



Automated Vehicle Team
National Transport Commission
Level 3, 600 Bourke Street
Melbourne VIC 3000

23 November 2018

Dear Automated Vehicle Team

Discussion Paper - Regulating government access to C-ITS and automated vehicle data

Thank you for the opportunity to make a submission in relation to your discussion paper on regulating government access to C-ITS and automated vehicle data.

We have considered the legal issues arising from your discussion paper, but not the technical questions. Accordingly, this submission is limited to the former.

We consider your paper correctly raises several significant privacy challenges associated with the personal data that will be generated by automated vehicles and C-ITS technologies. We agree with your assessment that Australia's current privacy laws do not adequately address these challenges, and that the gaps need to be addressed.

We differ on the approach that should be adopted to solving this issue. We are concerned that the inadequacies that the NTC has identified are not limited to AV and C-ITS data. We expect that they also extend to other technologies that are capable of collecting vast amounts of personal data. Accordingly, we'd prefer to see a more holistic solution that fixes the broader inadequacies within the existing privacy protection laws, rather than a narrow solution that creates new privacy protection laws that only apply to AV and C-ITS data.

Our responses to your specific questions follow.

1. **Are the assumptions the NTC has identified for this discussion paper reasonable?**
Yes.
2. **Have we accurately captured current vehicle technology and anticipated C-ITS and automated vehicle technology (and the information produced by it)?**

No comment.

PricewaterhouseCoopers, ABN 52 780 433 757
One International Towers Sydney, Watermans Quay, Barangaroo NSW 2000,
GPO BOX 2650 Sydney NSW 2001
www.pwcactuarial.com
T: +61 2 8266 0000, F: +61 2 8266 9999, www.pwc.com.au

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3. **Have we accurately captured the new privacy challenges arising from information generated by C-ITS and automated vehicle technology relevant to government collection and use?**

Yes.

4. **Based on your assessment, what information generated by C-ITS and automated vehicle technology is personal information and/or sensitive information under current law?**

We agree with your assessment.

5. **Have we broadly identified the key reasons why government may collect information generated by vehicle technology? Please outline any additional reasons governments may collect this information.**

You appear to have identified the key reasons. Government agencies are best placed to respond with any additional reasons why they may wish to collect the information.

6. **Is the current information access framework for government collection sufficient to cover privacy challenges arising from C-ITS and automated vehicle technology? Please provide reasons for your view, including what parties may be affected if there is no change.**

No, for the reasons you identify.

7. **Is the current information access framework for government use, disclosure and destruction/de-identification sufficient to cover privacy challenges arising from C-ITS in automated vehicle technology? Please provide reasons for your view, including what parties may be affected if there is no change.**

No, for the reasons you identify.

8. **Are separate options for addressing the privacy challenges of C-ITS technology and of automated vehicle technology reasonable for achieving any future reform? Please provide reasons for your view.**

We are not sure that separately addressing the privacy challenges for C-ITS technology on the one hand, and automated vehicle technology on the other hand, is the most appropriate way of achieving future reform.

We acknowledge that there are differences between the two technologies that raise different risks and issues. But there are also many similarities between the technologies and the associated risks and issues. The similarities are reflected in your draft principles (Table 5, p 73), which apply equally to each technology.

We understand that the NTC has been tasked to assist the Commonwealth, State and Territory Governments to develop a regulatory framework for automated vehicles, as opposed to C-ITS technologies, and that AustRoads is developing a national framework for the latter including in respect of the associated privacy challenges.

It is likely that the privacy challenges associated with these technologies will also apply to other technologies capable of collecting vast amounts of personal information. Accordingly, we suggest further consideration be given to addressing the privacy challenges that you have identified by reforming Australia's privacy protection laws as they apply more broadly, rather than supplementing them with new ad-hoc laws that only apply to personal information in AV and C-ITS data.

9. Are the criteria for assessing automated vehicle reform options comprehensive and reasonable?

There is a risk that your preliminary preferred option will lead to a "patchwork" approach to privacy protection laws. Accordingly, we suggest you add an additional criterion that favours reform options that minimise this risk.

In addition, we suggest you consider criterion that counterbalances criteria (b) and (c), by assessing whether the reform option adequately protects any personal information or sensitive information that may be contained in the AV or C-ITS data. Some reform options will better protect personal and sensitive information than others. Your first criterion only focuses on the deficiencies in the current information access framework, and does not focus on the relative benefits of the reform options from a privacy protection perspective.

10. Is there a need for reform to address the identified problem and the privacy challenges of automated vehicle technology (that is, option 1 is not viable)? At this stage of automated vehicle development, which option best addresses these privacy challenges while recognising the need for appropriate information sharing and why?

Yes, there is a need for reform to address the identified problem and the privacy challenges of automated vehicle technology.

Reform option 2 is inadequate because "broad principles" won't be sufficient to adequately protect the privacy of personal information.

Reform option 3 is inadequate for the reasons you have identified (i.e. it only extends to sensitive information, and does not extend to personal information).

Option 4 is inadequate because it only covers government collection, use and disclosure of automated vehicle information.

To adequately address the privacy issues that the NTC has identified, the private sector collection, use and disclosure of automated vehicle information must also be addressed.

11. Would the draft principles adequately address the privacy challenges of C-ITS and automated vehicle technology?

In relation to principle 1, we are not convinced that the privacy challenges associated with data from C-ITS and automated vehicles are sufficiently unique, relative to the data privacy challenges associated with other technologies, to justify new privacy protections which extend only to these two technologies.



We hope you find this submission helpful. We would welcome the opportunity to discuss it with you, and have no objection to you publishing it.

Yours sincerely

A handwritten signature in grey ink, appearing to read "Owen Hayford".

Owen Hayford
Partner, Legal