

13 November 2020

HVNL Review Team
National Transport Commission
Level 3, 600 Bourke Street
Melbourne VIC 3000

Dear HVNL Review Team

Submission in response to Heavy Vehicle National Law Review Consultation Regulation Impact Statement

The Office of the Victorian Information Commissioner (**OVIC**) is pleased to provide a submission in response to the National Transport Commission's (**NTC**) consultation on the Heavy Vehicle National Law (**HVNL**) Review (**Review**) Consultation Regulation Impact Statement (**Consultation RIS**). OVIC has followed the progress of this Review with interest, and welcomes the opportunity to comment on the reform options outlined in the Consultation RIS.

OVIC's submission

OVIC has combined oversight over freedom of information, information privacy, and information security in Victoria, administering the *Freedom of Information Act 1982* (Vic) and the *Privacy and Data Protection Act 2014* (**PDP Act**). As such, this submission will focus on two proposed changes outlined in the Consultation RIS that relate to privacy, one of OVIC's areas of remit:

- enabling data sharing with the National Heavy Vehicle Regulator (**NHVR**), per Option 5.4; and
- the NHVR becoming a law enforcement agency under the HVNL.

OVIC acknowledges that the proposed reforms encompass a range of different types of data. However, given OVIC regulates information privacy,¹ this submission is primarily concerned with personal information, and data which has the potential to reveal personal information – for example, when combined with other datasets, or where an individual's identity can be ascertained from the context in which the data is used.

Additionally, while the comments in this submission are general in nature, OVIC recognises that as the HVNL operates as an applied law scheme, different privacy legislation applies to the range of entities covered by the HVNL.

Option 5.4: Enable data sharing with the NHVR

1. Option 5.4 of the Consultation RIS proposes amending the HVNL to expand the scope of information the NHVR is able to request under section 660(2), from information required for the

¹ Under Part 3 of the PDP Act.

NHVR to exercise its functions under the HVNL, to *'any purpose associated with the regulation of heavy vehicles'*.

2. OVIC appreciates that as noted in the Consultation RIS, expanding the purposes for which information can be shared between the NHVR and other agencies (and therefore the scope of information the NHVR is able to request) can enhance the effectiveness of its enforcement and compliance efforts. However, without appropriate limitations in place, there is potential for the proposed amendment to be interpreted widely. Providing the NHVR with the power to collect personal (and other) information beyond what is needed for it to exercise its functions under the HVNL (as currently provided for in the existing law) carries a privacy risk of over-collection.
3. In further developing this reform option, OVIC encourages the NTC to consider some of the fundamental tenets underpinning many privacy laws, including Victoria's PDP Act – for example, the principle of collection limitation. This concept is reflected in Information Privacy Principle (IPP) 1 of the PDP Act, which states that an organisation must not collect personal information unless the information is necessary for one or more of its functions or activities.²
4. Should the HVNL be amended to expand the purposes for which information can be shared with the NHVR, OVIC would support a limitation – in regard to personal information – in line with the collection limitation principle. That is, personal information should only be collected if necessary for a specific purpose associated with the regulation of heavy vehicles, and only the minimum amount of personal information needed to satisfy that particular purpose.
5. The Consultation RIS states that this option would also provide a reciprocal authority for the NHVR to disclose collected information (noting this is not the primary aim of this provision). Where personal information is involved, careful consideration should be given to the appropriateness and necessity of the disclosure; there should be a defined purpose for sharing personal information, rather than sharing simply for the sake of it.
6. User and stakeholder expectations should also be taken into consideration when disclosing personal information, particularly for secondary purposes. Notwithstanding that it may be permitted under the HVNL, a secondary use or disclosure that does not align with individuals' expectations can erode trust between the NHVR and its stakeholders. For example, under the HVNL, the NHVR may collect data containing personal information for the purpose of risk identification and management. If such data were then disclosed to another agency for the purposes of compliance and enforcement, individuals who did not expect their personal information to be disclosed for such a purpose may be displeased, even if the disclosure was authorised under the HVNL.

Question 5.5: Are there any other implications or unintended consequences that may arise from the NHVR becoming a law enforcement agency under the HVNL?

7. Option 5.4 also proposes amending the HVNL to clarify the NHVR's status 'as a law enforcement agency for the purposes of state, territory or Commonwealth privacy or related legislation'.³ OVIC queries what such 'related legislation' may encompass, and strongly recommends that this is further clarified in the Decision RIS and any legislative amendments to the HVNL.
8. This is crucial given the exemptions and powers for law enforcement agencies contained in many laws, including privacy legislation. For example, the PDP Act exempts law enforcement agencies from complying with some IPPs in certain circumstances where noncompliance is reasonably

² The Information Privacy Principles contained in Schedule 1 of the PDP Act apply to entities listed under section 13 of the of the PDP Act, including Ministers, public sector agencies, councils and Victoria Police.

³ Page 57 of the Consultation RIS.

believed to be necessary.⁴ Without specifying what 'related legislation' entails, the NHVR could be designated a law enforcement agency for a range of laws, and potentially make use of law enforcement exemptions and powers that may exist under those laws.⁵ OVIC is concerned that this will provide the NHVR with significant powers beyond those necessary for it to fulfill its functions. The NTC may therefore wish to consider whether such broad powers are necessary and moreover, include appropriate limitations for this reform option by clarifying what 'related legislation' entails.

Thank you for the opportunity to consult and provide comment on the HVNL Review Consultation RIS. I have no objection to this submission being published by the NTC without further reference to me. I also propose to publish a copy of this submission on the OVIC website, but would be happy to adjust the timing of this to allow the NTC to collate and publish submissions proactively.

If you would like to discuss this submission, please do not hesitate to contact me directly or my colleague Tricia Asibal, Senior Policy Officer at tricia.asibal@ovic.vic.gov.au.

Yours sincerely



Sven Bluemmel
Information Commissioner

⁴ Section 15 of the PDP Act.

⁵ The *Surveillance Devices Act 2004* (Cth), for example, provides Commonwealth law enforcement agencies with significant powers in relation to surveillance devices and access to data held on computers, and for other related purposes.