

16 December 2020

Ms Rahila David
Automated Vehicle Team
National Transport Commission

By email only: automatedvehicles@ntc.gov.au

Dear Ms David

A national in-service safety law for automated vehicles

Thank you to yourself and your colleagues for meeting with the Office of the Victorian Information Commissioner (**OVIC**) on Tuesday 15 December 2020 to discuss the National Transport Commission's (**NTC**) consultation on the proposed national in-service Automated Vehicle Safety Law (**AVSL**). OVIC appreciates the opportunity to be consulted on this important program of work and provide comment on key privacy aspects of the proposed AVSL.

As a follow up, OVIC would like to briefly reiterate some points mentioned at the above meeting and in relation to the NTC's Discussion paper *A national in-service safety law for automated vehicles (discussion paper)*.

Collection, use and disclosure of automated vehicle data

The discussion paper outlines the proposed establishment of an in-service regulator and the information access powers needed for that regulator to effectively perform its role and discharge its regulatory functions. In particular, the discussion paper queries whether a specific power authorising the collection, use and disclosure of personal information is required (Question 28).

Generally, privacy legislation (including Victoria's *Privacy and Data Protection Act 2014*) permits regulated entities to collect personal information that is necessary (or 'reasonably necessary') for the entity's functions or activities. The in-service regulator would not necessarily require a specific power to collect personal information, as it would generally be permitted under privacy law to collect such personal information as is necessary for its functions and activities. However, privacy legislation is often considered 'default legislation' – that is, it permits the collection of personal information (qualified as above) in the absence of any other existing authority (such as an entity's establishing legislation).

While a specific power under the AVSL may not necessarily be required for the in-service regulator to collect personal information, it would provide the regulator with clear legislative authority to collect such information as needed for the regulator to perform its role and fulfill its functions. This express authority would also serve to dispel any ambiguities that may arise in respect of what personal information the in-service regulator is legally able to collect and when, compared to relying upon privacy law to collect personal information.

Similarly, in relation to use and disclosure, a specific power under the AVSL would provide the in-service regulator with a clear legislative basis to use and disclose personal information, particularly for secondary purposes (where certain uses or disclosures are not related to the original purpose of collection).

Should the AVSL contain specific powers to permit the in-service regulator to collect, use and disclose personal information, OVIC strongly supports appropriate limitations to those powers to protect individuals' privacy. This is particularly important given AV data can reveal potentially highly sensitive details about individuals, such as travel patterns, location etc. For example, the in-service regulator's access, use and disclosure powers should be underpinned by principles including necessity, reasonableness, and collection minimisation (only collecting the minimum amount of personal information required), as noted on page 111 of the discussion paper.

These same principles should also apply to entities beyond the in-service regulator that may collect personal information as part of their involvement in the automated vehicle space (in whatever capacity). As mentioned in the meeting, for example, an automated driving system entity (**ADSE**) will likely collect a broad range of AV data, including significant amounts of personal information which it does not necessarily require. As part of considering the content of the AVSL, OVIC suggests the NTC consider whether it is appropriate to include similar limitations on other entities' collection, use and disclosure of personal information (including limitations on the on-sharing of AV data shared by a third party). In OVIC's view, the threshold for accessing and using AV data needs to be very strict to prevent potential misuses of personal information that may be contained or revealed by the data.

Implementation approach: applied versus complementary law

As noted in the meeting, OVIC's preferred legislative implementation approach is the complementary law model. From a privacy perspective, this approach makes sense given state privacy laws do not apply to private entities, which will comprise the majority of players in the automated vehicle space. This approach will likely be less complex than an applied law model, in terms of determining the appropriate privacy regulator with whom individuals can raise a privacy complaint. Importantly, it will also ensure that individuals are able to access avenues for recourse in the event of a privacy breach involving personal information that may be contained in AV data, regardless of the state in which that individual resides and where the breach occurred.

Thank you once again for getting in contact with OVIC and consulting with us on the proposed AVSL. We will follow the progress of the AVSL with interest and look forward to engaging with the NTC again in the future should the opportunity arise. If you have any questions about this letter please contact my colleague Tricia Asibal, Senior Policy Officer at tricia.asibal@ovic.vic.gov.au.

Yours sincerely



Rachel Dixon
Privacy and Data Protection Deputy Commissioner