

Future of Small Passenger Services – Consultation Paper

Submission by the Office of the Privacy Commissioner to the Ministry of Transport

Introduction

We are pleased to make this submission on the Ministry of Transport's public consultation paper on options for the future of the small passenger services sector.

This submission discusses the privacy implications of the proposed regulatory reforms. It focuses on the collection and use of personal information and on measures to ensure the safety of both drivers and passengers, such as fit and proper person assessments and the use of in-vehicle security cameras.

Application of the Privacy Act 1993 to the small passenger service sector

The Privacy Act regulates the use of personal information by agencies. Personal information includes any information about an identifiable individual. The term 'agency' under the Privacy Act applies to registered businesses, such as taxi companies and business providing communications services or acting as intermediaries between drivers and customers. It also covers unincorporated individuals acting in a business capacity (such as independent operators not employed by a larger company).

All agencies must comply with the information privacy principles in the Privacy Act when they collect personal information from customers. They must:

- only collect personal information where it is necessary and in a manner that is not unreasonably intrusive;
- ensure the individual concerned is aware of the fact that information is being collected and why, and advise individuals who else will have access;
- collect it from the individual concerned (unless an exception applies, including where the individual has authorised collection from elsewhere);
- put in place reasonable security safeguards to protect personal information against loss or inappropriate access, or changes that would make it unreliable;
- protect that information against unauthorised use or disclosure; and
- dispose of information securely when it is no longer required for the lawful purpose for which it was originally collected.

The Ministry of Transport's preferred option (option 4) does not raise significant privacy issues

The privacy issues raised by option 4 are essentially the same as the status quo. These can be adequately managed under the Privacy Act. We are therefore comfortable with this option.

The Ministry of Transport has presented a range of options for reform of the small passenger service sector. The preferred option (option 4) is to create a single class for all small passenger services (including taxis, private hires, shuttles, dial-a-driver and ridesharing services, and transport network companies). All operators would need New Zealand Transport Agency approval to receive a passenger licence endorsement, including requiring fit and proper person assessments for drivers.

All vehicles providing passenger services would need to meet the existing rules for in-vehicle security cameras that apply currently to taxis. Exemptions to this requirement would be granted on a case-by-case basis, where an operator meets specific criteria designed to ensure driver and passenger safety without the use of in-vehicle cameras. The proposed criteria are:

- the operator only provides services to registered passengers;
- when registering with the operator, passengers provide their name, photo, address and phone number;
- before each trip starts, the name and photo of the passenger and driver are made available to each other; and
- the operator keeps a record of each trip.

This approach would essentially divide small passenger services into those interacting with customers anonymously who would be required to have in-vehicle cameras, and those exempt from that requirement because they only serve registered customers.

Under option 4, personal information about both drivers and customers would be collected, including:

- information required for fit and proper person assessments for drivers;
- information required to determine that a driver is medically fit;
- images collected of passengers by in-vehicle security cameras;
- name, address, contact phone number and photos of passengers registering with operators; and
- trip information collected by operators offering services to registered passengers.

The privacy issues raised by the collection of this personal information are largely those of the status quo. The Privacy Act would continue to apply to the collection, use, disclosure and destruction of the personal information to be collected under the proposed approach.

In-vehicle security cameras in urban taxis have been shown to be effective in improving driver and passenger safety and the associated privacy risks have been well managed under the current regime. Similarly, the current requirements for safety checks under the Land Transport Act required for anyone wishing to hold a passenger endorsement have proved an effective means of assessing drivers' suitability commensurate with the risk to the community their role entails.

We support the proposal that the current requirements for in-vehicle cameras and fit and proper person safety assessments should continue to apply, should the current requirements for taxi drivers be extended to a broader range of operators. This would include retention of a need for clear signage to advise customers their trip will be recorded. We note also that should any decision be made to reduce the level of compulsorily required signage on passenger vehicles, it will be increasingly important for operators to have readily available privacy policies.

Further matters to be considered if option 4 is progressed

Exemptions to the requirement to use in-vehicle cameras should be transparent

If option 4 is progressed, we recommend the Ministry consider defining in readily-accessible published procedural documents or in rules under the Land Transport Act clear criteria that would need to be met in order for an agency to be exempt from the in-vehicle camera requirement. This would provide certainty for operators about regulators' expectations and would provide public assurance that equivalent levels of protection will be maintained.

The Ministry should consider the level of oversight needed to assure compliance

Should an individual consider an agency has acted inappropriately in terms of their use of their personal information, the complaints processes under Part 8 of the Privacy Act will continue to apply. The Ministry will need to decide the level of additional regulatory oversight it will need to provide for in order to effectively audit and assure compliance. We recommend the Ministry considers whether a more formalised system for monitoring industry activity to ensure compliance would be warranted.

A privacy impact assessment would help identify appropriate safeguards

We recommend the Ministry conduct a privacy impact assessment to identify and compare the potential privacy implications of the various alternative approaches.

A comparative privacy impact assessment informed by the advice received during this consultation would:

- ensure the privacy risks associated with each option are evaluated fully;
- assist regulators in later developing clear guidance for operators in the sector;
- provide assurance the privacy risks have been identified and appropriate mitigations developed;
- help identify minimum agency obligations necessary to reform the sector in a privacy protective way;
- ensure the privacy of drivers is considered as well as of passengers; and
- help provide a regulatory framework that is transparent for consumers; practicable for operators, and enforceable by regulators.

Challenges of new technology

In the future, we are likely to see an increasing use of apps, smart phones and other portable devices, both to provide information to operators and increase the accessibility of services for customers.

Any agency collecting information from passengers indirectly, through a third party or using apps will need to take particular care¹. Apps offer advantages for businesses but their use raises specific privacy issues. Apps can gather large amounts of data about their users. Personal information collected by such means could, over a longer term, provide a detailed picture of an individual's habits and travel behaviour.

Conclusion

We have been pleased with the level of engagement between the Ministry of Transport and our office on this topic to date. The Ministry has engaged constructively with this office as the options for possible reform have been identified. It has been receptive to our advice about ensuring individual privacy is appropriately protected. We appreciate this consideration and look forward to continuing discussions with Ministry staff as the evaluation of options for reform in this area progresses.

¹ The Office of the Privacy Commissioner has developed guidance for businesses developing or using apps to help them understand their legal obligations under the Privacy Act when collecting personal information through mobile apps. This material ("*Need to know or nice to have: Making app privacy your competitive advantage*") is accessible on our website at <https://privacy.org.nz/news-and-publications/guidance-resources/apps-guidance/>. See also our blog post on this topic at <https://privacy.org.nz/blog/apps-what-you-need-to-know/>