

Our ref: D19/977

30 August 2019

Attn: In-service safety for automated vehicles
National Transport Commission
Level 3/600 Bourke Street
Melbourne VIC 3000

Dear National Transport Commission

Submission in response to the In-service safety for automated vehicles Consultation regulation impact statement

The Office of the Victorian Information Commissioner (**OVIC**) is pleased to provide a submission to the National Transport Commission (**NTC**) in relation to the *In-service safety for automated vehicles* consultation Regulation Impact Statement (**consultation RIS**).

OVIC is the primary regulator for information privacy, information security and freedom of information in Victoria. My office administers the *Privacy and Data Protection Act 2014 (PDP Act)* and the *Freedom of Information Act 1982 (Vic)*. One of my functions under the PDP Act is to make public statements on matters affecting individuals' privacy and information security. Accordingly, I have a strong interest in issues relating to government collection, use, and disclosure of personal information.

This submission focuses primarily on a particular issue identified in the consultation RIS, namely the need for a regulator to monitor and enforce the in-service safety of automated vehicles (**AV**).¹ One of the key points of this submission is that any new regulator's access, collection, use and disclosure of AV data and other personal information from regulated parties involved in AV in-service safety should be appropriately limited to protect privacy.

This is consistent with the NTC's updated design principles to guide and inform the development of future regulation around cooperative intelligent transport systems (**C-ITS**) and AVs, outlined in the recent *Regulating government access to C-ITS and automated vehicle data Policy paper (policy paper)*.² Specifically, the first principle states that the laws and standards for C-ITS and AVs should 'balance the benefits of government access to C-ITS and automated vehicle data with additional privacy protections to appropriately limit the collection, use and disclosure of C-ITS and automated vehicle data'.³ This could apply not only to government organisations in general, but also in the context of a potential new regulator in this space (regardless of whether the new regulator is an independent or government agency).

¹ Chapter 8 of the consultation RIS.

² Released August 2019.

³ Principle 1, page 5 of the National Transport Commission's *Regulating government access to C-ITS and automated vehicle data Policy paper*, August 2019.

Limiting collection, use, and disclosure of personal information

The consultation RIS notes that data collection and sharing will be key functions for a new regulator.⁴ While the consultation RIS does not discuss these particular proposed functions in detail, it does note that the regulator 'will need access to data relevant to the enforcement of road traffic laws and the general safe operation of the ADS'.⁵ Such data may include personal information from parties that would be regulated under a new regulatory framework (for example, Automated Driving System Entity executive officers, registered owners, repairers etc.). It may also include AV data, which, as OVIC has noted previously, could potentially amount to or reveal personal information.⁶

Government access to C-ITS and AV data is an issue that the NTC has considered extensively as part of its broader national AV reform program.⁷ Relevantly, the NTC's policy paper states (in relation to the first principle noted above):

'Australian governments will need to develop laws and aligned standards that support lawful collection, use and disclosure of C-ITS and automated vehicle data and capture holding, retention and storage of data. As part of this development, additional privacy protections should be included to appropriately limit the collection, use and disclosure of C-ITS and automated vehicle data to specific purposes, in particular safety and network efficiency.'⁸

OVIC supports a similar design principle in guiding the development of a new in-service safety regulator, along with the seven suggested principles to guide the design of a new regulator, outlined in Chapter 8 of the consultation RIS.⁹ Given that a new in-service safety regulator may – and indeed is likely to – collect AV data and personal information from regulated parties, the collection, use and disclosure of such data should be appropriately limited to what is necessary to fulfil the regulator's functions. This aligns with the collection and use limitation principles underpinning many privacy regimes (including Victoria's PDP Act), which promote, respectively, limiting the collection of personal information only to what is necessary for a particular function or activity, and using the personal information only for the purposes for which it was collected.

Additionally, as noted in OVIC's previous submission to the NTC, government collection and use of AV data (and other personal information more broadly) must also align with community expectations.¹⁰ In particular, we caution against the provision of AV data in an 'open data' context without a solid grounding in re-identification risk.¹¹ Poor information governance around open data, without the appropriate protections, may impact upon public trust.

Functions and powers in relation to information security

OVIC suggests that the NTC, in designing the powers and functions of an in-service safety regulator, consider including investigative and assurance functions in relation to information security. This would be particularly relevant where parties that fall under the in-service safety regulator's jurisdiction may be bound by contract to compliance with information security standards issued under other legislation; for example, where a Victorian entity regulated by the in-service safety regulator is also bound by contract to comply with the mandatory information security standards issued under Part 4 of the PDP Act. Binding regulated parties to federal legislation that does not also include investigative and assurance functions in

⁴ Page 101 of the consultation RIS.

⁵ Ibid.

⁶ See OVIC's *Submission in response to the Regulating Government Access to C-ITS and Automated Vehicle Data Discussion Paper*, available at <https://ovic.vic.gov.au/privacy/submissions-and-reports/submissions/>.

⁷ For example, see the National Transport Commission's *Regulating government access to C-ITS and automated vehicle data Discussion Paper*, September 2018.

⁸ Page 59, *Regulating government access to C-ITS and automated vehicle data Policy paper*.

⁹ Page 100 of the consultation RIS.

¹⁰ Page 3 of OVIC's *Submission in response to the Regulating Government Access to C-ITS and Automated Vehicle Data Discussion Paper*.

¹¹ For an example, see *Disclosure of myki travel information: Investigation under section 8C(2)(e) of the Privacy and Data Protection Act 2014 (Vic)*, 15 August 2019, at https://ovic.vic.gov.au/wp-content/uploads/2019/08/Report-of-investigation_disclosure-of-myki-travel-information.pdf.

relation to information security would represent a weakening of protection, unless the proposed in-service safety regulator had functions and powers in its legislation similar to those in the PDP Act.

Legislative authority

Given the potential for data collected and shared by an in-service safety regulator to include personal information, OVIC considers it crucial to ensure the regulator has the legislative authority to access, collect, use and disclose data from regulated parties, specifically in connection with its functions. This will be particularly relevant if the new regulatory function of monitoring and enforcing in-service safety is given to an existing body (or bodies).

Again, this is consistent with the NTC's design principles outlined in its policy paper, which states that access powers (and privacy protections) for C-ITS and AV data should be embedded in legislation (Principle 3).

Thank you for the opportunity to comment on the consultation RIS. OVIC will continue to follow the progress of the NTC's broader AV reform program with interest, and we look forward to reading the decision RIS in due course.

I have no objection to this submission being published by the NTC without further reference to me. I also propose to publish a copy of this submission on the OVIC website, but would be happy to adjust the timing of this to allow the NTC to collate and publish submissions proactively.

If you have any questions about this submission please contact myself or my colleague Tricia Asibal, Policy Officer at tricia.asibal@ovic.vic.gov.au.

Yours sincerely

Sven Bluemmel
Information Commissioner

