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12 November 2018

Mr Paul Retter AM
Chief Executive Officer
National Transport Commission
Level 3/600 Bourke Street
Melbourne VIC 3000
enquiries@ntc.gov.au

Dear Mr Retter

Thank you for the opportunity to provide feedback on the *Regulating government access to C-ITS and automated vehicle data: Discussion paper September 2018* (the discussion paper), released by the National Transport Commission on 27 September 2018.

Brisbane City Council (Council) welcomes the opportunity to provide feedback on the ideas and topics raised in the discussion paper. Council is both an infrastructure owner and a law enforcement agency in the context of the discussion paper. Council builds, maintains and manages road infrastructure, and is responsible for enforcing parts of the Queensland Road Rules and local laws relating to traffic management.

Council therefore considers that it is vital to strike a balance between these two competing functions by ensuring that an adequate framework is considered and legislated for C-ITS and automated vehicle technology.

Council's responses to the questions in the discussion paper are attached.

If you wish to clarify any of the matters raised in Council's response, please contact Ms Marie Gales, Manager, Transport Planning and Operations, Brisbane Infrastructure, on (07) 3178 1418.

Yours sincerely

Colin Jensen
CHIEF EXECUTIVE OFFICER

Att.

COUNCIL'S RESPONSE TO THE NATIONAL TRANSPORT COMMISSION'S *REGULATING GOVERNMENT ACCESS TO C-ITS AND AUTOMATED VEHICLE DATA: DISCUSSION PAPER* SEPTEMBER 2018

Council supports the development of a national regulatory framework for Cooperative Intelligent Transport Systems (C-ITS) and automated vehicle technology. The intent for the regulatory framework to include the management of the information/data privacy for people using these technologies is also supported. This will help ensure a consistent national approach across all levels of government and ensure increased confidence from the public regarding the usage of data and information generated by these developing technologies.

However, it is important to strike a balance between the privacy of the individual and ensuring that data collected and available from these developing technologies is able to be safely and securely accessed by government agencies to allow for the best management of the transport network, the delivery of safer and more efficient transport infrastructure and services and inform the most accurate planning for future infrastructure requirements.

Consultation questions:

1. Are the assumptions the NTC has identified for this discussion paper reasonable?	<p>Council considers the assumptions that the National Transport Commission (NTC) has identified to be reasonable in the context of the discussion paper.</p> <p>The assumption that de-identifying data collected by automated vehicles will be difficult due to the breadth and depth of information and the number of identifiers is a critical consideration when considering privacy impacts.</p> <p>Identifying that international information access frameworks will remain inconsistent with varying standards around data privacy, should ensure that the NTC's approach is best suited to the Australian national context.</p> <p>It is reasonable to expect that a safety assurance system for C-ITS and automated vehicles would most likely include a data recording and sharing criterion, with the NTC being able to propose specific legislative powers to access relevant automated vehicle information.</p>
2. Have we accurately captured current vehicle technology and anticipated C-ITS and automated vehicle technology (and the information produced by it)? Please provide reasons for your view, including whether there are any other devices that are likely to collect information internal and external to the vehicle.	<p>Council considers that the discussion paper accurately captures current vehicle technology and reflects the anticipated future development of C-ITS and automated vehicle technology.</p> <p>The NTC may wish to take into consideration spatial or location-based data for key infrastructure which may need to be available in real time to ensure safe network operation. This might include work zones for example.</p> <p>The ability to obtain and share data on kerbside usage – whether the data is collected via transport infrastructure (e.g. sensors) or the vehicles themselves has not been specifically included in the discussion paper and should be taken into consideration in developing the framework.</p>

<p>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?</p>	<p>Council finds that the discussion paper accurately outlines the relevant challenges that may arise in respect to information generated by C-ITS and automated vehicle technology. Council considers the potential for mass surveillance using this data will be the largest barrier to take up of the technology, if the current information access framework in Queensland is maintained. This presents a twofold challenge to Council as both an infrastructure owner and a law enforcement agency.</p> <p>It is in the interest of government agencies to want sufficient legal protections for personal information collected via C-ITS and automated vehicle technology.</p>
<p>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?</p>	<p>Council agrees wholly with the assessment of what information may be personal information, contained within the University of New South Wales' <i>The privacy and data protection regulatory framework for C-ITS and AV systems Report for the National Transport Commission</i> at 3.7. In practice, Council considers that erring on the side of caution and classifying all information with the potential to be personal information as such, is the preferred solution. This is to ensure that the privacy of residents is maintained and to avoid unnecessary risks to personal information being mishandled or released as open data.</p> <p>As the meaning of sensitive information found in schedule 5 of the <i>Information Privacy Act 2009</i> (Qld) (IP Act) is only defined in relation to the National Privacy Principles contained in schedule 4 of the IP Act, Council does not consider this category of information relevant to C-ITS and automated vehicle data in the context of Council's activities. However, information that could be classified as sensitive information may become relevant to Council if restrictions on government collection, use, disclosure and destruction of information falling into this category are enacted.</p>
<p>5. Have we broadly identified the key reasons why governments may collect information generated by vehicle technology? Please outline any additional reasons governments may collect this information.</p>	<p>Yes. Council agrees that the reasons why government may collect information generated by vehicle technology can be broadly categorised under the following:</p> <ul style="list-style-type: none"> • crash investigation and road traffic law enforcement • traffic management and road safety as part of network operations • infrastructure and network planning as part of strategic planning. <p>With regards to enforcement, it is considered that the predominance of enforcement applications would relate to road traffic law offences. However, it is possible that there could also be other issues where the data, particularly visual and audio recordings, could be of benefit in the investigation and potential prosecution of non-traffic related offences, including assaults or property damage.</p>

<p>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.</p>	<p>Council is acutely aware of the potential for misuse of data collected from C-ITS and automated vehicles, and the potential for mistrust in government to be increased by the voluminous collection of personal information. Council does not believe that the current framework in Queensland will provide adequate protections for personal information collected by this technology. The IP Act, the <i>Invasion of Privacy Act 1971</i> and the <i>Transport Operations (Road Use Management) Act 1995</i> do not adequately capture instances where government agencies will be directly collecting personal information from C-ITS and automated vehicles. Therefore, the legislative safeguards that are in place for traditional methods of collecting personal information are not afforded, as intended, to the users of C-ITS and automated vehicle technology.</p> <p>Additionally, providing a collection notice as required by the IP Act may become impossible to affect with the direct collection of this information from C-ITS and automated vehicles occurring before a collection notice can be provided. This may have consequences for government if this challenge is not adequately addressed.</p>
<p>7. Is the current information access framework for government use, disclosure and destruction/de-identification 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.</p>	<p>Council considers the current framework for government use and disclosure insufficient to cover the privacy challenges arising from C-ITS and automated vehicle technology. Broad provisions for secondary use in the IP Act may allow for the use of C-ITS and automated vehicle data to be used by government for purposes other than those intended at collection. Coupled with the broad exceptions that law enforcement agencies have to Information Privacy Principles, the practicality is that once information has been collected, it could be used for controversial practices such as mass surveillance. Queensland public sector agencies do not currently have broad requirements for the destruction or de-identification of personal information, and Council is of the view that this should be addressed in any reform options proposed.</p>

<p>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.</p>	<p>Council supports separate options for addressing the privacy challenges of C-ITS technology and of automated vehicle technology.</p> <p>As identified in the discussion paper, the C-ITS environment is very different to the automated vehicle environment. The C-ITS environment involves direct interaction with fixed (often government owned and operated) infrastructure and other vehicles, while automated vehicle data is generated by the vehicle itself.</p> <p>Additionally the uncertain timeframes for the development, implementation and uptake of different vehicle technologies means that separate options provide the greatest flexibility to adapt to unanticipated developments that may occur.</p> <p>This includes the possibility that other technology advances in non-transport related areas may drive privacy reforms which may address some of the challenges identified with C-ITS and automated vehicle technologies.</p>
<p>9. Are the criteria for assessing the automated vehicle reform options comprehensive and reasonable?</p>	<p>Council considers that that criteria are comprehensive and reasonable in addressing known considerations regarding privacy challenges relating to automated vehicles.</p> <p>Critically the criteria recognise the potential for the wider usage of data generated and collected by automated vehicles for congestion management and strategic planning.</p> <p>Ensuring appropriate levels of flexibility for development of the overall automated vehicle legislative framework is also supported.</p>
<p>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?</p>	<p>Council considers that reform is necessary and that, at this stage, option 2 is preferred. As the outcome of reviews regarding C-ITS and automated vehicles are yet to be determined, and potential new powers of government to collect data from this technology is unsure, a set of broad principles provides flexibility. The final form of any legislative reform should be contingent on the outcomes of the NTC and Austroads reviews.</p>
<p>11. Are the criteria for assessing the C-ITS reform options comprehensive and reasonable?</p>	<p>Council considers that criteria are comprehensive and reasonable in addressing known considerations regarding privacy challenges relating to C-ITS.</p> <p>Critically the criteria recognises the potential for the wider usage of data generated and collected by C-ITS for congestion management and strategic planning.</p> <p>Recognition that the development of the C-ITS framework in Australia is in its early stages and the need to provide appropriate levels of flexibility is also supported.</p>

<p>12. Is there a need for reform to address the identified problem and the privacy challenges of C-ITS technology (that is, option 1 is not viable)? At this stage of C-ITS development, which option best addresses these privacy challenges while recognising the need for appropriate information sharing and why?</p>	<p>Council considers that reform is necessary and that, at this stage, option 2 is preferred. As the outcome of reviews regarding C-ITS and automated vehicles are yet to be determined, and potential new powers of government to collect data from this technology is unsure, a set of broad principles provides flexibility. The final form of any legislative reform should be contingent on the outcomes of the NTC and Austroads reviews.</p>
<p>13. Would the draft principles adequately address the privacy challenges of C-ITS and automated vehicle technology?</p>	<p>Council agrees with the draft principles, in particular with Principles 3 and 7. Principle 3 states that any potential legislative reform governing the way that C-ITS and automated vehicle data is collected, used and disclosed will need to be balanced with ensuring that the benefits of government access to C-ITS and automated vehicle data can be realised. Council considers this principle is vital to maintain trust in all levels of government and their agencies, while still being able to deliver tangible benefits from the use of this data.</p> <p>Principle 7 suggests that government agencies should consider instantly aggregating data that is directly collected from C-ITS and automated vehicles. Council considers that aggregation or de-identification of data to the point where the data can be published in open data forums will provide for wide benefits in promoting open and efficient transport systems and assist in developing transport policy.</p>