

7 November 2018

Attn: Regulating Government Access to C-ITS and
Automated Vehicle Data
National Transport Commission
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By online submission

Dear Sir/Madam,

Thank you for the opportunity to respond to some of the issues outlined in the Regulating Government Access to C-ITS and Automated Vehicle Data discussion paper dated September 2018.

We congratulate NTC on the methodical and comprehensive nature of the analysis contained within the discussion paper.

Maurice Blackburn has been a proud contributor to this important ongoing conversation, and we are pleased to be able to offer our expertise in road safety matters for the benefit of the Commission.

Maurice Blackburn recognises that NTC has proposed:

- Four options for addressing the new privacy challenges associated with data generated by automated vehicle technology, as detailed in section 7.4 of the Discussion Paper; and
- Three options for addressing the new privacy challenges associated with C-ITS technology, as detailed in section 7.5 of the Discussion Paper.

Maurice Blackburn endorses and supports NTC's preferred options in both discussions, namely:

- Option 2 for addressing the new privacy challenges associated with data generated by automated vehicle technology, as described in section 7.4.6; and
- Option 2 for addressing the new privacy challenges associated with C-ITS technology as described in section 7.5.5

Maurice Blackburn agrees that, in both cases, Option 2 is the better options because:

- It recognises that additional privacy protections are likely necessary to address the new privacy challenges;
- While recognising that government collection, use and disclosure of information should be appropriately limited, it does not require agreement on what these specific purposes are at this stage. As such, it ensures beneficial future uses are not restricted; and
- It only agrees broad principles and therefore does not restrict further development of the framework.

Maurice Blackburn believes that Option 2 offers the ability to move on to option 3 and (in the case of data generated by automated versions) option 4 down the track, if appropriate, once more is known about the specific limitations that will need to be imposed. We would be supportive of clearly delineated limitations for government access to data as an end result of this process.

Maurice Blackburn further supports the eight draft principles for addressing the privacy challenges of government access to C-ITS and automated vehicle data, as displayed in Table 1 on page 5 of the Discussion Paper.

Maurice Blackburn supports processes which ensure a consumer-centred approach to any decisions related to access to data.

For example, section 5.2.1 of the Discussion Paper deals with the collection of data by governments for law enforcement purposes. Maurice Blackburn believes that this should only be permissible in circumstances where the end beneficiary of the data collection is the general public, not government agencies or commercial interests who stand to benefit from the data collection.

Under this stipulation, the following could be seen as outcomes of data collection which benefit the general public:

- Using the data where a public safety imperative exists;
- Showing potential faults in automated systems;
- Helping to prove who was in control of a vehicle at the time of an accident; or
- Informing investigations that remove a dangerous vehicle or driver from the roads.

Under this stipulation, the following would NOT be seen as outcomes of data collection which benefit the general public:

- The collection of data for insurance purposes;
- The use of historical/unrelated data to deny insurance claims;
- The access to data, or seeking to engage in data matching by unrelated government departments or agencies – eg the ATO or Centrelink or Border Force; or
- The commercialisation of data – the collection of data to on-sell to other institutions.

A process for external evaluation/review, to determine whether access to data is in the general public's best interest, would need to be developed and implemented.

Maurice Blackburn notes similarities in issues raised in relation to the collection of data related to automated vehicles and the recent discussions around the collection of data through the My Health Record system. A recent Senate Inquiry into the My Health Record System¹ heard arguments from consumer advocates that the data needs to be protected from:

- Commercial interests, such as insurers and those who may seek to profit from access to that data; and
- Government departments, such as the ATO and Border Force seeking to use the data to achieve outcomes unrelated to the health of the patient.

Recommendation 5 of that inquiry reads:

“The committee recommends that the current prohibition on secondary access to My Health Record data for commercial purposes be strengthened to ensure that My Health Record data cannot be used for commercial purposes.”

Recommendation 8 of that inquiry reads:

“The committee recommends that access to My Health Records for the purposes of data matching between government departments be explicitly limited only to a person's name, address, date of birth and contact information, and that no other information contained in a person's My Health Record be made available.”²

Maurice Blackburn believes that these two recommendations reflect the same broad principles in relation to government data collection as would be necessary for data collection related to automated vehicles.

We do not believe that the status quo (as described in Option 1) is a viable option for the future.

As clearly demonstrated in sections 5.3 and 5.4 of the Discussion Paper, the current authorisations for government data collection are convoluted and difficult to navigate. Any attempt to retro-fit the requirements of data collection related to automated vehicles to existing frameworks is an exercise in futility.

Maurice Blackburn notes the three categories of potential new privacy challenges outlined on page 3 of the Discussion Paper. We agree with the assessment of the NTC that “...these challenges may not be sufficiently addressed under Australia's information access framework...”

Maurice Blackburn believes that, at this stage, it is important to give decision makers the capacity to make principled, consumer focused decisions about the changes needed in data collection and access processes that will arise with the introduction of automated vehicles.

We note that the next phase of the NTC process looks specifically at insurance arrangements related to automated vehicles. Maurice Blackburn looks forward to expanding on a number of issues related to this submission, in our response to the next consultation.


¹ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/MyHealthRecordsystem

² Committee Report, Senate Community Affairs References Committee. My Health Record system.

https://www.aph.gov.au/~media/Committees/clac_ctte/MyHealthRecordsystem/Final_report/report.pdf?la=en

In the meantime, if there is any assistance we can offer the Commission in its deliberations, please do not hesitate to ask.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Katie Minogue', with a stylized, flowing script.

Katie Minogue
Senior Associate
Maurice Blackburn Lawyers