

30 November 2018



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Attention: **Automated Vehicle Team**
National Transport Commission
Level 3/600 Bourke Street
Melbourne VIC 3000

Dear Automated Vehicle Team,

Submission to the National Transport Commission Discussion Paper: Regulating Government Access to C-ITS and Automated Vehicle Data

The Law Institute of Victoria ('LIV') thanks the National Transport Commission ('the NTC') for the opportunity to provide further submissions in respect of the regulatory issues surrounding the trialling and implementation of varying levels of automated vehicles on our roads.

The LIV's response to the NTC's *Regulating Government Access to C-ITS and Automated Vehicle Data, Discussion Paper, October 2018* ('the discussion paper') follows.

Scope of Response:

The LIV acknowledges that the scope of the paper is limited to government collection and use of information generated by C-ITS and automated vehicle technology and excludes access to data by insurers or consumers for the purposes of liability and insurance. We will therefore limit our comments accordingly, and propose to separately respond to the important issues of access to data for insurance purposes discussed in the recently released *Motor Accident Injury Insurance and Automated Vehicles Discussion Paper*.

Response:

The LIV supports the NTC's proposed Option 2: agree broad principles on limiting government collection, use and disclosure of C-ITS and automated vehicle information.

The LIV submits and generally supports the NTC's view that government access to automated vehicle data and C-ITS will have clear advantages and the potential to enhance government decision making in relation to the following areas:

- Appropriate law enforcement;
- Traffic management and road safety as part of network operations; and
- Infrastructure and network planning as part of strategic planning.

From the LIV's perspective, law enforcement and its impact on improving road safety is paramount. We note in particular the NTC's comments at 5.2.1 of the discussion paper regarding the importance of identifying who is in control of an automated vehicle at a given point in time to ensure effective administration of road traffic laws and to complete crash investigations. Again, within the limited scope of this discussion paper, it is worth highlighting that this issue is also integral to questions of insurance and liability. We refer to the LIV's response to 'Clarifying control of automated vehicles' dated 9 June 2017 in which the LIV submitted that there should be a requirement for enforcement agencies to have the ability to capture data to determine who is in control of an automated vehicle at any given point in time. We look forward to commenting on these issues further from an insurance

and liability perspective in our response to the *Motor Accident Injury Insurance and Automated Vehicles Discussion Paper*.

The LIV strongly submits that the potential advantages that come with government access to automated vehicle and C-ITS data must be carefully balanced with sufficient privacy protection. The LIV notes the NTC's comments at 4.4 of the discussion paper that data produced by C-ITS and automated vehicle technology will most likely be personal information and sensitive information (especially when held by road agencies and law enforcement agencies). It is important that government agencies do not have unchecked power in relation to the use of this information.¹ It is equally important that the data is not used for alternate purposes, such as being used for data matching by unrelated government departments or agencies² or distributed for commercial purposes.

The LIV notes the complexity of the potential new privacy challenges that C-ITS and automated vehicle technology are likely to bring. As noted by the NTC at 3.4 of the discussion paper, these challenges can be summarised into:

- new information captured by automated vehicle technology;
- C-ITS technology allowing for more widespread direct collection of location information by government; and
- C-ITS and automated vehicle technology will generate a greater breadth and depth of information.

The LIV notes that whilst the collection of C-ITS data such as location, speed, and weather are potentially already available to government, it is currently directly collated in a limited way. The LIV submits that extra protections are required to regulate the use of the broader and deeper nature of the information that will be produced by automated vehicles and C-ITS. The LIV submits further that the type of personal and potentially sensitive data that C-ITS and automated vehicles will produce, including data collected by in-cabin cameras and biometric, biological or health sensors, require more rigorous legislative protections to ensure that consumer privacy is upheld.

For example, state road agencies including the Transport Accident Commission (the 'TAC') and VicRoads will likely have wide powers to access such sensitive data as mentioned above.³ One method of restricting the use of such information is to de-identify data where possible and to narrow the scope of its use to areas such as research or road safety campaigns.⁴

The LIV agrees with the NTC that C-ITS and automated vehicle technology will generate more personal and sensitive information. The LIV agrees with the NTC's preferred option 2 that broad principles are to be preferred at this stage to allow for flexibility as the technology develops. The LIV considers, however, that broad principles will not be sufficient for more personal or sensitive data including that produced by in-cabin cameras and microphones, and biometric, biological, or health sensor data. As discussed in section 7.4.3 of the discussion paper, the broader principles envisaged within option 2 should include more rigorous legislative protections where required for more sensitive data and allow for further legislative restrictions as the technology emerges.

¹ We refer to rules on admissibility of evidence raised in *McElroy v The Queen; Wallace v The Queen* [2018] VSCA 126.

² There are emerging privacy concerns arising from legislation to allow data matching between government agencies e.g. see *NSW Road Transport Amendment (National Biometric Matching Capability)* Bill 2018.

³ E.g. *Transport Accident Act* s 127A.

⁴ As opposed to a wider use such as law enforcement (see footnote 1) or liability for motor vehicle accidents.

If you would like to discuss this matter further please contact Irene Chrisafis, Senior Lawyer, Law Institute of Victoria by telephone on 9607 9386 or via email at ichrisafis@liv.asn.au.

Yours faithfully

A handwritten signature in blue ink, appearing to be 'Belinda Wilson', with a stylized loop at the start and a long horizontal stroke.

Belinda Wilson
President
Law Institute of Victoria