

14 June 2024

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

By email: automatedvehicles@ntc.gov.au

To whom it may concern,

Re: Automated vehicle safety reforms

Thank you for the opportunity to provide feedback to the National Transport Commission's consultation on the proposed automated vehicle safety reforms.

Our members provide a range of insurance products and services, including motor vehicle insurance, underwriting Compulsory Third Party (CTP) schemes in New South Wales, Queensland, South Australia, and the Australian Capital Territory as well as public liability insurance. Insurers play a crucial role in insuring motorists' vehicles for property damage and compensating injured road users under CTP schemes. Some of our members have also been participants in the various trials of automated vehicles through the provision of CTP and public liability insurance.

The Insurance Council recognises the opportunities automated vehicles (AV) can bring offering significant benefits for both consumers and insurers by reducing the frequency and severity of motor accidents. In the first study of its kind using real-world data from 39 million miles of driving, AVs were found to reduce motor vehicle bodily injury claims and property damage claims by 93%.¹

However, it is also important to acknowledge the considerable uncertainties associated with the deployment of AVs, including various technical, legal, and operational complexities that must be addressed to ensure a smooth transition to and adoption of this new technology.

We commend the National Transport Commission's leadership in developing an appropriate end-to-end regulatory framework to leverage the benefits of AVs, while providing a measure of safety and consumer protection. ICA is pleased to provide further detailed input in **Attachment A** below for NTC's consideration. By way of summary, the ICA is supportive of:

- Requiring Automated Driving System Entities (ADSEs) to be Australian-registered companies with centre of operations in Australia ('Option 1' as per the paper) to enhance accountability and provide clearer legal recourse for consumers and insurers in case of liability disputes involving automated driving systems (ADS);
- Restricting aftermarket modifications of ADS to those reviewed and approved by the appropriate regulatory authority under Australian Design Rules to ensure safety and compliance;
- Applying general safety duties to repairers, modifiers, and maintainers of AVs, with the condition that ADSEs must provide reasonable access to technical and repair information to independent repairers to support fair competition;

¹ Di Lillo et al. 2023. '[Comparative Safety Performance of Autonomous- and Human Drivers: A Real-World Case Study of the Waymo One Service](#)'

- Obligations on ADSEs to retain data for a minimum of seven years and requiring them to share relevant data with insurers in standardised formats to assist in insurance investigations and liability determination;
- Clearly delineating responsibilities for the safe operation of AVs in remote operation mode among remote operators, telecommunications providers, ADSEs, and human users within the AVSL;
- Obligations on ADSEs for responsible marketing and clear communication of the technical limitations of their products to consumers;
- Establishing clear and consistent obligations across states and territories regarding human user responsibilities when using an AV;
- Enhancing measures against potential cyber intrusions and tampering with ADSEs to strengthen the security and integrity of ADS;
- Ensuring that motor accident injury insurance provides access to compensation for injuries and deaths caused in crashes when an ADS is engaged. The ICA agrees that no person should be better or worse off if they are injured by a vehicle whose ADS was engaged than if they were injured by a vehicle controlled by a human driver; and
- Engaging further with state and territory governments and heads of motor accident and injury insurance schemes, to review existing recovery mechanisms and develop approaches for the inclusion of ADS-caused injuries.

This input supplements the information previously provided by the ICA throughout various rounds of consultations (refer **Attachments B** and **C**). We suggest that this new information be considered alongside our earlier commentary.

Please do not hesitate to contact Sam Xu, Senior Adviser, Regulatory and Consumer Policy, sxu@insurancecouncil.com.au if you require further clarification or additional information regarding our submission.

Yours sincerely



Andrew Hall
Executive Director and CEO

Attachment A – Detailed responses

Making sure the ADS is safe when it enters the market

1. What are the benefits and drawbacks of different corporate presence requirements?

ICA's preferred option is “**Option 1 – The corporation must be an Australian registered company with its centre of operations in Australia**”.

Having the ADSE's centre of operations in Australia allows for direct oversight and accountability under Australian law, facilitating the enforcement of regulations and standards. This makes it easier for insurers and regulatory bodies to interact with the ADSE and ensures clear legal recourse for insurers and consumers in case of disputes or incidents involving the ADS.

This option also significantly boosts consumer protection by ensuring that Australian consumer protection laws are fully applicable to the ADSE safeguards consumer rights while also enhancing consumer trust and confidence in AVs, as consumers can be better assured that the company is subject to local oversight and accountable to Australian authorities.

From an insurance operations perspective, having the ADSE's centre of operations in Australia facilitates efficient claims processing and recovery of costs from ADSEs when they are locally based. It also improves access to relevant data and information, thereby enhancing risk assessment and pricing accuracy for insurers.

While **Option 2** and **Option 3** provide some level of accountability by requiring the ADSE to be registered in Australia, they do not offer the same level of oversight and consumer protection as having the centre of operations in Australia. **Option 1** ensures the highest level of regulatory compliance and accountability, aligning with the ICA's priorities of ensuring robust safety standards, clear liability determination, and protecting consumer interests.

2. How would a requirement for the corporation to be an Australian registered company impact business models of potential ADSEs?

Requiring ADSEs to register as Australian companies would likely involve setting up legal, financial, and operational frameworks to comply with local regulations. Presumably there will also be other operating costs such as the establishment of local staff as well as legal and compliance expenses.

This may have implications for the attractiveness of the Australian market to international manufacturers of automated vehicles. Despite these challenges, the ICA maintains that requiring ADSEs to register in Australia may be necessary to ensure accountability, efficient claims processing, and consumer protection.

3. How suitable are the matters we propose to include in an ADSE's safety management system? Should other matters be considered?

The proposed matters to be included in an ADSE's safety management system are comprehensive, covering critical areas such as risk management, compliance with vehicle standards, incident response, and maintaining detailed safety incident logs.

Additional considerations could include:

- Incorporating mandatory regular audits and independent safety assessments by road safety authorities to ensure continuous compliance and identify potential safety gaps.
- Requirements for robust cybersecurity measures to protect the ADS from cyber threats and unauthorised access, given the heavy reliance of AVs on software and connectivity.
- Obligations on ADSEs to ensure that AV users are well educated regarding the functionality of its automation features and to not make misleading statements regarding the capabilities of its products.
- Obligations on the ADSE to ensure the AVs functional performance is monitored and maintained throughout its lifetime including facilitating ongoing functional improvements, notifying stakeholders – including regulators, dealers, users and insurers – of any performance degradation of AV functionality or product recalls. We note that similar obligations already exist in consumer law.
- The role of road authorities in building and maintaining infrastructure in a way that does not contribute to failures in AV driving systems.

4. Are there other matters that the law enforcement and emergency services interaction protocol should account for?

N/A

5. Do the certification procedures for aftermarket installations of an ADS adequately manage safety risks or should other matters be considered?

The certification procedures for aftermarket installations of an ADS are generally adequate in managing safety risks, as they include comprehensive safety standards and requirements for verifying the compatibility of aftermarket installations with existing vehicle systems. However, additional measures such as independent testing and validation of aftermarket installations should be included to ensure modifications meet safety and performance standards. Detailed impact assessments of aftermarket installations, including potential effects on vehicle systems, user safety, and compliance with safety standards, should be required to identify and mitigate potential risks. Ongoing monitoring and reporting procedures, including regular audits and safety performance reviews, should be implemented to ensure continuous compliance and prompt identification of issues. Providing clear information to consumers about the aftermarket installation process, including potential risks and safety measures, ensures transparency and informed decision-making. Mandatory training and certification programs for individuals performing aftermarket installations ensure that installers have the necessary skills and knowledge to perform modifications safely and effectively.

Keeping the ADS safe when it is on-road

6. Are there other modifications that should be considered significant? Is there other information an ADSE should provide when seeking authorisation for a significant modification?

Modifications related to cybersecurity, software updates, sensor systems, and the integration of new technologies should be considered significant due to their potential impact on safety and functionality. Cybersecurity modifications can affect the vehicle's safety and data integrity, making it critical to manage any changes rigorously. Significant software updates and upgrades, particularly those affecting the ADS's decision-making algorithms and operational capabilities, can alter the behaviour of the ADS, impacting safety and compliance with regulations. Changes to sensor systems, such as adding new sensors or changing the placement and calibration of existing sensors, are critical for the ADS to perform its driving tasks safely.

When seeking authorisation for a significant modification, ADSEs should provide comprehensive information, including detailed impact assessments, results from rigorous testing and validation processes, documentation showing compliance with existing safety standards and regulations, a risk management plan outlining how potential risks will be mitigated, and a strategy for communicating the modification's implications to consumers. These measures ensure that all aspects of the modification are thoroughly evaluated and managed to maintain high safety standards.

7. What are your views on the proposed additional AVSL measures to manage the safety risks of repairs, maintenance, and modifications?

a. Are the risks arising from repairs to an ADS different enough from the risks arising from repairs to a conventional vehicle to require additional regulatory measures?

No, the risks arising from repairs to an ADS are not sufficiently different from those associated with conventional vehicles to warrant additional regulatory measures. While ADS involve complex systems, the fundamental principles of automotive repair remain consistent, particularly if repairs are performed by competent technicians following manufacturing technical guidance.

The imposition of additional regulatory measures, particularly requiring repairers to obtain 'express authorisation' from ADSEs to repair their vehicles could create unnecessary barriers for independent repair shops, potentially limiting competition and driving up costs for consumers.

b. Is express authorisation of repairers, maintainers, and modifiers a suitable approach to manage the risks of unqualified parties working on an ADS?

Requiring express authorisation from ADSEs can result in a closed ecosystem where only a select few authorised dealers and repairer networks are provided with access to necessary information and tools to facilitate repairs. This restricts the ability of independent repairers to compete, leading to higher prices and fewer choices for consumers.

c. What is an appropriate balance between the level of control or discretion an ADSE has over who it authorises to work on its ADSs, and the level of responsibility placed on either the ADSE or the repairer, maintainer, or modifier doing that work?

An appropriate balance should lean towards less control by ADSEs over authorisation to foster a competitive repair market. Excessive control by ADSEs over who can perform repairs can stifle competition and innovation. Instead, a certification system managed by an independent regulatory body, rather than the ADSEs themselves, could ensure that repairers meet safety standards without restricting competition. Evidence from the Australian Competition and Consumer Commission (ACCC) suggests that reducing manufacturer control over repair information can enhance competition and lead to better outcomes for consumers in terms of price and service quality.²

d. Should the AVSL require that an ADSE not unreasonably withhold authorisation, and that it share necessary information? For what reasons should an ADSE reasonably be allowed to withhold authorisation?

The ICA supports the mandatory participation of ADSEs in the Motor Vehicle Information Service (MVIS), which requires that motor vehicle service and repair information must be made available to all Australian motor vehicle repairers and registered training organisations (RTOs) at a fair market price.

This scheme, established and monitored by the ACCC, ensures that repairers and RTOs have access to essential service and repair information, including:

- Information needed to service and repair cars or provide training
- Software updates that facilitate the connection of new spare parts with a car
- Information and codes for computerised systems from car manufacturers

e. Should the AVSL include safety duties for repairers, maintainers, and modifiers of ADSs? If so, how suitable are the proposed elements of the safety duty on repairers, maintainers, and modifiers?

ICA supports the inclusion of safety duties for repairers, maintainers, and modifiers of ADSs to:

- Perform repairs, maintenance, and modifications with due care for their own safety and the safety of others.
- Carry out their work in accordance with technical information provided by the ADSE.
- Ensure that their actions do not otherwise interfere with the safety of the ADS, as far as reasonably practicable.

However, the safety duty should not include a requirement for repairers, maintainers, and modifiers to be authorised by the ADSE. Such a requirement could lead to anti-competitive practices, restricting the market to a limited number of authorised entities and potentially driving up costs for consumers while reducing service availability.

f. How may the proposed additional measures for repairs, maintenance, and modifications affect business models for both ADSEs and repairers, maintainers, and modifiers?

The proposed additional measures could negatively impact business models by restricting competition and creating monopolistic practices. For ADSEs, these measures might create a closed market where they can control repair prices and availability, as was found to be the case with many manufacturers

² [New car retailing industry final report 0.pdf \(acc.gov.au\)](#)

prior to the MVIS. For independent repairers, the additional measures could increase operational costs and limit their ability to compete, potentially driving many out of business.

8. Are there measures we should consider to manage the consumer impacts of an ADS being disabled due to suspension, cancellation, or surrender of certification?

N/A

9. For how long should ADSEs be required to retain data? Should there be different periods for different types of information?

The ICA supports the proposed minimum data retention of 7 years to ensure all necessary information is available for liability determination, risk assessment, and continuous improvement of AV safety. The requirement aligns with the statute of limitations for legal claims and ensuring relevant data is available for insurance claims.

We note, however, that AV systems collect vast amounts of data, and it may be impractical for an ADSE to retain all information related to a vehicle's operations across all vehicles for a period of 7 years. We suggest limiting the scope of data retention to critical information needed to determine fault in the event of an accident (for example event data recorder or dashcam information in the 60 seconds in the lead up to and 30 seconds after a collision). This should include data indicating who was in control at the time of the accident, seating location of driver, and specific vehicle operational data such as travelling speed, location, direction, throttle, brake, indicator status, and Light Detection and Ranging (LIDAR) data. In our view, this targeted data retention will provide investigators with the necessary information to accurately reconstruct the crash scene and determine fault.

This information should be made available by an ADSE in a timely manner, such as within 2 business days following a request. The exchange of information should be facilitated by the proposed [national in-service safety regulator](#), ensuring efficient and swift access to data.

We note that the NTC has previously highlighted the need for further work to establish data requirements and access protocols.³ Existing international standards, such as the Singapore Standards Council's TR 68-2:2019 – Part 4: Vehicular Data Types and Formats, can likely be leveraged in developing new standards. However, the insurance industry is eager to participate in this process, particularly in shaping the standards for data requirements for an Australian context.

10. Are there risks associated with information management that are not covered in these proposals?

We consider that there is opportunity to build in a more streamlined process for ADSEs to share information with insurers for the purposes of crash investigations for the purposes of an insurance claim by:

- making it an explicit requirement in the law for ADSEs to share information when requested within a timely manner and for appropriate penalties to apply if they fail to do so

³ National Transport Commission. 2022. [The regulatory framework for automated vehicles in Australia.](#)

- standardised data formats and protocols for data sharing between ADSEs ensures data can be easily interpreted and used by different stakeholders, including insurers for the purposes of investigations as part of an insurance claim

11. What are your views on the proposed additional AVSL measures to manage the safety risks of remote operation of a vehicle with an ADS? In your response, please consider:

- a. How are companies using or planning to use remote operation as part of ADS deployment, and what business models are likely to be used? Which parties will have an influence on the safety of remote operation?**
- b. Do you agree with the proposed scope of remote operation to be managed under the AVSL, and if not, which forms of remote operation do you consider should be managed under the AVSL?**
- c. Should an ADSE have responsibility for the safety remote operation performed to support its ADS? Should we consider other models for allocation of safety responsibility for remote operation?**
- d. What duties should be placed on an ADSE or other entities for remote operations?**
- e. Should remote operators be subject to a safety duty, or any other requirements, under the AVSL?**
- f. What specific skills or proficiencies should be required of remote operators?**
- g. Should the AVSL require that remote operations centres be located in Australia? What are the advantages or disadvantages of this?**

The most critical consideration for the insurance industry is point (d), which addresses the ultimate accountability and liability for ensuring the safe operation of ADSEs in remote operation mode. As the deployment of AVs progresses, there will be a growing interest from businesses in transitioning to remote operations, a trend we are already seeing overseas with companies like Waymo using AVs for rideshare services.⁴

There are potentially four points of failure in remote operations: the failure of the ADSE's software, the failure of the remote operator, the failure of the operator within the vehicle for failing to regain control from the ADSE, and telecommunications failures that could lead to an accident. It is important to avoid a complex situation where it is difficult to determine who is ultimately at fault.

The current AVSL proposals do not clearly specify who would be deemed liable if an AV were operating remotely and there is an opportunity for the AVSL to provide clearer guidance on who is responsible for the safe operation of the ADSE in remote operation mode. Specifying this in the AVSL will facilitate easier underwriting of risks by providing certainty over who insurers can pursue in the case of a recovery action.

⁴ [Waymo becomes first company to launch driverless ride-hailing to public - The Washington Post](#)

12. Should an ADSE be required to ensure certain technical information is provided to consumers to inform purchasing decisions?

The ICA supports the requirement for ADSEs to provide comprehensive technical information to consumers to inform their purchasing decisions. From the perspective of ensuring an AVs safe operation, information could include:

- Detailed descriptions of the ADS's capabilities and limitations, including the operational domains and scenarios it can handle, ensuring consumers clearly understand what the ADS can and cannot do and their obligations for the vehicle's safe operation.
- Information regarding the maintenance and update requirements for the ADS, such as the frequency of software updates and the need for regular maintenance checks.
- Instructions for the safe operation of AVs, particularly the driver's obligations as a 'fallback-ready' user and what to do in emergency situations.

Additionally, to build consumer acceptance of and confidence in AVs, clear information on data privacy and security measures should be provided, including how personal data is collected, used, and protected, to address any potential consumer concerns. Details on warranty coverage and available support services, including contact information for technical support and emergency assistance, should also be provided.

13. Should the AVSL include offenses in relation to misrepresenting vehicle capabilities?

The ICA supports the inclusion of offences related to the misrepresentation of vehicle capabilities in the AVSL including establishing clear penalties for false advertising, omission of critical information, inaccurate documentation, and deceptive practices.

Offences should include making false or misleading statements about the capabilities, performance, or safety features of the ADS in advertising and marketing materials, with penalties such as fines, mandatory corrective advertising, and potential suspension of ADS certification. Failing to disclose critical information about the limitations or known issues of the ADS should be penalised with fines and mandatory disclosure of omitted information to affected consumers. Providing inaccurate or incomplete technical documentation to consumers or regulatory bodies should also be considered an offense, with penalties including fines and mandatory correction of documentation. Engaging in deceptive practices that mislead consumers about the ADS's capabilities or safety features should be penalised with significant fines, corrective measures, and potential legal action.

14. Are there other measures needed to address consumer risks?

In addition to measures identified in responses to question 12 and 13, the ICA supports the implementation of additional measures to address consumer risks including obligations on ADSEs to report safety incidents, including any product recalls or software updates to ensure transparency.

How people will interact with an ADS

15. What are your views on how we should approach laws for human user obligations in vehicles with highly or fully automated driving features?

- a. Which types of vehicle control and seating configurations are being considered or developed by industry for vehicles with highly or fully automated driving features? Can vehicle control/seating design help to determine the obligations for users of these vehicles?
- b. In vehicles with higher levels of driving automation that are configured with manual driving controls, should there be specific requirements about seating position when the ADS is engaged? Do you support any of the options identified, or propose any other options?
- c. How should licensing requirements apply to users of vehicles with highly and fully automated driving features with accessible manual controls? Do you support any of the options identified, a combination of options, or propose any other options?
- d. How should drug and alcohol restrictions apply to users of vehicles with highly and fully automated driving features? Do you support any of the options identified, a combination of options, or propose any other options?
- e. Do you think there should be a requirement to always have a person capable of driving traveling in a vehicle with highly or fully automated features? Why or why not?
- f. Do you support permitting a person seated in the driving position in vehicles with highly or fully automated driving features to undertake secondary activities? Do you support any of the options identified, a combination of options, or propose any other options?
- g. How should non-dynamic driving task obligations be assigned or shared in vehicles with highly and fully automated driving features? Do you agree with our analysis?

The ICA supports a clear and consistent approach to laws governing human user obligations in vehicles with highly or fully automated driving features. The general principle should be that drivers maintain a level of attentiveness and alertness comparable to operating a conventional vehicle, at least in the early stages of deployment.

We anticipate that existing requirements regarding drugs and alcohol consumption, engagement in secondary activities, and driving positions would remain the same, although there ought to be some avenue for exemptions in case of controlled trials.

While Level 4 and Level 5 automation may eventually allow vehicle occupants to engage in other activities, treating them more like passengers than operators, the current stage of technological development does not yet allow for a full understanding of the potential risks involved. There may be opportunities in the future to review and relax the AVSL if it is demonstrated that the technology is safe enough to eliminate the need for human attentiveness, which will be informed by ongoing trialling and monitoring of AV deployment.

16. Do you support third-party interference offenses being included in both the AVSL and state and territory law?

The ICA advocates for incorporating third-party interference offences in both the AVSL and state and territory laws to ensure the safety and integrity of AV systems. Although cybersecurity and hacking laws generally fall under the Federal government's purview, specific offences like physical tampering and unauthorised installation or interference with ADSEs might be more effectively enforced at the state and territory level within existing road safety laws.

17. Do you support the proposed automated vehicle regulatory framework as a whole, and are there any barriers to its implementation?

The ICA considers the automated vehicle regulatory framework to be broadly appropriate for the current stage of AV technology and is consistent with regulatory developments in other countries.

We consider there are opportunities to improve its implementation by ensuring that the AVSL is clear on:

- communicating with consumers and insurers following suspension, cancellation or surrender of ADSE certification (as per response to question 8)
- requiring ADSEs explicitly share information with insurers to support insurance investigations (as per response to question 10),
- responsibilities and liabilities in cases where an ADSE operated by a remote operator is involved in an accident (as per response to question 11).

Managing automated vehicle safety before the regulatory framework is in place

18. Are measures needed to prevent vehicles with an ADS from being provided to the market before the automated vehicle regulatory framework is in place? Which option or options is most suitable?

The ICA supports the implementation of measures to prevent vehicles with an ADS from being provided to the market before the automated vehicle regulatory framework is in place. This includes:

- **Restricting Market Provision Until Full Compliance:** Prohibit the sale and operation of AVs with ADS and aftermarket installation of ADSEs until they have been fully tested, certified, and comply with the established regulatory framework.
- **Interim Certification:** Implement an interim certification process that allows AVs to be tested and used under controlled conditions while the full regulatory framework is being finalised.
- **Enhanced Trial Regulations:** Strengthen regulations for AV trials, including stringent safety requirements, data reporting, and oversight, to ensure that any pre-regulatory deployment is closely monitored and managed.
- **Restrictions on the operation of AVs** - for instance, automated features could be limited to motorways, as has been implemented in Germany.⁵

Furthermore, as highlighted in the consultation paper, the existing guidelines for written-off light and heavy vehicles need to be reviewed to incorporate considerations for automated vehicles. Insurers heavily rely on these guidelines, last reviewed in 2019, to determine whether a vehicle is repairable or a statutory write-off (only to be used for parts). Expanding this guidance to include ADS considerations is crucial for ensuring consistent write-off decisions and for tracking AVs that should not be repaired.

⁵ [BMDV - Germany will be the world leader in autonomous driving \(bund.de\)](https://www.bund.de)

19. Is it necessary to restrict aftermarket installation of an ADS, or use of an ADS to approved trials only, before the automated vehicle regulatory framework is in place?

The ICA supports the restriction of aftermarket installation of an ADS and the use of ADS to approved trials only before the automated vehicle regulatory framework is fully established to ensure that installations and deployments meet stringent safety and compliance standards. We believe that such restrictions are necessary to:

- Enable better regulatory oversight of ADS deployment to ensure that installations of ADS are performed by qualified individuals and meet safety standards, reducing the risk of system failures and accidents as a result of unregulated installations
- Support a controlled and monitored deployment of AVs to gather data and inform regulatory development to assist in ongoing research and development while maintaining high safety standards.

20. What are the barriers to more complex and large-scale trials in Australia? How could trial arrangements be improved? Should there be provision in the AVSL for interim certification to support trials?

N/A

12 December 2018

Attn: Automated Vehicle Team
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Level 3/600 Bourke Street
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Discussion Paper: Motor Accident Injury Insurance and Automated Vehicles

The Insurance Council of Australia (ICA) welcomes the opportunity to provide a submission to the National Transport Commission (NTC) on motor accident injury insurance and automated vehicles. We also thank the NTC for recently meeting with the ICA and its members on the discussion paper.

The ICA is the peak representative body of the general insurance industry in Australia and represents about 95% of total premium income written by private sector general insurers. Our members underwrite Compulsory Third Party (CTP) schemes in New South Wales, Queensland, South Australia and the ACT and manage claims in the Northern Territory.

The ICA recognises that the advent of automated vehicles has the potential to bring many benefits to road users including increased safety and greater convenience. It will revolutionise the way people travel and may completely change the nature of vehicle ownership. With the continued improvements in automated driving system (ADS) technology and with ADS vehicles already on the road around the world, it is timely for Commonwealth and State Governments to consider how such a revolutionary innovation can be facilitated through the legal framework.

In particular, it is important that current statutory motor accident injury insurance (MAII) schemes can respond to injuries caused by an ADS. The ICA agrees that it is of paramount importance that a person injured by a vehicle with an ADS has timely access to treatment, care and financial support. The Australian community expects as a matter of fairness that no one is disadvantaged because they were injured by an ADS and not a human driver.

The ICA submits the best approach is minimal change to current MAII schemes with gradual change as more practical experience is gained. Changes should only be made if the current legal framework and mechanisms for recovery fail to respond to the challenges of ADSs. Many of the complex changes to MAII schemes contemplated in the NTC paper may be beneficial, but at this early stage and with no claims experience and data, it is difficult to fully anticipate how current MAII schemes or significantly reformed MAII schemes as proposed in the NTC paper will operate when vehicles at different levels of automation increasingly comprise a greater proportion of vehicles on the road.

In this regard the ICA proposes that Option 3 of the discussion paper is the most suitable model through which reform should be implemented. As we detail later in the submission, at this early stage we believe existing MAII schemes have the framework necessary for people to have timely access to treatment, care and financial support and should merely be expanded to cover injuries caused by an ADS. We believe this approach will also enable ADS entities and other potentially liable parties to be held to account. With greater

experience, minor changes to the law may be needed to ensure that there is a legislated right of recovery for insurers against an ADS entity (ADSE). This gradual approach avoids over-complicating reform and will provide a level of stability and certainty to road users, insurers and other potentially liable parties.

The ICA's response to relevant consultation questions is set out in the attachment. We note that some of our members may be providing their own submissions to this discussion paper. We thank the NTC for the opportunity to contribute to this consultation process. Our members look forward to continuing to work with the NTC to ensure that injured road users are provided with equitable outcomes regardless of the type of vehicle involved in the accident.

If you have any further questions, please contact Fiona Cameron, General Manager Policy, Consumer Outcomes at fcameron@insurancecouncil.com.au or 02 9253 5132.

Yours sincerely



Robert Whelan
Executive Director & CEO

ATTACHMENT: ICA RESPONSE TO CONSULTATION QUESTIONS

Chapter 1: Principles

Question 1: Do you agree that the proposed principles are suitable? Should there be additional or different principles.

The NTC proposes that reform should be guided by the overarching principle that *no person should be worse off, financially or procedurally, if they are injured by a vehicle whose ADS was engaged, than if they were injured by a vehicle controlled by a human driver.*

The ICA agrees with this primary principle, but adds that this principle should be clarified so that it is clear that a person injured by an at-fault person also should not be worse off or likewise better off under a scheme than a person injured by an ADS.

For example, it may be an unfair outcome if an inadvertent consequence of the principle was that a common law option for autonomous vehicles in jurisdictions arose where a no-fault scheme or a hybrid scheme exists, thus adding a layer of complexity and inefficiency.

There ought to be equity both ways. Regardless of whether a person is injured by an ADS or by a human driver, they should be able to access an equivalent level of support, and should not be advantaged or disadvantaged over other road users.

The ICA believes any contemplated reform should ensure that the MAII scheme remains flexible, with incremental change as greater experience with claims involving ADS vehicles is gained.

The ICA has no objections to the other listed principles but notes that minimising potential litigation between insurers and manufacturers/ADSEs (Principle 3) and transparency and certainty in accessing compensation (Principle 5) are also important. The ICA also believes that the principles should be more customer focussed, and emphasise that reform should aim to ensure an injured person has easy and timely access to treatment, care and recovery support.

Question 2: Do the problems identified cover the key challenges of personal injury and automated vehicles? Are there other problems that we should consider?

The NTC has identified that MAII laws do not contemplate an ADS as 'driving' a motor vehicle and therefore a person injured in an ADS crash may not recover under current MAII schemes. The ICA agrees that any definitional barriers in the law to MAII schemes encompassing a person injured by an ADS should be addressed.

The NTC has also identified that even if an ADS were deemed as 'driving' the motor vehicle, it may be difficult under fault based schemes to apply negligent liability to an ADS. The ICA agrees that this is also a key challenge under fault based schemes (see answer to Question 5). The outcomes for injured road users should be of paramount importance in considering any reform. In the ICA's view, road users should be able to access an equivalent level of

support, both financial and procedural, regardless of whether or not they are injured by an autonomous vehicle.

The NTC paper highlights that one of the problems with current MAll schemes is that they are generally designed to cover injuries caused by a human driver rather than product faults and therefore a significant redesign of MAll schemes is needed so that the appropriate liable parties bear the cost of ADS crashes.

As discussed below, other than definitional barriers preventing current MAll schemes from encompassing injuries caused by automated vehicles, the ICA has not identified any obvious barriers that current recovery mechanisms available to insurers present with respect to product liability and automated vehicles. Importantly, for a consumer, their claims process should not change. If they are injured, they should continue to be compensated by the insurer. The insurer under its right of subrogation would continue to pursue the manufacturer at-fault behind the scenes.

However, we recognise that greater experience may show otherwise and current schemes may need to be modified so that there is a clear party that an insurer can seek recovery from in the event of an injury caused by an automated vehicle.

As greater ADS experience is gained, recovery mechanisms can be reviewed to ensure they remain appropriate and fit for purpose.

Chapter 3: Barriers

Question 3: Have we accurately identified the key gaps and barriers in legislation? Are there other gaps or barriers we should consider?

The ICA acknowledges that barriers may arise if existing MAll schemes are applied to vehicles with an ADS due to the definition of a driver or uncertainty around whether an ADS is capable of negligence. Nonetheless, the ICA submits that at such an early stage, problems should not be pre-empted and major changes to MAll schemes should not yet be developed. Instead, we suggest that a more prudent approach would be for schemes to respond in accordance with real experience and information gathered. This will facilitate incremental change, subject to the experiences of each state, and allow schemes to respond appropriately to needs as they arise.

The ICA agrees with the NTC's statement that 'having an identified legal entity with responsibilities for the ADS will help insurers in actions for damages resulting from an ADS crash due to a defective or unsafe ADS.'

We note the NTC's third recommendation in the Changing Driving Laws to Support Automated Vehicles policy paper that at conditional, high and full automation, the ADSE is responsible for compliance with dynamic driving task obligations. As we note below (see answer to Question 5), issues may arise in those intermediate stages where the ADS has increasing responsibility for some driving tasks but the human operator is still deemed responsible for the vehicle. As these issues emerge they will require careful consideration.

Chapter 4: Options

Question 4: Is more research needed before a preferred option can be selected? If so, what research?

The ICA submits that research alone is not enough at this stage. The experience of automated vehicles operating under MAll schemes needs to be observed along with ongoing monitoring of the schemes' ability to manage these claims. The ongoing monitoring of ADSEs by an appropriate national entity will be required to ensure that current MAll schemes adequately respond to any issues and challenges that may emerge.

Question 5: Which option best meets the policy principles outlined in Chapter 1? Is there another option not referred to in this paper that would better meet these principles? If so, please explain how it would work.

The ICA believes that Option 3 without a recovery pool best meets the policy principles outlined in Chapter 1 and is the ICA's preferred option. Current MAll schemes should be modified so that injured people have access to compensation and benefits regardless of whether the injury was caused by an ADS or a human driver.

By implication, we do not support Option 1 and Option 2. Our position on Option 4, 5 and 6 is detailed below (see answer to Question 9, 10 and 11).

Where an injury is caused by an autonomous vehicle, the injured road user should continue to be able to claim under the CTP policy attached to the vehicle. The insurer will continue to pay benefits to the injured person as currently occurs. Under the right of subrogation, the insurer is able to pursue the automated vehicle manufacturer. The automated vehicle manufacturer in turn is able to pursue other potentially negligent parties such as manufacturers, software developers, communications providers and infrastructure owners.

As experience of automated vehicles increases, it is possible that there may need to be legislated right of recovery against an ADSE. Whilst at this early stage, we believe current recovery mechanisms work, it is an important principle that insurers are able to recover from an ADSE where any part of an autonomous vehicle contributes to an injury.

We suggest there should be a domiciled ADSE that the insurer has a right of recovery against, which in turn can seek recovery from other negligent parties such as manufacturers, software developers, communications providers and infrastructure owners. Whilst the determination of liability may be difficult (though this can be greatly aided by access to data: see answer to Question 12 below), what is important is that litigation and recovery from negligent parties does not constitute an undue burden on a claimant; it should continue to happen behind the scenes for the consumer. Ultimately, the insurer should continue to bear the burden for recovering from a negligent party as they have the resources to pursue the action.

Having an identifiable entity to sue avoids potential litigation complexity for an insurer as they can simply commence action against a single ADSE deemed liable. This will prevent protracted litigation that would add costs and delays to the MAll scheme.

Ideally, a road user should be agnostic as to the nature of the vehicle that gave rise to the injury. From their point of view, their pathway to recover if injured by an ADS should be identical to if they were injured by a vehicle controlled by a person. The injured road user isn't prejudiced by the fact that MAll schemes may not specifically deal with product liability as currently it is sorted out by insurers 'behind the scenes'. The only relevant factor for a claimant seeking benefits should be the fact that they are injured, regardless of the type of vehicle that caused the injury.

If a light touch approach is adopted there will be greater certainty, efficiency and transparency for road users as their path to recovering compensation for an injury will remain largely unchanged. We also note that the transition to a society where the vast majority of road users will be travelling in fully autonomous vehicles will be progressive. The MAll framework should remain flexible, with incremental change as problems arise and are identified with more certainty with greater experience as the number of autonomous vehicles increase on the road.

There may be a concern that expanding MAll schemes to include injuries caused by an ADS may unfairly shift the cost from the manufacturers to others such as insurers and create moral hazard. In response to this problem, the NTC has proposed the creation of a recovery pool where contributions are made by potentially liable parties. The ICA believes this has some merit but can potentially be complex (see answer to Question 9). We consider a legislated right of recovery against the ADSE for any faults associated with the ADS may address this issue and help to ensure that financial risk aligns with control, as the ADSE would have incentive to ensure that the whole of the vehicle is fit for purpose.

There will be frictional issues at the intermediate stages as vehicles increase in automation. Particularly in at-fault schemes where negligence is required for an insured to recover, the intermediate levels of automation pose issues if humans are still deemed legally responsible, but the ADS has assumed a greater responsibility for the driving task. The ICA submits further thought needs to be given as to how to minimise these friction issues. The ICA believes that there is a need to continually review the operation of MAll schemes, with ongoing research and learning as greater experience is gained with increasing usage of autonomous vehicles.

Question 6: Are the criteria sufficient for assessing the options? Are there alternative or additional criteria that you think should be considered?

The ICA is satisfied with the criteria put forward for assessing the options.

Question 7: Do you agree that the entity most able to manage the risk should be responsible for the cost of damages if the risk eventuates?

Yes. The ICA considers that current recovery mechanisms enable entities most able to manage the risk to be held to account and incentivised to minimise the risk. The insurer can sue the manufacturer and the manufacturer in turn can sue other liable parties. However,

increasing experience of automated vehicles on our roads may show the current legal framework to be inadequate in holding the entity most able to manage the risk responsible. If this arises a legislated right of recovery may rectify this (see answer to Question 5 and Question 3).

Question 8: Should different insurance models be used depending on the level of vehicle automation (conditional, high or full automation)?

The ICA does not believe that different insurance models should be used depending on the level of vehicle automation. This could create friction and introduce unnecessary complexity. Ultimately, multiple models of insurance could undermine the NTC's principle of reasonable and timely access to compensation regardless of the type of vehicle involved in the injury.

Question 9: If you support option 3, are current rights of recovery for insurers sufficient? If not, please indicate what additional rights or powers would be required and why.

The ICA expects that the current laws governing rights of recovery will be adequate. If any new issues arise, these laws can be revisited and amended according to challenges that may emerge.

The ICA considers a recovery pool is not required at this time. While an ADSE importing a vehicle could be required to contribute to a pool, it would be difficult to determine an equitable way to calculate the necessary contributions of potentially liable parties, particularly with little to no data and claims experience in a situation where the majority of the market involves vehicles with an ADS. However, the ICA is open to exploring how this option would operate in practice.

With regards to Option 6, the ICA believes that this could be explored at a later date, but is not required at the present time. Insurers should be able to adapt motor property cover to suit the automated vehicle market.

Question 10: If you support option 4, please provide details on how a purpose built scheme would work, including fault, governance, interaction with common law and existing MAll schemes and caps or thresholds.

The ICA does not support Option 4, as this would create a layer of complexity that is unnecessary at this early stage in the adoption of automated vehicle technology. Injured claimants may be uncertain about which scheme to access. We believe that expanding current schemes will create greater certainty for claimants. We also note that under current schemes, the total number of claims that involve product liability are a very small percentage. Whilst there will be accidents that involve vehicles with an ADS, it is anticipated that there will be less injuries as time goes on.

Question 11: If you support option 5, how should the minimum benchmarks be defined?

The ICA believes that Option 5 may have some merit once further experience is gained. Minimum benchmarking would help ensure that there is consistency in a minimum level of benefits and treatment regardless of which jurisdiction a road user is injured in. Further work would need to be undertaken with all Australian jurisdictions.

Chapter 5: Data and registration

Question 12: Are existing legislative and non-legislative processes sufficient to access automated vehicle data for the purposes of establishing liability relating to a personal injury claim involving an automated vehicle? If not, what additional powers would be required and why?

The ICA considers access to data to be of primary importance in ensuring that any MAII scheme is efficient and premiums kept low. The ICA agrees with the NTC's Safety Assurance for Automated Driving Systems: Consultation Regulation Impact Statement proposal that data recording and sharing requirements be imposed on relevant ADSEs. Of particular importance is the need for individuals and insurers to receive data to consider liability. The concerns with determining liability with a large group of potential at-fault parties such as the software developer, the manufacturer, the telecommunications provider or the road infrastructure can be simplified with access to an automated vehicle's data. Access to data will make the recovery process more timely and efficient for insurers and this will mean lower premiums for road users. We propose that providing access to relevant data for determining liability should be a condition for importing and selling automated vehicles in Australia.

We also agree with the approach taken in Germany. As noted by the NTC 'The German Road Traffic Act...requires an autonomous vehicle to have a data recording device that records the vehicle's control mode and any instances of a request by the vehicle for the driver to take control. The data must be stored for six months, or three years in the event the vehicle has previously been involved in an accident.' This requirement for data retention can help with the frictional issues discussed above. Whilst there is a six month requirement to store data under the German approach, timeframes would need to be considered within the context of Australian jurisdictions where there are divergent time limits to submit a claim.

Any data requirement should mean that insurers are able to access it in a timely manner that doesn't impede the claims process, in order to determine liability involving an ADSE efficiently.

Question 13: If different types of insurance attach to automated vehicles in different states and territories, does this create difficulties for mutual recognition of registration to continue? If so, how should this be addressed?

Challenges may arise if different types of insurance attach to automated vehicles in different jurisdictions, however Option 3 is the option most likely to minimise any issues arising from mutual recognition.



Insurance Council
of Australia

30 July 2021

Attention: Michael McCarthy
Strategic Engagement Advisor
National Transport Commission
Submission – The regulatory framework for automated vehicles in Australia
Level 3, 600 Bourke Street
Melbourne VIC 3000

Sent by email to: automatedvehicles@ntc.gov.au
cc: mmccarthy@ntc.gov.au

Dear Michael

NATIONAL TRANSPORT COMMISSION: THE REGULATORY FRAMEWORK FOR AUTOMATED VEHICLES IN AUSTRALIA

Thank you for inviting the Insurance Council of Australia (Insurance Council) to participate in the National Transport Commissions' targeted consultation about Discussion Paper: *The Regulatory framework for automated vehicles in Australia (June 2021)*.

The Insurance Council welcomes the opportunity to provide feedback to inform how the in-service national safety law for automated vehicles (or Automated Vehicle Safety Law (AVSL)) might fit within the broader end-to-end regulatory framework proposed for automated vehicles in Australia. We understand submissions will inform the final recommendations that will be put to the Infrastructure and Transport Ministers' meeting later this year in November 2021.

Our members offer a range of insurance including motor vehicle insurance and underwrite Compulsory Third Party (CTP) schemes in New South Wales, Queensland, South Australia and the ACT and manage claims in the Northern Territory. Insurers already play an important role providing compensation for injured road users under CTP schemes, indemnifying a policy holder for property damage, and exercising the right of subrogation to recover from negligent parties. Our members also offer public liability and professional indemnity insurance.

The Insurance Council recognises that the advent of automated vehicles has the potential to bring many benefits to road users including increased safety and greater convenience. It will revolutionise the way people travel and may completely change the nature of vehicle ownership. With the continued improvements in automated driving system (ADS) technology and with ADS vehicles already on the road around the world, it is timely for Commonwealth and State Governments to consider how such a revolutionary innovation can be facilitated through the end-to-end regulatory framework.

On behalf of our members, we highlight for your attention some key considerations to inform the design of the end-to-end framework.

1. CTP insurance

We welcome the proposed extension of all MAIIS (CTP and national injury insurance) to provide access for injuries and deaths caused by automated vehicles and that registered owners of automated vehicles be required to hold compulsory third party insurance for their automated vehicle to be registered.



We recognise that any extension to existing schemes might need to carefully consider how the shift away from driver at-fault liability towards product liability might be best accommodated by the regulatory framework. We recognise this may to some extent, be to varying degrees depending on the detail of the regulatory framework for fall-back ready users¹ (if a human controls the automated vehicle for part of the journey) and remote drivers².

The Insurance Council considers it is of paramount importance that a person injured by a vehicle with an ADS also has timely access to treatment, care and recovery support.

We support the guiding principle that *'no person is better or worse off, financially or procedurally, if they are injured by an automated vehicle or vehicle controlled by a human driver'*.

Any contemplated reform should allow for the MAIIS to remain flexible, with incremental change as greater experience with claims involving automated vehicles is gained. We encourage the NTC to work with the insurance industry and CTP regulators to ensure that any CTP redesign is flexible enough to accommodate autonomous vehicles on Australian roads, without unintended consequences.

With greater experience, and over time minor adjustments to the law might be needed to ensure there is a legislated right of recovery for insurers against an ADSE where any part of an autonomous vehicle contributes to an injury. While we are pleased to see all ADSEs will be required to demonstrate corporate presence within Australia as part of the self-certification process³, a domiciled ADSE will facilitate the insurer's right of recovery, with the ADSE in turn being able to seek recovery from other contributing parties such as manufacturers⁴, software developers, communications providers⁵ and infrastructure owners.

(a) Crash data

In the absence of claims experience and data, it will be difficult to fully anticipate how current MAIIS or significantly reformed MAIIS would operate when vehicles at different levels of automation increasingly comprise a greater proportion of vehicles on the road.

We welcome motor accident injury insurers' access to crash data so our members can assess liability. This will allow insurers to understand the risks associated with automated vehicles and develop insurance products covering the technology. We consider it important that data provision occur in a national standardised format to ensure the data can be readily accessed and utilised.

Access to data will make the recovery process more timely, and efficient for insurers and could benefit consumers through more affordable premiums. Access to data will also help to determine liability with a large group of potential at-fault parties such as the software developer, the manufacturer, the telecommunications provider or the road infrastructure.

We suggest the data collected could cover:

- environment, conditions and location of the incident;
- vehicle telematics at the time of the incident;
- cause of the incident; and
- extent of damage to vehicle and/or other property.

¹ NTC Discussion Paper: *The Regulatory framework for automated vehicles in Australia (June 2021)*, pages 39 - 40

² As above for note 1, pages 15 and 41

³ As above for note 1, page 22.

⁴ Noting the framework contemplates that if an ADSE is not the manufacturer of automated vehicles, the ADSE is likely to have contractual relationships in place to formalise the relationship: see as above for note 1, page 21

⁵ Noting the framework proposes the AVSL will require the safe operation of an ADS regardless of telecommunications connectivity failure: see as above for note 1, page 36.



Insurers consider it important there be a requirement for both data backup (for example in the cloud or a blackbox, in the event the automated vehicle is damaged and the data cannot be retrieved, or to counter negative events especially given the multitude of information from an automated vehicle's sensors) and data retention.

Any data requirement would ideally be designed in such a way that insurers are able to access the data in a timely manner so delays do not impede the claims process, and so the liability of an ADSE can be appropriately determined.

We note the framework proposes that access to automated vehicle data by general insurers will be considered at a later stage after States and Territories have considered whether existing legal frameworks support their access to data to assess liability for crashes⁶.

We are interested in whether the timing of this will coincide with when ADSEs will have to self-certify their ongoing data recording and sharing capability, including providing crash data to general insurers⁷. It would be desirable for there to be clear standardised data requirements in place for general insurers by this time, rather than relying on each ADSE to put forward their own individual approach. Our members note the work already being done by the NTC to identify the types of automated vehicle data that government agencies might be able to access⁸ and would be interested in better understanding the extent to which this could be made available to general insurers. We note that the framework anticipates the first supply regulator would forward to the In-Service regulator for their assessment, the part of the ADSE's application about data recording and sharing⁹, so hopefully the detail of this requirement would have been teased out by then.

(b) Access to other data

As infrastructure improves for effective automated vehicle use, insurers will also need access to key environmental and infrastructure data at the same time they are assessing crash data. Effective access to these other types of data will mean in-service safety risks are better understood and mitigated.

2. Non-MAIS injury, damage and loss (public liability insurance)

The Insurance Council also supports the need for 'an appropriate level of insurance' to cover personal injury, death and property damage caused by an ADS. We suggest the level of insurance coverage required could be proportionate to an ADSE's level of risk exposure in the market, which is likely to increase with larger scale trials on open roads. We note that CTP insurance currently provides unlimited cover for personal injury.

Holding the appropriate level of public liability insurance could be a minimum requirement as part of an ADSE's self-certification for entry to market.

Our supporting general comments in response to the four consultation questions posed are set out in Attachment A to this letter.

⁶ As above for note 1, pages 59 - 60.

⁷ We note the framework proposes that as part of first supply corporate obligations, ADSEs must outline their data and record sharing ability with relevant parties, including general insurers: see as above for note 1, pages 22, and 59 - 60.

⁸ NTC 2018-2019 consultations [Regulating government access to C-ITS and AV data](#)

⁹ As above for note 1, pages 21-22.



Insurance Council
of Australia

Feel free to contact me or Fiona Cameron, General Manager Policy, Consumer Outcomes on 0418 889 071 or Fiona.Cameron@insurancecouncil.com.au if you have any queries regarding our submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Hall'.

Andrew Hall

Executive Director and CEO



Attachment A: Responses to consultation questions

1. In your view, will the proposed end-to-end regulatory framework for automated vehicles achieve the key national outcomes of:
 - better road safety?
 - a single national market for automated vehicles?
 - flexible and future-proofed regulation for automated vehicles?
 - clear responsibilities for regulators, regulated parties and consumers?

We identify there could be improved road safety through the design of the crash data sharing framework, by simplifying the regulatory framework and streamlining regulator responsibilities, through the design of the AVSL and through regular reviews of the AVSL given technological advancements.

(a) Crash data sharing frameworks

Refer to our covering letter for our comments about CTP insurance.

(b) Simplifying the regulatory framework and streamlining regulator responsibilities

We consider there are opportunities for simplifying the proposed end-to-end regulatory framework and removing unnecessary complexity so there is enhanced road safety through regulators having clear regulatory remit.

For example:

- with Federal regulator functions being split between two agencies (e.g. the First Supply regulator being empowered to authorise market entry¹⁰ and recall automated vehicles¹¹, while the In-Service regulator is empowered to monitor, investigate and enforce compliance with the AVSL¹²). This may not be as seamless, compared with one regulator who might be empowered to authorise entry to market, and then recall an unsafe automated vehicle, following the findings of an audit or systemic crash investigation. We also note it is proposed that both the First Supply regulator and the In-Service regulator will assess an ADSE's application for self-certification¹³; and
- there is the potential for administrative complexity with State and Territory police being able to investigate individual road crashes, and the in-service Federal regulator also being able to assist those investigations as well as investigate crashes that may indicate systemic safety issues that go beyond examining proximal causes¹⁴.

We are interested in whether there has been any detailed consideration as to whether there could be enhanced simplification and leveraging of resources and knowledge if the ACCC's remit is expanded rather than setting up a new bespoke Federal regulator. We note the ACCC already oversees certain industry sectors, has a consumer education and protection remit, and has a product safety and recall remit that is well understood by businesses that could be expanded to extend to automated vehicles. We consider this might be the more intuitive home, given the shift

¹⁰ As above for note 1, page 15.

¹¹ As above for note 1, page 46-47.

¹² As above for note 10.

¹³ As above for note 9.

¹⁴ As above for note 1, pages 58-59.



towards product liability when it comes to automated vehicles, with the ACCC able to call on the expertise of other specialist road safety agencies if needed.

(c) Design of the AVSL

We consider the AVSL should be expressed as a cause of action and should not be limited to a regulator being able to take action. This is because ordinarily, an insurer will have a right of subrogation to litigate against negligent parties. Under a legislated general duty, insurers would have the right to recover against a defined entity whose negligence gave rise to the insured's injury. Allowing for private litigation rather than merely relying on the regulator will help to keep premiums down, as the insurer can recover the cost where the insured is not the at fault party.

(d) Regular reviews of the AVSL given technological advancements

We recommend that there be regular reviews of the AVSL every 2-3 years after commencement (instead of 7 years after the AVSL is enacted¹⁵) to assess the effectiveness of the regime and whether it is operating as intended. Given the rapid and ongoing development of ADS technology, regular reviews would facilitate the opportunity to consider whether adjustments to the regime are necessary over time, at least until the technology is bedded down.

2. Are there any gaps in the regulatory framework?

Refer to our covering letter for our comments about CTP insurance and non-MAIS injury, damage and loss (public liability insurance).

We identify there are potential gaps in the regulatory framework regarding responsibility for road defects and the agency responsible for promoting consumer awareness / education and the handling of consumer complaints.

(a) Responsibility for road defects

Given that automated vehicles will rely on certain standards for the design of roads, our members are interested in how defects in the road infrastructure would be treated in determining the fault of an accident.

For example, would the relevant State or Territory Government be financially accountable for missing lines, vandalised signs, etc., that might contribute to an accident involving an automated vehicle.

We consider a defect-free road would be a critical factor upon which the ADSE would depend when designing an ADS that has ability to interact with other road users (e.g. pedestrians and cyclists) and also respond to unusual events and changes in the external operating environment¹⁶.

(b) Agency responsible for promoting consumer awareness / education and the handling of consumer complaints

Our members are interested in whether there will be greater consideration as to which agency in the end-to-end regulatory framework might be responsible for enhancing consumer awareness and understanding of how automated vehicles work, and the customer's role in ensuring their optimum level of road safety, for example by initiating critical software updates, reporting faults, and making sure they take the automated vehicle to a person qualified to make hardware repairs or modifications.

¹⁵ As above for note 1, page 70

¹⁶ As above for note 1, page 40.



Our members are also interested in which agency in the end-to-end regulatory framework would be empowered to respond to consumer complaints about automated vehicles in the event of a customer dispute with an ADSE (e.g. the ADSE refuses to give the customer their crash data so they can verify whether they were at fault).

There are already established frameworks for customer complaints handling in a range of consumer markets which involve having a properly resourced internal dispute resolution (IDR) process that meets certain requirements¹⁷ and an external complaints handling body for escalated complaints (e.g. access to the relevant State / Territory Office of Fair Trading or an Ombudsman scheme¹⁸).

We are interested in what might be the envisaged avenues for complaints handling regarding automated vehicles and ADSEs, and how valuable insights from those complaints might be passed on to the relevant regulator to take action, whether that be involving safety regulation or educating consumers.

We note there does not seem to be a requirement for an ADSE to self-certify they have an ability to respond to consumer complaints¹⁹, although discussion about the framework does seem to acknowledge there could be certain types of complaints that could be resolved outside of court²⁰.

3. What are the impacts of the regulatory framework on your sector, including potential future work required?

Refer to our covering letter for our comments about CTP insurance.

Our members also identify a range of other ways in which the CTP insurance sector might be impacted by the new end-to-end regulatory framework that relate to pricing of insurance risk, developing new insurance products to cover personal mobility, adjusting approaches to processing and assessing insurance claims, and responding to changing market dynamics.

(a) Pricing of insurance risk

The data sharing framework will be highly relevant to insurers' ability to price risk which ultimately informs the price the customer pays for the insurance policy (also known as the insurance premium). If insurers are also able to access government and law enforcement data in a timely, streamlined manner, this information could inform insurers' assessments of price and risk.

As the body of information about automated vehicles develops through trials, experiments, and tests, insurers will also take this information into account to adapt their price modelling as new data becomes available.

(b) Developing new insurance products to cover personal mobility

Our members currently have regard to the 'intended use' of a vehicle when pricing insurance risk. Both consumers and insurers are currently facing a changing environment for the use of their cars, with the ability to 'rent' out cars owned for personal or household use, as well as operate as a de-facto taxi (through ride sharing apps). As an insurer's premium is modelled on the specific use/(s) as outlined in the agreement, the framework and modelling will continue to evolve (as evidenced by some insurers covering vehicles being used for ride sharing). It is possible this type of intended use might apply to automated vehicles.

¹⁷ E.g. Australian Standard AS/NZS 10002:2014 *Guidelines for complaint management in organizations*.

¹⁸ For a list of existing Ombudsman schemes in Australia, see the [members](#) of the Australian and New Zealand Ombudsman Association (ANZOA).

¹⁹ As above for note 9.

²⁰ As above for note 1, page 55.



Further, a standard term in insurance policies is whether the customer is 'reasonably aware' of any pre-existing damage to their vehicle which might invalidate a claim on their insurance policy. Under the proposed regulatory framework, it could be expected that the ADSE would be responsible for identifying any damage to the vehicle and communicating it to the consumer (whether the passenger, driver or owner of the vehicle), or face liability in the event of a crash, given it is unlikely a reasonable consumer would be able to identify the majority of defects or damage in an automated vehicle given they might not be visible).

(c) *Adjusting approaches to processing and assessing insurance claims*

In the absence of reliable and consistent crash data about automated vehicles, our members anticipate they may need to change the way they process and assess claims made on policies. Our members observe the proposed regulatory framework does not seem to contemplate who might bear the additional costs of assessing hybrid incidents involving both automated vehicles and human drivers. It is likely the initial assessments will be costly to conduct as claims assessors 'learn on the job' and spend time educating themselves about automated vehicles and what they need to identify who is at fault.

(d) *Responding to changing market dynamics*

Our members consider greater thought might need to be given to the degree of fault that is attributable to an owner of an automated vehicle as distinct from a manufacturer, and even where there might be shared fault. For example, fault might be with the owner (for failing to do a software upgrade or altering the software themselves) or the manufacturer if there is a systemic manufacturing defect, and even with a distributor if they continue to sell the faulty automated vehicle. Our members consider there could be changed market dynamics as a result of this shift.

4. What are the impacts of each in-service safety legislative implementation approach on your sector?

Relevant to crash data sharing frameworks, our members express a preference for one nationally consistent regulatory approach to any associated privacy and data security reforms²¹.

²¹ As above for note 1, pages 56, 64 and 74.