

7 July 2020

Automated Vehicle Team  
National Transport Commission  
Level 15, 628 Bourke Street  
Melbourne VIC 3000

Dear Automated Vehicle Team,

**Submission responding to the National Transport Commission’s ‘Government access to vehicle-generated data’ Discussion Paper, May 2020.**

The Law Institute of Victoria (the ‘LIV’) thanks the National Transport Commission (the ‘NTC’) for the opportunity to provide submissions responding to ‘*Government access to vehicle-generated data*’; *Discussion Paper, May 2020* (‘the Discussion Paper’).

**Scope**

The LIV does not propose to address all the questions raised in the discussion paper. Rather, the response will outline our support for the proposed option and raise key issues for consideration by the NTC. Whilst the LIV recognises that there are many opportunities for greater access to vehicle-generated data, we consider road safety to be a key priority due to the potential for data sharing to improve safety and reduce death and injury on the roads.

**Preferred Option**

We note the NTC’s problem statements that:

1. Vehicle-generated data is not currently provided to transport agencies for purposes that may have publicly beneficial outcomes.
2. There is a lack of data access framework to establish data access and use.

The NTC in its discussion paper put forward three options to address the problems, summarised as:

- Option 1: No change to existing framework and legislation.
- Option 2: Government and industry data exchange partnership.
- Option 3: Legislative reform.

The LIV supports the NTC’s recommendation of Option 2 as the preferred option. We agree that a data exchange partnership has the potential to make a significant impact on road safety outcomes. In this regard, we agree with NTC’s position that:

*For future development on government access to vehicle-generated data, road safety is the priority for exchanging vehicle-generated data between industry and government. Industry and government should collaborate on identifying opportunities for exchanging road safety data and adopt a principle of non-commercial sharing or exchange.*

We consider that Option 3, legislation reform introducing nationally consistent legislation that would require industry to capture, store and process vehicle-generated data, which would then be provided to road agencies, would be premature at this stage. The partnership should be used to determine privacy and security issues that arise, to establish trust and to keep step with international developments. The LIV agrees that legislative reform should be front of mind as a potential future policy direction.

### **Key Issues**

The LIV considers the critical issues to be considered in the establishment of a government and industry data exchange partnership are:

1. Privacy and protection against misuse of data.
2. Access and availability of data to consumers.

#### **1. Privacy and protection against misuse of data.**

We refer to page 19 of the Discussion Paper which notes:

*The vehicle industry is also reluctant to share data with governments due to concerns over the breadth of purposes it could be used for, particularly because many agencies hold roles both as regulators and transport system operators. Industry reluctance is founded on valid concerns of government use of data detrimentally impacting on them or their customers. This could include enforcement or compliance action, inadvertent release of commercial intellectual property and customer privacy.*

The LIV agrees that there are currently few and limited government access arrangements for vehicle generated data. However, for any increase in access to occur, including the partnership as proposed in Option 2, there must be safeguards in place to ensure data is used for its proper purposes and not misused by government or industry. The LIV considers clear principles stipulating the circumstances where data sharing is appropriate will be critical.

The LIV endorses safeguards and protections being put in place, such as the following suggested by the NTC:

- minimising the amount of data needed to achieve an outcome
- focusing on information and insights over data volume
- encouraging 'opt-in' to services
- protecting sensitive data – either personal or commercial

The LIV considers protecting the privacy of consumers' personal data is paramount. Cybersecurity risks will inevitably increase with the broader sharing of vehicle-generated data. In this regard, we consider it important that the consumer voice does not get conflated with the voice of 'industry'. Consumer rights and protections must continue to be a key consideration in the development of any data exchange partnership.

#### **2. Access and availability of data to consumers**

The NTC notes at 3.5.2:

*What is unique is the potential for vehicle-generated data to denote the status of the driver and the automated driving system, which may help with clarifying legal liability for either insurance or road safety enforcement purposes.*

The LIV reiterates its comments made in previous submissions to the NTC that access to data will be vitally important in dealing with issues of fault involving automated vehicles. The LIV supports early and transparent



access to event data to ensure issues of fault are dealt with expediently to reduce the expense and delay caused by litigation.

If you have any queries please contact Irene Chrisafis, Senior Lawyer and Privacy Officer, Litigation Lawyers Section by telephone on 03 9607 9386 or by email at [ichrisafis@liv.asn.au](mailto:ichrisafis@liv.asn.au).

Yours sincerely,

A handwritten signature in black ink that reads 'S. Pandya'.

Sam Pandya  
**President**  
Law Institute of Victoria