

National Transport Commission
Level 3/600 Bourke Street
MELBOURNE
VIC 3000

Re: Public submission – National In-service Safety Law for Automated Vehicles Discussion Paper

The Royal Automobile Club of Queensland (RACQ) thanks the National Transport Commission for the opportunity to provide this submission to the *National In-service Safety Law for Automated Vehicles* discussion paper.

As Queensland's peak motoring organisation, the RACQ has a vital interest and stake in the future of Queensland's transport network. On behalf of RACQ's 1.7 Million members, we advocate to ensure Queensland's transport system maximises safety, affordability, and sustainability.

Further detail regarding the RACQ's response to each of the discussion paper questions is provided in the body of this submission. RACQ thanks the NTC for the opportunity to provide this submission and contribute to shaping the future of Australia's transport network.

Should you need to discuss any of the items raised in this letter, you can contact Grace Willems, Transport Planning and Infrastructure Advisor, Ph. (07) 3872 8984 or email Grace.Willems@racq.com.au.

Yours sincerely



Dr Rebecca Michael

Head of Public Policy RACQ

T: (07) 3872 8650

E: Rebecca.Michael@racq.com.au



Chapter 3 Questions – ADSE Duties and Enforcement Framework

Specific responses to the questions contained in Chapter 3 are detailed below. Additional feedback in relation to content of the chapter includes:

- Section 3.8 – the NTC states ‘Allowing injured people to litigate safety duty breaches (essentially private enforcement of a public duty) would mean the duties owed by regulated parties to the public could be upheld without first requiring a regulator to take action, which could increase the likelihood of compliance by ADSEs.’
 - RACQ supports this being an option for injured persons but asserts the regulator should be taking first action on agreed GSD principle breaches. Litigation by third parties should be an edge case and inform further principles or guidance for ADSEs. This is particularly important due to the limited technical expertise about the technology for private litigation to leverage - it is more likely this level of knowledge is readily available through the regulator and would result in greater consistency and better consumer outcomes. While some may argue this will potentially incur greater regulator costs on taxpayers (depending on the final model implemented), RACQ notes this would result in broad community safety benefits and would support this as a justifiable cost.

Question 1: What prescriptive duties under the general safety duty should be included in the AVSL to manage in-service safety risks?

RACQ broadly supports the intent to use prescriptive duties to guide ADSE’s in meeting their obligations under the duty of care and is not opposed to any specific potential duty noted in Table 2. It is recommended there be specific metrics or improved definitions in some cases. Any guidelines should be consistent with other Federal laws or refer to state requirements where applicable. For example:

- The ADSE must notify the in-service regulator and users of any systemic safety issues affecting the ADS – for notification duties, it would be best practice to include maximum notification timeframes or thresholds.
 - An example of this is the APRA Prudential Standard CPS 234 Information Security s.35 and s. 36 which states “An APRA-regulated entity must notify APRA as soon as possible and, in any case, no later than 72 hours, after becoming aware of an information security incident...” and applies specific thresholds and further time frames for remediation notification.
- Further timeframe requirements may be required for the proposed duty – ‘The ADSE must record and store data relevant to compliance with the general safety duty’.
- The definition of ‘user’ in the proposed duty ‘The ADSE must ensure, so far as is reasonably practicable, that the ADS software is without risks to the health and safety of users’ may need clarification, and it is suggested to ensure this definition also covers other road users external to the vehicle.

Question 2: What matters relating to compliance with a general safety duty are better suited to guidance than being prescribed in the AVSL? Should this guidance have legislative force?

In the early stages while the regulator is taking a collaborative approach to share knowledge and ensure ADSE’s comply with in-service safety law and the general safety duty, it may be appropriate to provide guidance and introduce legislative force in future if experience supports the need.

However, some of the previously noted prescriptive duty suggestions where a timeframe or threshold could trigger the duty, and/or similar legislative requirements exist as a benchmark (such as privacy breaches or product safety recalls), could warrant legislative force as there is general industry knowledge and acceptance of these requirements, and a community expectation in regards to consumer protections and rights.



Question 3: Are existing and proposed regulatory frameworks (state and territory laws, first -supply requirements and general safety duty obligations) sufficient to address third-party interference with an ADS? If not, should interference with the safe operation of an ADS be a specific offence, and how should this offence be enforced?

Given the degree of interference with an ADS capable by third parties is largely unknown and untested on a market scale, it is agreed there is a reasonable likelihood current frameworks may not be sufficient to capture and deter third party interference and ensure consumer confidence and safety.

The RACQ would not be opposed to interference with an ADS becoming a specific offence but suggests there may need to be further clarification supported by available evidence to differentiate between malicious intent and negligence which has caused the interference. Depending on the entity and intent of a person or organisation who has interfered with the ADS, some laws may already be applicable such as state-based legislation overseeing repairs or Corporations Act 2001.

It is less clear if each state or territory would have an applicable, consistent, and appropriate offence which may apply to public individuals operating outside of a professional environment in either a negligent or malicious intent – such as a vehicle tampering or interference offence. Currently there are also potential gaps in non-automated vehicle ADR compliance. New vehicles are covered by the ADRs at the Federal level but once the vehicle is in service, the responsibility falls to the state or territory. They generally require continued compliance with the ADRs, though there are permissible (and often inconsistent) modifications approved at a state level. Generally, the states only have the ability to deregister or order the repair of defective vehicles. It is recommended this be reviewed and could be amended through state/territory based legislation under model law if gaps or inconsistencies are identified.

Question 4: Should the law provide a specific defence for Australian ADSE executive officers who rely on information provided by others, like a parent company, when discharging their due diligence duty?

It is highly likely given the lack of local manufacturing of vehicles and ADS systems, that local entities of global organisations the executive officers of ADSE's will be reliant on information provided by others including the parent company. While a specific defence may be appropriate in some cases to discharge the duty, it would be expected that an officer who has responsibility under the GSD locally should have access to company knowledge in relation to any issues which may affect a vehicle's safety and breach the general safety duty. If evidence of this knowledge, or evidence of deliberate intent to not identify such issues and claim ignorance is found, it would not be suitable for a party to discharge their due diligence duty.

RACQ also poses the question, if this defence were allowed, who would ultimately be held responsible for a non-compliance? To use the VW emissions scandal as an example, the decision to install a defeat device was made at a very high level and anyone not directly involved was apparently unaware of the issue. In these instances where local ADSE executive officers truly had no knowledge, international litigation would likely be required.



Chapter 4 Questions – Transfer of ADSE Responsibilities

Question 5: Please provide your views on the transfer of responsibilities for an in service ADS from an ADSE to a new entity.

- Should an ADSE be able to transfer responsibility for an in-service ADS to a new entity? If so, what powers should the in-service safety regulator have for approving the transfer?

From the perspective of a consumer, ensuring there are avenues for ongoing support for an ADS when an existing ADSE exits the market is a critical factor. RACQ therefore believes there should be an avenue to transfer responsibilities for an ADS to a new ADSE. Of the options presented, RACQ believes a combination of options 1 and 2 would still place an adequate focus on ensuring safety, while trying to streamline the process.

While option 1 makes an attempt to do this, there is potential for shortfalls in the new ADSE's ability to support the safety of existing ADS to be overlooked. It is not impossible for there to be a scenario in which the trigger for an ADSE to stop supporting an ADS, is in fact the inability to ensure the ADS's safety and compliance with the general safety duty. If in-service safety defects are discovered and place a burden on the existing ADSE, this could lead to financial impacts and corporate transition requiring a new ADSE to take on ADS with known issues. In this event it would be warranted to re-evaluate against all first supply criteria to ensure the ADS can in-fact be supported over the long term by the new ADSE.

In the first instance, option 1 should be a bare minimum, but it should be at the regulator's discretion based on the evidence available for the current ADS approvals and in-service safety record, the exiting ADSE, and the new ADSE's circumstances and safety management systems, if further evaluation against the first-supply principles may be warranted to ensure safe operation of all current vehicles in-service.

Option 3 is not supported as it appears to transfer a high level of risk to the new ADSE with potentially limited compliance.

Question 6: If there is no new entity to take responsibility for an ADS when an ADSE exits the market, are recall (including disengagement) under the RVSA and recourse under the Australian Consumer Law appropriate measures? Is there any role for the in-service regulator?

To mitigate consumer impact, recall and disengagement would be the least preferred outcome and RACQ suggests this be the last resort option to manage safety. In a situation in which there is no alternative ADSE to support the ADS, it would be a significant deterrent to further uptake of the technology. RACQ also notes this situation could be regarded as a major failure under the Australian Consumer Law which would trigger the demand for replacement of the vehicle or a refund, which could be a significant incentive for the manufacturer to make alternative arrangements.

As an alternative avenue to support the ADS and consumer rights, it is suggested a review be conducted of the potential for the Access to Service and Repair information to in future be leveraged to allow for a market solution such as where a third-party who has not directly purchased the rights to manage the ADS from the original ADSE, might be able to develop solutions to support the abandoned ADS and become registered as the new ADSE. The regulator may have a role in ensuring provision of this service and repair information to facilitate this market solution, and to review the safety case and accredit an ADSE for an abandoned in-service ADS.

RACQ also notes the issue remains that the vehicle 'lifecycle' has not been defined which could be a point of legal contention between the regulator and ADSEs.



Chapter 5 Questions – In-service Modifications and After-market Installations

Question 7: What should the role of the in-service regulator be for modifications made by an ADSE to an in-service ADS that changes its ODD or the level of automation?

The NTC's proposed approach for the in-service regulator to have a function to approve modifications that may be carried out to ADSs that are in service, is supported by the RACQ over the alternative option to manage modifications through the general safety duty. While this is a more onerous option, it maximises safety outcomes.

It is recommended the following be considered:

- The approvals for first-supply and in-service frameworks should be closely linked from an organisational perspective. This will mitigate the risk of delays due to information transfer, but also disputes due to varying culture and interpretations.
- Currently in-service modifications are approved by states and territories. But in the case of an it is questionable if all state and territory governments have the expertise to properly deal with such systems. It is recommended the modifications approval role needs to be centralised with the regulator and not split between federal and state.
- Further consideration may need to be given for how road managers are updated on changes to ODD which alter the presence of automated vehicles on sections of their network – at minimum a notification and ability to flag any concerns or request proof of safe operation could be facilitated by the regulator.
- Similarly, it is difficult to identify whether there are any alterations to the ADS which could fit within the same type approval, but still warrant triggering a modification approval. This should be monitored and evaluated during the early stages of updates, and considered as type approvals and ADRs are developed for AVs.

Question 8: How should in-service modifications made by parties other than an ADSE to vehicles to make them automated vehicles be managed?

Consider:

- *vehicle manufacturers modifying vehicles to become automated vehicles while in service*
- *businesses that supply and install aftermarket ADSs*
- *individuals installing aftermarket ADS kits.*

At this early stage, RACQ supports the NTC's consideration for it to be an offence for parties other than the ADSE, those authorised by the ADSE or those authorised by the first-supply regulator or in-service regulator to install an ADS.

Of the options presented, RACQ suggests that there be a transitional arrangement, beginning with Option 1 and transitioning to Option 2 in future when more evidence and tangible information is available. The extent to which third-parties will need to fit after-market ADS, and how safe and effective this practice will be in the early stages, is unknown and should be monitored closely.

In relation to vehicle manufacturers or fleet operators modifying vehicles to become automated vehicles while in-service, it is recommended there be consideration of whether further scrutiny of these systems is warranted after fitting has been completed and before approvals are granted, and for these reasons Option 3 is not preferred.



It is unclear if the ADS as a stand-alone componentry, and ADSE, would be approved before fitting to a vehicle. If this is the suggested approach, RACQ notes there is evidence of potential technology limitations depending on the model of vehicle being fitted. Most ADS through the first-supply framework will likely be assessed for their ability to function in relation to a specific or small range of vehicle models and arrangements. It has been noted by RACQ that after-market fitting of Connected Vehicle equipment in a Queensland based trial, that not every vehicle size/shape was compatible and allowed for safe and effective installation of the equipment. For this type of after-market installation, it should be considered whether each vehicle type to be retro-fitted with an ADS would need to be assessed individually through the first-supply safety criteria to ensure proper and safe operation.

It is acknowledged that businesses which supply and install aftermarket ADS may find this overly onerous if done for business to customer level. However, in the early stages to manage safety this may be best practice and warranted until further evidence and evaluation frameworks can be established to more rapidly determine the compatibility of an ADS with varying vehicle models.

Question 9: Are there any gaps in the regulation and proposed regulation of in service modifications that the NTC has not identified? Are there other options that should be considered?

In other device import markets such as e-scooters, there is strong evidence emerging of devices being brought into the country which claim to meet Australian standards and power limits, but are incredibly easy to bypass (such as through changing the registered country once owned by the consumer). This allows the vehicles access to greater power – reportedly travelling up to 80km/hr which exceeds the local regulations of 25km/hr.

While it is noted it may be an offence for non-ADSEs to install an ADS, RACQ considers this may not adequately manage instances where bypasses in technology to increase capabilities exists and these options may not always be apparent to the regulator upon approval. An ADSE may fit an ADS which is compliant at the time but provide easy access to information to the public to alter the performance and settings of the ADS by individuals and others. Processes for identifying and rectifying breaches (such as defect notices, recalls, revoking of ADSE status, banning of specific ADS componentry) may need further consideration to limit the penetration of such systems in the market.

Chapter 6 Questions – Functions of the In-service Safety Regulator

Question 10: Do you agree that the additional functions the NTC has identified may need to be undertaken by the regulator to ensure in-service safety?

- Reporting
- Crash investigations
- Accreditation
- Regulatory approvals

RACQ broadly supports this suite of functions for in-service regulation to enable both proactive and reactive safety and issue management.

In relation to the education and guidance function, while it is acknowledged the fall-back ready user will primarily be regulated through state enforcement, RACQ suggests the regulator should lead on creating education materials for this party also (and members of the general public), to ensure a consistent understanding of the technology and obligations are formed.



In relation to reporting, transparency of the regulator is highly critical and noting the discussion paper's indication the 'in-service regulator should report to its responsible minister(s)...', RACQ has concerns the reporting structure could be susceptible to politicisation and censorship or delays in information release to manage voter opinion. It is recommended reporting requirements for the regulator be legislated to mitigate this risk.

RACQ also supports independency in a regulator investigating crash events, but notes during the early stages detailed knowledge of ADS operations and requirements may not be extensive enough for there to be multiple regulating bodies overseeing the range of functions.

Question 11: Accreditation provides an alternate pathway for an entity to enter the market. Are there other purposes for which accreditation should be used in the in service framework?

In future there may be benefits to developing accreditations related to ADS related servicing, maintenance, and education. The regulator may be looked to as an accreditor of these services for third parties to ensure consistency in knowledge and standards. However, this is a long-term scenario and can be reviewed once further evidence has been found in relation to industry response and gaps.

Question 12: Do you agree with the functions the regulator is likely to perform in the initial phase following commencement of the AVSL?

Pre-empting the demand for the technology and potential regulatory burden to ensure the regulator has adequate resourcing at the outset will be challenging. Monitoring fleet penetration and growth trends of current automated features in the market, and considering advice from insights in trial guidelines may help inform the resourcing availability and functional planning. For example, in Queensland to organise and receive a permit for an automated vehicle trial on limited public roadways under the guidelines, it takes a small team of specialists a minimum 4-6 months including approximately 1-2 months of evaluation by government parties.

For this reason the suggestion for the regulator to have the ability to initially delegate functions with other agencies is supported, providing there is adequate oversight by the regulator to ensure consistency in process and decision making – without this the establishment of an effective and efficient regulator and industry confidence could be heavily damaged. This is the case currently with the trial guidelines and permit frameworks – each state has different interpretations, and changes within state processes between each trial in how the agency evaluates the trial leads to additional delays and industry burden.

Notwithstanding resourcing and time limitations, RACQ supports the NTC's intent for initial regulator functions to include monitoring, enforcement, education and guidance, research, engagement with states and territories, and serious crash investigation.

Chapter 7 Questions – Compliance and Enforcement Powers of the In-service Regulator

Question 13: Are the proposed compliance and enforcement powers proportionate to meet the objective of safely operating automated vehicles in Australia?

RACQ broadly supports the NTC's suggested compliance and enforcement powers. However, it is noted that practical application to gain access to specific information or documentation may be limited if the information is held internationally. The regulator may need to consider prescriptive duties to require the local ADSE to have access to or retain copies of certain information, or to be willing to request it from international parent companies.



Question 14: Do you consider that the in-service regulator should have any of the following powers?

- Recall powers
- Power to suspend the operation of an ADS until a safety issue is resolved by the ADSE
- Power to permanently suspend an ADSE from operating its ADS. In what circumstances would such a suspension be warranted?

In relation to recall powers and depending on the outcomes of options within the paper, while this may create a level of duplication, in the event an ADS is certified by the in-service regulator and a recall is warranted but the power is not available, it would be a potentially serious event with a high safety risk and no formal recourse therefore RACQ recommends it would be best practice to have the power available if ultimately necessary. However, if the power is not deemed required due to the duplication, it is recommended the existing processes residing with Treasury departments requires streamlining to ensure issues can be dealt with quickly and without political interference.

It is similarly difficult to pre-empt whether an event would occur which would warrant temporary or permanent suspension of an ADS on a widescale basis. RACQ can see value in this power being available but as above recommends this function may need to operate through / with treasury, which is ultimately responsible for product safety enforcement.

It is also believed temporary suspension on individual cases where maintenance or operation has led to sensors requiring recalibration/repair would be a more common place in-service requirement (such as following windshield replacement or sensor damage). Generally if a single or fleet of vehicles experiences a safety defect which results in the ADS not operating correctly, under the first-supply obligations the ADS would have demonstrated 'how the ADS will detect that it cannot operate safely and the steps the ADS will take to bring the vehicle to a minimal risk condition'. If during service this obligation is no longer met, there may be a need to temporarily or permanently direct the ADSE to disable the ADS.

Broader reasons why an ADS and the ADSE could be permanently suspended from operation include cases where the operating authority has been granted on false information, where the system cannot be relied upon to perform its intended function, where the ADSE no longer exists.

RACQ however does not believe this will be a common occurrence, and additionally there is unlikely to be a need until partially and fully automated vehicles are widely commercially available and have increased fleet penetration which will likely be 5 years away at minimum.

Question 15: Do you consider that additional prescriptive requirements may be needed to support a risk-based approach to compliance and enforcement under the AVSL? Please provide examples.

& Question 16: Please share your views on the illustrative penalties set out in appendix B.

RACQ acknowledges additional prescriptive requirements may be required to support compliance and enforcement. As it is difficult to predict exactly when and how these powers should be applied, it is recommended any additional requirements be based on evidence of Australian and international enforcement cases and implemented powers (e.g. Takata Airbags, VW Emissions, NHTSA). Similarly, detailed examples using case studies of breaches to test the illustrative penalties in combination with the broader legislative environment would be of benefit.



Question 17: Has the NTC identified the additional powers that may be required by the in-service regulator in addition to the baseline powers provided in the Regulatory Powers (Standard Provisions) Act 2014 (Cwlth)?

Until further evidence becomes available of the powers required during the regulator's processes, RACQ is satisfied the additional powers identified are appropriate.

Chapter 8 – Roadside Interaction and Enforcement

Responses to questions for Chapter 8 are detailed below. In addition to these questions, RACQ has noted the paper states 'An audit of existing state and territory roadside enforcement powers will be required to assess their adequacy to regulate roadside safety risks of automated vehicles'. It is suggested that in addition to enforcement power adequacy, this audit should also include practical readiness and identify skill, resourcing, or knowledge gaps which should be rectified. Having effective enforcement powers may otherwise be hindered by capability and practical application shortfalls.

Question 18: Are there other roadside enforcement issues relating to automated vehicle in-service safety that the NTC should consider?

& Question 19: How should ADSEs advise on their ADS's interaction with roadside enforcement agencies? Should the AVSL require the ADSE to provide a law enforcement interaction protocol to the in-service regulator and/or roadside enforcement agencies?

RACQ recommends a phased approach on requirements for the ADSE to advise on law enforcement interaction and in first instance the most critical aspect to identify is how enforcement will gain access to data/information.

It should also be recognised that different responses will be likely depending on the vehicle's automation levels. For example, conditionally automated vehicles will likely have to divert control to the fallback ready users to respond safely, while highly automated vehicles may be capable of stopping (safely stopping outside of the road space would be the preferred method).

It should also be recognised that higher automated vehicles may be at risk of abuse from pranks or illegal activity (such as carjacking) if certain actions are automated, such as pulling over/stopping due to detecting emergency sirens/lights. The response should not pose a safety risk in any circumstance. If the ability for the vehicle to detect law enforcement and pull over was available, the vehicle occupant may require the ability to verify it is safe to do so. For highly automated vehicles to respond correctly, the interactions will be complex as the vehicle will need to determine if the emergency/enforcement vehicle is trying to pass, is located in the surrounding area but does not require a response (traffic monitoring at roadworks and nightworks), or requesting a pull-over manoeuvre from various angles (e.g. RBT from front/side, infringement detected from vehicle behind, etc).

Due to these complexities, requirements for protocols should be increased over time once vehicle technology matures and further evidence of capabilities or need is established.



Question 20: Do you agree that when a breach of road traffic laws occurs and:

- the ADS is engaged, or

- a roadside enforcement agency forms a reasonable belief that the ADS was engaged at the time of the breach that the incident should be treated as a potential breach of the general safety duty and not handled through the infringement system for human drivers?

RACQ supports these scenarios of a confirmed or suspected breach of road rules by the ADS should be treated as a potential breach of the general safety duty and not handled through the infringement system for human drivers.

One potential option to provide a flexible approach in the early stages of technology maturity and enforcement could be if the ADSE is aware of any Australian road rules it may breach that it declare these and identify how the duty of care and a safe outcome is still maintained. For example if VMS signage is challenging for the vehicle to accurately read and conform to an altered speed limit due to congested network conditions, the vehicle could use adaptive cruise control, historical speed data, and live traffic information to identify a safe speed. While this may still warrant enforcement, the issue and alternative solution could be evaluated proactively and a may not warrant an immediate breach of the general safety duty.

Question 21: Do you agree that when a breach of a road traffic law occurs and a roadside enforcement agency forms a reasonable belief that the remote driver was in control of the vehicle at the time of the breach, that the incident should be referred to the in-service regulator and not handled through the infringement system for human drivers?

RACQ suggests confirmed or suspected remote driver infringement should be referred to the body responsible for licensing the remote driver, and this may or may not be the in-service regulator. A remote driver would likely be a human, in which case it may be more appropriate for State law to regulate their behaviour (though penalties may vary from regular driver infringements and detection processes depending on practicalities of remote driving software and physical limitations e.g. a police officer may suspect intoxication but remote drivers will not be able to perform physical tests such as roadside breath tests, so alternative penalties or powers may be needed). This is likely a more suitable approach at least in the short term as the first remote drivers will likely be enabled through automated vehicle trial frameworks currently regulated and monitored by State and Territory governments. It would be onerous for these trials if the remote drivers were regulated by a separate body.

Question 22: Do you agree that when a breach of road traffic laws occurs and:

- it is unclear to a roadside enforcement agency which entity is in control of the vehicle at the time of a road traffic law breach, or

- a road safety camera detects a road traffic law breach that the infringement notice be issued in the first instance to the human driver or registered owner/operator with a process to nominate the ADS or remote driver as the driver if required?

- Are there other approaches that should be considered?

In these instances, RACQ supports the human driver/owner receiving the infringement first as this will be uncommon in the early stages. If they nominate the ADS being engaged, RACQ suggests the notice should be passed directly onto the regulator by State enforcement agencies for further investigation (i.e. not sent to the ADSE to investigate/accept before the regulator receives notification). This approach of sending to the regulator provides a notification path which does not rely on transparency and good practice by the ADSE - if there are



notable discrepancies between the infringement notices and the ADSE reporting it is worthy of further investigation.

This approach of going via the human driver/owner first also has an added benefit, where if a breach is detected and the ADS is at fault, it will be an opportunity for informal education to the community and owner of the technology's limitations and safe operating conditions.

However, there is also the potential for underreporting where an owner or driver may choose to pay the fine rather than try to prove the ADS was in control. An option to mitigate this to a degree would be for enforcement agencies to report potential breaches with ticket no. or transport/enforcement agencies develop an automated process to tally and report conditionally or highly automated vehicles which receive infringements (e.g. cross-referencing infringement notices with registration details and automation classification noted on the registration database). The second option may capture human and ADS breaches, but would be a valuable data indicator of the maximum potential breaches to give insight into human driver behaviour. For example, if verified ADS breaches are low compared to maximum potential breaches of vehicles with ADS capabilities, further research could be undertaken to identify the cause, such as human drivers may not be utilising the ADS in certain road environments/frequently, or human drivers may be more likely to speed when in control compared to the ADS.

Chapter 9 – Relationship between the in-service regulator and other agencies

Question 23: Are the interactions between the in-service regulator and other regulators and agencies accurately described?

The paper notes 'Where an ADSE operates a commercial fleet of rideshare/passenger transport vehicles, the ADSE would be subject to safety duties under WHS legislation (in relation to its employees, including its drivers and passengers) as well the general safety duty under the AVSL.' In RACQ's experience owning an autonomous shuttle which is trialled on public roads as a passenger transport service, the ADSE may not always be the owner/operator and often operations are contracted or undertaken by a third party such as an existing operator accredited through the state based public transport system – many of these organisations may have limited or no knowledge of autonomous operations and thus an ADSE may need to hold the duty of care in relation to the ADS, while a contracted operator may have a safety duty under WHS which should not extend to ADS operations other than basic or limited operational knowledge.

Question 24: Are there other agencies that the in-service regulator will need to interact with?

RACQ notes future or incoming bodies may be developed which should be regularly engaged with, such as those related to access to service and repair information for vehicles. Another example could be if new regulatory bodies are created or changed which oversee connected vehicle technology.

It is also noted the National Office of Road Safety is not specifically identified – however this organisation should have ongoing information exchange to facilitate monitoring and tracking of automated vehicles' contribution to strategic road safety objectives, and may in the short and/or long term provide a resource to lead, support or coordinate automated vehicle research. Additional bodies should be recognised and interacted with regularly to contribute to the research and knowledge development and continue building industry skills and knowledge including iMove partners, ARRB, private road owners, universities, and automobile/advocacy groups.



Chapter 10 – Access to information by the in-service regulator and information exchange with other regulators and agencies

Question 25: Are there other information types, purposes or parties relevant to the in service regulator's access to information? & Question 26: Have the key information flows that the in-service regulator needs to be a party to been identified? Are there others that you suggest?

If the regulator is investigating an issue to determine responsibility, it should be considered if there is a need to have powers to access third-party data sources which state based enforcement may generally have access to – this could reduce delays in investigations as without these powers the regulator may need to request other agencies source this information. This may include telecommunications information, dashcam footage, or private environmental camera footage (e.g. security cameras owned or operated by private parties which had a view of an incident occurring).

Before legislating access to particular information, to ensure private and sensitive information is protected and only what is necessary is collected and analysed, RACQ strongly suggests some real world examples be worked through in order to understand the true feasibility and practicality of accessing data, and also determining which data is integral to identify the responsible party or issue. This evidence base and relevant data should then be released for public consultation to justify or limit collection of data beyond what is necessary.

In relation to the system-to-system flow data, it should be recognised and flexibility built in to consider further integrations. One example is C-ITS system integration (which in turn likely relays with traffic management platforms such as SCATS and STREAMS, and public transport platforms). An additional data platform to recognise in the short term would be a national road safety database which many industry bodies and agencies are hoping is developed to provide a consistent and open platform to monitor road safety statistics and data.

Question 27: Do the proposed information access powers meet the objectives of the in-service regulator? Are there other statutory powers for information access that the regulator will require to support its compliance and enforcement functions?

RACQ supports and acknowledges the proposed information access powers, but notes the information access powers may need some protections or limitations against further sharing beyond the regulator and necessary government agencies in order to protect privacy and intellectual property or commercially sensitive information. The method of data and information transfer to ensure security should also be considered.

For example, if the regulator was to request information via email from the Queensland Government in relation to an incident, this information may be accessible via an RTI request. While transparency should be maximised from a public perspective, there will be some cases where industry bodies could require protections, particularly if it is in the best interest of the strategic intent of the reform process. For example, if a new ADSE enters the market and a low-risk issue is identified which warrants penalties but is not deliberate or of wide-spread concern to safety, but an information or data leak leads to public scrutiny and distrust in the ADSE, this may impact future sales and force the ADSE out of the market potentially leaving current ADSEs un-supported which is not in the best interest of consumers.



Question 28: Do you agree that a specific power authorising collection, use and disclosure of personal information is required in the national law and in state and territory legislation?

The RACQ agrees this is likely a required legislative power to enable effective information collection for the regulator's activities, though reiterates case studies be used to scope the level and type of information required, and additional public consultation with further clarity around specific data examples be undertaken.

Question 29: What privacy protections may be needed around the collection, use and disclosure of ADS-derived personal information?

In addition to security of commercial data discussed above, RACQ notes our members and the public in general have concerns related to sharing and control of their information, particularly following COVID-19 QR data collection privacy breaches. However, it is also acknowledged privacy protection is necessary, but it must not hinder legitimate investigation of safety or enforcement issues or make accessing information by proper authorities excessively onerous.

RACQ supports the NTC's intention to undertake a privacy impact assessment and suggests there needs to be further tangible examples of which data is needed and why. These examples would be valuable in opening a dialogue with the public for supporting short term regulatory functions but also long-term additional uses such as strategic network planning. It is therefore recommended one of the preliminary and early functions of the reform process and regulator focus on public education on this topic.

A further issue which may be beyond the scope of this paper but is important nonetheless to consider in the broader reform process is whether there are adequate restrictions placed on the data that OEMS/ADSE's themselves collect and store and how this aligns to public acceptance. For example, the Facebook-Cambridge Analytica data scandal brought to light that large companies were collecting and using more information about the members of general public than they were aware of or comfortable with and led to the #DeleteFacebook movement and generally decreased activity and use of the platform. A similar event occurring in the connected/automated vehicle sector due to lack of ADSE/OEM data collection regulation could create distrust and hinder the uptake of vehicles with these features and limit the long-term safety benefit derived from these vehicle technologies.

Chapter 11 – Legislative implementation of the national approach to in-service safety

Question 30: Do you agree with the differences outlined between the legislative implementation approaches? Which approach will best achieve the reform outcomes?

In previous discussion papers, RACQ had a preference to utilise State and Territory applied law in the early years as the fleet became conditionally automated and there was still a heavily reliance on the fallback ready user or human driver for the majority of trips given the limited ODDs of current systems. This was with a view to transition to a complementary national law once higher penetration and automation levels were achieved, and state's had time to resolve discrepancies in laws and signage such as school zone variations, or at minimum understand the abilities and limitations for vehicles to respond to varied infrastructure, signage, and laws between states.

RACQ takes the same position this law could be planned as a transition from applied state/territory law to national law in future. As previously noted, RACQ still questions whether the remote driver should in the earlier stages also be regulated by state and territories, at least under trial frameworks.