**Attachment 1: Responses to the NTC's identified discussion questions**

The Department of Transport and Main Roads (TMR) provides the following responses to the National Transport Commission's (NTC) discussion paper examining an in-service safety law for Automated Vehicles (AVs).

The responses below should be read in conjunction with TMR's regulatory proposal document titled *An end-to-end approach to regulating AV safety in Australia* at Attachment 2. Where relevant, sections of TMR's proposal document are cross referenced in the table below.

Refer to the Glossary of Terms at Appendix A of TMR's proposal document for a definition of any acronyms of terms.

| **NTC discussion question** | **TMR response** | **Relevant section/s of TMR's proposal document (Attachment 2)** |
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| 1. What prescriptive duties under the GSD should be included in the AVSL to manage in-service safety risks?
 | Where specific outcomes are expected, prescriptive requirements are necessary. These will support ADSE compliance with the GSD. We agree with the list of prescriptive requirements identified in the discussion paper. Additional requirements are provided for consideration in our proposal document.It is unclear why the penalties for prescriptive requirements are separate from the GSD or held to a different standard (civil versus criminal). It is our view that the prescriptive requirements should be a non-exhaustive list that an ADSE must meet in order to demonstrate GSD compliance. A breach of a prescriptive requirement is therefore a breach of the GSD. A criminal burden of proof is appropriate (beyond a reasonable doubt). | * 3.3
* Appendix C
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| 1. What matters relating to compliance with a GSD are better suited to guidance than being prescribed in the AVSL? Should this guidance have legislative force?
 | The distinction between legislative and non-legislative guidance may be confusing. To give effect to guidance material and ensure it can be used to support compliance and enforcement, the AVSL should include a head of power that enables the ISSR to publish guidance material. Compliance with guidance material should be considered when determining if the GSD has been breached and if enforcement action is justified. However, the GSD would also allow for alternative compliance based on specific technology or operating models. | * 3.3
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| 1. Are existing and proposed regulatory frameworks (state and territory laws, first supply requirements and GSD obligations) enough 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? | We are of the view that a specific prohibition is required to prevent unlawful interference with an ADS. Such a prohibition is required in state and territory law (or the AVSL, if established in state-applied law) as it will need to have broad application. Such a prohibition should apply to everyone, including owners, repairers, modifiers, users. This prohibition may negate the need to grant 'access as a right' for ADSEs to use public roads.In the creation of a new offence for unlawful interference with an ADS, existing state and territory criminal offences will need to be further considered to ensure offences are clearly delineated and avoid duplication and added complexity in enforcement. For example, the Queensland Criminal Code already contains offences relating to computer hacking and misuse (section 408E) and dangerous operation of a motor vehicle, which can include interference (section 328A).Some lawful interference may be necessary where explicitly provided for. For example, police powers to intercept a vehicle. | * 3.7
* 3.9
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| 1. Should the law provide a specific defense for Australian ADSE executive officers who rely on information provided by others, like a parent company, when discharging their due diligence duty?
 | The framing of executive officer due diligence duties should ensure that they only apply to the extent the officer has influence, control and professional responsibility over the ADSE's actions.In any enforcement action, it will be incumbent on the ISSR to prove that an officer did not act reasonably in discharging this duty. This would include an assessment as to whether it was reasonable to take the advice of a parent company and whether the officer had the ability to influence or critically interrogate that information.A specific defence, as proposed, may not add significant value to this process as it could serve as a disincentive for executive officers to exercise influence where they may be able to do so. Further consideration should be given once the due diligence provisions are drafted. | * 3.4
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| 1. 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?
 | While the need for ADSE transferability is likely to be very limited, to support emerging business models and market flexibility it will be important to enable the controlled transfer of responsibilities from one ADSE to another when required.It is difficult to cleanly separate this function from first supply processes given the transfer of responsibilities will presumably impact new and in-service vehicles concurrently. Consistent with our views on updates and modifications, the regulatory model should support a streamlined approach across both first supply and in-service and avoid duplication, fragmentation and unnecessary regulatory burden.Our view is that an effective ADSE accreditation framework best enables this and should be considered across both first supply and in-service. | * 2.4
* 3.2
* Appendix D
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| 1. 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 ACL appropriate measures? Is there any role for the in-service regulator?
 | Appropriate end of life processes should be within the scope of the AVSL, and therefore ISSR.Our view is that the AVSL should be developed with a view to managing ADS safety holistically in-service, including obligations on an ADSE to ensure the safety of its ADSs after departure from the market. In its simplest form, this would require and ADSE to disable its ADSs until such time as a suitable replacement ADSE is identified. This could be imposed as a prescriptive requirement under the GSD or via a condition of ADSE accreditation.Recall powers under the RVSA may be useful in this circumstance, but only where in-service options have been exhausted. The approach to vehicle recalls may need to be rethought in the context of an ADS disengagement where the vehicle is otherwise able to be driven by a human.Other avenues under consumer law will also be available to consumers seeking compensation for any losses. | * n/a
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| 1. 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?
 | Our views on managing in-service modifications to ADS-equipped vehicles are consistent with our views on regulating ADSs at first supply. That is, we need to leverage industry expertise as much as possible.Given this we are supportive of option 2, managing the risks associated with in-service modifications through the GSD, by the ISSR. An ADSE accreditation framework may be helpful in setting risk-based conditions that enable some ADSEs greater autonomy than others based on historical safety/compliance performance.ADSE notification requirements (for example, an updated Statement of Compliance) should be considered so that the ISSR is aware of any modifications and understands the current capabilities of ADSs. Further work is required to determine what types of updates/modifications would warrant notification as some will be very minor.ADSE responsibility for detecting unsafe modifications and repairs will need to be subject to the reasonably practicable test and supported by relevant prohibitions on other parties. | * 2.3
* 2.4
* 3.8
* Appendix D
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| 1. 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 ADS
* Individuals installing aftermarket ADS kits
 | Our view is based on the general principle that all ADSs must be supported by an accredited ADSE. This significantly simplifies this issue. To 'deploy' an ADS either at first supply or in-service, an entity needs to be either an ADSE or under the direct control of an ADSE.All vehicle modifications that impact the safety of the ADS should be subject to this requirement. For example, vehicle owners should only fit parts that are consistent with ADSE specifications.This would need to be supported by prohibitions on deploying an ADS if not an ADSE as well as using an ADS if not supported by an ADSE.Our preferred approach is most aligned to option 3 but avoids the need to create alternative approval pathways or ban particular types of ADS deployment (for example, after-market fitment). | * 2.3
* 2.4
* 3.2
* 3.8
* 3.9
* Appendix D
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| 1. 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?
 | A key challenge is the absence of a clear view as to how the proposed first supply and in-service frameworks are expected to work together. To address this, we have described a workable model in our proposal document that combines ADS deployment and modifications into a holistic approach, managed by the ISSR.Without such a system-level view it is not possible to definitively say that gaps and inconsistencies do not exist or will not emerge over time.Our proposed model also deals with all vehicle modifications that may impact the safety of an ADS, and not just specific modifications to ADSs. | * 2.3
* 2.4
* 3.8
* Appendix D
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| 1. 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 (for enforcement, with a specialist agency like the ATSB to undertake no-blame investigations)
* Accreditation
* Regulatory Approvals.
 | We support most of the additional functions identified. Specifically:* Reporting (in addition to ISSR corporate reporting, we propose a voluntary ADSE reporting scheme modelled on the Aviation Self-Reporting Scheme)
* Crash investigations (including leveraging the technical skills and experience of a third-party such as the ATSB)
* Accreditation

However, without further information, we do not support a broad regulatory approvals function for the ISSR. Our view is that the ISSR should be responsible for managing a holistic ADSE accreditation framework, which would include an element of organisational approval (to ensure ADSEs are fit and proper). However, industry expertise should be leveraged under a self-certification scheme to manage the safety of ADSs. This aligns well with the proposed GSD.Leveraging industry expertise does not mean that a regulator cannot apply a due diligence acceptance check to ensure that the information provided is complete and in sufficient detail to inform subsequent compliance activities. This is consistent with other national transport regulatory models, where a regulator provides acceptance but not approval (for example, rail).Overt ADS approvals (whether at first deployment or modifications) exposes the regulators to unnecessary liability as they will not have the technical expertise required to undertake this function and issuing an approval may constrain the ability to subsequently take enforcement action. | * 3.2
* 4.3
* 4.4
* Appendix D
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| 1. Accreditation provides an alternative pathway for an entity to enter the market. Are there other purposes for which accreditation should be used in the in-service framework?
 | We list a range of benefits associated with accreditation in our proposal document. For example:* Flexibility in deployment and business models
* Administrative enforcement action
* A mechanism to charge fees
 | * 3.2
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| 1. Do you agree with the functions the regulator is likely to perform in the initial phase following commencement of the AVSL?
 | A more nuanced approach is required to considering scalability of the ISSR. The ISSR will require the capability to undertake all regulatory functions from the outset (broad scope), but it is likely that the size of the task will be small initially (small scale). A key lesson learned from the implementation of existing national transport regulators is that insufficient investment and powers in the early phases of establishment can constrain the regulators effectiveness. Critically, the ISSR will require effective IT systems and access to data from the outset. | * 3
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| 1. Are the proposed compliance and enforcement powers proportionate to meet the objective of safely operating AVs in Australia?
 | We are of the view that the ISSR will require a broad range of powers but will need to develop a risk-based compliance and enforcement framework to support the use of these powers. An illustrative framework is included in our proposal document. | * 4
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| 1. 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?
 | Recall powersOur view is that the ISSR does not need recall powers in addition to the existing powers available to DITRDC under the RVSA. The ISSR should be able to effectively manage ADS safety, including where faults are suspected or confirmed, using other more fit for purpose in-service tools (including those below).In the event a recall is appropriate, DITRDC's existing powers seem sufficient.Suspend operation of a specific ADSWe agree that the ISSR should be able to temporarily suspend the operation of either a single or class of ADS, subject to a critical safety issue being resolved. This could be operationalised within an ADSE accreditation framework. Suspending the operation of an ADS would likely have the result in reducing the automated capability of a vehicle (for example, can only be driven in a 'level 3' mode, if possible).Suspend or cancel ADSE accreditationAs a point of clarification on terminology, an ADSEs accreditation could either be suspended (temporary) or cancelled (permanent). Our view is that both should be possible within an ADSE accreditation framework. However, the use of these administrative actions would need to be carefully considered and based on risk to public safety and sustained or willful non-compliance by an ADSE. In practice, it is expected that these functions will be rarely, if ever, used.Consumer law rights will also be relevant. There may be circumstances where compensation is payable for the ADSE for consumer losses. | * 4
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| 1. 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.
 | The compliance and enforcement powers, functions and mechanisms proposed appear comprehensive and fit for purpose.The missing element is how they would be used within a risk-based approach. This does not necessarily need to be legislated within the AVSL but is important context in understanding the role of the ISSR and interactions with industry and other regulators. An illustrative framework is included in our proposal document.  | * 4.5
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| 1. Please share your views on the illustrative penalties set out in Appendix B.
 | For the most part the illustrative penalties appear reasonable and are consistent in approach to other comparable regulatory frameworks. Some general comments:* It is not clear when an individual would ever be liable for an ADSE GSD penalty, given an ADSE must be a corporation.
* Specific penalty amounts will need to be determined based on the consequences and risks of offending, a comparison with other similar regulatory frameworks and an understanding of the industry being regulated (what value of penalty would be a sufficient disincentive).
* Additional penalties may be required for additional prohibitions and offences not currently considered in the discussion paper. For example, unlawful interference with an ADS, deploying or using an unsupported ADS, etc.
* There appears to be a confusion between criminal and civil penalties. It is not clear to us why to different models are proposed with different burdens of proof. As a point of clarification, offences carrying financial penalties only can still be criminal offences. As is the case with most offences currently, the criminal burden of proof is appropriate.
* See also our response to question 1 that deals with the need for specific penalties for prescriptive elements of the GSD.
 | * n/a
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| 1. 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 RPA?
 | We support the regulatory powers identified by the NTC. | * 4.5
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| 1. Are there other roadside enforcement issues relating to automated vehicle in-service safety that the NTC should consider?
 | At a high-level, we support the NTC's analysis. It is difficult to be definitive without a clearer view as to what and how roadside enforcement would do in relation to ADS safety. We have proposed an illustrative framework in a proposal document to clarify the role of state and territory enforcement officers and have defined four key roles:* Intercept
* Investigate
* Refer
* Disable

The interaction between law enforcement officers and human users of AVs will be critical. Consideration of the impact on current enforcement practices is required. For example, where an offence carries an immediate licence suspension, vehicle impoundment as well as downstream prosecution of recidivist offenders. The framework and approach cannot incentivise human offenders claiming an ADS was in control to avoid or delay penalties and sanctions. Existing offences dealing with providing false and misleading statements to authorised officers may already cover these circumstances. | * 4.2
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| 1. 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?
 | It is unclear how this is proposed to be managed at first supply. Ideally this would form part of the self-certification process as part of market entry.The core requirement should be that ADSEs are required to provide sufficient information about interactions with enforcement officers (and other approved persons) at market entry and this must be able to be updated in-service as changes are necessary. Whether this is required within the AVSL, will depend on the approach at first supply.Our proposed approach to managing first-deployment would allow for a law enforcement protocol to be lodged at market entry and updated as necessary in-service.Until enforcement protocols/interactions are standardised internationally, there may be value in a coordinated Australian approach to ensure consistency nationally. | * 2.4
* Appendix D
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| 1. Do you agree that when a breach of traffic laws occurs and;
* the ADS is engaged, or
* a roadside enforcement agency forms a reasonable belief that the ADSE was engaged at the time of the breach

That the incident should be treated as a potential breach of the GSD and not handled through the infringement system for human drivers? | We agree that ADSEs, as large multinational corporations, are best regulated by the ISSR using fit for purpose tools and not the existing state and territory human driver infringement notice system. | * 1.3
* 3.3
* 4
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| 1. 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?
 | There is currently too much uncertainty as to what the role of a remote driver will be to definitively answer this question. Our proposal document explores this in more detail. | * 3.6
* 4
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| 1. 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 issues 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? | We acknowledge that existing enforcement practices will need to be leveraged in the first instance in many cases. However, these operational issues do not need to be resolved at this time. Eventually the availability of data will support more efficient resolution of these sorts of issues. In the meantime, further work is required as to how to design operation processes to minimise the impacts on the public, regulators and industry alike.Our priority should be reaching agreement on which regulatory and enforcement framework applies (human driver versus ADSE). The mechanism to understand control of a vehicle at a point in time can will be developed and improve as technology matures. It is also likely that international approaches will resolve this. | * 4.2
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| 1. Are the interactions between the in-service regulator and other regulators and agencies accurately described?
 | At a high-level we agree with the NTC's assessment of the interactions between the ISSR and other regulators. Two key areas of disagreement are discussed below.The split in responsibilities between the first supply regulator and the ISSR will need to be continually reviewed as the two regulatory models are developed. Our proposal document establishes a primacy of responsibility for regulating ADS safety with the ISSR.Similarly, we have sought to reduce the overlap between a range of regulators and the ISSR by giving the ISSR primacy over ADS safety and related breaches. This includes, the NHVR, ACCC, ASIC, passenger transport regulators and WH&S regulators. The ISSR will develop the necessary skills, experience and relationships to effectively manage ADS safety and it is unlikely that these other regulators will be wanting to take duplicative action if the ISSR is seen as effective and efficient. | * 4.5
* 6
* Appendix D
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| 1. Are there other agencies that the in-service regulator will need to interact with?
 | We have identified a range of other regulators that the ISSR will need to interact with. Including:* Motor Accident Injury Insurance regulators
* State and territory dangerous goods regulators
* Local Governments
 | * 6.1
* 6.3
* 6.5
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| 1. Are there other information types, purposes or parties relevant to the in-service regulator’s access to information?
 | We agree with the NTC's assessment of parties the ISSR will need to obtain information from. | * 5.1
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| 1. Have the key information flows that the in-service regulator needs to be a party to been identified? Are there others that you suggest?
 | Access to data by consumers should also be considered and included in the information flow. | * 5.1
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| 1. 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?
 | At a high-level we agree with the information access powers listed.  | * 5.1
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| 1. Do you agree that a specific power authorizing collection, use and disclosure of personal information is required in the national law and in state and territory legislation?
 | Yes, without such a power the collection of such personal information may be unlawful. | * 5.1
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| 1. What privacy protections may be needed around the collection, use and disclosure of ADS-derived personal information?
 | The privacy principals previously noted by transport ministers are appropriate as a starting point and will need to be reviewed further during a relevant privacy impact assessment.In our proposal document we propose limiting the use of personal information for prescribed purposes. At minimum, this would need to include:* Determination of party in control.
* Liability investigations (including critical ADS operational information such as steering action, braking and acceleration).
* Crash/safety/security investigations.
 | * 5.1
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| 1. Do you agree with the differences outlined between the legislative implementation approaches? Which approach will best achieve in the reform outcomes?
 | We are supportive of the complimentary law approach due to its effectiveness in achieving the identified outcomes. Specifically:* Consistency in core elements,
* Speed of implementation/ maintenance,
* Accountability of a regulator,
* Simplification of judicial process, and
* Support a single market for industry.
 | * Appendix B
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