



NATIONAL ROAD TRANSPORT ASSOCIATION

Submission to the National Transport Commission

On-road enforcement for automated vehicles

5 September 2022

Executive Summary:

The National Road Transport Association (NatRoad) is pleased to respond to the National Transport Commission's (NTC) consultation request regarding on-road enforcement for automated vehicles.

Since the start of the Heavy Vehicle National Law (HVNL) reform process, NatRoad has pointed to the need for a radical overhaul of how the existing law is enforced, with the issue consistently deferred.

The diverse and at times seemingly ad hoc approaches to heavy vehicle enforcement applying across state and territory jurisdictions calls out for a national approach which can then be adapted to automated vehicles.

The NTC's own Consultation Regulation Impact Statement (CRIS) for the HVNL Review committed it to reviewing current penalties and sanctions before formulating policy and finalising legislation.

As far back as 2017, NatRoad has advocated that the level of technology these vehicles will use will be critical. Regulation must be tailored to the levels of automation that particular vehicles might reach and this factor should also govern a staged approach to enforcement of the law relating to automated vehicles.

Introduction

1. The National Road Transport Association (NatRoad) is pleased to respond to the National Transport Commission's (NTC) consultation request. NTC seeks feedback on a discussion paper entitled *On-road enforcement for automated vehicles*¹ (Discussion Paper).
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, car carriers, as well as tankers and refrigerated freight operators. Accordingly, NatRoad's principal focus in giving feedback on the Discussion Paper is from the perspective of heavy vehicle operators.

Getting Enforcement Right

3. The on-road enforcement work articulated in the Discussion Paper is part of a broader reform program involving several agencies. It aims to create nationally consistent, end-to-end regulation to support the safe commercial deployment and operation of automated vehicles at all levels of automation. This is commendable but is a tall order, given the fractured state of current regulation, particularly that relating to heavy vehicles. That concern is amplified when the subject of enforcement is in play. Since the commencement of the Heavy Vehicle National Law (HVNL) reform process, NatRoad has pointed to the need for a radical overhaul of how the law is enforced, especially the HVNL. Yet the consideration of enforcement has been deferred in that process, and it remains a problematic subject.
4. When the Consultation Regulation Impact Statement (CRIS) for the HVNL Review was published,² the following was said about enforcement:

*Once a new framework and approach for the HVNL is settled, the HVNL will need reviewing to adjust investigation and enforcement powers as well as reviewing sanctions where consequences of a breach are less material and conversely increasing penalties where a breach represents a significant risk to road safety. For example, this could involve suspended prison sentences and other sentencing orders such as community service and probationary orders. Potential reforms to these mechanisms are not considered in the Consultation RIS. However, **the NTC is intending to undertake a separate review of penalties and sanctions under the HVNL upon settling policy, but before legislation is finalised.***³

5. Given the words in bold in the quoted extract, NatRoad members were somewhat surprised that enforcement is being considered in respect of automated vehicles so far in advance of viable commercial applications for automated vehicles. Without a solid foundation on which to build, the exercise seems premature. This has been expressed by one NatRoad member in informal terms as follows:

These automated vehicles will share the same road network and will be subject to at least the same regulation as current non-autonomous or semi-autonomous vehicles, that same regulation which they have failed to transform from the cobbled-together mis-mash of non-compatible State and regional regulation which is the current HVNL. Perhaps they should figure out Part 1 before they attempt Part 2.

¹ [NTC Discussion Paper - On-road enforcement for automated vehicles_0.pdf](#)

² [HVNLR RIS 25 June.pdf \(amazonaws.com\)](#)

³ *Ibid* p 32

6. This reaction is grounded in the commendable research that the NTC has utilised in the Discussion Paper. The QUT report⁴ referenced in the Discussion Paper indicates that one of its findings is that:

*(T)he 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.*⁵

7. Hence, the approach taken in this submission is to emphasise the issues about enforcement raised and highlight those issues as a means to underpin what we believe must begin the journey now. The QUT report could be built upon to form the foundation of reform of the current law.
8. In particular, we agree that enforcement of a consistent law should be in place both for current vehicle types and for automated vehicles. Rules should not change, or their enforcement differ, merely because a heavy vehicle has crossed a State or Territory border. There should also not be a difference between the way the law is enforced merely because of the status of the authorised officer. This is a current problem of some magnitude. By way of example, the Police currently do not define defects with regard to the National Heavy Vehicle Inspection Manual.⁶ But that document establishes the approach of other authorised officers, particularly those engaged by the National Heavy Vehicle Regulator (NHVR).
9. The need for an agreed, stable national approach to assessing heavy vehicle roadworthiness, including accreditation, inspection, interception, defect and related enforcement processes, has long been crying out as an area for reform. How will automated vehicles be defected? This fundamental question is also dependent on the technological capabilities of automated vehicles that are introduced to the market.
10. In that context for non and semi-automated vehicles, we submit that the NTC should recommend the delivery of enforceable defect standards by incorporating the NHVIS and the NHVR's national risk-based inspection criteria and framework as legislative instruments under the new HVNL as soon as possible. This would then enable the same process to be applied when the technology was sufficiently mature to replicate the exercise for automated vehicles. The future should not be built without a current bedrock.
11. The extent to which risk-based considerations will affect the issue of roadside interventions is also a matter that is integral to an examination of enforcement and where resources are or, in the future, should be devoted. The Discussion Paper says that officers "will need to interact with automated vehicles on the road, at the roadside and after a crash, and intervene, in real-time, in cases of road traffic law breaches."⁷ But the extent of roadside

⁴ [QUT report - Applicability of state and territory roadside enforcement powers to automated vehicles - July 2021.pdf \(ntc.gov.au\)](#)

⁵ Id at p11

⁶ [National Heavy Vehicle Inspection Manual | NHVR](#)

⁷ Above note 1 at p12

intervention cannot yet be gauged as the need for such intervention is a function of the extent to which a risk-based system will be applied and the level of technology that is introduced.

12. As NatRoad indicated in feedback to the NTC in 2017, the level of technology is a critical issue with unanswered questions about many aspects of regulation dependent on this variable. Regulation must be tailored to the levels of automation that particular vehicles might reach. The NatRoad working group that assists with policy in this area has reiterated that the comment below made in a 2017 submission to NTC⁸ remains NatRoad policy, including in the current context:

Whilst we agree that a safety assurance system is required for automated vehicles, the details are difficult to determine while there are still many unanswered questions about how automated systems will cope with various road freight tasks. We expect that there will be phases of transition to higher levels of automation and that different regulatory boundaries may be needed for each of these stages.

13. The concerns raised by NatRoad are expressed in the Discussion Paper as a tension between two issues/themes expressed thus:

States and territories want to be prepared for enforcing automated vehicles when they begin operating on our roads. At the same time, there is uncertainty over the future capability of automated vehicle technology. The ongoing tension between these two themes states (sic) is a common theme running through this paper.⁹

14. The prior discussion shows the NatRoad approach to the Discussion Paper; the capabilities of the technology are unclear so getting current rules right is even more critical. We have, accordingly, limited comments and have not structured the submission around a response to each of the Discussion Papers' questions, albeit some of the questions are answered following the setting out of NatRoad's observations and policy stance. In addition, we note that an ownership model and intermediary obligations in any proposed framework are not addressed in the Discussion Paper. NatRoad believes that this omission raises a number of questions that will be critical to the issue of enforcement e.g., who is vested with ownership/control in the NTC vision of the future; what are the regulations to apply to a remote operator of an ADS; how will the regulatory system encourage competition rather than granting ADSE entities monopoly-like power?¹⁰ Accordingly, the absence of an answer to these questions is another reason for the stance adopted in this submission.

Providing Directions to Automated Vehicles On road

15. The Discussion Paper notes that the current legal powers to stop a light or heavy vehicle under the HVNL (whilst different) have no apparent application to an automated driving system (ADS).

⁸ NatRoad submission to the NTC dated 28 July 2017 on the discussion paper mentioned here [Four options on the table for an automated vehicle safety assurance system | National Transport Commission \(ntc.gov.au\)](#)

⁹ Above note 1 p7

¹⁰ This issue is controversial. See for example the discussion here: <https://electrek.co/2019/07/08/tesla-will-stop-selling-cars-full-self-driving-elon-musk/>

16. NatRoad agrees with other stakeholders who have given feedback that the capability of ADS technology to follow specific directions of enforcement officers must be considered in tandem with the necessary powers of enforcement officers to direct an ADS. Those considerations depend on the level of technology and the level of responsibility vested in the party that will self-certify the safety of the ADS and take responsibility for it over its life (ADSE). That should be a high level of responsibility. The boundaries around when those requirements are to be mandated must be clear. That observation applies to all policy questions raised in the Discussion Paper.
17. NatRoad also agrees with the recommendations for interactions with first responders set out in the Discussion Paper derived from the work of the Automated Vehicle Safety Consortium as follows:
- *the ADS should be able to follow a direction independently or through communications with a fleet operator*
 - *the ADS should be capable of detecting and reacting to emergency vehicles where they are identifiable by features such as flashing lights and sirens*
 - *ADSEs should 'document instructions for communicating with an ADS-DV and contacting fleet operators in interaction plans.'*¹¹
18. We note in the discussion of options in the Discussion Paper dealing with this subject that the differences in approach between light and heavy vehicles needing to follow directions are set out and then considered as entrenched in the following discussion.
19. First, the Discussion Paper says:
- Automated heavy vehicles will most likely need to respond to a more diverse range of directions than light vehicles. For example, they may need to follow enforcement officer directions to enter checking stations or inspection sites. They may also need to follow various directions for moving heavy vehicles during an inspection. There are a variety of methods by which directions can be communicated, including hand signals, visually, orally, via audible alarm signals or by some other means.*¹²
20. Then, whilst the Discussion Paper acknowledges that the situation in the prior quoted paragraph is “most likely” rather than a rule or rules to be followed, it goes on to say that the guidance under consideration “could differ for light and heavy vehicles to capture some of the additional considerations that are generally only relevant for heavy automated vehicles.”¹³ From earlier comments, it is clear that, especially in the context of automated heavy vehicles, those assumptions should be under question, as they should be when reviewing the current HVNL. For this reason (and the Discussion Paper acknowledges the uncertainty in identifying when a vehicle is considered “automated”), we do not believe there should be a Road Rule change considered at this time.
21. We, therefore, respond to questions 1-3 as follows (question 4 is not answered) with the NatRoad answers in italics :

¹¹ Id p26

¹² Above note 1 p25

¹³ Id p28

Question 1: Do you support amending enforcement powers to ensure enforcement officers can legally provide directions? *Yes, but only following a thorough investigation of the rationale for and current law relating to potential amending the HVNL*

Question 2: Will either of the options proposed – that is, the provision of guidance documentation or the addition of directions to the road rules – best offer a pathway for giving ADSEs information on how to build the capability of their technology? *Guidance is preferred.*

Question 3: If guidance documentation is preferred, where would the guidance documentation be best placed? *In material that provided the basis of an ADSE being authorised to use an automated vehicle on the jurisdictions' roads.*

Disabling an Automated Driving system

22. In Chapter 3, the Discussion Paper indicates that for an automated vehicle, even where the vehicle has stopped, there may still be a safety risk if the ADS is not disabled. By disable, the Discussion Paper indicates that this means the ADS has been disengaged, so it is no longer in automated mode.
23. As we have reinforced in the earlier discussion, this is essentially a question of technology. As part of the technological development, NatRoad believes that ADSEs should be required to show how the ADS can be disabled at the roadside by enforcement officers. Once that technology is introduced, other issues will fall into place, and the answers to questions 5 to 8 will be more readily discernible.
24. In the discussion of current state and territory laws concerning the removal of vehicles from the road, it is clear that there are disparate regulations that should be further studied and made consistent now, rather than merely noting that there are “gaps in the existing regulation.”¹⁴ Hence, our response to question 9 is that a preferred option for the powers and processes for enforcement officers after an ADS is disabled should proceed from best practice regulation being adopted as part of HVNL and broader reform. That work should be used as a platform from which sensible options, having regard to the then available technology, may be formulated.

Access to Data

25. This issue is currently controversial. The NatRoad policy in relation to the use of vehicle-generated data was comprehensively communicated to the NTC in response to the discussion paper entitled *Government access to vehicle-generated data*¹⁵ (Data Paper) issued by the NTC in May 2020. The position we advanced at that time and which we maintain is that the outcome of the HVNL review concerning the use of technology as a data generator concerning compliance, enforcement and assurance is a foundational consideration. There is a lack of trust in providing data to governments. The main concern

¹⁴ Above note 1 p42

¹⁵ [NTC Discussion Paper - Government access to vehicle-generated data.pdf](#)

is that the data would be used for enforcement rather than other purposes underpinning the law, such as enhancing productivity. Trust is not high, at least partly because the issue of who meets the cost of increased data demands and how data could be diverted to make the enforcement regime even harsher are unresolved questions.

26. The Discussion Paper contains an extensive discussion of access to automated vehicle data in Chapters 4,5, and 6. Some of the issues raised in these chapters need to be the subject of reform now, e.g., a time limit for access to data, raised in Question 11.

27. In talking about the future, NTC speaks of two current provisions in State based legislation relating to heavy vehicles as follows:

- *Victoria's Road Safety Act, 1986 ss 114(2)(ii) and 115(3)(d)), which allow police or authorised officers to copy documents relating to the vehicle or its use accessible from electronic equipment in the vehicle.*
- *The NSW Road Transport Act 2013 Part 6.1, which allows for the seizure of monitoring devices and records fitted in a vehicle.*¹⁶

28. The Discussion Paper makes no value judgment about whether these provisions are appropriate or should be nationally consistent, albeit contrasting these powers with the NSW equivalent: s 155 of the New South Wales Act¹⁷ allows police officers to take and retain data stored in a device fitted in the vehicle for specific purposes only, such as where a person is killed in an accident, or the driver has committed a major offence. This would not be broad enough to capture data following a road traffic law breach involving an automated vehicle. But NatRoad reinforces that the current differences should be examined in detail and should be investigated as part of the ongoing HVNL review.

29. We note that setting data requirements differently from those developed overseas could hamper the market for automated vehicles here. Accordingly, NatRoad believes that the observation in the Discussion Paper that Australian governments should continue to monitor international developments and review if international consensus on ADS data arises should be the criteria to guide the development of regulation in this area. That should follow a review of current data use for enforcement, and, at the least, the inconsistencies noted in the Discussion Paper should be the subject of proposals for resolution.

30. That investigation could also cover the issue of data and its retention during a phasing in of automated vehicles. That proposition raises the sorts of issues mentioned in the Discussion Paper, where it states that:

Australian roads will most likely feature a mixed fleet for some time, consisting of vehicles of markedly different levels of automation. Automated vehicle data may provide an accurate reconstruction of the circumstances of, and reasons for, a crash to clarify liability issues. This cannot be replicated in a conventional vehicle.

31. That statement reinforces the NatRoad view that the starting point is getting current enforcement right, then moving to consider transitional issues and finally, once the nature and extent of the commercially viable automated technology is clearer, deal with the issues

¹⁶ Above note 1 p51

¹⁷ S155(1)(a) *Road transport Act 2013 (NSW)*

raised in the Discussion Paper definitively. This is particularly necessary (a staged approach) because, as noted in the Discussion Paper:

Where a human driver breaches a road rule while driving an automated vehicle and the ADS was not engaged, they will continue to be subject to relevant state and territory infringements (or other relevant sanctions).¹⁸

32. Further, as that technology is better understood, the issues raised in Chapters 7 and 8 of the Discussion paper can be given greater contextual cogency.

Conclusion

33. We note that the NTC says:

The tension between the uncertainty of the future technological capabilities and the desire to be prepared when automated vehicles appear on our roads will persist for some time. That is why we believe it is imperative the Commonwealth, state and territory governments continue to collaborate closely and support further ongoing engagement with industry as the technology capabilities evolve and develop.¹⁹

34. We appreciate that this is an evolving issue. But the main point of this submission is that the current system should be thoroughly examined from the ground up, and more work should be done immediately on current reform of the extant system as a better platform for future enforcement.

¹⁸ Above note 1 at p76

¹⁹ Id at p 78