

## Privacy Commissioner's Submission to the Justice Committee on the Land Transport (Road Safety) Amendment Bill (251-1)

### Introduction

1. Thank you for the opportunity to make a submission on the public consultation of the Land Transport (Road Safety) Amendment Bill.
2. The Land Transport (Road Safety) Amendment Bill ("the Bill") has been introduced to improve responses to fleeing drivers, and to address a broader range of road safety matters by increasing the speed and severity of enforcement. Among other changes, the Bill seeks to improve detection and enforcement powers in the Land Transport Act 1998 by providing for:
  - electronic service of notices,
  - point-to-point cameras as a tool to enforce speeding offences; and
  - the automated issuing of certain infringement notices.
3. In combination, the proposed powers in the Bill are intended to enable a system that can automatically detect the commission of a moving vehicle infringement offence, automatically generate particulars of the offence, and automatically issue an infringement notice to the person it identifies as being responsible.

### The role of the Privacy Commissioner

4. Under the Privacy Act 2020, the functions of the Privacy Commissioner include examining new legislation for possible impacts on individual privacy. It is also part of my role to monitor emerging privacy issues, and to offer guidance on how people in industry, government agencies, and across broader society can uphold their privacy obligations.
5. The developing use of algorithms, generative AI, and automated decision-making is one of the key areas I am monitoring as part of my mandate to uphold privacy interests. This is an area which is also a priority for and being monitored by international privacy and data protection regulators. I recently issued a statement of expectations on generative AI, setting out steps organisations can take to uphold their privacy obligations when using these tools.<sup>1</sup>
6. I acknowledge that the use of automated decision-making systems has the potential to create significant benefits including improved efficiency. However, ADM systems that

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<sup>1</sup> OPC, "Generative Artificial Intelligence" (25 May 2023), <[privacy.org.nz](https://www.privacy.org.nz)>.

use personal information may magnify existing privacy risks. Privacy protection must be built into the development and use of ADM systems.

7. This Bill proposes legal powers enabling automated decision-making (“ADM”). This process is an opportunity for lawmakers to consider the potential privacy impacts of automated decisions, and to ensure that these new legal powers are paired with protective mechanisms to ensure systems uphold accuracy, fairness, and equity – that they are both safe to use and used safely. These features will also be important in maintaining and growing citizen trust and confidence in the decision-making regime.

## **The Privacy Act 2020**

8. The Privacy Act has 13 Information Privacy Principles that are principles based and technology neutral which can be applied to emerging technologies such as ADM systems.
9. Agencies using ADM systems must be held accountable for using personal information appropriately, which can be achieved through transparency on the use of ADM systems and by embedding a privacy by design approach. These requirements can be supported by establishing regulatory oversight and the need to provide assurances to public and to people affected through independent audits.

## **The key privacy issues in the Bill as proposed**

### **Privacy impacts of automated decision systems**

10. The Bill proposes new legal powers to enable the individual and combined use of automated camera systems, decision systems, and communication systems to issue legally binding infringement notices. These systems will rely on the collection and use of personal information, starting with automatic photographing of road users and vehicles, followed by steps to match that information with a registered vehicle, the registered owner, and an electronic or physical address to serve an infringement notice.
11. I am monitoring the area of artificial intelligence and automated decision systems because these systems can have broad scale impacts that are difficult to reverse and magnify existing privacy risks.
12. It is in everybody’s interests to make sure these systems work as intended. This can be achieved by ensuring there is increased transparency, openness and accountability by agencies using ADM systems. In addition, ensuring human oversight is built into the ADM system will introduce an additional check against unintended harms to individuals, eventually leading to better decision making. It is my view that this can be achieved with some minor changes to the present Bill.

### **Automated infringement notices**

13. Waka Kotahi has prepared a Privacy Impact Assessment (“the PIA”) on the use of automated infringement notices, which is referred to in the Departmental Disclosure

statement. My office has seen a copy of the PIA undertaken by an independent privacy consultancy, which notes that:<sup>2</sup>

“Waka Kotahi will need to strike a balance between total automation and total reliance on human oversight. The system must incorporate a sensible reliance on automation with sufficient human oversight both at the decision-making point of the system and with subsequent activity around the use of the data. The aim would be to arrive at a practice that gives both Waka Kotahi and the public confidence that the used data is accurate and not misleading particularly when the decision making may result in a detriment for individuals.”

14. I agree with the above assessment. It is vital that information relied on is accurate, particularly when imposing liabilities on an individual. Waka Kotahi must have processes in place to ensure the accuracy of information relied on, and to flag a need for human intervention when there is a risk that information may be inaccurate, or where the use of information brings the potential for serious harm.
15. Implementing the recommendations in the Privacy Impact Assessment undertaken for Waka Kotahi should help Waka Kotahi assure themselves that they are meeting their privacy obligations.
16. I recommend that Waka Kotahi maintain an up-to-date Privacy Impact Assessment, and that Privacy Impact Assessments are undertaken for all proposed changes to the handling of individuals' personal information, not just automated infringement notices.
17. To ensure new legal powers and the systems they enable operate as intended, I recommend a statutory requirement for the Director to seek and publish an independent audit of these systems at the design stage, and at least annually once they are in operation. Audits should consider privacy matters such as accuracy, security, and equity. Requiring independent audits will give individuals certainty that the information being relied upon is accurate and not misleading as well as ensuring the relevant agencies using the ADM system are held accountable for decisions they make using an automated system. It will also provide reassurance that systems work as intended.

### **Electronic service of documents**

18. The Bill provides for service of documents using an electronic address, which includes an email address.
19. Clause 26 of the Bill proposes to insert a new section 139AAA into the Land Transport Act 1998. The proposed section 139AAA(2)(i) allows the automated infringement notice system to be automatically sent by electronic means “addressed to the person at their

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<sup>2</sup> Privacy Impact Assessment prepared for Waka Kotahi (August 2022).

electronic address (if any) as recorded on the register of motor vehicles **or any other register administered by the Agency** [emphasis added]”

20. Individuals need to understand what their information being collected by Waka Kotahi will be used for. When Waka Kotahi (the Agency) collects and uses a person’s email address they must be satisfied that they uphold transparency by clearly explaining that the email address is not just being collected for general communication purposes but will effectively be used as an address for service. In addition, individuals need to be made aware of the use of the ADM system to understand how the system will impact individual rights. Transparency on the use of ADM systems helps protect against inaccuracy and uphold accountability.
21. Given that a number of New Zealanders do not have access or regular access to the internet it will be essential that Waka Kotahi has alternative ways of contacting identified road users/vehicle owners. Those who do not have access/regular access to email are also likely to be those for whom accumulated late penalties are likely to cause hardship. Regular audits to guard against unintended consequences of automation will be an important guardrail in this regard.
22. Finally, I note that unfortunately electronic and text messaging are being increasingly used by malicious actors to scam individuals. This includes the current “unpaid tolls” NZTA text scam which has caught out large numbers of New Zealand road users. The Latitude Financial data breach has exposed the personal information of over 1 million New Zealand customers, the bulk of which is driver license details. These details can be used to scam New Zealanders. It will be essential that Waka Kotahi provides road users with a mechanism that allows them to verify the authenticity of the infringement notice and the payment methods associated with them. Ideally this mechanism would not require the individual to provide identifying information (and thus itself be a target for scammers).

### **Policy process**

23. Contrary to the Cabinet Manual, the policy process leading to this Bill did not include proactive contact to my office about proposals for automated decision-making. Cabinet papers record an early stance from officials that the electronic service, point-to-point camera, and automated issuing of notices aspects were technical changes and did not require a regulatory impact assessment.
24. The Departmental Disclosure document also records that my Office was not consulted in relation to the electronic service provisions as they are technical in nature.
25. The Bill provides for new ways to collect and use personal information and new powers for automated systems to establish legal liability, but it does not match those powers with any provision for independent audits, expanded appeal rights, or other safeguards.
26. My Office expects to be consulted on proposals that have significant potential impacts on the use of individuals’ personal information, even if this is a technical matter.

## Algorithm Charter

27. Both the Ministry of Transport and Waka Kotahi are signatories to the Algorithm Charter, which sets out expectations on how agencies will approach automated decisions. It would be helpful to hear any details of work to consider and meet these expectations in the process so far, and in the future. This could be one area for an independent audit to consider.

## Recommendations

28. I support the adoption or use of new technologies, when they are adopted and used in ways that uphold privacy interests and promote fairness and equity. In terms of the present Bill, this means finding ways to monitor and mitigate potential risks to privacy, ensuring that individuals can exercise their privacy rights, and that at a systems level we can learn and develop best practice for responsible use of technologies in Aotearoa New Zealand.
29. My recommendations include establishing appropriate safeguards to help maintain trust and confidence in these systems:
- **Transparency:** ensuring sufficient information on the use of ADM systems and the consequences of the automated decisions are publicly available.
  - **Accountability:** Amend audit provisions to require that ADM systems and their operations are subject to appropriate oversight through independent audits, which consider privacy impacts and any commitments agencies have made.
  - **Openness:** Require that independent audits are kept up to date and published online to inform the public about how systems are operating as well as how ADM systems impact individual rights.
  - **Human oversight:** Ensure individual can obtain human intervention as well as get an explanation of the automated decision and have a reasonable way to challenge the automated decision. This includes adding a provision to require fall-back to non-automated systems in the event that there is credible evidence of inaccuracy or harm.
  - **Accuracy:** Require agencies relying on ADM systems to put appropriate processes in place to ensure the accuracy of information used to reduce the risk of errors and negative outcomes.
  - **Verification:** ensure that reasonable processes are in place to safeguard against automated issuing and electronic notification of infringement notices being used by scammers.
  - **Review:** Require a regular review of the overall operation of automated systems.

**Conclusion**

30. I recommend considering pairing new powers that enable automated decision making with reasonable safeguards to uphold privacy interests. This will help to ensure these technologies have the intended effects and work well for everyone.
31. I do not seek to appear before the Committee, but my officials stand ready to assist should the Committee find that helpful in its consideration of the Bill.



Michael Webster

**Privacy Commissioner**