



**FEDERAL CHAMBER
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6 February 2019

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

Attention: Marcus Burke

Motor Accident Insurance and Automated Vehicles

Dear Mr Burke,

Please find attached the FCAI submission on the above NTC discussion paper issued in October 2018. If you have any questions in relation to the above please contact James Hurnall or Tony McDonald at the FCAI on 02 6247 3811.

Yours sincerely,

Tony Weber
Chief Executive

FCAI Response to NTC discussion paper re Motor Accident Insurance and Automated Vehicles



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**Mr Tony McDonald, Director Industry Operations
Mr James Hurnall, Technical Director**

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Introduction

1. The Federal Chamber of Automotive Industries (FCAI) is the peak industry body for the motor vehicle industry in Australia. Its members comprise nearly all of the importers of passenger, light commercial and SUV vehicles, and motor cycles in Australia.
2. The FCAI welcomes the opportunity to respond to the Discussion Paper prepared by the National Transport Commission on "Motor Accident Injury Insurance and Automated Vehicles".
3. In this response the FCAI uses the same acronyms and abbreviations as are used in the Discussion Paper.

Principles

4. The FCAI agrees that the overarching principle should be 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".

5. The FCAI is also broadly supportive of the 5 supporting principles subject to the following comments:
 - a. Ideally, there should be a consistent approach throughout Australia to dealing with personal injuries caused by motor vehicles - whether or not the vehicle's ADS was engaged. Having such a patchwork of regimes dealing with something as ubiquitous as motor vehicles (and unfortunately accidents involving motor vehicles) defies common sense. The FCAI, recognises that, at this stage, such a suggestion is unrealistic and beyond the scope of the Discussion Paper. Nonetheless the FCAI believes that any reforms should be a step towards, rather than away from, a nationally consistent approach to compensating victims of motor vehicle accidents.
 - b. A corollary to the overarching principle is that there should not be any distinction between accidents involving vehicles with or without their ADS activated. It follows that there should be no distinction in the regulatory treatment or any potential insurance models based on the level of vehicle automation (whether Conditional, High or Full Automation).
6. The FCAI is of the view that there should be one additional overarching principle that should inform the reforms being considered:

"At the very least, no ADSE should be worse off as a result of any reform."
7. It is commonly accepted that the introduction of vehicles fitted with ADS's, particularly High and Full Automation systems, will lead to a significant reduction in motor vehicle accidents with a commensurately significant reduction in deaths and injuries. The benefits of such a significant reduction cannot be overstated. Accordingly, it is important that there are no disincentives placed in the way of manufacturers which might be considering introducing into Australia vehicles equipped with ADS's. Australia is a small market and in the absence of a local automotive manufacturing industry is subject to international competitive forces. If manufacturers are faced with risk

uncertainty and increased costs they are less likely to be favourably disposed towards the Australian market, hence delaying the introduction of vehicles fitted with ADS.

The options

Option 1: No change – rely on existing legal framework

8. The FCAI agrees that option 1 is unlikely to be acceptable, for the reasons outlined in the Discussion Paper and because, at least in some jurisdictions, it is unlikely to satisfy the overarching principle.

Option 2: Exclude injuries caused by an ADS from MAll Schemes

9. Option 2 does not satisfy the overarching principle in any jurisdiction and accordingly the FCAI agrees with the NTC that it is not acceptable.

Option 3: Expand MAll schemes to cover injuries caused by an ADS

10. The FCAI agrees with the NTC's suggestion that Option 3 best meets the assessment criteria and would be the simplest and easiest to implement.
11. However, the FCAI does not support the suggestion that there be a compulsory automated vehicle supply chain reinsurance pool as outlined in paragraph 4.4.4 of the Discussion Paper. It says this for 3 main reasons:

- a. The reinsurance pool is a response to one of the suggested consequences of option 3 - the complexities of proving causation and establishing liability and collections involving an ADS, may make it difficult for an MAll scheme insurer to recover claims costs from ADSE's or manufacturers which would inevitably result in significantly higher premiums for all vehicles.

Courts and tribunals are well used to dealing with complex issues relating to causation and liability. It might well be that the first few cases take some time to be resolved but as the jurisprudence builds and precedents are established it will only be in a few unusual instances that it will be necessary to go to Court. Motor vehicles are already complex pieces of machinery, made up of a multitude of components (increasing including software), manufactured by a large and long supply chain. ADS's are no different.

- b. Establishing a national insurance pool with compulsory contributions made by all parties in the automotive vehicle supply chain does not allow risk to fall on the entity that is best placed to control the risk. The risk is shared collectively meaning that there is limited incentive on individual participants to reduce their risk by improving the performance of their product.
- c. There is an argument to suggest that the beneficiaries of the introduction of ADS technology should bear a proportional cost of the technology. One of the greatest beneficiaries will be the community. The benefits that accrue to the community at large are very significant and accordingly it is appropriate that the community (through the government as its proxy) should bear a portion of the costs of ADS technology, even though this cost will be substantially less than the value of the community benefit.

12. The Discussion Paper suggests that the assumption that automated vehicles will have fewer crashes than conventional vehicles may not be correct. As the FCAI understands it, there is little doubt that automated vehicles will have fewer crashes than conventional vehicles which should lead to reduced insurance premiums.

Option 4: Purpose-built automated vehicle scheme

13. In the FCAI view, option 4 is problematic. If the purpose built scheme is national, one of the key questions will be whether it will be fault, no fault or some sort of hybrid scheme. Whatever the decision, the national scheme will be inconsistent with at least some of the State's and Territories' existing schemes dealing with accidents involving vehicles driven by humans. As such the scheme is unlikely to satisfy the overarching principle.
14. If the purpose-built scheme is specific to each State and Territory and consistent with the existing regime in each State and Territory, it would appear to be little more than what is suggested in Option 3.
15. One further comment: Given the existing differences between the regimes in each of the States and Territories, it would be extremely ambitious to expect States and Territories to be able to agree upon a national scheme to deal with accidents involving ADSE's. Having said that, if it was possible, it might well pave the way for a nationally consistent scheme for all accidents involving motor vehicles. If so, it might well be worth making the effort.

Option 5: Minimum benchmarks

16. While the FCAI is not across the details of the NIIS, it understands that the NIIS does not deal with issues associated with liability. In many of the Australian jurisdictions establishing liability for a motor accident is a critical matter and the issues around liability are some of the most complex. As such the NIIS is perhaps not the most useful scheme to refer to as a point of comparison.
17. In addition, the FCAI suspects that the amount of work required to be done in order for the States and Territories to agree on minimum standards would be substantial. Again, the work might be justified if it paved the way for a nationally consistent scheme for all accidents involving motor vehicles.

Option 6: Single insurer

18. The FCAI has no comments on option 6.