup>

However, only NSW,<sup>195</sup> the Northern Territory,<sup>196</sup> South Australia<sup>197</sup> and Victoria<sup>198</sup> include data surveillance devices in the definition of 'surveillance devices'. The surveillance device legislation in the Australian Capital Territory, Queensland and Western Australia makes no mention of data surveillance devices, and therefore would not apply to an ADS. NSW,<sup>199</sup> the

<sup>188</sup> *Road Safety (Automated Vehicles) Regulations 2018* (Vic) r 18(3)(a).

<sup>189</sup> *Road Safety (Automated Vehicles) Regulations 2018* (Vic) r 19.

<sup>190</sup> *Road Safety (Automated Vehicles) Regulations 2018* (Vic) r 13 **serious incident**.

<sup>191</sup> *Road Transport Act 2013* (NSW) ss 148R(1)(a), (b).

<sup>192</sup> *Road Transport Act 2013* (NSW) ss 148R(2).

<sup>193</sup> *Listening Devices Act 1992* (ACT); *Surveillance Devices Act 2007* (NSW); *Surveillance Devices Act 2007* (NT); *Invasion of Privacy Act 1971* (Qld); *Surveillance Devices Act 2016* (SA); *Listening Devices Act 1991* (Tas); *Surveillance Devices Act 1999* (Vic); *Surveillance Devices Act 1998* (WA).

<sup>194</sup> *Surveillance Devices Act 2007* (NSW) s 4; *Surveillance Devices Act 2007* (NT) s 4; *Surveillance Devices Act 2016* (SA) s 3; *Surveillance Devices Act 1999* (Vic) s 3.

<sup>195</sup> *Surveillance Devices Act 2007* (NSW) s 4.

<sup>196</sup> *Surveillance Devices Act 2007* (NT) s 4.

<sup>197</sup> *Surveillance Devices Act 2016* (SA) s 3.

<sup>198</sup> *Surveillance Devices Act 1999* (Vic) s 3.

<sup>199</sup> *Surveillance Devices Act 2007* (NSW) Part 5 Division 1—*Restrictions on use, communication and publication of information*.



Northern Territory,<sup>200</sup> South Australia<sup>201</sup> and Victoria<sup>202</sup> all have some form of regulation around the communication and publication of information gathered from surveillance devices. The specific sections within these Divisions in each jurisdiction provide for disclosure of information for investigation under the respective Acts and to certain authorities.<sup>203</sup> However, these powers are contingent on the use of surveillance devices for the purposes of their respective Acts, and then usually only under a warrant or emergency authorisation.<sup>204</sup> Accordingly these provisions may not be specifically applicable to a roadside enforcement agency accessing ADS data outside of the specific requirements set within the surveillance device laws.

## 5 Powers to Disclose Information

A significant issue for AVs is the capacity of roadside enforcement agencies to disclose vehicle information and ADS data to other enforcement and regulatory agencies. This would be especially important in the context of an ISR, which will require state and territory roadside enforcement officers to be ‘eyes and ears’.<sup>205</sup> Further, there are sound policy reasons for roadside enforcement agencies to be able to disclose data to ADSEs. This involves consideration of the current scope of powers under state and territory law for roadside enforcement agencies to disclose information.

State and territory policing powers laws provide for the sharing of information, or the making of arrangements to share information, gathered during criminal investigations with other Australian police services or agencies.<sup>206</sup> It can be assumed that ADS data gathered in the investigation of a criminal offence could be shared under these schemes with other police and law enforcement agencies. It seems possible that the ISR could be a party to such an information arrangement.

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<sup>200</sup> *Surveillance Devices Act 2007* (NT) Part 8 Division 1—*Restrictions on use, communication and publication of information*.

<sup>201</sup> *Surveillance Devices Act 2016* (SA) Part 2 Division 2—*Regulation of communication or publication of information or material derived from use of surveillance devices*.

<sup>202</sup> *Surveillance Devices Act 1999* (Vic) Part 3—*Restriction on communication and publication of private conversations and activities*.

<sup>203</sup> *Surveillance Devices Act 2007* (NSW) ss 40, 41, 42; *Surveillance Devices Act 2007* (NT) ss 52, 53, 54; *Surveillance Devices Act 2016* (SA) ss 8, 9, 10, 11; *Surveillance Devices Act 1999* (Vic) ss 11, 12.

<sup>204</sup> *Surveillance Devices Act 2007* (NSW) ss 17, 31; *Surveillance Devices Act 2007* (NT) ss 19, 33; *Surveillance Devices Act 2016* (SA) ss 17, 21; *Surveillance Devices Act 1999* (Vic) ss 15, 26.

<sup>205</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, pp 93–4.

<sup>206</sup> For example, *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 78; *Police Powers and Responsibilities Act 2000* (Qld) s 723; *Victoria Police Act 2013* (Vic) s 180.

When it comes to information gathered under traffic or vehicle laws, there is no uniform approach under state and territory law for the sharing of vehicle data with other enforcement and regulatory agencies or with private entities such as an ADSE. It is important to acknowledge that privacy law and privacy regimes also influence how public and private entities share data. There is a body of existing research on the adaptability of Australian privacy law to AVs.<sup>207</sup> This concern with the privacy and the appropriate use of information gathered is reflected in most state and territories setting out detailed criminal offences that apply if an officer discloses any information gathered about vehicles without an express power to make that specific disclosure.<sup>208</sup>

This report's focus is on the express powers that authorise the disclosure of vehicle-related information. South Australia, Queensland, Western Australia and Victoria all have provisions that allow transport authorities to disclose information gathered under road and vehicle laws with 'corresponding authorities'.<sup>209</sup> This general disclosure power seems to establish a broad framework for state and territory transport authorities to disclose and share information. These powers seem to be expressed sufficiently broadly to reasonably encompass ADS data.

Focusing on the South Australian powers to disclose, these powers seem to be highly adaptable in providing AV-related information to other enforcement agencies and the proposed ISR. Section 41L of the *Road Traffic Act 1961* (SA) allows for 'any records, devices or other things seized under this Act, or any information obtained under this Act, may, for the purposes of law enforcement, be given to any public authority of any jurisdiction'.<sup>210</sup> 'Public authority' is defined broadly to be a 'police force or police service or the Crown in any other capacity; or a body established under law, or the holder of an office established under law, for a public purpose, including a local government authority'.<sup>211</sup> 'Jurisdiction' is defined as the

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<sup>207</sup> David Vaile, Monika Zalnieriute, and Lyria Bennett Moses, *The Privacy and Data Protection Regulatory Framework for C-ITS and AV Systems Report*, The Allens Hub for Technology, Law and Innovation, University of New South Wales (Sydney, 2018); Mark Brady, 'Data Privacy and Automated Vehicles: Navigating the Privacy Continuum', *Monash University Law Review* 45, no. 3 (2020), 589.

<sup>208</sup> *Motor Vehicles Act 1959* (SA) s 138D; *Police Powers and Responsibilities Act 2000* (Qld) s 532; *Road Transport (Safety and Traffic Management) Act 1999* (ACT) ss 29A-C; *Road Transport Act 2013* (NSW) s 101; *Traffic Act 1987* (NT) s 29AV; *Road Safety Act 1986* (Vic) s 90Q (vehicle information). There does not seem to be a specific offence protecting the unauthorised disclosure in Tasmania and Western Australia.

<sup>209</sup> *Road Traffic Act 1961* (SA) ss 41L, 174J; *Transport Operations (Road Use Management) Act 1995* (Qld) s 168C; *Road Traffic (Administration) Act 2008* (WA) ss 13, 13A; *Road Safety Act 1986* (Vic) Part 7B.

<sup>210</sup> *Road Traffic Act 1961* (SA) s 41L. This power is further reinforced by s 174J facilitating provision of information gathered under this Act to a 'corresponding Authority'.

<sup>211</sup> *Road Traffic Act 1961* (SA) s 5 **public authority**.

Commonwealth or a state or territory.<sup>212</sup> This power seemingly allows any of the information gathered under the expansive powers available under the *Road Traffic Act 1961* (SA) to be shared with other South Australian public authorities, but also with any other Australian police services, governmental departments and agencies. Given that ‘authority’ and ‘jurisdiction’ are defined under the Act to include any authority established under law for a public purpose and covers Commonwealth, state, territory and local authorities, it is foreseeable that this power would allow South Australian authorities to disclose AV-related information to the ISR.

There are two limitations to this power. The first is it relates to the limitation of ‘law enforcement’ in the wording of the provision. Narrowly understood, law enforcement might mean only criminal investigations. However, the *Road Traffic Act 1961* (SA) provides that it is an Act concerned with:

the duties of road users; to provide for nationally consistent road rules; to provide for vehicle standards, mass and loading requirements and other safety measures in relation to light vehicles; to regulate the identification of vehicles; to provide for the installation, use and maintenance of traffic control devices; to provide for the closing of roads for traffic management and other purposes; to provide for the use of photographic detection devices; to provide for the enforcement of Australian road laws.<sup>213</sup>

The phrase ‘law enforcement’ in section 41L should be seen within the broad scope of the Act, and could be viewed as extending to information gathering in the enforcement of the various regimes established and supported by the Act. This would be wider than just information about criminal offences, and could include the sharing of gathered information about AVs and ADSs with other ‘public authorities’. The second limitation of the South Australian provision relates to the possible disclosure to an ADSE. By definition, ADSEs will not be public authorities, so this power would not authorise passing of information to ADSEs.

This is the inherent problem with the disclosure powers to ‘corresponding authorities within the state and territory laws’. While, as seen in the analysis above of the South Australian powers, the provisions are potentially broad enough to support disclosure to other public enforcement and regulatory authorities established by states, territories and the Commonwealth, including any potential ISR, it does not facilitate the disclosure of information

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<sup>212</sup> *Road Traffic Act 1961* (SA) s 5 *jurisdiction*.

<sup>213</sup> *Road Traffic Act 1961* (SA).

to an ADSE. Indeed, there are limited powers that would support the disclosing of information to an ADSE.

In Western Australia, agreements can be made with third parties concerning the disclosure of vehicle and licensing data.<sup>214</sup> This power to create information disclosure agreements seems to be in the context of arrangement with private providers of customer service functions, rather than investigations and enforcement.

Victoria and NSW have specific provisions dealing with disclosure of AV data provided under the AV trial framework. In NSW, AV data can be disclosed to ‘any person or body if the Minister considers it reasonable ... for the purposes of law enforcement or road safety’.<sup>215</sup> While this provision is not limited to public authorities, and therefore could reasonably support disclosure to an ADSE, its location within the AV trial regime limits its general application. The Victorian provision is more complicated. It allows disclosure of information provided under the AV trial scheme in a variety of circumstances, including ‘exercising a power under the transport legislation’, ‘intergovernmental agreements’ or ‘the prevention, detection, investigation, prosecution or punishment of offences of any kind’.<sup>216</sup> Like the NSW approach, the limits are the prescribed purposes for disclosing rather than just to ‘corresponding authorities’ as is the general disclosure power.

Most jurisdictions have specific authorisation for police and transport authorities to provide crash-related information to statutory motor accident insurance schemes, persons injured (and their representatives) and owners of property damaged in accidents.<sup>217</sup> There might therefore be some possibility that it could support disclosure to ADSEs, especially if the ADSE could be considered a potential party to a civil process. However, it is limited to crash-related information and would not support broader information flows from state and territory enforcement and regulatory agencies to ADSEs.

## 6 Passenger Transport

All states and territories have specific laws and regulations relating to passenger transport. A particular likely deployment of AVs is in relation to passenger transport, particularly the use of automated buses or small AVs in a MaaS type service. Indeed, this specific use case for AVs

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<sup>214</sup> *Road Traffic (Administration) Act 2008* (WA) s 11(5A).

<sup>215</sup> *Road Transport Act 2013* (NSW) s 148R(3).

<sup>216</sup> *Road Safety Act 1986* (Vic) s 90K.

<sup>217</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 94; *Road Traffic (Administration) Act 2008* (WA) ss 13D, 13E; *Victoria Police Act 2013* (Vic), s 248.

is likely to be where full level 5 ADS, or level 4 ADS operating on a set route, will be in active deployment. Therefore, an important consideration is whether the powers given to roadside enforcement officers under passenger transport laws are adequate and adaptable to AVs.

The state and territory passenger transport laws generally have stated aims to provide for safe and efficient passenger transport. This is important, as the powers given to enforcement officers relate to the purposes of the Act and determine compliance with the Act. The scope of vehicles and business models recognised in the passenger transport law is broad. In Queensland, the ACT, Western Australia, the Northern Territory, Victoria and South Australia, bus services, traditional taxi services and ride share services are covered.<sup>218</sup> In NSW, there is a specific Act for taxis and ride share services,<sup>219</sup> while buses are regulated under the *Passenger Transport Act 2014* (NSW).<sup>220</sup>

Generally, the passenger transport laws give ‘authorised officers’<sup>221</sup> powers to stop vehicles,<sup>222</sup> enter vehicles and premises,<sup>223</sup> and inspect or copy information. The phrasing of the powers to inspect and copy information either directly includes the power to copy and take digital information, or is sufficiently drafted to allow for the copying and taking of digital data.<sup>224</sup> The

<sup>218</sup> *Transport Operations (Passenger Transport) Act 1994* (Qld) Schedule 3 **public passenger vehicle**; *Passenger Transport Act 1994* (SA) s 4 **passenger transport service**; *Road Transport (Public Passenger Services) Act 2001* (ACT) s 10; *Transport (Road Passenger Services) Act 2018* (WA) s 4 **passenger transport service**; *Commercial Passenger Vehicle Industry Act 2017* (Vic) ss 4, 7; *Commercial Passenger (Road) Transport Act 1991* (NT); *Ridesharing Regulations 2017* (NT).

<sup>219</sup> *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW). It explicitly excludes car-pooling: *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* (NSW) s 90.

<sup>220</sup> *Passenger Transport Act 2014* (NSW).

<sup>221</sup> *Transport Operations (Passenger Transport) Act 1994* (Qld) Schedule 3 **authorised officer**; *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW) s 3 **authorised officer**; *Commercial Passenger Vehicle Industry Act 2017* (Vic) s 125; *Passenger Transport Act 1994* (SA) s 53; *Transport (Road Passenger Services) Act 2018* (WA) s 4 **authorised officer**, s 166; *Road Transport (Public Passenger Services) Act 2001* (ACT) s 121 **authorised person**. The Northern Territory has inspectors: *Commercial Passenger (Road) Transport Act 1991* (NT) s 64.

<sup>222</sup> *Transport Operations (Passenger Transport) Act 1994* (Qld) s 123(2); *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW) s 117; *Commercial Passenger Vehicle Industry Act 2017* (Vic) s 162(1)(c); *Passenger Transport Act 1994* (SA) s 53(5)(b); *Road Transport (Public Passenger Services) Act 2001* (ACT) s 118(2)(a); *Transport (Road Passenger Services) Act 2018* (WA) s 169(1)(a); *Commercial Passenger (Road) Transport Act 1991* (NT) s 66(a).

<sup>223</sup> *Transport Operations (Passenger Transport) Act 1994* (Qld) ss 123, 124; *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW) ss 113, 119; *Commercial Passenger Vehicle Industry Act 2017* (Vic) Part 7, Division 2; *Passenger Transport Act 1994* (SA) ss 53(5)(a), (b); *Transport (Road Passenger Services) Act 2018* (WA) s 171; *Commercial Passenger (Road) Transport Act 1991* (NT) ss 65, 66. In the ACT, under the *Road Transport (Public Passenger Services) Act 2001* (ACT), authorised officers and police have power to inspect and test vehicles (s 118) and power to request information from ‘a person’ (s 116) by giving written notice but no direct power to take information outside of the notice procedure.

<sup>224</sup> *Transport Operations (Passenger Transport) Act 1994* (Qld) s 124; *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW) s 116; *Commercial Passenger Vehicle Industry Act 2017* (Vic), s 149(2)(f); *Passenger Transport Act 1994* (SA) s 53(5)(e); *Transport (Road Passenger Services) Act 2018* (WA) ss 169(1)(h), 194–7; *Commercial Passenger (Road) Transport Act 1991* (NT) s 65(1)(c).

exception is Tasmania, where the *Passenger Transport Services Act 2011* (Tas) does not contain dedicated roadside enforcement powers.<sup>225</sup> Some states and territories have wider information-gathering powers. In Queensland and Western Australia, authorised officers can gather information from ‘persons’ the officer ‘reasonably suspects’ have information about an offence in relation to passenger transport.<sup>226</sup> In NSW, this power is vested in the ‘Point to Point Transport Commissioner’.<sup>227</sup> In the ACT, the power is limited to inquiring of drivers or ‘anyone else apparently in charge of the vehicle ... any information’ in relation to inspecting and testing the vehicle,<sup>228</sup> and in the Northern Territory, it is a power to ‘require any person there to answer questions (but not if the answer might tend to incriminate the person)’.<sup>229</sup>

The passenger transport laws also provide for the disclosure of information gathered to other agencies. Primarily, there are provisions for the disclosure of information between transport authorities and the police forces within the state or territory.<sup>230</sup> In addition, there are provisions to enable cross-border operation of passenger transport and efficient communication between relevant transport and police authorities with respect to vehicles and drivers.<sup>231</sup> In the context of a possible ISR, the wording of the powers in Queensland and Western Australia may be sufficiently general to enable disclosure.<sup>232</sup> It is possible that the Victorian provision could allow the disclosure of passenger transport information in a context where there has been death or serious injury to any person,<sup>233</sup> or where police or health professionals are required to attend.<sup>234</sup>

<sup>225</sup> *Passenger Transport Services Act 2011* (Tas) s 3.

<sup>226</sup> *Transport Operations (Passenger Transport) Act 1994* (Qld) s 128; *Transport (Road Passenger Services) Act 2018* (WA) ss 169(1)(d), 170.

<sup>227</sup> *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW) s 139A.

<sup>228</sup> *Road Transport (Public Passenger Services) Act 2001* (ACT) s 118(2)(d)(i).

<sup>229</sup> *Commercial Passenger (Road) Transport Act 1991* (NT) s 66(e).

<sup>230</sup> *Road Transport (Public Passenger Services) Act 2001* (ACT) s 5; *Road Transport (Public Passenger Services) Regulation 2002* (ACT) ss 27B, 70AG, 70K; *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW) ss 149, 150; *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* (NSW) s 94; *Transport Operations (Passenger Transport) Regulation 2018* (Qld) s 123; *Commercial Passenger Vehicle Industry Act 2017* (Vic) ss 257, 266; *Transport (Road Passenger Services) Act 2018* (WA) ss 157–164; *Transport (Road Passenger Services) Regulations 2020* (WA) s 146.

<sup>231</sup> *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW) s 149; *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* (NSW) s 94; *Commercial Passenger (Road) Transport Act 1991* (NT) s 85; *Commercial Passenger Vehicle Industry Act 2017* (Vic) s 266; *Transport (Road Passenger Services) Act 2018* (WA) ss 160, 164.

<sup>232</sup> *Transport Operations (Passenger Transport) Regulation 2018* (Qld) s 123; *Transport (Road Passenger Services) Act 2018* (WA) s 160.

<sup>233</sup> *Commercial Passenger Vehicle Industry Act 2017* (Vic) s 272; *Commercial Passenger Vehicle Industry Regulations 2018* (Vic) s 7.

<sup>234</sup> *Commercial Passenger Vehicle Industry Regulations 2018* (Vic) s 7.

The state and territory passenger transport enforcement powers seem reasonably adaptable to AVs. The public interest in ensuring safe passenger transport, and the recent reforms in the states and territories regulating ridesharing, have led to a selection of powers that would allow the stopping and gathering of ADS data from an AV being used as passenger transport. The ‘driver’ dilemma is less of an issue with these powers, as they are usually expressed as being directed to the vehicle rather than specifically to the driver. One area where there might be a gap is in relation to gathering information from an ADSE. While there are powers to enter premises, these are usually framed as the premises or garage of the operator of the business using the vehicle. While it is possible that an ADSE would be the operator of passenger transport system, especially using a MaaS model, it would not be the usual situation. Further, Queensland, Western Australia and NSW have powers whereby ‘persons’ can be asked to disclose information about a vehicle being used for passenger transportation. It is possible that this power could extend to ADSE providing authorities with ADS data. However, these powers are confined to the specific purposes of the transport passenger laws. In NSW, an incident or accident involving an automated bus could be subject to the expansive powers under the *Passenger Transport Act 2014* (NSW) for the conducting of ‘transport safety investigation’.<sup>235</sup> Finally, the passenger transport laws have provisions that allow for the disclosure of passenger transport information with agencies within states and territories, and also relevant agencies in other states and territories. It is possible that these powers are sufficiently general to facilitate the disclosure of passenger transport information with an ISR.

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<sup>235</sup> *Passenger Transport Act 2014* (NSW) Part 8.

## Part B: HVNL Enforcement Powers

### 1 Overview

A significant application of AV technology relates to heavy vehicles. The term ‘heavy vehicle’ generally refers to vehicles above 4.5 tonnes, and more specifically to heavy vehicles being used in trade and commerce. The primary vehicle suggested by ‘heavy vehicle’ is the semi-trailer or other similar transport and delivery vehicle. There is substantial investment in the development of automated heavy vehicles, aiming to unlock significant safety and productivity gains in supply and distribution.<sup>236</sup>

As seen in Part A, many state and territory roadside enforcement powers are specifically directed to heavy vehicles. Since its adoption by Queensland, the ACT, NSW, Victoria, Tasmania and South Australia, the primary source of powers for roadside enforcement officers in relation to heavy vehicles has been the HVNL. Much of the HVNL, especially in relation to accessing information, could apply to heavy AVs, although issues around the ‘driver’ dilemma are an impediment in all jurisdictions to the effective regulation of heavy vehicles.

### 2 Background to the HVNL

The HVNL is ‘the culmination of the heavy vehicle reform program which formally began in March 2008, when the Council of Australian Governments (COAG) committed to a microeconomic reform agenda for Australia’.<sup>237</sup> Following this, in 2009 ‘COAG agreed to establish the National Heavy Vehicle Regulator and a national body of law governing the regulation of all vehicles weighing more than 4.5 tonnes’.<sup>238</sup> It was agreed by COAG that the HVNL would be based on ‘reforms developed by the NTC’.<sup>239</sup> In 2011, the Commonwealth of Australia and the Australian states and territories entered into the Intergovernmental Agreement on Heavy Vehicle Regulatory Reform (IGA),<sup>240</sup> which had as its main objectives the ‘seamless national regulation of heavy vehicles that achieves the same outcome in the same

<sup>236</sup> ‘Autonomous Trucks Hit the Highways, with Australian Tech Helping Drive the Revolution’, ABC News (web page), updated 19 June 2021, accessed 22 June, 2021, <https://www.abc.net.au/news/2021-06-19/autonomous-trucks-hit-the-road-carrying-watermelons/100218538>.

<sup>237</sup> Heavy Vehicle National Law Bill 2012 (Qld), Explanatory Notes, 1.

<sup>238</sup> Heavy Vehicle National Law Bill 2012 (Qld), Explanatory Notes, 1.

<sup>239</sup> Heavy Vehicle National Law Bill 2012 (Qld), Explanatory Notes, 1.

<sup>240</sup> ‘Intergovernmental Agreement on Heavy Vehicle Regulatory Reform’, 2011, <https://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-heavy-vehicle-regulatory-reform>.



circumstances; and consistent and streamlined administration and service provision for the regulation of heavy vehicles’.<sup>241</sup>

Two of the outputs from this IGA were the creation of an independent National Heavy Vehicle Regulator (NHVR) to administer the National Law in each state and territory and the creation of a consistent Heavy Vehicle National Law (HVNL). A detailed structure of the objectives, functions, roles, responsibilities, governance, and accountability of the NHVR are set out in Schedule B of the IGA.<sup>242</sup> The IGA called for Queensland to enact the HVNL first, which would then be adopted by the other states and territories under the IGA.<sup>243</sup> With the exception of Western Australia and the Northern Territory, all jurisdictions have adopted the HVNL, whether as a whole or with some modifications.

Queensland was the first state to enact the COAG objectives, as agreed in the IGA, with the *Heavy Vehicle National Law Act 2012* (Qld) setting out the HVNL in Schedule 1.<sup>244</sup> The other participating jurisdictions then followed. The *Heavy Vehicle National Law (South Australia)* adopts the Queensland law with some alterations.<sup>245</sup> The ACT adopts the HVNL as passed by Queensland,<sup>246</sup> subject to modifications in Schedule 1.<sup>247</sup> Victoria adopts the HVNL under section 4 of the *Heavy Vehicle National Law Application Act 2013* (Vic),<sup>248</sup> while Tasmania and NSW also adopted the HVNL<sup>249</sup> and the Heavy Vehicle National Regulations under similarly worded provisions.<sup>250</sup> However, in addition to specific powers granted under the HVNL, NSW also allows for the exercise of powers conferred on authorised officers under other legislation where applicable, depending on the circumstances.<sup>251</sup>

<sup>241</sup> ‘Intergovernmental Agreement on Heavy Vehicle Regulatory Reform’, Objectives

<sup>242</sup> ‘Intergovernmental Agreement on Heavy Vehicle Regulatory Reform’, Schedule B.

<sup>243</sup> ‘Intergovernmental Agreement on Heavy Vehicle Regulatory Reform’.

<sup>244</sup> *Heavy Vehicle National Law 2012* (Qld) s 4, Schedule 1.

<sup>245</sup> *Heavy Vehicle National Law (South Australia) Act 2013* (SA).

<sup>246</sup> *Heavy Vehicle National Law (ACT) Act 2013* (ACT) s 7.

<sup>247</sup> *Heavy Vehicle National Law (ACT) Act 2013* (ACT) s 7(a).

<sup>248</sup> *Heavy Vehicle National Law Application Act 2013* (Vic) s 4.

<sup>249</sup> *Heavy Vehicle National Law (Tasmania) Act 2013* (Tas) s 4; *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) s 4.

<sup>250</sup> *Heavy Vehicle National Law (Tasmania) Act 2013* (Tas) s 5; *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) s 5; *Heavy Vehicle (Fatigue Management) National Regulation* (Qld); *Heavy Vehicle (General) National Regulation* (Qld); *Heavy Vehicle (Mass, Dimension and Loading) National Regulation* (Qld); *Heavy Vehicle (Registration) National Regulation* (Qld); *Heavy Vehicle (Vehicle Standards) National Regulation* (Qld).

<sup>251</sup> *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) s 27A.

### 3 Powers to Stop and Inspect Heavy Vehicles

There are significant reasons for roadside enforcement officers to have the power to stop a heavy AV. In addition to the general powers to stop granted under state and territory policing, road and vehicle laws, in participating jurisdictions there are specific stopping powers under the HVNL.

Generally, the power to stop heavy vehicles arises where it facilitates operation of the HVNL.<sup>252</sup> Specifically, section 513 provides grounds to ‘direct the driver’ to stop a heavy vehicle ‘to enable an authorised officer to exercise a power under this Law’.<sup>253</sup> ‘Authorised officer’ for the HVNL is defined as ‘(a) a police officer declared by a law of a participating jurisdiction to be an authorised officer for the purposes of this Law; or (b) a person who holds office under this Law as an authorised officer’.<sup>254</sup>

The directions that may be given to a driver do invoke the ‘driver’ dilemma. ‘Driver’ is defined in the HVNL as ‘the person driving the vehicle’ and ‘drive’ as ‘to be in control of the steering, movement or propulsion of the vehicle’.<sup>255</sup> As discussed in Part A(2), from a formal perspective the ADS cannot be the driver under this definition. There is the possibility that there is no addressee for an authorised officer’s stopping request. Section 512 does expand the definition of driver ‘to include a reference to a person in, on or in the vicinity of the vehicle whom an authorised officer present at the scene reasonably believes is the vehicle’s driver’.<sup>256</sup> This potentially expands the range of possible addressees of the stopping power. It would cover the fallback-ready user in a heavy vehicle with a level 3 ADS. It could also extend to level 4 and 5 equipped heavy AVs, provided ‘the person’ is seated in the traditional driver’s seat facing the familiar in-cabin controls, thus giving basis to the officer’s reasonable belief that the person is the driver. However, a level 5 equipped heavy AV operating without an occupant may not have an addressee for the stopping power. Even if the ADSE could fall within the definition of ‘driver’, it might not be reasonable or practicable for officers to identify the ADSE, contact the ADSE and request that the ADSE stop the vehicle (assuming that personnel from the ADSE have the technical capacity to stop the vehicle or dictate to the ADS remotely).

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<sup>252</sup> Heavy Vehicle National Law ss 513(1), 523(1).

<sup>253</sup> Heavy Vehicle National Law s 513(1).

<sup>254</sup> Heavy Vehicle National Law s 5, **authorised officer**.

<sup>255</sup> Heavy Vehicle National Law s 5 **drive, driver**.

<sup>256</sup> Heavy Vehicle National Law s 512.

Further, the power to stop under the HVNL is not absolute, but is provided to allow authorised officers the capacity to exercise other powers under the HVNL.<sup>257</sup> These other powers are in Part 9.3 Division 4 ‘Inspecting and searching heavy vehicles’.<sup>258</sup> Section 520 provides that ‘an authorised officer may enter and inspect a heavy vehicle for monitoring purposes’<sup>259</sup> and section 521(1) provides that:

An authorised officer may, using necessary and reasonable help and force, enter and search a heavy vehicle for investigation purposes if the officer reasonably believes –

- (a) the vehicle is being, or has been, used to commit an offence against this Law; or
- (b) the vehicle, or a thing in the vehicle, may provide evidence of an offence against this Law that is being, or has been, committed; or
- (c) the vehicle has been or may have been involved in an incident involving the death of, or injury to, a person or damage to property.

These sections provide relatively clear grounds to stop heavy vehicles to allow officers to inspect and search the vehicle. However, these do not provide officers with general powers to stop, inspect and search vehicles. Rather, they are limited to compliance with the HVNL and investigations of offences under the HVNL or where the vehicle has caused personal or property damage.<sup>260</sup> Unlike the general state and territory laws, there does not seem to be power allowing officers to stop heavy vehicles due to emergencies or safety of other road users concerns. Where a roadside enforcement officer might need to stop a heavy AV in these circumstances, they would probably be using the general powers under traffic and vehicle laws rather than the HVNL.

Another ground for an officer to stop a heavy vehicle is to enable the inspection of documents. For example, under section 568, an authorised officer may inspect documents where a vehicle ‘has been stopped under section 513’.<sup>261</sup> Additionally, drivers may be required to stop being in control of a vehicle where an authorised officer reasonably believes a driver is impaired by

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<sup>257</sup> Heavy Vehicle National Law s 513(a).

<sup>258</sup> Heavy Vehicle National Law Division 4, Inspecting and searching heavy vehicles.

<sup>259</sup> Heavy Vehicle National Law s 521(1).

<sup>260</sup> Heavy Vehicle National Law s 520(1).

<sup>261</sup> Heavy Vehicle National Law s 568(1)(c).

fatigue.<sup>262</sup> For example, under the HVNL, an authorised officer may, ‘if the officer has observed the driver driving in a way the officer considers on reasonable grounds to be dangerous, require the driver to also immediately stop being in control of the fatigue-regulated heavy vehicle’.<sup>263</sup> Following the argument detailed in A(2), it is arguable that the fallback-ready user in a level 3 ADS equipped heavy AV, could be considered the driver for the purposes of the stopping power under the HVNL. One of the impetuses behind the development of heavy AVs is to address the known road safety concerns of the relationship between fatigue and crashes and incidents involving heavy vehicles. An ADS will have known limits, often made express by the ODD, however it is unlikely that an ADS will get fatigued and possibly start to drive dangerously as a human driver does. Therefore, it is highly unlikely that a heavy AV will be stopped by officer due to the prevention of fatigue powers.

In summary, the HVNL provides some powers to stop heavy AVs for the purposes of the HVNL. The main difficulty with the HVNL power to stop a heavy AV is in the requirement for the directions to be given to a driver, or person in or near the vehicle. This may function adequately in most circumstances, particularly at lower levels of automation where a human is required to be present to monitor the ADS. However, this could become problematic in highly automated vehicles that may have no human present in the vehicle to receive communicated directions. The power to stop is also a narrow power generally available only for the purposes of compliance and enforcement with the HVNL and not available for broader purposes.

## **4 Access Information for HVNL Investigation, Compliance or Enforcement**

The HVNL provides a suite of powers to authorised officers to access information for investigation, compliance, or enforcement purposes in relation to the HVNL. The powers relating to information in the HVNL reflect the substantial public interest in ensuring a safe and well-regulated heavy vehicle and transport industry. As such, the powers to gather information under the HVNL are more expansive than under the general state and territory laws. These powers are possibly adaptable to gathering ADS specific data.

### *4.1 When Can Data be Accessed Under the HVNL?*

Data may be accessed under the HVNL for the purposes of investigation to determine breach or compliance with the HVNL in each jurisdiction. Accessing data under the HVNL is usually

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<sup>262</sup> Heavy Vehicle National Law s 540(1).

<sup>263</sup> Heavy Vehicle National Law s 540(2)(b).

undertaken through monitoring or investigation powers granted to authorised officers in the course of their duties. The grounds to monitor or investigate whether an occasion has arisen for the exercise of powers under the HVNL centre primarily around investigations undertaken by authorised officers and what they may do in relation to gathering information during the conduct of an investigation.

The powers to monitor or investigate whether an occasion has arisen for the exercise of powers under the HVNL deal primarily with the ability of an authorised officer to gather data or other information. This may occur through entering premises,<sup>264</sup> or by stopping and entering vehicles,<sup>265</sup> or during seizure of evidence<sup>266</sup> and the Act sets out ways in which this may be undertaken,<sup>267</sup> what equipment may be used<sup>268</sup> and what assistance must be given to authorised officers.<sup>269</sup> For example, section 544 provides that:

An authorised officer, or a person helping an authorised officer, may operate equipment at a place, or in a vehicle, entered under this Chapter to examine or process a thing found at the place, or in the vehicle, in order to decide whether it is a thing that may be seized under this Chapter.<sup>270</sup>

Additionally, the power is usually limited by the requirement that there must be suspicion, or ‘reasonable belief’ of an officer that a breach of the HVNL may have occurred.<sup>271</sup> For example, section 497 ‘does not authorise an authorised officer, without the occupier’s consent or a warrant, to enter ... a place that is unattended, unless the officer reasonably believes the place is attended’.<sup>272</sup>

#### 4.2 Powers to Support Access to Heavy Vehicle Information

The capacity to access data under the HVNL centres around authorised officers’ powers to enter premises and vehicles and gather information, often through search and seizure provisions. These provisions appear equally well suited to gathering information from a heavy AV, apart from situations where a person is required to be present in order to allow for

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<sup>264</sup> Heavy Vehicle National Law ss 497, 498, 499.

<sup>265</sup> Heavy Vehicle National Law ss 521, 522, 523, 524.

<sup>266</sup> Heavy Vehicle National Law ss 545, 546, 547, 553.

<sup>267</sup> Heavy Vehicle National Law ss 500, 502, 521.

<sup>268</sup> Heavy Vehicle National Law ss 543, 544.

<sup>269</sup> Heavy Vehicle National Law ss 569, 570.

<sup>270</sup> Heavy Vehicle National Law s 544(1).

<sup>271</sup> Heavy Vehicle National Law ss 497(5), 498(1), 499(1), 502(1)(b), 518(1)(a), 521(1)(a), 522(1)(a), 524(1)(b), 545, 546(4), 547, 548(1)(b), 570(1)(c).

<sup>272</sup> Heavy Vehicle National Law s 497(5).

authorised officers to exercise the powers. In addition, in order to carry out some functions necessary to gather data under the HVNL, authorised officers may at times need to use force against persons or property. The use of force against persons or property, and what an authorised officer must do when undertaking search and seizure, are set out under the HVNL.<sup>273</sup> For example, according to section 491(1):

This Chapter does not authorise –

- (a) an authorised officer (or a person assisting or otherwise acting under the direction or authority of an authorised officer) to use force against a person in the exercise or purported exercise of a function under this Chapter; or
- (b) without limiting paragraph (a), a warrant to be issued under this Chapter authorising a person to use force against a person.<sup>274</sup>

In the ACT, provisions around the use of force are limited with the words ‘reasonable force’ being the limiting factor where authorised officers are exercising these powers against persons or property.<sup>275</sup> For example, section 25 provides that ‘a police officer is authorised to use reasonable force against a person in the exercise or purported exercise of a function under the HVNL’.<sup>276</sup> In NSW, the powers to use force against persons and property are available where ‘reasonably necessary’.<sup>277</sup> This is to be found in section 23 under ‘Authority to use force’ where ‘an authorised officer who is a police officer is authorised to use force against a person in the exercise, or purported exercise, of a function under the HVNL’.<sup>278</sup> In NSW, powers are also given to TfNSW as an additional authorised entity.<sup>279</sup>

South Australian powers are relatively detailed, and while expanding what authorised officers may do in relation to use of force against persons and property, they are quite specific regarding when and how those powers are to be exercised. For example, the enabling Act provides that ‘an authorised officer is authorised to use force against property in the exercise or purported

<sup>273</sup> Heavy Vehicle National Law ss 491, 492, 495, 496, 510, 511.

<sup>274</sup> Heavy Vehicle National Law s 491.

<sup>275</sup> *Heavy Vehicle National Law Act (ACT) 2013* (ACT) s 25, 26.

<sup>276</sup> *Heavy Vehicle National Law Act (ACT) 2013* (ACT) s 25.

<sup>277</sup> *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) s 23.

<sup>278</sup> *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) s 23(1).

<sup>279</sup> *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) s 27.

exercise of a function under the HVNL'.<sup>280</sup> Additionally, if the authorised officer is a police officer, they may use force against persons.<sup>281</sup>

Tasmania, in contrast, simply authorises the use of force against persons or property for the purposes of the heavy vehicle national law.<sup>282</sup> For example, section 21 allows 'an authorised officer who is a police officer is authorised to use force against a person in the exercise, or purported exercise, of a function under the HVNL'.<sup>283</sup> Section 21(2) provides that 'an authorised officer is authorised to use force against property in the exercise, or purported exercise, of a function under the HVNL'.<sup>284</sup> Victoria adopts the HVNL and amends it with transitional provisions around who is an authorised officer,<sup>285</sup> and what powers authorised officers may have to forfeit property.<sup>286</sup>

In summary, most jurisdictions set out who is an authorised officer for the purposes of the HVNL. They also provide for powers of authorised officers in relation to the use of force against persons or property to carry out their function under the HVNL. While some jurisdictions are more detailed in the scope of powers granted to authorised officers, the main differences between jurisdictions are in the modifiers 'reasonable force' used in the ACT and 'reasonably necessary' used in NSW which narrow the effect of the powers in these states; this is in contrast to South Australia, where the use of force is broadened to include the exercise *or purported exercise of a function* under the Heavy Vehicle National Law (South Australia).<sup>287</sup>

#### 4.3 Accessing Vehicles, Premises and Persons

It is assumed that ADS data will be either stored onboard an ADS in the heavy AV, or transmitted and stored in a repository either under the control of the ADSE or at the ADSE's premises.

Under the HVNL, power is given to authorised officers to enter vehicles<sup>288</sup> and places,<sup>289</sup> and gather information from relevant persons.<sup>290</sup> This expressly includes the power to access and

<sup>280</sup> *Heavy Vehicle National Law (South Australia) Act 2013* (SA) s 12(2).

<sup>281</sup> *Heavy Vehicle National Law (South Australia) Act 2013* (SA) s 12(1).

<sup>282</sup> *Heavy Vehicle National Law (Tasmania) Act 2013* (Tas) s 21.

<sup>283</sup> *Heavy Vehicle National Law (Tasmania) Act 2013* (Tas) s 21(1).

<sup>284</sup> *Heavy Vehicle National Law (Tasmania) Act 2013* (Tas) s 21(2).

<sup>285</sup> *Heavy Vehicle National Law Application Act 2013* (Vic) s 57.

<sup>286</sup> *Heavy Vehicle National Law Application Act 2013* (Vic) s 23.

<sup>287</sup> *Heavy Vehicle National Law (South Australia) Act 2013* (SA) s 12(2) (emphasis added).

<sup>288</sup> *Heavy Vehicle National Law* s 520, 521.

<sup>289</sup> *Heavy Vehicle National Law* s 497, 498.

<sup>290</sup> *Heavy Vehicle National Law* s 570(21).

copy digital data.<sup>291</sup> Prima facie this would seem to cover ADS data. Further, the HVNL provides powers to access data from an ‘intelligent access program’. This relates to a national scheme connecting vehicles to road infrastructure.<sup>292</sup> It is possible, although not essential, that the ADS within a heavy AV would also participate in the intelligent access program. In that situation, the powers to gather data relating from an intelligent access program could apply to the ADS.

In relation to gathering ADS information from premises, the HVNL facilitates authorised officers to access a ‘relevant place’.<sup>293</sup> ‘Relevant place’ is defined specifically as ‘(a) a place of business of a responsible person for a heavy vehicle; or (b) the relevant garage address of a heavy vehicle; or (c) the base of the driver or drivers of a heavy vehicle; or (d) a place where records required to be kept under this Law’.<sup>294</sup> The term ‘responsible person’ is defined as the owner, driver, operator or person in charge, or apparently in charge, of the vehicle.<sup>295</sup>

It is not entirely certain that an ADSE would satisfy the definition of a ‘responsible person’ under the HVNL, and therefore whether data held at their premises could be accessed under these powers. If the ADSE could be seen as the person in charge or apparently in charge of the heavy AV, then the ADSE could be a ‘responsible person’ under the HVNL. This characterisation would also affect whether the ADSE would be required to disclose information under section 570(1), which directs ‘responsible persons’ to respond to authorised officers’ inquiries on:

- (a) information about the vehicle or any load or equipment carried or intended to be carried by the vehicle; or
- (b) personal details known to the responsible person about any other responsible person for the vehicle; or
- (c) personal details known to the responsible person about anyone else the responsible person reasonably believes holds information about the heavy vehicle.<sup>296</sup>

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<sup>291</sup> Heavy Vehicle National Law ss 496(1)(f)(i), (ii); 520(2)(3)(i), (ii).

<sup>292</sup> Heavy Vehicle National Law, Ch 7.

<sup>293</sup> Heavy Vehicle National Law s 496.

<sup>294</sup> Heavy Vehicle National Law s 494 *relevant place*.

<sup>295</sup> Heavy Vehicle National Law s 5 *responsible person*.

<sup>296</sup> Heavy Vehicle National Law s 570(1).



Provided an ADSE is considered a responsible person, then section 570(1)(a) authorises the release of information by an ADSE (being ‘information about the vehicle’). Further, section 570(b) would operate in a similar manner to the power to determine the identity of the driver power under Queensland and South Australian laws, requiring an ADSE to disclose information relating to other responsible persons.

Even if an ADSE is not considered a ‘responsible person’, section 570A of the HVNL applies to ‘persons’ and not the narrow range of ‘responsible persons’. The limitation of section 570A is that it applies to the general safety duty on ‘each party in the chain of responsibility for the vehicle’.<sup>297</sup> If the ADSE is considered as part of the chain of responsibility for the vehicle, then the general duty of the HVNL should apply to it, which also means that the ADSE could be asked to disclose ADS information under section 570A. Furthermore, section 570A as addressed to a person might apply to third parties, who could hold data relevant to whether the ADSE is compliant with the general safety duty under the HVNL.

## **5 Disclosure of Information Accessed under the HVNL**

Once information has been accessed from a heavy AV, the next question is what may be done with it. The HVNL already affords authorised officers power to share information with the NHVR and law enforcement where applicable.<sup>298</sup> The HVNL provides three main ways by which gathered information may be disclosed. The first is the intra-jurisdictional ability to share information with other roadside enforcement agencies, such as for police and road transport purposes. The second is the inter-jurisdictional ability to disclose information with similar police and transport entities across state and territory borders. The third pathway for disclosure is the ability to share information with the NHVR.

Intra-jurisdictional sharing of information may be found in several provisions in Part 7,<sup>299</sup> which provide powers for disclosure of information by intelligent access program providers.<sup>300</sup> For example, section 418(3) provides that:

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<sup>297</sup> Heavy Vehicle National Law s 26A(1).

<sup>298</sup> Heavy Vehicle National Law s 686B.

<sup>299</sup> Heavy Vehicle National Law ss 418(3).

<sup>300</sup> Heavy Vehicle National Law s 447.

An intelligent access program service provider may disclose intelligent access program information to –

- (a) an authorised officer, other than a police officer, for law enforcement purposes if so authorised by a warrant issued under this Law; or
- (b) an authorised officer who is a police officer, for law enforcement purposes if so authorised by a warrant issued under this Law or another law.<sup>301</sup>

With inter-jurisdictional sharing of information, there are several provisions dealing with how this information may be shared and what obligations attach to the keeping and sharing of data. Under the HVNL,<sup>302</sup> the NHVR is empowered to share data with:

- (a) a registration authority for a participating jurisdiction or another Australian jurisdiction; or
- (b) a police force or police service for a participating jurisdiction or another Australian jurisdiction.<sup>303</sup>

Additionally, power is granted to Transport Certification Australia (TCA) to disclose information to intelligent access program auditors.<sup>304</sup> For example, section 433 provides that: TCA may use or disclose intelligent access program information –

- (a) for the exercise of its functions mentioned in section 425; or
- (b) for law enforcement purposes.<sup>305</sup>

Power to disclose information to the NHVR is given under Part 7 under the intelligent access program,<sup>306</sup> to intelligent access program service providers<sup>307</sup> to intelligent access program auditors,<sup>308</sup> and also to the TCA.<sup>309</sup> Other jurisdictions have broadened the ability to disclose information. In the ACT, power is given to the Road Transport Authority to provide information to the NHVR. For example, section 29 of the *Heavy Vehicle National Law Act 2013* (ACT) provides that:

<sup>301</sup> Heavy Vehicle National Law ss 418(3).

<sup>302</sup> Heavy Vehicle National Law s 686B.

<sup>303</sup> Heavy Vehicle National Law s 686B.

<sup>304</sup> Heavy Vehicle National Law s 433(3).

<sup>305</sup> *Heavy Vehicle National Law (South Australia) Act 2013* (SA) s 433(1).

<sup>306</sup> Heavy Vehicle National Law ss 402(1)(c)(ii), (2)(b).

<sup>307</sup> Heavy Vehicle National Law s 418(2).

<sup>308</sup> Heavy Vehicle National Law s 447(2).

<sup>309</sup> Heavy Vehicle National Law s 433(2).

Despite any other territory law, the road transport authority is authorised, on its own initiative or at the request of the Regulator, to give the Regulator –

- (a) the information (including information given in confidence) in the authority's possession or control that the Regulator reasonably requires for the local application provisions of this Act or the *Heavy Vehicle National Law* (ACT).<sup>310</sup>

In NSW, in a similarly structured provision to that used in the ACT, TfNSW is also authorised to provide information to the NHVR.<sup>311</sup> For example, section 25 of the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) allows:

Despite any other Act or law, TfNSW is authorised, on TfNSW's own initiative or at the request of the Regulator:

- (a) to provide the Regulator with such information (including information given in confidence) in the possession or control of TfNSW that is reasonably required by the Regulator for the purposes of this Act or the *Heavy Vehicle National Law* (NSW).<sup>312</sup>

These powers serve to broaden the ability to gather and share information in these jurisdictions, which could improve the ability to adapt the HVNL to a heavy AV fleet. In NSW, additional power is expressly granted to the NHVR to monitor heavy vehicles under section 93A where:

Part 6.1 of the Road Transport Act 2013 of New South Wales makes provision for the monitoring of the journeys on roads of certain heavy vehicles with GVMs or GCMs exceeding 13.9 tonnes and vehicles carrying dangerous goods. (2) The requirements of that Part are in addition to, and do not limit the effect of, any other provisions of this Law concerning the use of monitoring devices or equipment (such as intelligent transport systems) and the keeping of journey documentation or other records for a heavy vehicle. Note – This section is inserted for New South Wales.<sup>313</sup>

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<sup>310</sup> *Heavy Vehicle National Law Act (ACT) 2013* (ACT) s 29(1).

<sup>311</sup> *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) s 25.

<sup>312</sup> *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) s 25.

<sup>313</sup> *Heavy Vehicle National Law Act* (NSW) 2013 (NSW) s 93A.

Significantly, Tasmania and Victoria make no additions to the HVNL in this area beyond the provisions around adoption of the HVNL.

The disclosure powers under the HVNL established a network of disclosure relationships between the state agencies and the NHVR. Furthermore, the HVNL might be adaptable to the disclosure of information to a proposed ISR. Under section 660(2), the NHVR is authorised to ‘give information to a government agency of a participating jurisdiction or the Commonwealth that the agency requires to exercise its functions under a law of the participating jurisdiction or the Commonwealth’.<sup>314</sup> Provided the ISR is established under Commonwealth or participating state or territory law, it would seem that the NHVR would have the power to disclose information to it.

In summary, all jurisdictions adopt provisions in the HVNL to monitor, investigate and gather data, and set out some information on how authorised officers may conduct investigations. Overall, it appears that these provisions will be broadly adaptable to accommodating the introduction of automated heavy vehicles, with the possible exception being where a person is required to be in the vehicle to produce data. Some jurisdictions also include a requirement of reasonableness in the exercise of certain powers under the HVNL. This slight difference in terminology can be seen in Queensland, where there is a requirement of ‘reasonable belief’ while in the ACT and NSW the term used is ‘reasonably required’ and in South Australia the modifier is ‘reasonable help’ for an officer seeking assistance. The transport authorities in several states are also empowered to deal with information gathered from vehicles, which may potentially expand the effectiveness of the HVNL in these jurisdictions and assist the transition to automation through easier sharing of information.

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<sup>314</sup> Heavy Vehicle National Law s 660(2)(c).

## Part C: Gap Analysis

### 1 Overview

In addressing the enforcement issues related to automated vehicles, we note the previous work by the NTC on the enforcement framework relating to the general safety duty of ADSEs.<sup>315</sup> As the focus of our analysis is on the enforcement powers under existing state and territory legislation, further analysis of the general safety duty of ADSEs is beyond the scope of this report.

Unsurprisingly, in the analysis of relevant state and territory laws relating to enforcement powers, we have found few provisions that specifically address AVs, and those provisions that do are limited to trials of AVs. This means that there are few powers in current state and territory legislation that specifically address roadside enforcement in relation to AVs. As detailed in Parts A and B, there are some enforcement powers in existing state and territory legislation or under the HVNL that may be applicable to AVs. In other instances, legislative amendments would be required to extend the application of existing provisions to AVs. The state and territory provisions are also characterised by jurisdictional differences in wording, highlighting the challenges for national consistency in this area.

### 2 National Consistency

National consistency has been an important objective in the development of Australian laws and policies for automated vehicles. In 2017, the Transport and Infrastructure Council agreed to the development of a uniform approach to Australian driving laws for automated vehicles.<sup>316</sup> However, with much transport regulation existing in state and territory laws, the development of national consistency can be challenging. Some level of national consistency for transport laws has already been achieved in the area of regulation of heavy vehicles with the development of the HVNL and NHVR.<sup>317</sup> Ministers have also agreed to the establishment of a national automated vehicle safety law (AVSL).<sup>318</sup> At present, however, there is a lack of national consistency in relation to enforcement powers for existing motor vehicles,<sup>319</sup> suggesting that

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<sup>315</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, pp 26–39.

<sup>316</sup> National Transport Commission, *Automated Vehicle Program Approach*, p 4.

<sup>317</sup> As discussed in Part B(1).

<sup>318</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, p 21.

<sup>319</sup> See the discussion in Part A of this report.

additional reforms will be required to support the development of a nationally consistent approach to enforcement powers for automated vehicles.

### 3 Definition of ‘Driver’

As outlined in Part A(2), many enforcement powers in state and territory laws refer to the ‘driver’ of a vehicle, with ‘driver’ defined in terms of a person, which under state and territory interpretation Acts is defined as a natural person or a corporation. At level 3 automation, the role of the fallback-ready user may be relevant. The NTC has noted:

There may be circumstances where roadside enforcement action is required against fallback-ready users and occupants of an automated vehicle. Roadside enforcement agencies will require clarity on the obligations that these parties have.

For example, Australian Road Rule 304 requires a person to obey any reasonable direction from a police officer or authorised person. In vehicles with conditional automation, the fallback-ready user could be required to comply with such a direction. In a level 5 automated vehicle with no licensed occupant, an ADS design solution may be required.

Infrastructure and transport ministers have agreed that state and territory laws should provide rules for the fallback-ready user.<sup>320</sup>

While the fallback-ready user could potentially take on some obligations currently placed on human drivers, the issue remains for all AVs (including those operating at level 3 automation) that, where the ADS controls the operation of the vehicle, the ADS does not appear to fall within the current definitions of ‘driver’. This creates a potential gap in enforcement powers in state and territory laws where those powers are directed to engaging with the driver of a vehicle. As outlined in Part A(2), some existing provisions relate to the vehicle’s owner or passengers in the vehicle, while others apply to the ‘operator’ of a vehicle. These provisions could potentially apply in the context of an AV.

In addition, although legislation in some states addresses the driver of an AV, such as the provisions in the *Road Safety Act 1986* (Vic), which include specific provisions defining the driver of a vehicle operating in automated mode,<sup>321</sup> these provisions appear to have limited

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<sup>320</sup> National Transport Commission, *A National In-Service Safety Law for Automated Vehicles Policy Paper*, p 95.

<sup>321</sup> *Road Safety Act 1986* (Vic) ss 3AB(2), 3AB(3).

application and do not fully address the need to clarify the definition of ‘driver’ of AVs for enforcement purposes. For example, under the Victorian legislation, if ‘a person is driving an automated vehicle for which there is not an ADS permit in force’, then ‘a person who is seated in the driver seat at a time when the vehicle is being used on a highway’ or ‘a person who has any control over the performance of the dynamic driving task at a time when the vehicle is being used on a highway’ will be ‘taken to be driving the vehicle for the purposes of this Act, even when the vehicle is operating in automated mode’.<sup>322</sup> The references to ‘driver seat’ and a person with control of the dynamic driving task may not apply in the context of vehicles at higher levels of automation, particularly at level 5. If the provisions in existing state and territory laws that apply to a ‘driver’ are to apply to AVs, they may need to be amended to take into account the fact that the ADS may be performing the driving task.

As outlined in Part B(2), the driver dilemma also arises under the HVNL in relation to the power to stop heavy vehicles as directions to stop a vehicle are focused on a ‘driver’. The definition of ‘driver’ under the HVNL, which ‘includes a reference to a person in, on or in the vicinity of the vehicle who an authorised officer present at the scene reasonably believes is the vehicle’s driver’,<sup>323</sup> does potentially expand the people to whom a direction could be given; however, the absence of a clear application to an ADS or ADSE means the ‘driver’ dilemma is still likely to arise for automated heavy vehicles.

#### **4 Power to Intercept and Stop a Vehicle**

As detailed in Part A(3.1), existing state and territory laws contain multiple provisions allowing officers or authorised persons to stop vehicles. However, there is a lack of national consistency, with the wording of these provisions generally varying between jurisdictions. These provisions generally have effect in relation to safety concerns, where there is a suspicion that the vehicle is being used in relation to criminal activity, or where there is a power to stop a vehicle under transport laws or heavy vehicle laws. Furthermore, it should be noted that these provisions apply generally to vehicles and do not expressly include AVs – although, as noted in Introduction (1.4), AVs will come within the definition of ‘vehicle’ in all states and territories.

Although all jurisdictions have laws giving ‘authorised officers’ roadside powers to stop vehicles, as detailed in Part A(3.2), the definition of an authorised person varies between jurisdictions. All jurisdictions give police officers powers to use force against persons to stop

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<sup>322</sup> *Road Safety Act 1986* (Vic) s 3AB(3).

<sup>323</sup> Heavy Vehicle National Law s 512.

vehicles, although as detailed in Part A(3.3), the wording varies between jurisdictions. Although the power to use force against a person to stop a vehicle is limited to police officers in all jurisdictions, the power to use force in relation to property to stop a vehicle has a broader application, with some jurisdictions permitting these powers to be exercised by authorised persons (see Part A(3.4)).

The laws in each state and territory contain provisions allowing vehicles to be stopped (see Part A(3.5)). Usually, these directions are made to a ‘driver’ or a ‘person in control’ of a vehicle. As noted in Part A(3.5), where there is no person in control of an AV or where an AV is operating and unoccupied, there may be difficulties in applying the provisions relating to the giving of directions to stop a vehicle and existing powers to immobilise a vehicle may need to be relied on instead. As discussed in Part A(6), powers to stop a vehicle also exist in passenger transport legislation. The driver dilemma is less likely to arise in this area as the powers are directed to vehicles rather than drivers. As outlined in Part B(2), the HVNL contains a power to stop vehicles. However, this is not a general power, but rather is one that enables ‘an authorised officer to exercise a power’ under the HVNL.<sup>324</sup> Furthermore, some powers under the HVNL, such as the power to stop a fatigued driver, would not apply in the context of a level 4 or 5 AV where the ADS was performing the DDT.

## **5 Power to Access Data for Roadside Enforcement and Crash Investigation**

As detailed in Part A(4), state and territory powers to access data generally fall within five areas: (i) laws that grant roadside enforcement officers powers to identify the driver of a vehicle; (ii) powers that grant access to data for law enforcement or for road, traffic and vehicle compliance; (iii) powers to access data to assist in crash investigations; (iv) existing AV data gathering powers; and (v) access to data through surveillance device laws. As outlined in Parts A and B, there may be some difficulties in applying the existing powers to AVs. This is because, for example, the provisions are directed to the ‘driver’ of the vehicle (thus leading to the driver dilemma in AVs where the ADS is performing the DDT), or because the provisions that specifically apply to AVs are focused on AV trials. Powers to gather information and inspect documents also exist under passenger transport legislation, as outlined in Part A(6).

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<sup>324</sup> Heavy Vehicle National Law s 513.



They also exist under the HVNL, as outlined in Part B(3) to support HVNL investigation, compliance or enforcement. As discussed in Part B, in some instances these may apply to AVs.

### *5.1 Powers that Grant Roadside Enforcement Officers Powers to Identify the Driver of a Vehicle*

As outlined in Part A(4.1), the driver dilemma may arise in the context of trying to identify the driver or person in control of an AV. However, some existing powers under some state and territory laws may be relevant, such as laws in South Australia that give police officers powers to ask questions of a broad range of persons in order to identify who was driving or the owner of a vehicle. This may include an ADSE where a corporation is included in the definition of ‘person’. However, in some states the powers are more limited and can only be exercised where there is a suspicion that the vehicle has been used in connection with an offence. In other jurisdictions, such as Tasmania, the provisions are focused on drivers and owners, thus potentially not applying to an occupant of an AV when the ADS is engaged.

### *5.2 Powers that Grant Access to Data for Law Enforcement or for Road, Traffic, and Vehicle Compliance*

The *Victorian Road Safety (Automated Vehicles) Regulations 2018* (Vic) (discussed in Part A(5)) include specific provisions relating to access to data from AVs. As detailed in Part A(4.2), with the exception of these laws, there are no specific state and territory provisions that expressly provide for access to ADS data from AVs. However, police officers have powers under state and territory laws to inspect and take evidence from a vehicle for law enforcement or for criminal investigations, although these powers seem more focused on investigation of serious criminal offences rather than roadside enforcement. There are also a range of powers under state and territory laws that specifically relate to road, traffic or vehicle compliance and investigation of offences (see Part A(4.2)). While some jurisdictions have fairly broad powers that could potentially be adapted to AVs and access to ADS data, the provisions in other jurisdictions are more limited in scope and, many focused on commercial vehicles and MDL issues, suggesting that these provisions may be less adaptable to light AVs. As discussed above in Part B(4), the HVNL includes provisions that allow for information to be gathered.

### *5.3 Powers to Access Data to Assist in Crash Investigations*

Access to vehicle data may also be required as part of crash investigations. As outlined in Part A(4.3), Queensland and South Australia have existing powers to access information in relation to crash investigations that could apply to ADS data in the event of a crash involving an AV.

In NSW, Tasmania and the Northern Territory, higher thresholds of alleged criminal activity or injury to persons need to be met before the relevant powers are enlivened. In addition NSW has broad powers to undertake crash investigations in relation to passenger transport that could include accessing data from an passenger transport AV.

#### *5.4 Existing AV Data Gathering Powers*

In Victoria, South Australia and NSW, specific laws have been enacted to cover trials of AVs. As outlined in Part A(4.4), the laws in Victoria and NSW include data-gathering powers that specifically apply to AVs, but their application is limited to the context of trials of AVs, rather than roadside enforcement more generally.

#### *5.5 Access to Data through Surveillance Device Laws*

As outlined in Part A(4.5) an ADS might fall within the definition of ‘surveillance device’ for the purposes of the NSW, the Northern Territory, South Australia and Victoria surveillance device laws. Those acts might allow police to access ADS data with a warrant or in emergency situations. The scope of the surveillance device laws is such that it may not be specifically applicable to a roadside enforcement agency accessing ADS data for general regulatory purposes. Further, due to the narrower definition of surveillance device, these powers are not available in Queensland, Western Australia and the ACT.

## **6 Power to Disable an ADS**

As outlined in Part A(3.5), laws in each state and territory contain provisions that allow vehicles to be stopped. Usually this is by way of a direction from a police officer or other authorised person to the driver of a vehicle. However, the application of these provisions may be difficult in the context of an AV where there is no ‘driver’. Instead, it may be necessary to rely on powers to immobilise a vehicle (see Part A(3.5)). At present, there are no specific provisions in state and territory laws addressing the power to disable an ADS. This represents a significant gap in the application of existing enforcement laws to AVs.

## **7 Power to Disclose Information to Other Agencies and Third Parties**

Roadside enforcement agencies may need to share information with other agencies, including other roadside enforcement agencies or other regulatory agencies. This could potentially include the ISR, depending on the scope of the legislation establishing the ISR. There may also be a need to disclose information about an AV to an ADSE. This report is focused on the scope of provisions in existing state and territory laws that permit the disclosure of vehicle-related information. Accordingly, it is beyond the scope of this report to consider the broader privacy

law issues relating to access to data. As discussed in Part A(5), there is a patchwork of existing powers giving police and transport agencies the ability to disclose information gathered under policing, road and vehicle law across the jurisdictions. For example South Australia has broad capacity to disclose information to other public authorities. While this power could support disclosure of ADS data to the ISR it would not allow disclosure to ADSEs.

In addition, both Victoria and NSW have some provisions that specifically relate to disclosure of data in the context of trials of AVs (see Part A(5)). As these provisions are AV-specific, they are limited in their application to AV trials, rather than general roadside enforcement of AVs. Further, as discussed in A(6), where an AV is used for passenger transport, there are provisions relating to disclosure of information gathered under the passenger transport laws to other agencies within and between states and territories. These could potentially extend to an ISR.

As outlined in Part B(5), the HVNL as well as provisions in heavy vehicle laws in some jurisdictions permit information to be shared between the NHVR and other agencies in some circumstances. These provisions are limited to heavy vehicles and do not have broad application to AVs. There does seem to be a substantial gap concerning the powers of state and territory enforcement agencies to disclosure of ADS and information about AVs gathered to other agencies and to ADSEs.

## Part D: Substantive Differences

This part sets out the substantive differences in powers between the states and territories.

### 1 State and Territory Roadside Enforcement Powers

At a general level, the state and territory roadside enforcement powers are broadly similar. State and territory laws allow for stopping vehicles, searching vehicles and gathering information about vehicles and investigating crashes. However, there are often substantive differences between the states and territories on the formulation, extent and scope of the powers. The following sets out the elements of these core powers to:

- intercept and stop vehicles, including powers to:
  - stop vehicles
  - immobilise vehicles
  - direct vehicles
- Access data for roadside enforcement and crash investigation purposes, including powers to:
  - inspect or search vehicles and premises
  - determine identity of drivers
  - investigate crashes
  - gather information about or from vehicles and premises
- disclose information to other agencies and third parties.

#### Powers to Stop Vehicles

The broadest set of roadside enforcement powers in state and territory laws relate to stopping vehicles and are substantively similar in all jurisdictions. There are few general powers to just stop a vehicle; rather, the power to stop must be for a specific purpose. All states and territories authorise police to stop a vehicle as part of a criminal investigation (Figure 3). Generally, the stopping must be in relation to a suspicion or reasonable belief of a ‘serious’ criminal offence, or because of a suspicion that the vehicle was stolen or being used for transportation of illicit drugs, or to facilitate the arrest of an occupant. Similarly, all states and territories provide police officers with the power to stop vehicles in an emergency situation where the vehicle represents a danger to persons or property (Figure 4). Some states also allow non-police officers – usually authorised officers associated with transport authorities – to also stop vehicles in an emergency. Finally, all states and territories allow police officers and authorised officers to stop vehicles to ensure compliance with transport and vehicle laws (Figure 5), or if there is suspicion or

belief of an offence under a traffic or vehicle Act. A critical feature is that many of the stopping powers are articulated as directed to a 'driver' or 'person in control', while others are expressed just to the vehicle. Powers expressed directly to a vehicle may be the most appropriate for use in an automated vehicle context.

Figure 3: Powers to Stop for Criminal Investigation

	Act	Section	Officer	Addressee	Preconditions	Vehicle type	Penalty
<b>Queensland</b>	<i>Police Powers and Responsibilities Act 2000 (Qld)</i>	26(1)	Police officer	Vehicle	Reasonably suspects a roadblock may be effective to apprehend or locate a person in a vehicle	Any vehicle	
		31(1)(a)	Police officer	Vehicle	'who reasonably suspects any of the prescribed circumstances'	Any vehicle	
		31(2)	Police officer	Vehicle	'reasonably suspects the vehicle is being used unlawfully'	Any vehicle	
		60(1)	Police officer	'Person in control'	'prescribed purpose' Transport	Any vehicle	60PU (Light) 90PU (Heavy)
	<i>Transport Operations (Passenger Transport) Act 1994 (Qld)</i>	123(2)	Authorised person	Person in control	Being, or has been, used in the commission of an offence against Act	Any vehicle	75PU
	<i>Transport Operations (Road Use Management) Act 1995 (Qld)</i>	31(1)	Authorised officer	Person in control	Reasonably believes the vehicle does not comply with a transport Act; or believes driver has just committed specific road offences	Any vehicle	60PU
		32	Authorised officers	Person in control	Compliance with a transport Act	Heavy vehicles	90PU
		35C(1)(C)	Authorised officers	Vehicle	Reasonably believes there is no-one else in or near the vehicle	Heavy vehicles	
<b>Australian Capital Territory</b>	<i>Crimes Act 1900 (ACT)</i>	209(2)(a)	Police officer	'conveyance'	Suspects serious offence	Any vehicle	
	<i>Road Transport (Public Passenger Services) Act 2001 (ACT)</i>	118(2)(a)	Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
<b>New South Wales</b>	<i>Law Enforcement (Powers and</i>	36	Police officer	Vehicle	Suspects on reasonable grounds <ul style="list-style-type: none"> <li>• stolen</li> <li>• commission of offence</li> <li>• drugs</li> </ul>	Any vehicle	

	<i>Responsibilities Act 2002 (NSW)</i>	36A	Police officer	Vehicle	Arrest driver or passenger	Any vehicle	
		37	Police officer	Vehicle	Establish roadblocks	Any vehicle	
		187(1)	Commission of Police	Vehicle	Use tyre deflation devices	Any vehicle	
	<i>Point to Point Transport (Taxis and Hire Vehicles) 2016 (NSW)</i>	117(2)	Police officer	Driver or person in charge	To exercise functions under the Act	Any vehicle	
	<i>Road Transport Act 2013 (NSW)</i>	148C(1)	Commission of Police	Vehicle	Use tyre deflation devices	Any vehicle	
<b>Northern Territory</b>	<i>Police Administration Act 1978 (NT)</i>	119A(3)(a)	Police officer	Vehicle	Circumstances of such seriousness and urgency	Any vehicle	
		120C	Police officer	Vehicle	Reasonable grounds to suspect dangerous drug	Any vehicle	
<b>South Australia</b>	<i>Road Traffic Act 1961 (SA)</i>	40H(1)(a)	Authorised officer	Driver	For the purpose of or in connection with exercising other powers under a road law	Any vehicle	\$5,000
	<i>Motor Vehicles Act 1959 (SA)</i>	98P(3)(b)(ii)	Authorised officer	Driver of tow truck	For purposes of investigation	Tow truck	\$20,000
	<i>Passenger Transport Act 1994 (SA)</i>	53(5)(b)	Authorised officer	Vehicle	Suspects on reasonable grounds is, a vehicle that is, or is to be, used for the purposes of a passenger transport service	Any vehicle	1 year prison or \$4,000
	<i>Summary Offences Act 1953 (SA)</i>	68(1)	Police officer	Vehicle	Reasonable cause to suspect – stolen goods – offence – evidence of offence	Any vehicle	
		74B(2)	Police officer	Vehicle	Senior police officer believes on reasonable grounds that the establishment of a roadblock at a particular place would significantly improve the prospects of apprehending a person	Any vehicle	\$2500 or 6 months prison
		74BAA(1)(a)(i)	Police officer	Vehicle	Believes on reasonable grounds vehicle will not stop	Any vehicle	
<b>Tasmania</b>	<i>Police Powers (Vehicle Interception) Act 2000 (Tas)</i>	7(1)(a)	Police officer	Vehicle	With authority under s6 – Authority to establish roadblocks	Any vehicle	50PU or 12 months prison

	<i>Police Powers (Public Safety) Act 2005</i> (Tas)	19(1)	Police officer	Vehicle	Suspects on reasonable grounds designated vehicle	Any vehicle	
	<i>Police Offences Act 1935</i> (Tas)	6B(1)(b)	Police officer	Vehicle	Reasonable grounds to believe prohibited item	Any vehicle	20PU 40PU
		37N(3)(a)	Police officer	Person in control	Prescribed offence	Any vehicle	40PU
<b>Victoria</b>	<i>Commercial Passenger Vehicle Industry Act 2017</i> (Vic)	162(1)(c)	Authorised officer	Driver	For compliance and investigative purposes,	Any vehicle	10PU
	<i>Road Safety Act 1986</i> (Vic)	54(3)	Police officer	Driver	Upon request	Any vehicle	
		63B(1)(a), (b)	Police officer	Vehicle	Prevent escape from custody, in connection with pursuit of vehicle	Any vehicle	
		64A(1)	Police officer, or protective services officer on duty	Driver	Upon request	Any vehicle	60PU and/or 6 months 120PU and/or 12 months
<b>Western Australia</b>	<i>Criminal Investigations Act 2006</i> (WA)	39	Officer	Vehicle	Reasonably suspects offence	Any vehicle	
	<i>Transport (Road Passenger Services) Act 2018</i> (WA)	169(1)(a)	Authorised officer	Vehicle	Reasonably necessary for the exercise of any other power of the authorised officer under this Act	Any vehicle	



Figure 4: Power to Stop for Safety and Emergency

	Act	Section	Officer	Addressee	Preconditions	Vehicle type	Penalty
<b>Queensland</b>	<i>Police Powers and Responsibilities Act 2000</i> (Qld)	26(1)(e)	Police officer	Vehicle	May be endangering the life or safety of someone else	Any vehicle	
		31(1)(a)	Police officer	Vehicle	'who reasonably suspects any of the prescribed circumstances'	Any vehicle	
		31(2)	Police officer	Vehicle	'reasonably suspects the vehicle is being used unlawfully'	Any vehicle	
		60(1)	Police officer	'Person in control'	'prescribed purpose' Transport	Any vehicle	60PU (Light) 9PU (Heavy)
	<i>Transport Operations (Passenger Transport) Act 1994</i> (Qld)	123(1A)	Authorised person	Person in control	Being, or has been, used in the commission of an offence against Act	Any vehicle	75PU
	<i>Transport Operations (Road Use Management) Act 1995</i> (Qld)	31(1)	Authorised officer	Person in control	Reasonably believes the vehicle does not comply with a transport Act; or believes driver has just committed specific road offences	Any vehicle	60PU
		32	Authorised officers	Person in control	Compliance with a transport Act	Heavy vehicles	90PU
		35C(1)(c)	Authorised officers	Vehicle	Reasonably believes there is no-one else in or near the vehicle	Heavy vehicles	
<b>Australian Capital Territory</b>	<i>Road Transport (Safety and Traffic Management) Act 1999</i> (ACT)	5C	Police officer	Person driving a motor vehicle	Asks to stop	Any vehicle	100PU
<b>New South Wales</b>	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)	36(1)(f)	Police officer	Vehicle	Suspects on reasonable grounds a serious risk to public safety	Any vehicle	
		37(2)(b)	Police officer	Vehicle	To establish roadblocks	Any vehicle	
		148C	Commission of Police	Vehicle	Use tyre deflation devices	Any vehicle	
<b>Northern Territory</b>	<i>Police Administration Act 1978</i> (NT)	119A(4)(a)	Police officer	Vehicle	Circumstances of such seriousness and urgency	Any vehicle	
<b>South Australia</b>	<i>Road Traffic Act 1961</i> (SA)	40H(1)(a)	Authorised officer	Driver	For the purpose of or in connection with exercising other powers under a road law	Any vehicle	\$5,000
	<i>Summary Offences Act 1953</i> (SA)	74BAA(1)(a)(i)	Police officer	vehicle	Believes on reasonable grounds vehicle will not stop	Any vehicle	
		83B(3)(b)	Police officer	Driver	Believes on reasonable grounds that it would be unsafe	Any vehicle	\$2,500

							or 6 months prison
<b>Tasmania</b>	<i>Vehicle and Traffic Act 1999</i> (Tas)	46(1)	Police officer or authorised officer	Driver	For compliance or enforcement	Any vehicle	25PU 50PU
	<i>Police Offences Act 1935</i> (Tas)	15C(2)	Police officer	Vehicle	Reasonably believes dangerous article present	Any vehicle	10PU
<b>Victoria</b>	<i>Road Safety Act 1986</i> (Vic)	63B(1)	Police officer	Vehicle	Stop or assist in stopping a vehicle from entering a place	Any vehicle	
	<i>Commercial Passenger Vehicle Industry Act 2017</i> (Vic)	162(1)(c)	Authorised officer	Driver	For compliance and investigative purposes,	Any vehicle	10PU
<b>Western Australia</b>	<i>Criminal Investigations Act 2006</i> (WA)	38(c)	Officer	Vehicle	Reasonably suspect stop to protect safety	Any vehicle	
		35	Police officer	Vehicle	Reasonably suspect to stop to present violence	Any vehicle	
		37(3)	Police officer	Vehicle	Fire, explosion or likely endanger safety	Any vehicle	

*Figure 5: Powers to Stop for Transport and Vehicle Compliance and Enforcement*

	Act	Section	Officer	Addressee	Preconditions	Vehicle type	Penalty
<b>Queensland</b>	<i>Police Powers and Responsibilities Act 2000</i> (Qld)	31(1)(a)	Police officer	Vehicle	'who reasonably suspects any of the prescribed circumstances'	Any vehicle	
		31(2)	Police officer	Vehicle	'reasonably suspects the vehicle is being used unlawfully'	Any vehicle	
		60(3)(a), (b)	Police officer	Person in control	'prescribed purpose' Transport or HVNL	Any vehicle	60PU (Light) 90 PU (Heavy)
	<i>Transport Operations (Passenger Transport) Act 1994</i> (Qld)	123(2)	Authorised person	Person in control	Reasonable grounds for suspecting vehicle being, or has been, used in the commission of an offence against Act	Any vehicle	75PU
	<i>Transport Operations (Road Use Management) Act 1995</i> (Qld)	31(1)	Authorised officer	person in control	Reasonably believes the vehicle does not comply with a transport Act; or believes driver has just committed specific road offences	Any vehicle	60PU
		32	Authorised officers	Person in control	Compliance with a transport Act	Heavy vehicles	90PU
		35C(1)(a)	Authorised officers	Vehicle	A person fails to comply with a s39 requirement	Heavy vehicles	60PU (Light) 90PU (Heavy)
<b>Australian Capital Territory</b>	<i>Road Transport (Safety and Traffic Management) Act 1999</i> (ACT)	10	Police officer or authorised person	Person driving a motor vehicle	Reasonable grounds...traffic offence	Any vehicle	20PU
	<i>Road Transport (Public Passenger Services) Act 2001</i> (ACT)	118(2)(a)	Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
<b>New South Wales</b>	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)	36(1)(b)	Police officer	Vehicle	Suspects on reasonable grounds commission of offence	Any vehicle	
		37(1)(b), (3)	Police officer	Vehicle	Establish roadblocks	Any vehicle	

	<i>Point to Point Transport (Taxis and Hire Vehicles) 2016 (NSW)</i>	117(2)	Police officer	Driver or person in charge	For the purpose of exercising functions under Act	Any vehicle	
	<i>Road Transport Act 2013 (NSW)</i>	148C(1)	Commissioner of Police	Vehicle	Use tyre deflation devices	Any vehicle	
		154(4)	Police officer	Driver	to determine if monitoring device fitted and functioning	Heavy vehicle	
<b>Northern Territory</b>	<i>Motor Vehicles Act 1949 (NT)</i>	64(a)	Officer	Driver	Use of public streets and places by vehicles	Any vehicle	
	<i>Commercial Passenger (Road) Transport Act 1991 (NT)</i>	66(a)	Inspector	Vehicle	Reason to believe that a motor vehicle is being used to carry passengers for hire or reward	Any vehicle	
	<i>Traffic Regulations Act 1999 (NT)</i>	25	Officer of competent authority	Driver	Reason to believe that a vehicle is being driven in contravention	Any vehicle	
<b>South Australia</b>	<i>Road Traffic Act 1961 (SA)</i>	40H(1)(a)	Authorised officer	Driver	For the purpose of or in connection with exercising other powers under a road law	Any vehicle	\$5,000
	<i>Passenger Transport Act 1994 (SA)</i>	53(5)(b)	Authorised officer	Vehicle	Suspects on reasonable grounds is, a vehicle that is, or is to be, used for the purposes of a passenger transport service	Any vehicle	1 year prison or \$4,000
<b>Tasmania</b>	<i>Vehicle and Traffic Act 1999 (Tas)</i>	46(1)	Police officer or authorised officer	Driver	For compliance or enforcement	Any vehicle	25PU 50PU
<b>Victoria</b>	<i>Road Safety Act 1986 (Vic)</i>	59(1)(a)	Police officer, authorised officer, employee of department, or regulator	Driver or person in charge of a motor vehicle	If requested or signalled to do so	Any vehicle	5PU
	<i>Commercial Passenger Vehicle Industry Act 2017 (Vic)</i>	162(1)(c)	Authorised officer	Driver	For compliance and investigative purposes,	Any vehicle	10PU

<b>Western Australia</b>	<i>Road Traffic (Administration) Act 2008 (WA)</i>	39(2)	Police officer	Driver	Purpose under road law	Any vehicle	100PU
	<i>Transport (Road Passenger Services) Act 2018 (WA)</i>	169(1)(a)	Authorised officer	Vehicle	Reasonably necessary for the exercise of any other power of the authorised officer under this Act	Any vehicle	

**Powers to Immobilise Vehicles**

The power to stop is directly connected to the power to immobilise a vehicle (Figure 6), and these provisions are substantively similar in all jurisdictions. All states and territories have powers that authorise police to deploy physical barriers (roadblocks, tyre-deflation devices) to stop vehicles. As with the stopping powers, there are no general provisions giving roadside enforcement the power to deploy immobilising devices. Rather, the power to deploy is contingent on specific preconditions, such as suspicion of a serious offence and specific anti-street racing provisions, and often requires authorisation from a more senior police officer. Accordingly, the way the powers to immobilise are directed at controlling or modifying some human behaviour creates problems around the ‘driver’ dilemma when associated with automated vehicles as these preconditions may not be present.

Figure 6: Powers to Immobilise Vehicles

	Act	Section	Officer	Addressee	Preconditions/	Vehicle type	Penalty
<b>Queensland</b>	<i>Police Powers and Responsibilities Act 2000</i> (Qld)	26	Police officer	Person in a vehicle	Reasonably suspects, offence 7 years imprisonment, escape custody, endangering life	Any vehicle	
		74J(1)	Police officer	Vehicle	Appropriate in circumstances	Any vehicle	
		75(1)	Police officer	Vehicle	A need to impound or immobilise vehicle	Any vehicle	
<b>Australian Capital Territory</b>	<i>Road Transport (Safety and Traffic Management) Act 1999</i> (ACT)	10BA	Police officer	Vehicle	Reasonable grounds road racing offences	Any vehicle	20PU
	<i>Crimes Act 1900</i> (ACT)	209(2)(a)	Police officer	'conveyance'	Suspects serious offence	Any vehicle	
	<i>Road Transport (General) Act 1999</i> (ACT)	81	Police officers authorised by chief of police	Vehicle	Tyre deflation device	Any vehicle	
<b>New South Wales</b>	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)	37(1)	Police officer	Vehicle	Senior police officers permission	Any vehicle	
		189(1)	Police officer	Vehicle	Opinion of officer necessary to do so	Any vehicle	
	<i>Road Transport Act 2013</i> (NSW)	148E(1)	Police officer	Vehicle	Opinion of officer necessary to do so	Any vehicle	
		148G(2)	Police officer	Vehicle	Opinion of officer necessary to do so	Any vehicle	
<b>Northern Territory</b>	<i>Traffic Act 1987</i> (NT)	29AD(1)	Police officer	Vehicle	Reasonably believes used in prescribed offence	Any vehicle	
<b>South Australia</b>	<i>Summary Offences Act 1953</i> (SA)	74BAA(1)(a)(i)	Police officer	Vehicle	Believes on reasonable grounds driver of vehicle will not stop	Any vehicle	
<b>Tasmania</b>	<i>Police Powers (Vehicle Interception) Act 2000</i> (Tas)	5(1)	Police officer	Vehicle	With authority of senior police officer	Any vehicle	
		6(1)	Police officer	Vehicle	With authority of senior police officer	Any vehicle	
	<i>Police Offences Act 1935</i> (Tas)	37N91(a)	Police officer	Vehicle	Prescribed offence	Any vehicle	
	<i>Traffic Act 1925</i> (Tas)	41A(1)(c)	Police officer	Vehicle	Opinion the driver does not have proper control of the motor vehicle	Any vehicle	
<b>Victoria</b>	<i>Road Safety Act 1986</i> (Vic)	63B(1)	Police officer	Vehicle	To prevent use of vehicle or to stop or assist in stopping vehicle	Any vehicle	
		84F(1)	Police officer	Vehicle	Belief on reasonable grounds use in offence	Any vehicle	
		84I(b)	Police officer	Vehicle	Vehicle seized or surrendered	Any vehicle	
<b>Western Australia</b>	<i>Criminal Investigations Act 2006</i> (WA)	18	Senior police officer	Vehicle	Reasonably suspects roadblock necessary to stop vehicle	Any vehicle	
		19(1)	Officer	Vehicle	reasonably necessary in the circumstances	Any vehicle	

**Powers to Direct Vehicles**

All states and territories have powers to direct vehicles, and these provisions are substantively similar in all jurisdictions (Figure 7). These are usually available in two circumstances. The first is a general power to direct vehicles for road safety purposes. The second is in the context of impounding vehicles – often part of ‘anti-hooning’ reforms. The main problem with the powers to direct vehicles is that the addressee must necessarily be a person in all circumstances, and where an AV is involved clearly demonstrates the ‘driver’ dilemma in the exercise of these powers.



Figure 7: Powers Directing Vehicles

	Act	Section	Officer	Addressee	Preconditions	Vehicle type	Penalty
Queensland	<i>Police Powers and Responsibilities Act 2000 (Qld)</i>	59(1)	Police officer	Driver, passenger	Any direction ... reasonably considers necessary for the safe and effective regulation of traffic	Any vehicle	
		60(1)	Police officer	Driver, person in control	Prescribed purpose	Any vehicle	60PU 90PU
		66(1)	Police officer	Owner, registered operator	Reasonably suspects a vehicle is unsafe or defective,	Any vehicle	60PU 90PU
		75(1)	Police officer	Driver, person who has the key	To impound vehicle	Any vehicle	
	<i>Police Powers and Responsibilities Regulation 2012 (QLD)</i>	17	Police officer	Vehicular and pedestrian traffic	Reasonably considers necessary	Any vehicle	
	<i>Transport Operations (Passenger Transport) Act 1994 (Qld)</i>	123(2)	Authorised person	Person in control	Being, or has been, used in the commission of an offence against Act	Any vehicle	75PU
	<i>Transport Operations (Road Use Management) Act 1995 (Qld)</i>	33(2)	Authorised officers	Person in control	Vehicle stopped or stationary	Any vehicle	60PU 90PU
		33D(2)	Authorised officers	Person in control	Reasonably believes it is necessary to give a direction	Dangerous goods vehicle	60PU
		37(1)	Authorised officers	Owner, registered operator or person in control	Reasonably believes a private vehicle or prescribed vehicle is unsafe	Any vehicle	60PU 90PU
		39(1)	Authorised officers	A person	To enable the officer to effectively exercise a power under this Act	Any vehicle	60PU 90PU
		49A)(2)	Authorised officers	A person involved in transport of dangerous goods	For compliance purposes	Dangerous goods vehicle	45PU
		161J(2)	Authorised officers	Person in a position to prevent dangerous situation	Reasonably believes a person is in a position to take steps to prevent a dangerous situation; and it is not reasonable or immediately possible to give a dangerous situation notice.	Vehicle	100PU 200PU

<b>Australian Capital Territory</b>	<i>Road Transport (Public Passenger Services) Act 2001 (ACT)</i>	118(2)(a)	Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
		119(1)	Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
	<i>Road Transport (Safety and Traffic Management) Act 1999 (ACT)</i>	30(1)(b)	Police officer	Vehicles	During a temporary obstruction or danger	Any vehicle	20PU
<b>New South Wales</b>	<i>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)</i>	38	Police officer	Person in vehicle or vicinity or public place	To exercise a power	Any vehicle	50PU or 12 months prison
		95(1)(a)	Police officer	Person at crime scene	To exercise a function	Any vehicle	100PU or 2 years prison
		185	Police officer	Person driving vehicle	For regulation of traffic	Any vehicle	
	<i>Point to Point Transport (Taxis and Hire Vehicles) Act 2016 (NSW)</i>	117(3), (4)	Police officer	Driver or person in charge	Being used on a road or road related area	Any vehicle	
	<i>Road Transport Act 2013 (NSW)</i>	148A	Police officer	Person driving vehicle	For regulation of traffic	Any vehicle	
		169A	Authorised officer	Driver	To exercise a power	Light vehicle or light combination	60PU
	<i>Road Rules 2014 (NSW)</i>	304	Police officer or authorised officer	Person	For regulation of traffic	Any vehicle	20PU
<b>Northern Territory</b>	<i>Commercial Passenger (Road) Transport Act 1991 (NT)</i>	66(b)	Inspector	Vehicle	Reason to believe that a motor vehicle is being used to carry passengers for hire or reward	Any vehicle	
	<i>Motor Vehicles Act 1949 (NT)</i>	128	Inspector or authorised officer	Owner or person with custody of vehicle	Upon request	Any vehicle	

		128A(2)(b)	A member of the Police Force or an inspector	Owner or person with custody of vehicle	If considers vehicle to be defective	Any vehicle	
	<i>Traffic Regulations Act 1999</i> (NT)	25(1)(a)	Police officer or an officer of a competent authority	Driver	Reason to believe that a vehicle is being driven in contravention	Any vehicle	
	<i>Police Administration Act 1978</i> (NT)	147N(1)(a)	The responsible member	Person	Crime scene	Any vehicle	
<b>South Australia</b>	<i>Passenger Transport Act 1994</i> (SA)	53(5)(i)	Authorised officer	Vehicle	Suspects on reasonable grounds is, a vehicle that is, or is to be, used for the purposes of a passenger transport service	Any vehicle	1 year prison or \$4,000
	<i>Road Traffic Act 1961</i> (SA)	40H(1)	Authorised officer	Driver	Exercising powers under a road law	Any vehicle	\$5,000
		40I(1)	Authorised officer	Driver or operator	Exercising powers under a road law	Any vehicle	\$5,000
		40J(2)	Authorised officer	Driver	Exercising powers under a road law	Light vehicle	\$5,000
		40K(2), (3)	Authorised officer	Driver or other person	Failure to comply with a direction	Any vehicle	\$5,000
		40L(1)	Authorised officer	Driver	Exercising powers under a road law	Any vehicle	
		145(1a)	Authorised officer	Driver	Suspects on reasonable grounds vehicle has deficiencies	Light vehicle	\$5,000
		146(1)(b)	Authorised officer	Driver or operator	Believes on reasonable grounds breach of MDL requirements	Light vehicle or combination	\$5,000
	<i>Motor Vehicles Act 1959</i> (SA)	98ME(10)	Authorised officer or a police officer	Driver or operator of tow truck	Incorrect details, alteration of authority, to preserve evidence	Tow truck	\$1,250

		98P(3)(b)(ii)	Authorised officer	Driver of tow truck	For purposes of investigation	Tow truck	\$20,000
	<i>Summary Offences Act 1953 (SA)</i>	54(1)(a)	Police officer	Vehicle	Excessive sound emitted	Any vehicle	\$1,250
		74B(5)(b)	Police officer	Vehicle	Roadblock authorised	Any vehicle	\$2,500 or 6 months prison
		83B(3)(b)	Police officer	Driver	Believes on reasonable grounds that it would be unsafe	Any vehicle	\$2,500 or 6 months prison
<b>Tasmania</b>	<i>Vehicle and Traffic Act 1999 (Tas)</i>	46(1)	Police officer or authorised officer	Driver	For compliance or enforcement	Any vehicle	25PU 50PU
		49(4)	Police officer or authorised officer	Driver	For purpose of inspection	Any vehicle	25PU 50PU
		49A(2)	Police officer or authorised officer	Driver	Reasonably suspects breach of MDL	Any vehicle	25PU 50PU
	<i>Police Offences Act 1935 (Tas)</i>	37N(3)(a)	Police officer	Person in control	Prescribed offence	Any vehicle	40PU
		37R(2)(a)	Police officer	Person responsible	Confiscated vehicle	Any vehicle	40PU
		63C(1)(b)	Police officer	Person	Serious incident site	Any vehicle	40PU
	<i>Police Powers (Public Safety) Act 2005 (Tas)</i>	19(3)	Police officer	Driver or person in charge of vehicle	Reasonably necessary to search vehicle	Any vehicle	
<b>Victoria</b>	<i>Commercial Passenger Vehicle Industry Act 2017 (Vic)</i>	162(1)	Authorised officer	Driver	For compliance and investigative purposes,	Any vehicle	10PU
	<i>Road Safety Act 1986 (Vic)</i>	59(5)	Police officer	Driver or person in charge of vehicle	In the opinion of that police officer, necessary	Any vehicle	5PU
		64A(1)	Police officer	Driver	Upon request	Any vehicle	60PU 12 months 120PU 12 months

		84G(3)(c)	Police officer	Driver, or any person in possession of the ignition keys or other keys	To seize a motor vehicle	Any vehicle	
		162(2)(d)	Inspector	Driver	Believes on reasonable grounds minor breach of MDL	Any vehicle	
		163(2)(c)	Inspector	driver	Believes on reasonable grounds severe breach of MDL	Any vehicle	
		168(1)	Inspector	Person	Direction made under division 3	Heavy vehicle	
<b>Western Australia</b>	<i>Road Traffic (Administration) Act 2008 (WA)</i>	45	Police officer	Unattended vehicle	Should be moved for MDLR compliance powers	Heavy vehicles	
		46	Police officer	Unattended or broken down	Causing serious harm, obstructing traffic	All vehicles	
	<i>Transport (Road Passenger Services) Act 2018 (WA)</i>	169(1)	Authorised officer	Vehicle	Reasonably necessary for the exercise of any other power of the authorised officer under this Act	Any vehicle	
		170(a), (b)	Authorised officer	Vehicle	Authorised officer may do all or any of the following	Any vehicle	

### **Powers to Inspect and Search Vehicles and Premises**

All states and territories have extensive powers to inspect and search vehicles (Figure 8). These are closely tied to the powers to stop, and once again these provisions are substantively similar in all jurisdictions. Further, all jurisdictions allow for the searching of premises. Generally, the power to inspect and search vessels and premises is vested in police and connected to powers related to criminal investigation. Powers to stop and search are also available to police and authorised officers in relation to road and transport compliance and offence investigations. These powers are particularly detailed in relation to heavy vehicles, dangerous goods transportation and/or specialist vehicles regulations such as tow trucks. The main difference between the general powers in state and territory laws and powers specifically directed to heavy vehicles is that the latter involve narrower issues around the monitoring and inspection of heavy vehicles for compliance. In contrast, the police powers are slightly broader with respect to the circumstances where the powers may be exercised, such as entry to premises and other places for the purposes of investigation.

Figure 8: Powers to Inspect and Search Vehicles and Premises

	Act	Section	Description	Officer	Addressee	Preconditions	Vehicle type	Penalty
Queensland	<i>Police Powers and Responsibilities Act 2000 (Qld)</i>	31(1)(c)	Searching vehicles without warrant	Police officer	Vehicle	'who reasonably suspects any of the prescribed circumstances'	Any vehicle	
		31(2)	Searching vehicles without warrant	Police officer	Vehicle	'reasonably suspects the vehicle is being used unlawfully'	Any vehicle	
		54	Power of inquiry into road use contraventions	Police officer		Establishing an offence against the <i>Road Use Management Act</i> or HVNL	Any vehicle	
		57	Power of entry	Police officer		Enter premise for vehicle inspections; use of force if authorised by inspector.	Any vehicle	
		57	Power of entry	Police officer	Vehicle or place	Stopped under s 60	Any vehicle	
		63	Power to inspect	Police officer	Vehicle	For compliance or enforcement	Any vehicle	
	<i>Transport Operations (Passenger Transport) Act 1994 (Qld)</i>	124(1)(a)	General powers in relation to places and vehicles	Authorised person	Person in control	Being, or has been, used in the commission of an offence against Act	Any vehicle	75PU
	<i>Transport Operations (Road Use Management) Act 1995 (Qld)</i>	26B(1)	Power of entry	Police officer	Particular place	Reasonably believes connection to an incident involving the death of, or injury to, a person or damage to property	Any vehicle	
		34	Power to inspect vehicles	Authorised officers	Stopped or stationary motor vehicle	Check complies with transport Act	Any vehicle	
		35	Power to enter vehicles etc. other than for vehicle inspection	Authorised officers		Reasonable belief vehicle used or vehicle has evidence of an offence against a transport Act	Any vehicle	
		36(1)	Power to require vehicle inspections	Authorised officers	Vehicle	reasonably believes vehicle is not compliant	Any vehicle	
		40	Power to seize evidence	Authorised officers	Enter place with consent	Evidence of an offence against a Transport Act	Any vehicle	

		47	Power to set up checkpoints	Authorised officers	Motor vehicle	To ensure compliance with Transport Act	Any vehicle	
<b>Australian Capital Territory</b>	<i>Road Transport (Safety and Traffic Management) Act 1999 (ACT)</i>	10(2)(c)	Search	Police officer or authorised person	Person driving a motor vehicle	Reasonable grounds...traffic offence	Any vehicle	20PU
	<i>Road Transport (Public Passenger Services) Act 2001 (ACT)</i>	117(1)	Power to inspect maintenance facilities	Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
		118(1)		Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
		119(2)(a)		Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
	<i>Crimes Act 1900 (ACT)</i>	209(2)(a)	Stopping, searching and detaining conveyances	Police officer	Vehicle	Suspects serious offence	Any vehicle	
		210G(1), (2)	Crime scene powers	Police officer	Vehicle or place	Crime scene	Any vehicle	
<b>New South Wales</b>	<i>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)</i>	21(1)	Power to search persons and seize and detain things	Police officer	Anything in the possession or under the control of the person	Suspects on reasonable grounds: – stolen goods – commission of offence – dangerous article – drugs	Any vehicle	
		36(1), (2)	Power to search vehicles	Police officer	Vehicle	Suspects on reasonable grounds: – stolen goods – commission of offence – dangerous article – drugs – serious risk to public safety	Any vehicle	
		95(1)	Crime scene powers	Police officer	Crime scene	For any necessary investigation	Any vehicle	
		188(1)(b)	Stolen vehicle powers	Police officer	Vehicle	To determine if stolen	Any vehicle	20PU
	<i>Point to Point Transport (Taxis and Hire)</i>	111(1)(a)	Authorised officer	Police officer	Driver or person in charge	Being used on a road or road related area	Any vehicle	
		116	Authorised officer	Police officer	Premises	Enters premises under this Part	Any vehicle	



	<i>Vehicles) Act 2016 (NSW)</i>	119	Authorised officer	Authorised officer	Vehicle	Authorised to inspect a vehicle may	Any vehicle	
	<i>Road Transport Act 2013 (NSW)</i>	76(1)	Defective registrable vehicles	Police officer, or Transport for NSW	Registrable vehicle	Deciding its identity, condition or registration status	Any vehicle	
		80(1)(b)	Entry to inspect	Transport for NSW	Registrable vehicle	Compliance	Any vehicle	20PU
		148D(1)(b)	Entry for tracing stolen motor vehicles	Police officer or authorised officer	Motor vehicle or trailer	To determine if stolen	Any vehicle	20PU
		154(1)	Inspection of monitoring devices and records	Police officer	Any applicable motor vehicle	To determine if device fitted and operating correctly	Heavy vehicles	50PU
<b>Northern Territory</b>	<i>Commercial Passenger (Road) Transport Act 1991 (NT)</i>	66(a)	Inspection of motor vehicles	Inspector	Vehicle	Reason to believe that a motor vehicle is being used to carry passengers for hire or reward	Any vehicle	
	<i>Motor Vehicles Act 1949 (NT)</i>	64(a)	Powers of officers	Police officer	Driver	Compliance	Any vehicle	
		128	Inspection of motor vehicles	Authorised officer	Owner or person with custody of vehicle	Upon request		
		128A(2)(b)	Defective motor vehicles	Member of the Police Force or inspector	Owner or person with custody of vehicle	If officer considers vehicle defective	Any vehicle	
	<i>Traffic Regulations Act 1999 (NT)</i>	25(1)(d), (e)	Enforcement	Police officer, or officer of a competent authority	Driver	Reason to believe vehicle driven in contravention of regulation	Any vehicle	
	<i>Police Administration Act 1978 (NT)</i>	116F(1)(b)	Reasonable grounds for search without warrant	A member of the Police Force	Place (including vehicle)	Suspicion on reasonable grounds	Any vehicle	
		116J(1)(b)	Reasonable grounds for search without warrant	A member of the Police Force	Place (including vehicle)	Suspicion on reasonable grounds	Any vehicle	
		119(1)	Urgent searches without warrant	a member of the Police Force	Place (including vehicle)	Circumstances of such seriousness and urgency	Any vehicle	

		119AA(1)(b)	Search without warrant	member of Police Force	Vehicle	Suspects on reasonable grounds	Any vehicle	
		120C(a)	Searching without warrant	member of Police Force	Vehicle	Reasonable grounds to suspect drugs	Any vehicle	
		147N(1)(g)	Crime scene powers	member of Police Force	Vehicle	Crime scene	Any vehicle	
<b>South Australia</b>	<i>Road Traffic Act 1961 (SA)</i>	40D(1)(b)	Unattended vehicle	Authorised officer	Vehicle	Inspection and enquiry	Any vehicle	
		40Q(2)	Power to inspect vehicle	Authorised officer	Vehicle	For compliance	Any vehicle	
		40R(2)	Power to search vehicle	Authorised officer	Vehicle	For compliance	Any vehicle	
		41D(3)	Use of equipment to examine	Authorised officer	Vehicle	Authorised officer exercising a power	Any vehicle	
		41E(1), (2)	Use or seizure of electronic equipment	Authorised officer	Vehicle	Authorised officer finds a storage device contains information	Any vehicle	
	<i>Motor Vehicles Act 1959 (SA)</i>	98P(3)(b)(i)	Authorised officer	Driver of tow truck	Vehicle	To investigate	Any vehicle	\$20,000
		139(1)(c)	Inspection of motor vehicles	Authorised vehicle inspector	Vehicle	Compliance, safety	Any vehicle	\$10,000
	<i>Passenger Transport Act 1994 (SA)</i>	53(5)	Authorised officers	Authorised officer	Vehicle or premises	Reasonably be required in connection with the administration, operation or enforcement of this Act	Any vehicle	1 year prison or \$4,000
	<i>Summary Offences Act 1953 (SA)</i>	21L(1)(b)	Search for prohibited weapons	Police officer	Vehicle	For ensuring compliance	Any vehicle	
		68(1)(a)	Power to search suspected vehicles, vessels, and persons	Police officer	Vehicle	Reasonable cause to suspect – stolen goods – offence – evidence of offence	Any vehicle	
		74B(5)(d)	Roadblocks	Police officer	Vehicle	Where roadblock authorised	Any vehicle	
		80	Entry and search - fires and other emergencies	Police officer	Vehicle	Emergency	Any vehicle	
<b>Tasmania</b>	<i>Vehicle and Traffic Act 1999 (Tas)</i>	46(1)(b)	Power to stop vehicle	Police officer or authorised officer	Vehicle	For inspection	Any vehicle	25PU 50PU
		49(1)–(4)	Inspection of vehicles	Police officer or authorised officer	Vehicle	For inspection	Any vehicle	25PU 50PU
		50(1)	Production of vehicles for inspection	Registrar	Person	For inspection	Any vehicle	20PU/ 10PU or 40PU/20PU

		52(1)(a)	Powers of entry	Police officer or authorised officer	Vehicle	For inspection	Any vehicle	25PU 50PU
	<i>Police Powers (Public Safety) Act 2005 (Tas)</i>	19(1)	Power to search vehicles	Police officer	Vehicle	Reasonable suspicion of designated vehicle, person or area	Any vehicle	
	<i>Police Offences Act 1935 (Tas)</i>	6B(1)(b)	Search, seizure and forfeiture	Police officer	Vehicle	Reasonable grounds to believe prohibited item	Any vehicle	20PU 40PU
	<i>Police Powers (Vehicle Interception) Act 2000 (Tas)</i>	7(1)	Power to stop and search vehicles at roadblock	Police officer	Vehicle	At or in vicinity of roadblock	Any vehicle	50PU <i>or</i> 12 months
	<i>Traffic Act 1925 (Tas)</i>	41D(1)(a)	Seizure of detection devices	Police officer or authorised officer	Vehicle	Reasonable grounds to believe detection device fitted	Any vehicle	
<b>Victoria</b>	<i>Commercial Passenger Vehicle Industry Act 2017 (Vic)</i>	148(2)	General investigation powers relating to entry of industry premises or other place	Authorised officer	Place or premises	For the purpose of the investigation	Any vehicle	10PU
		149(2)	General investigation powers relating to entry of motor vehicle	Authorised officer	Vehicle	For the purpose of the investigation	Any vehicle	10PU
		150(1)	Use or seizure of electronic equipment	Authorised officer	Device	Authorised officer believes on reasonable grounds that the device sent, transmitted or generated information	Any vehicle	10PU
	<i>Road Safety Act 1986 (Vic)</i>	13(1)-(5)	Inspect motor vehicles and trailers	Police officer or authorised officer	Vehicle	Reasonable grounds for compliance	Any vehicle	5PU
		84ZY(1)	Power to inspect motor vehicles	Police officer or person authorised under s13(6)	Vehicle	Impounded, immobilised or forfeited vehicle	Any vehicle	
		112(1)(d)	Authorised officers	Department employee or staff member of Regulator	Heavy vehicle	As permitted under Part 9	Heavy vehicle	
		114(1)	Power to inspect vehicle	Inspector	Heavy vehicle	Compliance	Heavy vehicle	

<b>Western Australia</b>		115(1)	Power to inspect vehicle	Inspector	Heavy vehicle	Contravention of law or in an accident	Heavy vehicle	
		118	Consent not needed for inspections or searches	Inspector	Heavy vehicle	Compliance	Heavy vehicle	
	<i>Victoria Police Act 2013 (Vic)</i>	264(1)(a)	Entry and search with consent	Police officer	Vehicle	Belief on reasonable grounds an offence	Any vehicle	
	<i>Criminal Investigations Act 2006 (WA)</i>	21	Forensic examination of a thing	Person	Thing	Relevant to an offence	Any vehicle	
		19	Use means necessary to stop vehicles	Officer	Vehicle		Any Vehicle	
		38(a)	Search vehicles	Officer	Vehicle	Reasonably suspect search will prevents offence	Any vehicle	
		39(b)	Search vehicles	Officer	Vehicle	Reasonably suspects offence	Any vehicle	
	<i>Road Traffic (Administration) Act 2008 (WA)</i>	52	Inspection of vehicles	Police officer	Vehicle	MDLR compliance	Heavy vehicles	
	<i>Transport (Road Passenger Services) Act 2018 (WA)</i>	169(1)	Powers in relation to vehicles	Authorised officer	Vehicle	Reasonably necessary for the exercise of any other power of the authorised officer under this Act	Any vehicle	
		170(1)	Entry of premises	Authorised officer	Vehicle	Reasonably necessary for the exercise of any other power of the authorised officer under this Act	Any vehicle	

**Powers to Determine Identity of Drivers**

All states and territories have roadside enforcement powers allowing police to compel human drivers to disclose information such as name, drivers licence and addresses (Figure 9). These powers often extend to passengers. Further, as discussed in Part A(4.1), there are powers in some states and territories to determine the identity of drivers through compelling disclosure from various persons. Not all states and territories have this power, and there are substantive differences regarding the category of persons to which identity determining questions can be directed. The practical effect of this difference is that identification of the identity of a person driving a vehicle may be more difficult in some states or territories than in others. Further, the ‘driver’ dilemma potentially disrupts this power, as when an ADS is in operation it formally cannot be considered the ‘driver.’

Figure 9: Powers to Determine Identity of Drivers

	Act	Section	Description	Officer	Addressee	Preconditions	Vehicle type	Penalty
Queensland	<i>Police Powers and Responsibilities Act 2000 (Qld)</i>	40(1), (2)	Person may be required to state name and address	Police officer	Person	Reasonably suspects the person has committed an offence	Any vehicle	
		41(k)	Circumstances for requiring name and address	Police officer	Person	Person in control of a vehicle	Any vehicle	
		42(2)	For particular motor vehicle related purposes	Police officer	Person	Deciding if contravention of the Road Use Management Act occurred	Any vehicle	
		54	Power of inquiry into road use contraventions	Police officer	Person	Reasonably necessary	Any vehicle	
		55	Power to require information about identity of drivers of vehicles, etc.	Police officer	Owner, driver, person in possession, person who may reasonably be expected to be able to give the information.	Reasonably suspects a contravention of the Road Use Management Act or HVNL	Any vehicle	40PU
		56(1)	Power of inquiry for relevant vehicle incidents	Police officer	Person	Reasonably necessary	Any vehicle	40PU
		58(2)	Production of driver licence	Police officer	Person	Reasonably considers it is necessary for enforcing the Road Use Management Act in relation to a heavy vehicle or for enforcing the Heavy Vehicle National Law (Queensland)	Any vehicle	
	<i>Transport Operations</i>	125	Power to seize evidence	authorised person	Person in control	Being, or has been, used in the commission of an offence against Act	Any vehicle	75PU

	<i>(Passenger Transport) Act 1994 (Qld)</i>	129	Power to require production of certain documents	Authorised person	Person	Who holds, or claims to hold, an accreditation, authorisation, licence or contract under this Act	Any vehicle	60PU
		129AA	Power to require production of driver licence	Authorised person	Person	Authorised person reasonably suspects a person in control of a motor vehicle	Any vehicle	60PU
	<i>Transport Operations (Road Use Management) Act 1995 (Qld)</i>	48	Power to require name and address	Police officer	Person	Authorised officer finds a person committing an offence against a transport Act	Any vehicle	60PU
		48A(2)	Power to require personal detail	Police officer	Person	reasonably suspect	Any vehicle	45PU
		49(1)	Power to require documents to be produced	Police officer	Person	Require under a transport Act or a corresponding law	Any vehicle	45PU
<b>Australian Capital Territory</b>	<i>Road Transport (General) Act 1999 (ACT)</i>	58	Question as to identity of driver	Police officer or authorised persons	Driver	Execution of function under road transport legislation	Any vehicle	20PU
	<i>Road Transport (Public Passenger Services) Act 2001 (ACT)</i>	121(1)	Power to require name and address	Police officer or authorised person	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
<b>New South Wales</b>	<i>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)</i>	11	Identity may be required to be disclosed	Police officer	Person	Suspects on reasonable grounds person able to assist in the investigation	Any vehicle	2PU
		14(1)	Power to request disclosure of driver or passenger identity	Police officer	Driver or passenger	Suspects on reasonable grounds that a vehicle is being, or was, or may have been used in or in connection with an indictable offence	Any vehicle	50PU or 12 months prison
		19	Power to request proof of identity	Police officer	Person	Requested by officer	Vehicles or places	
		87L(1)(b)	Power to obtain disclosure of identity	Police officer	Person	Requested by officer	Vehicle or road	50PU and/or 12 months prison

	<i>Point to Point Transport (Taxis and Hire Vehicles) Act 2016 (NSW)</i>	128(1)	Offenders to state name and address	Authorised officer	Person	Reasonably suspects the person to be committing or to have committed an offence against this Act or the regulations	Any vehicle	5PU
	<i>Road Transport Act 2013 (NSW)</i>	11	Duties of participants in, and witnesses to, road accidents	n/a	Driver or other person involved in or affected by accident	Motor vehicle accident	Vehicles or persons	
		154(3)(a)	Inspection of monitoring devices and records in vehicles	Police officer	Driver	To determine if device fitted and operating correctly	Heavy vehicles	50PU
		175(1)	Produce licence and state name and address	Authorised officer	Driver or rider	In execution of functions under road transport legislation	Any vehicle	20PU
		177(1)	Responsible person to disclose driver identity	Authorised officer	Driver of motor vehicle	Commission of offence alleged	Any vehicle	20PU
	<i>Road Rules 2014 (NSW)</i>	287(3)	Duties of a driver involved in a crash	Police officer	Driver	Motor vehicle accident	Any vehicle	
<b>Northern Territory</b>	<i>Commercial Passenger (Road) Transport Act 1991 (NT)</i>	66(b)	Inspection of Motor vehicles	Inspector	Vehicle	Reason to believe that a motor vehicle is being used to carry passengers for hire or reward	Any vehicle	
	<i>Motor Vehicles Act 1949 (NT)</i>	64(c)	Powers of officers	Police officer	Driver	Compliance	Any vehicle	
		65(1)	Person to comply with requirements	Officer	Person	requirement	Any vehicle	8PU 2 years prison
		113(1), (2)	Requirement to produce licence or give information	Registrar, inspector or police officer	Driver of motor vehicle	Upon request	Any vehicle	20PU
		126(1)	Power to demand name and address	Member of Police Force or inspector	Person	When required	Any vehicle	
	<i>Traffic Act 1987 (NT)</i>	29AF(1)(a)	Related powers of police officer	Police officer	Driver	For purposes of impounding	Any vehicle	



	<i>Traffic Regulations Act 1999 (NT)</i>	9	Person to give particulars	Authorised person	Driver	When required	Any vehicle	
	<i>Police Administration Act 1978 (NT)</i>	134	Requirement to furnish names and addresses	Member of Police Force	Person	Upon request	Any vehicle	4PU
<b>South Australia</b>	<i>Road Traffic Act 1961 (SA)</i>	40V(2)	Direction to give name and other personal details	Authorised officer	Person	Suspects on reasonable grounds	Any vehicle	\$5,000
		40W(1)(c)(i)	Direction to produce records, devices or other things	Authorised officer	Person	For compliance purposes	Any vehicle	\$5,000
		40X(2)	Direction to provide information	Authorised officer	Person	For compliance purposes	Any vehicle	\$10,000
	<i>Motor Vehicles Act 1959 (SA)</i>	137(b)	Duty to answer certain questions	Police officer or authorised officer	Person	In the course of performing duties	Any vehicle	\$750
	<i>Passenger Transport Act 1994 (SA)</i>	53(5)(f)	Authorised officers	Authorised officer	Vehicle	as may reasonably be required in connection with the administration, operation or enforcement of this Act	Any vehicle	1 year prison or \$4,000
	<i>Summary Offences Act 1953 (SA)</i>	54(1)(b)	Emitting excessive noise from vehicle	Police officer	Driver and any other occupant	If excessive noise is emitted	Any vehicle	\$1,250 <i>or</i> 6 months prison
		74AB(1)	Questions as to identity of drivers etc	Police officer	Person	For purposes of obtaining information	Any vehicle	\$1,250 <i>or</i> 3 months prison
		74B(5)(c)	Roadblocks	Senior police officer	Person	Where roadblock is authorised	Any vehicle	\$2,500 <i>or</i> 6 months prison
	<i>Vehicle and Traffic Act 1999 (Tas)</i>	46A(1)(b)	Carriage and production of driver licence, &c.	Police officer or an authorised officer	Driver or person in charge of vehicle	Upon request	Any vehicle	5PU
<b>Tasmania</b>		47(1)	Production of documents by drivers	Police officer or an	Driver	For inspection	Any vehicle	10PU 5PU

			and persons in charge of vehicles	authorised officer				
	<i>Police Powers (Public Safety) Act 2005 (Tas)</i>	17(1)	Power to obtain disclosure of identity	Police officer	Person	If unknown to police officer	Any vehicle	20PU
	<i>Police Powers (Vehicle Interception) Act 2000 (Tas)</i>	8(1)	Power to request disclosure as to driver or passenger	Police officer	Person	Upon request	Any vehicle	50PU or 12 months
		9(1)	Failure to disclose identity on request	Police officer	Person	Upon request	Any vehicle	50PU or 12 months
	<i>Traffic Act 1925 (Tas)</i>	32(7)	Reckless driving	Police officer	Person	Upon request	Any vehicle	
		41(1)	Refusing to give name and address, etc.	Police officer or an authorised officer	Person	Upon request	Any vehicle	
<b>Victoria</b>	<i>Commercial Passenger Vehicle Industry Act 2017 (Vic)</i>	162(1)(a), (b)	Directions to driver of commercial passenger vehicle	Authorised officer	Driver	For compliance and investigative purposes,	Any vehicle	10PU
	<i>Road Safety Act 1986 (Vic)</i>	59(1)(a)	General duty of driver or person in charge of motor vehicle	Police officer, authorised officer, employee of Department, or Regulator	Driver or person in charge of a motor vehicle	If requested or signalled to do so	Any vehicle	5PU
		60(1)	Duty of owner of motor vehicle to give information about driver	Police officer	Owner of a motor vehicle, or relevant nominated person	In the execution of duty	Any vehicle	20PU or 2 months or 4 months
		60A(1)	Duty of owner of trailer to give information	Police officer	Owner of a trailer or relevant nominated person	In the execution of duty	Any vehicle	20PU or 4 months or

								10PU or 2 months
		62	Power to enter motor vehicles	Police officer, or a protective services officer	Vehicle	To establish the identity of the driver	Any vehicle	
		136(1)(b)	Direction to provide certain information	Inspector	Person	Compliance	Heavy vehicle	
<b>Western Australia</b>	<i>Road Traffic Act 1974 (WA)</i>	57	Identification of person driving	Police officer	Responsible person	Death of bodily harm to a person from use of a motor vehicle	Any vehicle	60PU or 12 months prison
	<i>Road Traffic (Administration) Act 2008 (WA)</i>	34	Identification of person in charge of vehicle	Police officer	Responsible person	Alleged offence under written law	Any vehicle	24PU Body corporate 100PU
	<i>Transport (Road Passenger Services) Act 2018 (WA)</i>	169(1)(b), (d)	Powers in relation to vehicles	Authorised officer	Vehicle	Reasonably necessary for the exercise of any other power of the authorised officer under this Act	Any vehicle	

**Powers to Investigate Crashes**

The powers of state and territory agencies to investigate crashes is diverse (Figure 10). Generally, police have powers to investigate crashes. One area of difference is that the states and territories do not share a common term for crashes. In addition, the scope and extent of investigation powers are quite different. In some states and territories, there would need to be an accident involving serious personal injury to enliven detailed investigatory powers. In other states and territories, roadside enforcement agencies have a full range of investigatory powers, even over minor crashes.

Figure 10: Powers to Investigate Crashes

	Act	Section	Description	Officer	Addressee	Preconditions	Vehicle type	Penalty
Queensland	<i>Police Powers and Responsibilities Act 2000 (Qld)</i>	19	General power to enter to make inquiries, investigations or serve documents	Police officer	Person, place	Performing a function of the police service	Any vehicle	
		54	Power of inquiry into road use contraventions	Police officer	Person	Reasonably necessary	Any vehicle	
		56(1)	Power of inquiry for relevant vehicle incidents	Police officer	A person	Vehicle incident	Any vehicle	40PU, 6 months
		64(1)(c)	Power to enter vehicles etc. other than for vehicle inspection	Police officer	Vehicle	Reasonably suspects	Any vehicle	
		160(2)	Search to prevent loss of evidence	Police officer	Vehicle, place	Reasonably suspects	Any vehicle	
		196	Power to seize evidence generally	Police officer	Person, place	Reasonably suspects	Any vehicle	
	<i>Transport Operations (Passenger Transport) Act 1994 (Qld)</i>	124(1)	General powers in relation to places and vehicles	Authorised person	Person in control	Being, or has been, used in the commission of an offence against Act	Any vehicle	75PU
		125	Power to seize evidence	Authorised person	Person in control	Authorised person who enters a place under this part with a warrant	Any vehicle	75PU
		126C(1)	Powers supporting seizure	Authorised person	Person in control	To enable a thing to be seized	Any vehicle	75PU
		129	Power to require production of certain documents	Authorised person	Person	Who holds, or claims to hold, an accreditation, authorisation, licence or contract under this Act	Any vehicle	60PU

	<i>Transport Operations (Road Use Management) Act 1995 (Qld)</i>	26B	incident involving death, injury or damage	Police officer	Occupier	Death of, or injury to, a person or damage to property	Any vehicle	
		30A(4)	powers after entering place	Police officer	Person	Obtaining evidence of an offence against a Transport Act	Any vehicle	
		94(1)	Scheme to facilitate supply of information as to road incidents	Commissioner or the chief executive	Police officer	Death of, or injury to, a person or damage to property	Any vehicle	
		196(1)	Power to seize evidence generally	Police officer	Vehicle, place, person	Reasonably suspects is evidence	Any vehicle	
<b>Australian Capital Territory</b>	<i>Road Transport (Safety and Traffic Management) Regulation 2017 (ACT)</i>	58(1)-(3)	Entry premises	Authorised person	Occupier	Heavy vehicle parking enforcement	Heavy vehicles	
		61	General powers on entry to premises	Authorised person	Person	Heavy vehicle parking enforcement	Heavy vehicles	
	<i>Road Transport (Public Passenger Services) Act 2001 (ACT)</i>	117(2),(3)	Power to inspect maintenance facilities	Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
		118	Power to inspect and test vehicles	Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
		119(1)	Power to require vehicles or equipment to be inspected and tested	Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
	<i>Road Transport (General) Act 1999 (ACT)</i>	80	Entry premises	Police officers authorised by chief of police	Premises or place	Stolen parts	Any vehicle	
<b>New South Wales</b>	<i>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)</i>	90(1)(a)	When crime scene may be established	Police officer	Premises	If the police officer suspects on reasonable grounds	Vehicle or place	
		94(1)(b)	Crime scene warrants	Police officer	Crime scene	Reasonable grounds	Crime scene	

	<i>Point to Point Transport (Taxis and Hire Vehicles) Act 2016 (NSW)</i>	111(1)	Functions of authorised officers	Authorised officer	Driver or person in charge	Being used on a road or road related area	Any vehicle	
		116	Powers after entering premises	Authorised officer	Premises	Enters premises under this Part	Any vehicle	
		119	Powers when inspecting vehicles	Authorised officer	Vehicle	Authorised to inspect a vehicle may	Any vehicle	
	<i>Road Transport Act 2013 (NSW)</i>	76(3)(c)	Defective registrable vehicles	Police officer, or Transport for NSW	Vehicle	Motor vehicle accident	vehicle	
		78(2)(a)	Dangerously defective vehicles	Police officer or Transport for NSW	Vehicle	Vicinity or scene of accident	Any vehicle	
		155(1)(a)	Seizure of monitoring devices and records	Police officer	Vehicle	Involved in accident	Heavy vehicles 13.9 + tonnes	50PU
	<i>Road Rules 2014 (NSW)</i>	287(3)	Duties of a driver involved in a crash	Police officer	Driver	Motor vehicle accident	Any vehicle	
	<i>Passenger Transport Act 2014 (NSW)</i>	133	Chief investigator may investigate transport accidents	Chief investigator/ Minister	Transport accident	Transport accident of incident	Buses	
	<b>Northern Territory</b> <i>Motor Vehicles Act 1949 (NT)</i>	64(a)–(h)	Powers of officers	Police officer	Driver	Compliance	Any vehicle	
		128	Inspection of motor vehicles	Authorised officer	Owner or person with custody of vehicle	Upon request		
		128A	Defective motor vehicles	Member of the Police Force or inspector	Owner or person with custody of vehicle	If officer considers vehicle defective	Any vehicle	
		<i>Commercial Passenger (Road)</i>	65(1)	Inspection of motor vehicles	Inspector	Vehicle	Reason to believe that a motor vehicle is being used to carry passengers for hire or reward	Any vehicle

	Transport Act 1991 (NT)	66(f)	Inspection of motor vehicles	Inspector	Vehicle	Reason to believe that a motor vehicle is being used to carry passengers for hire or reward	Any vehicle	
		Traffic Act 1987 (NT)	47(1)	Duties and powers of police, etc.	Member of the Police Force	Vehicle	To ensure that this Act is duly observed	Any vehicle
	Police Administration Act 1978 (NT)	119(1)	Urgent searches without warrant	A member of the Police Force	Place (including vehicle)	Circumstances of such seriousness and urgency	Any vehicle	
		119AA(1)(b)	Search without warrant	Member of Police Force	Vehicle	Suspects on reasonable grounds	Any vehicle	
		120C(a)	Searching without warrant	Member of Police Force	Vehicle	Reasonable grounds to suspect drugs	Any vehicle	
		147N(1)(g)	Crime scene powers	Member of Police Force	Vehicle	Crime scene	Any vehicle	
	South Australia	Road Traffic Act 1961 (SA)	40R(2)(b)	Compliance purposes	Authorised officer	Vehicle	Compliance purposes	Any vehicle
40T(2)(b)			Power to search premises	Authorised officer	Premises	Compliance purposes	Any vehicle	
40Y(2)(a)			Direction to provide reasonable assistance for powers of inspection and search	Authorised officer	Responsible person	Effectively to exercise a power u	Any vehicle	\$10000
41B(1)(b)			Warrants	Authorised officer	Vehicle	Believes on reasonable grounds	Any vehicle	
Motor Vehicles Act 1959 (SA)		98P(2)	Investigation powers	Authorised officer	Vehicle or premises	For the purposes of an investigation	Any vehicle	\$20000
Passenger Transport Act 1994 (SA)		53(5)-(8)	Authorised officers	authorised officer	Vehicle or premises	reasonably be required in connection with the administration, operation or enforcement of this Act	Any vehicle	1 year prison or \$4,000
Summary Offences Act 1953 (SA)		68(1)(a)(iii)	Power to search suspected vehicles,	Police officer	Vehicle	reasonable cause to suspect indictable offence	Any vehicle	



<b>Tasmania</b>	<i>Vehicle and Traffic Act 1999</i> (Tas)	46(1)(c)	Power to stop vehicles	Police officer or an authorised officer	Driver	For the purposes of an investigation	Any vehicle	25PU 50PU
		49(1)-(4)	Inspection of vehicles	Police officer or authorised officer	Vehicle	For inspection	Any vehicle	25PU 50PU
		50(1)	Production of vehicles for inspection	Registrar	Person	For inspection	Any vehicle	20PU/ 10PU or 40PU/ 20PU
		52(1)(a)	Powers of entry	Police officer or authorised officer	Vehicle	For inspection	Any vehicle	25PU 50PU
	<i>Police Powers (Public Safety) Act 2005</i> (Tas)	19(1)	Power to search vehicles	Police officer	Vehicle	Reasonable suspicion of designated vehicle	Any vehicle	
	<i>Police Powers (Vehicle Interception) Act 2000</i> (Tas)	7(1)	Power to stop and search vehicles at roadblock	Police officer	Vehicle	At or in vicinity of roadblock	Any vehicle	50PU <i>or</i> 12 months
	<i>Traffic Act 1925</i> (Tas)	41E(1)(d)	Seizure of vehicles	Police officer	Vehicle	For examination	Any vehicle	
<b>Victoria</b>	<i>Commercial Passenger Vehicle Industry Act 2017</i> (Vic)	148(2)	General investigation powers relating to entry of industry premises or other place	Authorised officer	Place or premises	For the purpose of the investigation	Any vehicle	10PU
		149(2)	General investigation powers relating to entry of motor vehicle	Authorised officer	Vehicle	For the purpose of the investigation	Any vehicle	10PU
		150(2), (3)	Use or seizure of electronic equipment	Authorised officer	Device	Authorised officer believes on reasonable grounds that the device sent, transmitted or generated information	Any vehicle	10PU

	<i>Road Safety Act 1986 (Vic)</i>	13(1)–(5)	Inspect motor vehicles and trailers	Police officer or authorised officer	vehicle	Reasonable grounds for compliance	Any vehicle	5PU
		60(2)(a)	Duty of owner of motor vehicle to give information about driver	Police officer	Owner of a motor vehicle, or relevant nominated person	In the execution of duty	Any vehicle	20PU or 4 months or 2 months
		61(1)	Duty of driver, etc. of motor vehicle if accident occurs	Police officer or person injured, etc.	Driver	Accident	Any vehicle	10 years 1200PU or 80PU or 8 months
		84ZY(1)	Power to inspect motor vehicles	Police officer or person authorised under s13(6)	Vehicle	Impounded, immobilised or forfeited vehicle	Any vehicle	
		112(1)(d)	Authorised officers	Department employee or staff member of Regulator	Heavy vehicle	As permitted under Part 9	Heavy vehicle	
		114(1)	Power to inspect vehicle	Inspector	Heavy vehicle	Compliance	Heavy vehicle	
		115(1)	Power to inspect vehicle	Inspector	Heavy vehicle	Contravention of law or in an accident	Heavy vehicle	
		118	Consent not needed for inspections or searches	Inspector	Heavy vehicle	Compliance	Heavy vehicle	
	<i>Victoria Police Act 2013 (Vic)</i>	264(1)(a)	Entry and search with consent	Police officer	vehicle	Belief on reasonable grounds an offence	Any vehicle	
<b>Western Australia</b>	<i>Road Traffic Act 1974 (WA)</i>	54	Obligations on driver in an incident occasioning bodily harm	Driver	driver	Stop, ensure assistance	Any vehicle	20 years prison if results in death

		55	Obligations on driver in an incident occasioning property damage	Driver	Driver	Stop, disclose identity	Any Vehicle	30 PU
		56	Reporting incident to police	Driver	Driver	Incident occasioning bodily harm, report to police	Any vehicle	10 years prison if death
	<i>Transport (Road Passenger Services) Act 2018</i> (WA)	169(1)	Powers in relation to vehicles	Authorised officer	Vehicle	Reasonably necessary for the exercise of any other power of the authorised officer under this Act	Any vehicle	
		171	Entry of premises	Authorised officer	Vehicle or place	With the consent of the occupier; or under an entry warrant	Any vehicle	
		194	Grounds for seizing things	Authorised officer	Vehicle	Reasonably necessary to prevent it from being concealed, disturbed or lost; to preserve its evidentiary value; to subject it to forensic analysis; to prevent it from being used in the commission of an offence.	Any vehicle	
		195	Records relevant to offence	Authorised officer	Vehicle	If a record may be seized	Any vehicle	
		196	Seizing of devices and equipment	Authorised officer	Vehicle	If a record may be seized	Any vehicle	
		197	Powers to facilitate seizing of records	Authorised officer	Vehicle	For the purpose of seizing a record or exercising a power in section 195(1) or (2)	Any vehicle	

### **Powers to Gather Information from Vehicles and Property**

All states and territories have substantially similar extensive powers to gather information from vehicles and property (Figure 11). Foremost, these powers are connected to the general police powers of criminal investigation and, like the power to stop, are often conditional on suspicion of a serious crime. Further states and territories do provide the power for authorised officers, in addition to police, to gather information from vehicles or premises for road and vehicle enforcement purposes. One feature of these enforcement powers is that usually entry onto premises is only with the consent of the occupier. There are often specific powers in relation to gathering information about heavy vehicles and particularly documents. Some jurisdictions also explicitly provide that the power to gather information includes digital information and powers to copy digital information. Specifically, Queensland,<sup>325</sup> South Australia,<sup>326</sup> Victoria<sup>327</sup> and Western Australia<sup>328</sup> all allow for the seizing of digital devices or data from vehicles or premises. The inclusion of express powers in relation to digital devices and data is the obvious difference between the states and territories. It is unlikely that this makes a practical difference as digital data comes with the other used statutory terms such as ‘information’, ‘evidence’ and ‘record’.

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<sup>325</sup> *Transport Operations (Road Use Management) Act 1995* (Qld) s 35B.

<sup>326</sup> *Road Traffic Act 1961* (SA) ss 41D, 41E.

<sup>327</sup> *Road Safety Act 1986* (Vic) s 147.

<sup>328</sup> *Criminal Investigations Act 2006* (WA) ss 58, 148; *Road Traffic (Administration) Act 2008* (WA) ss 53, 54, 55, 56.

*Figure 11: Powers to Gather Information from Vehicles and Property*

	Act	Section	Description	Officer	Addressee	Preconditions	Vehicle type	Penalty
Queensland	<i>Police Powers and Responsibilities Act 2000 (Qld)</i>	19(1)	General power to enter to make inquiries, investigations or serve documents	Police officer	A person	Performing a function of the police service	Any vehicle	
		31(1)(c), 31 (2)	Searching vehicles without warrant	Police officer	Vehicle	‘who reasonably suspects any of the prescribed circumstances’	Any vehicle	
		56(1)	power of inquiry for relevant vehicle incidents	Police officer	A person	Vehicle incident	Any vehicle	40PU, 6 months
		63	Power to inspect	Police officer	Vehicle	For compliance or enforcement	Any vehicle	
		64(2)	Power to enter vehicles etc. other than for vehicle inspection	Police officer	Vehicle	Reasonably suspects	Any vehicle	
		68	Power to enable effective and safe exercise of other powers	Police officer	A person	exercise a power	Any vehicle	60PU 90PU
	<i>Transport Operations (Passenger Transport) Act 1994 (Qld)</i>	124(1)	General powers in relation to places and vehicles	Authorised person	Person in control	Being, or has been, used in the commission of an offence against Act	Any vehicle	75PU
		125	Power to seize evidence	Authorised person	Person in control	Authorised person who enters a place under this part with a warrant	Any vehicle	75PU
		126C(1)	Powers supporting seizure	Authorised person	Person in control	To enable a thing to be seized	Any vehicle	75PU
		129	Power to require production of certain documents	Authorised person	Person	Who holds, or claims to hold, an accreditation, authorisation, licence or contract under this Act	Any vehicle	60PU
	<i>Transport Operations (Road Use Management) Act 1995 (Qld)</i>	26(1)	Enter place (with consent) take information	Authorised officers	A person	Reasonable belief	Any vehicle	
		30(2)	General powers after entering places	Authorised officers	A person	Reasonable belief	Any vehicle	
		30A(4)	powers after entering place	Police officer	Person	Obtaining evidence of an offence against a transport Act	Any vehicle	

		34(1)	Power to inspect vehicles	Authorised officers	Stopped or stationary motor vehicle	Check compliance with transport Act	Any vehicle	
		35(2)	Power to enter vehicles etc. other than for vehicle inspection	Authorised officers	Dangerous goods vehicle	Reasonable belief vehicle used for, or vehicle has evidence of, an offence against a transport Act	Any vehicle	
		35A	Powers to inspect and search prescribed dangerous goods vehicle	Authorised officers	Stopped or stationary motor vehicle	Compliance, or, dangerous, or offence committed	Heavy vehicle	
		35B	Powers to access or download stored information	Authorised officers	prescribed dangerous goods vehicle	To exercise a power	Heavy vehicle	
		36(1)	Power to require vehicle inspections	Authorised officers	vehicle	Reasonably believes vehicle is not compliant	Any vehicle	
		40(1), (3)	Power to seize evidence	Authorised officers	Enter place with consent	Offence against a transport Act	Any vehicle	
		40A(2), (3)	Power to seize evidence	Authorised officers	Enter place	Belief and suspicion of an offence	Any vehicle	
		47	Power to set up checkpoints	Authorised officers	Motor vehicle	For transport Act compliance	Any vehicle	
		196(1)	Power to seize evidence generally	Police officer	Vehicle, place, person	Reasonably suspects is evidence	Any	
<b>Australian Capital Territory</b>	<i>Road Transport (Public Passenger Services) Act 2001 (ACT)</i>	117	Power to inspect maintenance facilities	Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
		118	Power to inspect and test vehicles	Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
		119	Power to require vehicles or equipment to be inspected and tested	Police officer	Driver	Believes, on reasonable grounds, is operating, or has operated, as a public passenger vehicle	Any vehicle	20PU
	<i>Road Transport (Safety and</i>	58(1)-(3)	Entry premises	Authorised person	Occupier	Heavy vehicle parking enforcement	Heavy vehicles	

	<i>Traffic Management) Regulation 2017 (ACT)</i>	61	General powers on entry to premises	Authorised person	Person	Heavy vehicle parking enforcement	Heavy vehicles	
	<i>Road Transport (General) Act 1999 (ACT)</i>	80	Entry premises	Police officers, authorised by chief of police	Premises or place	Stolen parts	Any vehicle	
<b>New South Wales</b>	<i>Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)</i>	21(1)	Power to search persons and seize and detain things	Police officer	Anything in the possession of or under the control of the person	Suspects on reasonable grounds: - stolen goods - commission of offence – dangerous article - drugs	Any vehicle	
		36(1), (2)	Power to search vehicles	Police officer	Vehicle	Suspects on reasonable grounds: – stolen goods – offence – dangerous article – drugs – risk to safety	Any vehicle	
		95(1)	Crime scene powers	Police officer	Crime scene	For any necessary investigation	Any vehicle	
		188(1)(b)	Stolen vehicle powers	Police officer	Vehicle	To determine if stolen	Any vehicle	20PU
	<i>Point to Point Transport (Taxis and Hire Vehicles) Act 2016 (NSW)</i>	111(1)	Functions of authorised officers	Authorised officer	Driver or person in charge	being used on a road or road related area	Any vehicle	
		116	Powers after entering premises	Authorised officer	premises	Enters premises under this Part	Any vehicle	
		119	Powers when inspecting vehicles	Authorised officer	vehicle	Authorised to inspect a vehicle may	Any vehicle	
	<i>Road Transport Act 2013 (NSW)</i>	76(1)	Defective registrable vehicles	Police officer, or Transport for NSW	Registrable vehicle	Deciding its identity, condition or registration status	Any vehicle	
		80(1)(b)	Entry to inspect	Transport for NSW	Registrable vehicle	Compliance	Any vehicle	20PU
		148D(1)(b)	entry for tracing stolen motor vehicles	Police officer or authorised officer	Motor vehicle or trailer	To determine if stolen	Any vehicle	20PU

		154(1)	Inspection of monitoring devices and records	Police officer	Applicable motor vehicle	To determine if device fitted and operating correctly	Heavy vehicle	50PU
	<i>Surveillance Devices Act 2007</i> (NSW)	17	Application for a surveillance device	Law enforcement officer		Relevant offence likely or about to be committed	Any vehicle	
		31	Emergency use of a surveillance device	Law enforcement officer		Imminent threat of serious violence to a person or substantial damage to property	Any vehicle	
<b>Northern Territory</b>	<i>Motor Vehicles Act 1949</i> (NT)	29AF(1)(d)	Related powers of police officer	Police officer	Vehicle	For purposes of impounding	Any vehicle	
		64(a)	Powers of officers	Police officer	Driver	Compliance	Any vehicle	
		128	Inspection of motor vehicles	Authorised officer	Owner or person with custody of vehicle	Upon request		
		128A(2)(b)	Defective motor vehicles	Member of the Police Force or inspector	Owner or person with custody of vehicle	If officer considers vehicle defective	Any vehicle	
	<i>Commercial Passenger (Road) Transport Act 1991</i> (NT)	65(1)	Inspection of motor vehicles	Inspector	Vehicle	Reason to believe that a motor vehicle is being used to carry passengers for hire or reward	Any vehicle	
		66(a)	Inspection of motor vehicles	Inspector	Vehicle	Reason to believe that a motor vehicle is being used to carry passengers for hire or reward	Any vehicle	
	<i>Traffic Regulations Act 1999</i> (NT)	25(1)(d), (e)	Enforcement	Police officer, or officer of competent authority	Driver	Reason to believe vehicle driven in contravention of regulation	Any vehicle	
	<i>Police Administration Act 1978</i> (NT)	116F(1)(b)	Search without warrant	Member of Police Force	Place (including vehicle)	Suspicion on reasonable grounds	Any vehicle	



		116J(1)(b)	Reasonable grounds for search without warrant	A member of the Police Force	Place (including vehicle)	Suspicion on reasonable grounds	Any vehicle	
		119(1)	Urgent searches without warrant	Member of the Police Force	Place (including vehicle)	Circumstances of such seriousness and urgency	Any vehicle	
		119A(4)(a)	Powers incidental to search and entry powers	Member of the Police Force	vehicle	Where authorised	Any vehicle	
		119AA(2)(b)	Search without warrant	Member of Police Force	vehicle	Suspects on reasonable grounds	Any vehicle	
		120C(a)	Searching without warrant	Member of Police Force	vehicle	Reasonable grounds to suspect drugs	Any vehicle	
		147J(1)(b)	Authority to enter place and establish crime scene	Member of Police Force	Place (includes vehicle)	Suspects on reasonable grounds offence committed	Any vehicle	
		147N(1)(g)	Crime scene powers	Member of Police Force	Vehicle	Crime scene	Any vehicle	
	<i>Surveillance Devices Act 2007</i> (NT)	19	Application for a surveillance device	Law enforcement officer		Relevant offence likely or about to be committed	Any vehicle	
		33	Emergence use of a surveillance device	Law enforcement officer		Imminent threat of serious violence to a person or substantial damage to property	Any vehicle	
<b>South Australia</b>	<i>Road Traffic Act 1961</i> (SA)	40D(1)(b)	Unattended vehicle	Authorised officer	Vehicle	Inspection and enquiry	Any vehicle	
		40Q	Power to inspect vehicle	Authorised officer	Vehicle	For compliance	Any vehicle	
		40R(2)	Power to search vehicle	Authorised officer	Vehicle	For compliance	Any vehicle	
		40S(2)	Power to inspect premises	Authorised officer	Vehicle or premises	For compliance	Any vehicle	
		40T(2)	Power to search premises	Authorised officer	Premises	Compliance purposes	Any vehicle	
		40Y(2)(a)–(d)	Direction to provide reasonable assistance for powers of inspection and search	Authorised officer	Responsible person	Effectively to exercise a power u	Any vehicle	\$10,000

		41B(1)(b)	Warrants	Authorised officer	Vehicle or premises	Believes on reasonable grounds	Any vehicle	
		41C(1)	Use of assistants and equipment	Authorised officer	Vehicle or premises	Considers reasonably necessary	Any vehicle	
		41D(1)–(3)	Use of equipment to examine	Authorised officer	Vehicle	Authorised officer exercising a power	Any vehicle	
		41E(1), (2)	Use or seizure of electronic equipment	Authorised officer	Vehicle	Authorised officer finds a storage device contains information	Any vehicle	
	<i>Motor Vehicles Act 1959 (SA)</i>	98P(3)	Authorised officer	Vehicle or premises	Vehicle	For purposes of investigation	Any vehicle	\$20,000
		139(1)	Inspection of motor vehicles	Authorised vehicle inspector	Vehicle	Compliance, safety	Any vehicle	\$10,000
	<i>Passenger Transport Act 1994 (SA)</i>	53(5)	Authorised officers	Authorised officer	Vehicle or premises	Reasonably be required in connection with the administration, operation or enforcement of this Act	Any vehicle	1 year prison or \$4,000
	<i>Summary Offences Act 1953 (SA)</i>	21L(1)(b)	Search for prohibited weapons	Police officer	Vehicle	For ensuring compliance	Any vehicle	
		68(1)(a)	Power to search suspected vehicles, vessels, and persons	Police officer	Vehicle	Reasonable cause to suspect – stolen goods – offence – evidence of offence	Any vehicle	
		74B(5)(d)	Roadblocks	Police officer	Vehicle	Where a roadblock is authorised	Any vehicle	
		80	Entry and search - fires and other emergencies	Police officer	Vehicle	Emergency	Any vehicle	
	<i>Surveillance Devices Act 2016 (SA)</i>	17	Application for a surveillance device	Officer of an investigating agency		Relevant offence likely or about to be committed	Any vehicle	
		21	Emergence use of a surveillance device	Chief officer of an investigating agency		Imminent threat of serious violence to a person or substantial damage to property	Any vehicle	
<b>Tasmania</b>	<i>Vehicle and Traffic Act 1999 (Tas)</i>	46(1)(c)	Power to stop vehicles	Police officer or authorised officer	Driver	For the purposes of an investigation	Any vehicle	25PU 50PU
		49(1)–(4)	Inspection of vehicles	Police officer or authorised officer	Vehicle	For inspection	Any vehicle	25PU 50PU

		51(1)	Power of seizure	Police officer or authorised officer	Vehicle	In course of inspecting	Any vehicle	
		52(1)(a)	Powers of entry	Police officer or authorised officer	Vehicle	For inspection	Any vehicle	25PU 50PU
	<i>Police Powers (Public Safety) Act 2005 (Tas)</i>	19(1)	Power to search vehicles	Police officer	Vehicle	Reasonable suspicion of designated vehicle	Any vehicle	
		23(1)(b)	Power to enter and search premises	Police officer	Premises	Reasonable grounds designated vehicle present	Any vehicle	
		25(1)	Seizing and detaining things	Police officer	Vehicle	In connection with a search	Any vehicle	
		28(1)	Assistance to exercise powers	Police officer	Vehicle	To exercise a power	Any vehicle	
	<i>Police Powers (Vehicle Interception) Act 2000 (Tas)</i>	7(1)	Power to stop and search vehicles at roadblock	Police officer	Vehicle	At or in vicinity of roadblock	Any vehicle	50PU or 12 months
	<i>Police Offences Act 1935 (Tas)</i>	37N(11)	Clamping and confiscation of vehicles	Police officer	Vehicle	Where prescribed offence alleged	Any vehicle	100PU or 12 months
		63A(1)	Authority at crime scene	Police officer	Vehicle	At crime scene	Any vehicle	
		63C(1)(g)	Authority serious incident site	Police officer	Vehicle	At serious incident site	Any vehicle	
	<i>Traffic Act 1925 (Tas)</i>	41D(1)(b)	Seizure of detection devices	Police officer or authorised officer	Vehicle	Reasonable grounds	Any vehicle	
		41E(1)(d)	Seizure of vehicles	Police officer	Vehicle	For examination	Any vehicle	
<b>Victoria</b>	<i>Road Safety Act 1986 (Vic)</i>	13(1)–(5)	Inspect motor vehicles and trailers	Police officer or authorised officer	Vehicle	Reasonable grounds for compliance	Any vehicle	5PU
		14(1A)	Defective vehicles	Police officer	Vehicle	Compliance	Any vehicle	
		60(1)–(4)	Duty of owner to give information	Police officer	Owner of vehicle, or nominated person	In the execution of duty	Any vehicle	20PU or 4 months or 2 months
		60A	Duty of owner of trailer to give information	Police officer	Owner of a trailer or relevant	In the execution of duty	Any vehicle	20PU or 4 months or

					nominated person			10PU or 2 months
		79A	Evidence of engine management system data	Police officer or person authorised	Vehicle	For any purpose under this Act,	Any vehicle	
		84ZY(2)	Power to inspect motor vehicles	Police officer or person authorised	Vehicle	Officer considers appropriate	Any vehicle	
		112(1)(d)	Authorised officers	Department employee or staff member of Regulator	Heavy vehicle	As permitted under Part 9	Heavy vehicle	
		114(1)	Power to inspect vehicle	Inspector	Heavy vehicle	Compliance	Heavy vehicle	
		115(1)	Power to inspect vehicle	Inspector	Heavy vehicle	Contravention of law or in an accident	Heavy vehicle	
		118	Consent not needed for inspections or searches	Inspector	Heavy vehicle	Compliance	Heavy vehicle	
		131(b)	Seizure of things not mentioned in the warrant	Inspector	Heavy vehicle	Believes on reasonable grounds necessary	Heavy vehicle	
		133(2)	Direction to provide reasonable assistance	Inspector	Responsible person	To exercise a power	Heavy vehicle	60PU
		145	Use of assistants and equipment	Inspector	Assistants	To exercise a power	Heavy vehicle	
		146(1)–(3)	Use of equipment to examine or process things	Inspector	Vehicle	To exercise a power	Heavy vehicle	
		147(1)–(3)	Use or seizure of electronic equipment	Inspector or person assisting inspector	Vehicle or premises	To access information	Heavy vehicle	
	<i>Commercial Passenger</i>	148(2)	General investigation powers relating to entry of industry premises or other place	Authorised officer	Place or premises	For the purpose of the investigation	Any vehicle	10PU

	<i>Vehicle Industry Act 2017</i> (Vic)	149(2)	General investigation powers relating to entry of motor vehicle	Authorised officer	Vehicle	for the purpose of the investigation	Any vehicle	10PU
		150(2)	Use or seizure of electronic equipment	Authorised officer	Device	authorised officer believes on reasonable grounds that the device sent, transmitted or generated information	Any vehicle	10PU
	<i>Victoria Police Act 2013</i> (Vic)	264(1)–(3)	Entry and search with consent	Police officer	Vehicle	Belief on reasonable grounds an offence	Any vehicle	
		268(1)	Form and content of search warrants	Police officer	Place or vehicle	Authorised by magistrate	Any vehicle	
		271(b)	Seizure of things not mentioned in the warrant	Police officer	Place or vehicle	Belief on reasonable grounds necessary	Any vehicle	
	<i>Surveillance Devices Act 1999</i> (Vic)	15	Application for a surveillance device	Law enforcement officer		Relevant offence likely or about to be committed	Application for a surveillance device	
		26	Emergence use of a surveillance device	Chief officer of an investigating agency		Imminent threat of serious violence to a person or substantial damage to property	Emergence use of a surveillance device	
	<b>Western Australia</b>	<i>Criminal Investigations Act 2006</i> (WA)	58	Data access order	Police officer apply to Magistrate	Suspect an offence	Any vehicle	
			146	Seizing things	Officer	Thing	Relevant to an offence	Any vehicle
			148	Copying records as seizing	Officer	Records	Relevant to an offence	Any vehicle
			149	Records, powers to facilitate seizing	Officer	Records	Relevant to an offence	Any vehicle
		<i>Road Traffic (Administration) Act 2008</i> (WA)	53	Search vehicle, inspect records, take copies	Police officer	Vehicle	MDLR compliance	Heavy vehicle
			54	Inspection and search of premises, inspection of records take copies	Police officer	Premises	MDLR compliance	Heavy vehicle
			55	Search of premises	Police officer	Premises	MDLR compliance	Heavy vehicle

		56	Direction to produce records	Police officer	'Involved person'	MDLR compliance	Heavy vehicle	
	<i>Transport (Road Passenger Services) Act 2018 (WA)</i>	169(1)	Powers in relation to vehicles	Authorised officer	Vehicle	Reasonably necessary for the exercise of any other power of the authorised officer under this Act	Any vehicle	
		171(1)	Entry of premises	Authorised officer	Vehicle or place	With the consent of the occupier; or under an entry warrant	Any vehicle	
		194	Grounds for seizing things	Authorised officer	Vehicle	Reasonably necessary to prevent it from being concealed, disturbed or lost; to preserve its evidentiary value; to subject it to forensic analysis; to prevent it from being used in the commission of an offence.	Any vehicle	
		195(1)	Records relevant to offence	Authorised officer	Vehicle	If a record may be seized	Any vehicle	
		196	Seizing of devices and equipment	Authorised officer	Vehicle	If a record may be seized	Any vehicle	
		197(2), (3)	Powers to facilitate seizing of records	Authorised officer	Vehicle	For the purpose of seizing a record or exercising a power in section 195(1) or (2)	Any vehicle	

**Powers to Disclose Information**

There is a patchwork of provisions that allow roadside enforcement agencies to disclose information to other agencies and to third parties (Figure 12). There is no uniform approach and substantive differences exist in the nature and scope of the disclosure powers across jurisdictions. Most states and territories do allow for intra-jurisdictional information exchange between transport authorities, police and third-party accident insurance commissions. Most also allow for exchange with inter-jurisdictional agencies. There are some provisions authorising disclosure to third parties, but usually only in relation to a crash involving the third party.

Figure 12: Powers to Disclose Information

	Act	Section	Description	Officer	Preconditions	Vehicle type	Penalty
<b>Queensland</b>	<i>Police Powers and Responsibilities Act 2000</i> (Qld)	353	Permitted use of protected information	n/a	If it is necessary to do so under 353(1)	Any vehicle	
	<i>Transport Operations (Road Use Management) Act 1995</i> (Qld)	77	Restricted release of persons information	Chief executive	Consent	Any vehicle	
		168C	Give to corresponding authority	Chief executive	Dangerous goods matter	Heavy vehicle	
<b>Australian Capital Territory</b>	<i>Road Transport (General) Act 1999</i> (ACT)	230(1)	Indemnity from personal liability	Territory	Honest and good faith	Any vehicle	
<b>New South Wales</b>	<i>Road Transport Act 2013</i> (NSW)	101(e)	Unauthorised disclosure	Transport for NSW	To exercise its functions	Any vehicle	20PU
		104R(e)	Unauthorised disclosure	Transport for NSW	To exercise its functions	Any vehicle	20PU
		277A(1)	Use of information in registers	Transport for NSW	To exercise its functions	Any vehicle	
<b>Northern Territory</b>	<i>Police Administration Act 1978</i> (NT)	147A	Exchange of information in databases	Minister or the Commissioner	Under arrangement	Any vehicle	
		147B(1)(h)	Access to and use of information stored in database	Person	Under arrangement entered into under s 147A	Any vehicle	
		155(3)(a)(1)	Unauthorised disclosure of confidential information	Person	For administration of Act	Any vehicle	200PU, 2 years prison
<b>South Australia</b>	<i>Road Traffic Act 1961</i> (SA)	41L	Providing evidence to other authorities	Minister or the Commissioner of Police	Considered appropriate	Any vehicle	
		174J(1)	Minister may provide information to corresponding Authorities	Minister	Minister may provide information	Any vehicle	
<b>Tasmania</b>	<i>Traffic Act 1925</i> (Tas)	58(1)	Powers and duties of Commission	Commission	State transport or traffic matter	Any vehicle	



<b>Victoria</b>	<i>Road Safety Act 1986 (Vic)</i>	90K(a)	Authorised use or disclosure	The Secretary or a relevant person	Subject to section 90N	Any vehicle	
		90L(1)	Exceptional circumstances	Minister	Satisfied that exceptional circumstances exist	Any vehicle	
<b>Western Australia</b>	<i>Road Traffic (Administration) Act 2008 (WA)</i>	12	Exchange information CEO and Commissioner	CEO	CEO must disclose specific information to Commissioner	Any vehicle	
		13A	Exchange of information between CEO and other transport authorities	CEO	May disclose	Any vehicle	
		13B	Disclosure to Commission of Main Roads	CEO	Must disclose	Any vehicle	
		13D	Disclosure of incident information to ICWA	CEO, Commissioner	Must disclose incident material to ICWA	Any vehicle	
		13E	Disclosure of incident information to persons	Commissioner	Person harmed in an incident	Any vehicle	
		14	Disclosure to prescribed persons	CEO	Disclose licence and vehicle information	Any vehicle	
		15	Disclosure for road safety purpose	CEO, Commissioner	Disclosure of incident reports and licence and vehicle information	Any vehicle	

## **2 HVNL Enforcement Powers**

Due to the fundamentally uniform nature of the HVNL, there are very limited substantive differences to discuss. These differences are found mainly in the enabling provisions, which set out some differential disclosure powers or obligations within each state or territory. The HVNL covers a wide range of powers around the operation and regulation of heavy vehicles in Australia. These provisions are quite broad, and range from monitoring and reporting obligations to defining who may be authorised officers and what powers of enforcement may be exercised. The primary substantive difference is that the HVNL does not apply in Western Australia and the Northern Territory. In those jurisdictions, enforcement powers for heavy vehicles remain in the general road, traffic and vehicle laws.

### **Power to stop vehicles**

The suite of powers granted to authorised officers include the following powers in relation to heavy vehicles:

- stop vehicles
- immobilise vehicles
- direct vehicles.

Ultimately, there are no substantive differences in the powers allocated to stop vehicles under the HVNL in each participating jurisdiction, and these powers are effectively the same for participating jurisdictions across Australia.

### **Power to access data for roadside enforcement and crash investigation purposes**

These powers include powers to:

- inspect or search vehicles and premises
- determine the identity of drivers
- investigate crashes
- gather information about or from vehicles and premises.

As with the powers to stop, immobilise and direct vehicles, there are no substantive differences in the powers allocated under the HVNL in each participating jurisdiction, and these powers

are effectively the same for participating jurisdictions across Australia. However, this is not the case with the disclosure powers, discussed below.

### **Power to Disclose Information**

The disclosure powers under the HVNL in each jurisdiction contain very limited substantive differences. These differences can be found in the enabling provisions in states and territories that provide for some alteration to the HVNL. The principal substantive differences are found in the ACT and NSW HVNL. Specifically, section 29 of the ACT HVNL allows disclosure to the regulator by the ACT Road Transport Authority on its own initiative,<sup>329</sup> and NSW provides the same power of disclosure to TfNSW.<sup>330</sup> NSW also allows for monitoring of information around heavy vehicles over a GVM of 13.9 tonnes.<sup>331</sup>

### **Summary**

In summary, there are only very minor substantive differences in the various iterations of the HVNL across participating jurisdictions. These differences are mainly limited to the state and territory enabling provisions, and to some disclosure provisions and the differing requirements of reasonableness in some jurisdictions.<sup>332</sup> Ultimately, whether the current HVNL is adaptable to the introduction of automated heavy vehicles will depend on the ability to give directions to an automated vehicle, and on definitions of who is a driver, or person in control, of a heavy vehicle.

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<sup>329</sup> *Heavy Vehicle National Law Act (ACT) 2013* (ACT) s 29(1).

<sup>330</sup> *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) s 25.

<sup>331</sup> *Heavy Vehicle National Law* (NSW) 2013 (NSW) s 93A.

<sup>332</sup> *Heavy Vehicle National Law* s 577(1); *Heavy Vehicle National Law Act (ACT) 2013* (ACT) s 25; *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) s 23.

## **Appendix 1: State and Territory Enforcement Powers**

The tables in this appendix list the state and territory legislation and regulations considered in this report. The tables include both legislation and regulation directly discussed, and legislation and regulations examined in the process of determining the core roadside enforcement powers in the states and territories. As noted in the Introduction, it is not claimed that all possible roadside enforcement powers have been identified. Rather, the focus has been on the core powers. In the tables, the core powers from the states and territories have also been identified. Further, there are fewer entries than in the tables in Part D. In Part D, the substantive differences between the states and territories were the focus. Powers were identified by the precise section and often subsection that authorised the specific enforcement action. Further, supporting and supplementary powers were also included. In the tables in this appendix, only the ‘head’ section is identified, and cross-referenced to the broad purpose of the power.

## Queensland Legislation and Regulations Considered

Figure 13: Queensland Legislation and Regulations Considered

Act	Power	Purpose
<i>Police Powers and Responsibilities Act 2000 (Qld)</i>	Searching vehicles without warrant s 31	Stopping vehicles/accessing information from vehicles
	Power of inquiry into road use contraventions s 54	Accessing information from vehicles
	Power to require information about identity of drivers of vehicles s 55	Accessing information about vehicles
	Power to prohibit use of vehicles s 66	Directions about a vehicle
	Additional power of inquiry for relevant vehicle incidents s 56	Crash investigation
	Stopping vehicles for prescribed purposes s 60	Stopping vehicles
	Power to inspect vehicles s 63	Access information from vehicles
	Power to enter vehicles s 64	Access information from vehicles
	Permitted use of protected information s 353	Disclosing information
<i>Transport Operations (Passenger Transport) Act 1994 (Qld)</i>	Entry or boarding of vehicles s 123	Access information from vehicles or places
	General powers in relation to places and vehicles s 124	Access information from vehicles or places
	Power to seize evidence s 125	Access information from vehicles or places
	Powers supporting seizure s 126C	Access information from vehicles or places
	Power to require production of documents s 129	Access information from vehicles or places
	Power to require production of licence s 129AA	Access information about vehicles or person
<i>Transport Operations (Road Use Management) Act 1995 (Qld)</i>	Sharing information with police s 17E	Disclosing information
	Power to stop private vehicles s 31	Stopping vehicles
	General powers after entering places s 30	Access information about vehicles
	Power to stop heavy vehicles or prescribed vehicles s 32	Stopping vehicles
	Power to enter vehicles etc. other than for vehicle inspection s 35	Accessing information from vehicles
	Power to seize evidence s 40	Accessing information from vehicles
	Scheme to facilitate supply of information as to road incidents s 94	Crash investigation
	Chief executive may give information to corresponding authority s 168C	Disclosing information
<b>Other considered Acts and Regulations</b>		
<i>Acts Interpretation Act 1954 (Qld)</i>		
<i>Police Powers and Responsibilities Regulation 2012 (Qld)</i>		
<i>Statutory Instruments Act 1992 (Qld)</i>		
<i>Statutory Instruments Regulation 2012 (Qld)</i>		
<i>Tow Truck Act 1973 (Qld)</i>		
<i>Transport Operations (Marine Safety) Act 1994 (Qld)</i>		
<i>Transport Operations (Passenger Transport) Act 1994 (Qld)</i>		
<i>Transport Operations (Road Use Management - Road Rules) Regulations 2009 (Qld)</i>		
<i>Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010 (Qld)</i>		
<i>Invasion of Privacy Act 1971 (Qld)</i>		

## New South Wales Legislation and Regulations Considered

Figure 14 New South Wales Legislation and Regulations Considered

Act	Power	Purpose
<i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (NSW)	Power of police officer to require disclosure of driver or passenger identity s 14	Gathering information
	Power to search vehicles and seize things without warrant s 36	Stop vehicles and access information about vehicles
	Power to stop vehicles s 36A	Stopping vehicles
	Powers to stop vehicles and erect roadblocks s 37	Stopping vehicles
	Power to search for and seize things without warrant s 45B	Stop vehicles and access information about vehicles
<i>Law Enforcement (Powers and Responsibilities) Regulation 2016</i> (NSW)	Operation of Surveillance Devices Act 2007 s 108F	Gathering information
<i>Point to Point Transport (Taxis and Hire Vehicles) Act 2016</i> (NSW)	Functions of authorised officers s 111	Stop vehicles and access information about vehicles. Gathering information
	Powers after entering premises s 116	Access information about vehicles
	Power to stop and detain motor vehicle s 117	Stop vehicles and access information about vehicles
	Powers when inspecting vehicles s 119	Access information from vehicles
	Offenders to state name and address s 128	Gathering information
	Powers of Commissioner to obtain information s 139A	Disclosing information
<i>Road Transport Act 2013</i> (NSW)	Use of dangerously defective motor vehicles s 78	Stop vehicles and access information about vehicles
	Power of entry to inspect damaged vehicles s 80	Access information about vehicles
	Information about written-off and demolished heavy vehicles s 104J	Disclosing information
	Use of tyre deflation devices s 148C	Stopping vehicles
	Monitoring of heavy vehicles and vehicles carrying dangerous goods s 154	Access information about vehicles
	Seizure of monitoring devices and records s 155	Access information from vehicles
<i>Surveillance Devices Act 2007</i> (NSW)	Accessing information from a data surveillance device ss 17, 31	Access information from vehicles
<b>Other Acts and Regulations considered</b>		
<i>Dangerous Goods (Road and Rail Transport) Act 2008</i> (NSW)		
<i>Motor Accident Injuries Act 2017</i> (NSW)		
<i>Motor Accidents Compensation Act 1999</i> (NSW)		
<i>Privacy and Personal Information Protection Act 1998</i> (NSW)		
<i>Passenger Transport Act 2014</i> (NSW)		
<i>Road Rules 2014</i> (NSW)		

## Victorian Legislation and Regulations Considered

Figure 15 Victorian Legislation and Regulations Considered

Act	Power	Purpose
<i>Road Safety Act 1986</i> (Vic)	Preliminary testing stations s 54	Stop vehicles and access information about vehicles
	General duty of drivers s 59	Stopping vehicles
	Use of vehicle immobilising devices s 63B	Stopping vehicles
	Evidence of speed s 79A	Access information from vehicles
	Powers of Victoria Police s 84F	Stopping vehicles
	Power to inspect motor vehicles s 84ZY	Access information from vehicles
	Power to inspect vehicle s 114	Access information from vehicles
	Power to search vehicle s 115	Access information from vehicles
	Power to require production of documents and related items s 132	Gathering information
	Use or seizure of electronic equipment s 147	Access information about vehicles
<i>Road Safety (Automated Vehicles) Regulations 2018</i> (Vic)	Corporation may maintain records of persons driving, or in charge of, automated vehicles s 331	Gathering information
<i>Road Safety (General) Regulations 2019</i> (Vic)	Engine management system reading devices s 53	Access information from vehicles
	Obtaining information from an engine management system reading device s 54	Access information about vehicles
<i>Commercial Passenger Vehicle Industry Act 2017</i> (Vic)	General investigation powers relating to entry of industry premises or other place s 148	Access information about vehicles
	General investigation powers relating to entry of motor vehicle s 149	Access information from vehicles
	Use or seizure of electronic equipment s 150	Access information from vehicles
	Directions to driver of commercial passenger vehicle s 162	Gathering information
<i>Victoria Police Act 2013</i> (Vic)	Disclosure of accident information s 248	Disclosing Information
	Entry and search with consent s 264	Access information about vehicles
	Seizure of things not mentioned in the warrant s 271	Access information about vehicles
<i>Surveillance Devices Act 1999</i> (Vic)	Accessing information from a data surveillance device ss 15, 26	Access information from vehicles
<b>Other Acts and Regulations considered</b>		

## Tasmanian Legislation and Regulations Considered

Figure 16 Tasmanian Legislation and Regulations Considered

Act	Power	Purpose
<i>Vehicle and Traffic Act 1999</i> (Tas)	Power to stop vehicle s 46	Stopping vehicles
	Production of documents by drivers and persons in charge of vehicles s 47	Gathering information
	Inspection of vehicles s 49	Access information from vehicles
	Power of seizure s 51	Access information from vehicles
		Stop vehicles and access information about vehicles
<i>Police Powers (Public Safety) Act 2005</i> (Tas)	Power to obtain disclosure of identity s 17	Gathering information
	Power to search vehicles s 19	Access information from vehicles
	Power to enter and search premises s 23	Access information about vehicles
	Seizing and detaining things s 25	Access information about vehicles
<i>Police Offences Act 1935</i> (Tas)	Requirement of owner or registered operator to provide details s 37G	Gathering information
	Clamping and confiscation of vehicles s 37N	Stopping vehicles
<i>Police Powers (Vehicle Interception) Act 2000</i> (Tas)	Power to stop and search vehicles at roadblock s 7	Stop vehicles and access information about vehicles
	Power to request disclosure as to driver or passenger s 8	Gathering information
	Powers in respect of vehicle stopped by vehicle immobilising device s 11	Access information about vehicles
<i>Traffic Act 1925</i> (Tas)	Seizure of vehicles s 41E	Access information about vehicles
<b>Other Acts and Regulations considered</b>		
<i>Passenger Transport Services Act 2011</i> (Tas)		
<i>Road Rules 2019</i> (Tas)		
<i>Taxi and Hire Vehicle Industries Act 2008</i> (Tas)		
<i>Listening Devices Act 1991</i> (Tas)		



## South Australian Legislation and Regulations Considered

Figure 17 South Australian Legislation and Regulations Considered

Act	Power	Purpose
<i>Road Traffic Act 1961</i> (SA)	Direction to stop vehicle to enable exercise of other powers s 40H	Stop vehicles and access information about vehicles
	Power to inspect vehicle on road or certain official premises s 40Q	Access information about vehicles
	Power to search vehicle on road or certain official premises s 40R	Access information about vehicles
	Power to inspect premises s 40S	Access information about vehicles
	Power to search premises s 40T	Access information about vehicles
	Direction to give name and other personal details s 40V	Gathering information
	Direction to produce records, devices or other things s 40W	Access information about vehicles
	Use or seizure of electronic equipment s 41E	Access information about vehicles
	Providing evidence to other authorities s 41L	Disclosing information
	Defect notices s 145	Access information about vehicles
	Proving information to corresponding Authorities s 174J	Disclosing information
<i>Motor Vehicles Act 1959</i> (SA)	Investigation powers s 98P	Gathering information
<i>Passenger Transport Act 1994</i> (SA)	Authorised officers s 53	Access information about vehicles
<i>Summary Offences Act 1953</i> (SA)	Power to search suspected vehicles, vessels, and persons s 68	Stop vehicles and access information about vehicles
	Power to require statement of name and other personal details s 74A	Gathering information
	Questions as to identity of drivers, etc. s 74AB	Gathering information
	Roadblocks s 74B	Stopping vehicles
	Vehicle immobilisation devices s 74BAA	Stopping vehicles
<i>Surveillance Devices Act 2016</i> (SA)	Accessing information from a data surveillance device ss 17, 21	Access information from vehicles
<b>Other Acts and Regulations considered</b>		
<i>Road Traffic (Miscellaneous) Regulations Act 2014</i> (SA)		
<i>Passenger Transport Regulations 2009</i> (SA)		

## Western Australian Legislation and Regulations Considered

Figure 18 Western Australian Legislation and Regulations Considered

Act	Power	Purpose
<i>Criminal Investigations Act 2006</i> (WA)	Roadblocks, use of to stop vehicles s 18	Stopping vehicles
	Stopping vehicles, powers in connection with s 19	Stopping vehicles
	Power to enter includes power to enter some other places s 20	Access information about vehicles
	Place or vehicle, entry of to prevent violence s 35	Stopping vehicles
	Vehicle, search of for things relevant to offence s 39	Stop vehicles and access information from vehicles
	Things relevant to offence, grounds for seizing s 146	Access information about vehicles
	Records relevant to offence s 148	Access information about vehicles
<i>Road Traffic Act 1974</i> (WA)	Owner etc. of vehicle occasioning bodily harm etc. to help police identify driver etc. s 57	Access information about vehicles
	Use or seizure of electronic equipment s 69	Access information about vehicles
<i>Road Traffic (Administration) Act 2008</i> (WA)	Agreements to share information s 11(5A)	Disclosing information
	Exchange of information with other authorities s 13A	Disclosing information
	Disclosure of information to Insurance Commissioner s 13D	Disclosing information
	Disclosure of information to persons involved in an incident s 13E	Disclosing information
	Disclosure of information for road safety purposes s 15	Disclosing information
	Giving name, address, etc. s 32	Gathering information
	Duty to identify offending driver or person in charge of Vehicle s 34	Gathering information
	Direction to stop vehicle: to enable exercise of other powers s 39	Stop vehicles and access information about vehicles
	Inspection of vehicles on roads, in public places or certain official premises s 52	Access information from vehicles
	Search of vehicles on roads, in public places or certain official premises s 53	Access information from vehicles
	Search of premise s 55	Access information about vehicles
	Direction to produce records, devices or other things s 56	Access information about vehicles
	Direction to provide information s 57	Access information about vehicles
<i>Road Traffic Code 2000</i> (WA)	Directions by police s 273	Stopping vehicles
<i>Transport (Road Passenger Services) Act 2018</i> (WA)	Disclosure of information to law enforcement official s 162	Access information about vehicles

	Powers in relation to vehicles s 169	Access information from vehicles
	Directions to relevant persons s 170	Access information
	Entry of premises s 171	Access information about vehicles
	Grounds for seizing things s 194	Access information about vehicles
	Records relevant to offence s 195	Access information about vehicles
	Seizing of devices and equipment s 196	Access information about vehicles
	Powers to facilitate seizing of records s 197	Access information about vehicles
<b>Other Acts and Regulations considered</b>		
<i>Surveillance Devices Act 1998 (WA)</i>		

## Northern Territory Legislation and Regulations Considered

Figure 19 Northern Territory Legislation and Regulations Considered

Act	Power	Purpose
<i>Motor Vehicles Act 1949</i> (NT)	Persons to give particulars s 9	Gathering information
	Powers of officers for purposes of Part VA and Standards s 64	Stop vehicles and access information about vehicles
	Inspection of motor vehicles s 128	Access information about vehicles
<i>Traffic Regulations Act 1999</i> (NT)	Persons to give particulars s 9	Gathering information
	Enforcement s 25	Stopping vehicles
<i>Commercial Passenger (Road) Transport Act 1991</i> (NT)	Inspection of premises s 65	Access information about vehicles
	Inspection of motor vehicles s 66	Access information from vehicles
<i>Police Administration Act 1978</i> (NT)	Urgent searches without warrant s 119	Access information about vehicles
	Powers incidental to search and entry powers s 119A	Stopping vehicles
	Searching without warrant s 120C	Stop vehicles and access information about vehicles
	Exchange of information in databases s 147A	Disclosing information
	Authority to enter place and establish crime scene s 147J	Access information about vehicles
	Crime scene powers s 147N	Gathering information
<i>Surveillance Devices Act 2007</i> (NT)	Access information from a data surveillance device ss 19, 33	Access information from vehicles
<b>Other considered Acts and Regulations</b>		
<i>Traffic Act 1987</i> (NT)		

## Australian Capital Territory Legislation and Regulations Considered

Figure 20 Australian Capital Territory Legislation and Regulations Considered

Act	Power	Purpose
<i>Road Transport (Safety and Traffic Management) Act 1999 (ACT)</i>	Powers of police officers to seize and impound vehicles used in committing certain offences s 10C	Stopping vehicles
<i>Road Transport (Safety and Traffic Management) Regulation 2017 (ACT)</i>	Power to enter premises s 58	Access information about vehicles
	General powers on entry to premises s 61	Access information about vehicles
<i>Road Transport (Public Passenger Services) Act 2001 (ACT)</i>	Power to inspect maintenance facilities s 117	Access information about vehicles
	Power to inspect and test vehicles s 118	Access information from vehicles
	Power to require vehicles or equipment to be inspected and tested s 119	Access information about vehicles
	Power to require name and address s 121	Access information
<i>Crimes Act 1900 (ACT)</i>	Stopping, searching and detaining conveyances s 209	Stopping vehicles and accessing information from vehicles
<b>Other considered Acts and Regulations</b>		
<i>Motor Accident Injuries Act 2019 (ACT)</i>		
<i>Road Transport (Alcohol and Drugs) Act 1977 (ACT)</i>		
<i>Road Transport (Driver Licensing) Act 1999 (ACT)</i>		
<i>Road Transport (Road Rules) Regulations 2017 (ACT)</i>		
<i>Road Transport (Offences) Regulations 2005 (ACT)</i>		
<i>Road Transport (General) Act 1999 (ACT)</i>		
<i>Road Transport (Safety and Traffic Management) Act 1999 (ACT)</i>		
<i>Road Transport (Vehicle Registration) Act 1999 (ACT)</i>		
<i>Listening Devices Act 1992 (ACT)</i>		

## Appendix 2: HVNL Enforcement Powers

Figure 21: HVNL Enforcement Powers

Act	Power	Purpose
Heavy Vehicle National Law	Powers to use and disclose intelligent access program information s 418	Disclosing information
	Powers to use and disclose intelligent access program information s 433	Disclosing information
	Powers to use and disclose intelligent access program information s 447	Disclosing information
	Use of force against persons s4 91	Stopping vehicles
	Use of force against property s 492	Stop vehicles and access information about vehicles
	Power to enter relevant place s 494B	Access information about vehicles
	Power to enter relevant place s 495	Access information about vehicles
	General powers after entering relevant place s 496	Access information about vehicles
	General power to enter places s 497	Access information about vehicles
	Power to enter a place if evidence suspected to be at the place s 498	Access information about vehicles
	Power to enter particular places if incident involving death, injury or damage s 499	Access information about vehicles
	General powers after entering a place s 500	Access information about vehicles
	Direction to stop heavy vehicle to enable exercise of other powers s 513	Stop vehicles and access information from vehicles
	Power to enter and inspect heavy vehicles for monitoring purposes s 520	Access information from vehicles
	Power to enter and search heavy vehicle involved, or suspected to be involved, in an offence, etc. s 521	Access information from vehicles
	Power to order presentation of heavy vehicles for inspection s 522	Access information from vehicles
	Starting or stopping heavy vehicle engine s 523	Stopping vehicles
	Direction to leave heavy vehicle s 524	Stop vehicles and access information from vehicles
	Power to use equipment to access information s 543	Access information about vehicles
	Power to use equipment to examine or process a thing s 544	Access information about vehicles
	Seizing evidence at a place that may be entered without consent or warrant s 545	Access information about vehicles
	Seizing evidence in a heavy vehicle entered under s 521 s 547	Access information from vehicles
	Additional seizure power relating to information stored electronically s 548	Access information about vehicles
	Power to require name, address, and date of birth s 567	Gathering information
	Power to require production of document etc. required to be in driver's possession s 568	Access information about vehicles
	Power to require production of documents etc. generally s 569	Access information about vehicles
	Power to require information about heavy vehicles s 570	Access information about vehicles

	Power to require reasonable help s 577	Access information about vehicles
	Database of heavy vehicles s 686A	Gathering information
	Regulator may share information in database of heavy vehicles s 686B	Disclosing information
<i>Heavy Vehicle National Law (ACT) Act 2013 (ACT)</i>	Use of force against people, ss 491, 25	Stopping vehicles
	Use of force against property ss 492, 26	Stop vehicles and access information about vehicles
	Provision of information and assistance to Regulator by road transport authority s 29	Disclosing information
<i>Heavy Vehicle (Adoption of National Law) Act 2013 (NSW)</i>	Authority to use force s 23	Stop vehicles and access information about vehicles
	Authority to seize heavy vehicles or things s 24	Stop vehicles and access information about vehicles
	RMS authorised to provide information and assistance to Regulator s 25	Disclosing information
<i>Heavy Vehicle National Law (South Australia) Act 2013 (SA)</i>	Authority to use force s12	Stop vehicles and access information about vehicles
	Authority to seize heavy vehicles or things s14	Stop vehicles and access information about vehicles
	Authorised use of protected information s 15	Disclosing information
	Power to enter certain places s19	Access information about vehicles
<i>Heavy Vehicle National Law (Tasmania) Act 2013 (TAS)</i>	Authorised use of protected information s 20	Disclosing information
	Authority to use force s 21	Stop vehicles and access information about vehicles
<i>Heavy Vehicle National Law Application Act 2013 (Vic)</i>	Power to forfeit particular things or samples s 23	Access information about vehicles
	Regulator may disclose information to Authority s 239ADD	Disclosing information

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