



The Motor Accident Insurance  
Commission response to the National  
Transport Commission's  
**Motor Accident Injury Insurance and  
Automated Vehicles Discussion Paper**

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## 1.0 Introduction

The Motor Accident Insurance Commission (MAIC) welcomes the opportunity to make a submission in response to the National Transport Commission's (NTC) 'Motor Accident Injury Insurance and Automated Vehicles' Discussion Paper (the Discussion Paper). The introduction of automated vehicle technology represents an exciting opportunity for the community, industry and governments alike. However, to fully realise all the potential benefits this technology will bring, it is essential we have the right frameworks in place to support their safe operation. Identifying and addressing barriers to accessing compensation for personal injuries caused by an Automated Driving System (ADS) is a critical step in achieving this. As this issue crosses multiple government agencies, MAIC, in formulating this submission, has consulted with the Department of Justice and the Attorney-General, Queensland Treasury, Queensland Police Service and the Department of Transport and Main Roads. It should be noted at the outset that MAIC's support for the principles and preferred option identified in the Discussion Paper is in-principle only and should not be seen as a commitment by the Queensland Government to regulatory change.

Autonomous vehicles are no longer a futuristic concept. Trials of automated vehicles with their life-saving technology are already underway in several states, including Queensland, with more planned for the future. Such trials are essential in helping us to better understand the technology and how it will integrate with and improve road safety and transport options for Queenslanders. It is equally important that there is a collaborate approach to the development of end to end regulation for automated vehicles. To this end, MAIC has worked closely with interstate regulators and actively contributed to the issues and options presented in the Discussion Paper. MAIC welcomes the opportunity for ongoing collaboration and looks forward to receiving the NTC's final recommendations.

## 2.0 Queensland's CTP Scheme

As is the case in every jurisdiction in Australia, Motor Accident Injury Insurance (MAII), or Compulsory Third Party (CTP) insurance as it is more commonly known, is mandatory and paid at the time of vehicle registration or renewal. Since Queensland's CTP Scheme (the Scheme) was first introduced in 1936, it has been privately underwritten by licensed insurers who accept applications for insurance and manage claims on behalf of motor vehicle owners

The Scheme is governed by the *Motor Accident Insurance Act 1994* (MAI Act) and regulated by the MAIC. It provides motor vehicle owners with an insurance policy that covers their

unlimited liability for personal injury caused by, through or in connection with, the use of the insured motor vehicle. The protection afforded by the CTP policy extends indemnity to the driver of the vehicle and passengers, for example, whose negligence in respect of the insured motor vehicle causes injury to a third party.

For those injured in motor vehicle accidents, the Scheme provides access to compensation where negligence against a third party can be established. As the Scheme is fault-based, circumstances can arise where a driver or injured person cannot bring a successful CTP claim because he or she is solely to blame for the accident or there is no other negligent party against whom he or she can bring an action. There are, however, instances where an injured party is still able to pursue a CTP claim even if they were partly responsible for the accident.

Since 1 July 2016, an at-fault driver or any other person who sustains eligible, serious personal injuries as a result of a motor vehicle accident, may be eligible to receive necessary and reasonable treatment, care and support from the National Injury Insurance Scheme Queensland (NIISQ). The NIISQ complements the CTP scheme by ensuring those who are seriously injured on our roads receive the treatment, care and support they need, regardless of fault, and even if they were injured in a single motor vehicle accident.

A key distinction with Queensland's NIISQ (compared to other states) is that, in addition to being one of the most affordable schemes, it also enables a catastrophically injured person with common law rights to choose to receive their entitlements as a single lump sum payment or to continue to receive medical treatment, care and support from the NIISQ over their lifetime.

The Nominal Defendant is established under the MAI Act to provide access to compensation for injured persons where the at-fault vehicle is uninsured or cannot be identified. The Nominal Defendant is also required to meet the cost of claims in the event a licensed CTP insurer becomes insolvent.

Since 1 October 2000, the Scheme has operated a Vehicle Class Filing Model, based on a community rating philosophy<sup>1</sup> and where classes are determined by vehicle type and purpose of use. The Scheme's licensed insurers determine and file their premiums for each of the 26 vehicle classes every three months within floor and ceiling premiums set by MAIC. The setting of a floor and ceiling range by MAIC is informed by actuarial analysis and other factors. It is

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<sup>1</sup> Community rating is where all owners of a particular class of vehicle pay the same within the premium range, based on the collective claims experience of the class and regardless of driving history, driver age, vehicle usage and other like factors.

aimed at ensuring premiums are reasonable, neither excessive nor insufficient, and enabling insurers to file competitive premiums.

CTP insurance premiums are collected by the Department of Transport and Main Roads through vehicle registration renewal notices and are distributed to the Scheme's licensed insurers. This efficient system of premium collection minimises administration costs within the Scheme and only requires one convenient transaction by motorists for both registration and CTP insurance.

## 3.0 Principles

The Discussion Paper outlines a number of options to accommodate the arrival of automated vehicles on our roads and ensure those injured or killed in accidents involving such vehicles have a clear pathway to obtain treatment, care and compensation.

From MAIC's perspective, it is important to highlight from the outset that any decision on reform options should consider community expectations of 'fairness'. It is submitted that, in the context of motor accident injury schemes, fairness means:

- protecting motor vehicle owners and drivers from having to pay the cost of liability claims made against them as a result of a motor vehicle accident;
- enabling injured people to access prompt medical treatment and rehabilitation support to aid their timely and optimal recovery;
- making sure the claims process is uncomplicated and straightforward;
- decision making (both in terms of liability and quantum of the claim) is timely to reduce unnecessary cost, stress and delay in settlement of the claim;
- financial compensation is both reasonable and commensurate with the injuries sustained; and
- premiums paid by motor vehicle owners which are used to deliver these benefits to injured claimants must be affordable in any compulsory scheme.

With these elements of fairness in mind, MAIC is supportive of the overarching principle, however, would recommend it be broadened to read:

“No person should be worse **or better** 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.”

This amendment promotes equality and fairness for injured people in their access to rehabilitation and compensation – regardless of whether they are injured by a human driver or a vehicle operated by an ADS.

MAIC is supportive of the five supporting principles proposed by the NTC. However, it is proposed that consideration be given to four additional principles to support the overarching principle:

1. The arrangements should be implemented in a manner that complements existing administration arrangements in each jurisdiction. This includes arrangements such as the collection of CTP premium by registration authorities;
2. The arrangements should ensure simplicity of scheme design and administration;
3. The arrangements should be flexible given the rapidly changing environment. They need to be effective both in the early stages of development and adoption of automated vehicle technology, and into the future, as there are advances in technology and increasing numbers of automated vehicles on Australian roads; and
4. The arrangements should not be so complex to comply with as to impede innovation and the take up of automated vehicles or cause automated vehicle manufacturers and Automated Driving System Entities (ADSEs) to bypass the Australian market.

It is submitted that these additional supporting principles will ensure that personal injury insurance arrangements for automated vehicles are equally efficient, cost-effective and easy to access and comply with, as they are now for existing vehicles requiring human drivers. It will also ensure that Australian jurisdictions are inviting and accessible markets for the trial and deployment of automated vehicles.

## 4.0 Criteria to assess the options

MAIC agrees with the five assessment criteria put forward by the NTC and believes the preferred insurance arrangements should meet or exceed these criteria. In addition, it is proposed that two further criteria be added:

1. Will the option minimise additional administrative and regulatory burden on consumers, administering agencies (for example, registration authorities) and insurance regulators?
2. Is the option likely to increase the cost of insurance for consumers to an unaffordable level?

It is also considered important that reforms to CTP insurance to accommodate automated vehicles are based on a sound understanding of the technology and associated level of risk. In this regard, MAIC is actively monitoring automated vehicle technology and supporting the trials of automated vehicles to further this understanding.

## **5.0 Options to address the problems**

### **5.1 Preferred Options**

Queensland is proud to have the second most affordable CTP premiums in the country and a scheme that preserves long-standing common law rights. The preferred option should support the existing scheme, meet the assessment criteria noted above and be in line with the overarching principle and supporting principles outlined in the Discussion Paper. MAIC suggests a considered and measured approach would be appropriate given the projected gradual adoption of automated vehicles.

MAIC therefore supports in-principle the implementation of Option 3 or a hybrid of Option 3 and Option 5.

#### **5.1.1 Option 3: Expand MAll Schemes to cover injuries caused by an ADS**

Option 3 proposes amendments to Queensland's CTP legislation to remove barriers that restrict the access by people injured in accidents caused by an ADS. Injured people would therefore have access to compensation and benefits regardless of whether the injury was caused by a human driven vehicle or an automated vehicle whose ADS was engaged. This option provides clarity for injured people who will be able to approach the same scheme regardless of whether their injury was caused by a human driven or vehicle where the ADS was engaged. It is also the option most likely to meet community expectations of 'fairness'.

Early lodgement of a claim for injuries caused by a motor vehicle is imperative for the prompt offering of rehabilitation to those who are injured and prevents delay which could lead to poorer injury outcomes. Injured people who are uncertain about where to lodge their claim and how to access compensation and rehabilitation may delay lodging a claim. These delays can also have implications regarding limitation periods which may bar them from claiming altogether.

MAIC supports Option 3 in-principle conditional on further consideration being given to a more robust model to enable recovery by insurers from third parties such as ADSEs, manufacturers and providers of smart transport infrastructure<sup>2</sup>. At present, Queensland's CTP legislation focuses on defects in the vehicle or negligence by a repairer. For Option 3 to be implemented effectively, the recovery provisions in Queensland legislation would need to be broadened to capture entities involved in the manufacture, deployment and operation of automated vehicles. This would ensure the scheme is not burdened by costs arising from defective automated vehicles and facilitate the transfer of risk to the entities most able to manage it. It would not be the case that automated vehicles and the entities involved in their deployment would be responsible for all automated vehicle accidents. It is simply envisaged that a broader range of entities would need to be added to the recovery provisions of the MAI Act to enable recovery where a defect, or other negligence, has occurred in the supply, operation or maintenance chain. While in-principle support is provided for the purpose of responding to the Discussion Paper, any proposed changes to Queensland's CTP legislation would require formal Queensland Government policy endorsement.

A portion of levies and fees on CTP premiums go towards funding hospital and emergency services. By incorporating automated vehicles into the existing schemes, Option 3 ensures the consistent and predictable funding of these agencies which assist in the operation of the scheme and provide life-saving assistance to those who are injured in motor vehicle accidents.

The implementation of Option 3 would also ensure compatibility with Queensland's lifetime care scheme, the NIISQ. Queenslanders who sustain serious eligible personal injury in motor vehicle crashes should be able to rely on the NIISQ regardless of whether the vehicle was human or ADS driven. Given the NIISQ is a no-fault scheme, individuals who are injured through fault of their own whilst driving or controlling lower-level ADS vehicles would also be eligible for the scheme.

### **5.1.2 Option 5: Minimum benchmarks**

Under Option 5, national benchmarks would be agreed by states and territories on eligibility, coverage and benefits for personal injuries caused by an ADS crash. As levels of eligibility, coverage and benefits already widely vary nationwide, a hybrid of Option 3 and Option 5 may be required to prevent some jurisdictions requiring major reform should the recommended model require higher or lower eligibility, coverage or benefits than currently exist. This hybrid

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<sup>2</sup> Smart transport infrastructure allows vehicles and infrastructure to 'talk to each other' to share real-time information about the road and to generate safety-related warning messages for drivers.



would recognise existing scheme differences and give flexibility where unanimous agreement by jurisdictions cannot be reached.

The NIISQ is a recent example of agreed national benchmarks which facilitated the creation of state and territory lifetime care schemes. Benchmarks were agreed and set for the NIISQ that specified factors such as levels of coverage and eligibility criteria. It was then up to each state and territory to decide whether to simply meet the benchmarks or provide additional coverage and benefits. However, when contrasted with minimum benchmarks for automated vehicle CTP, the creation of the NIISQ was more complex in that it required the establishment of administering agencies and introduction of new legislation. For automated vehicles to be incorporated into existing CTP schemes as proposed in Option 3, no new regulatory body would need to be created and only amendments to existing insurance and transport legislation may be required. There may also be some additional administrative cost to expand the expertise and function of regulators such as MAIC but this is anticipated to be minor.

Given the existing differences between CTP schemes in Australian states and territories, the agreement of national benchmarks would set the minimum level of insurance that is nationally required. A combination of Option 3 and Option 5 would give all jurisdictions the flexibility to implement Option 3 within their existing schemes and ensure motorists that travel interstate are not underinsured.

Possible minimum benchmarks could include:

1. Injured people are only required to approach one scheme and/or one insurer;
2. The minimum level of coverage for automated vehicles is third party personal injury insurance;
3. Sufficient recovery mechanisms are implemented to ensure schemes and/or insurers can recover from those in the automated vehicle supply, operation and maintenance chain for product defects and failures; and
4. It is compulsory for automated vehicles to obtain CTP insurance.

## **5.2 Alternate Models**

### **5.2.1 Option 1: Rely on existing legal framework**

Option 1 relies on existing causes of action for anyone injured in an ADS crash. This includes making a claim under existing MAIL schemes, under the Australian Consumer Law (ACL), in contract law for breach of contract or in negligence based on a breach of a duty of care. MAIC

considers Option 1 to be insufficient to meet the criteria, overarching principle and supporting principles.

Given the requirement of human ‘fault’ in Queensland’s CTP scheme, there is great uncertainty as to whether injuries caused by an ADS would be compensable. Injured people would therefore be required to undertake protracted and expensive litigation against a corporate entity (likely based overseas) to obtain rehabilitation and compensation.

MAIC agrees that the remainder of the available causes of action would also be highly problematic for the reasons identified by the NTC in the discussion paper. This includes caps on damages, limitation periods, manufacturer defences and legislation not fit for purpose. It is envisaged that injured people would have difficulty identifying proper respondents and assigning liability as well as increasing the burden on the judiciary.

## **5.2.2 Option 2: Exclude injuries caused by an ADS from MAI schemes**

Option 2 requires amendments of MAI legislation to exclude accidents and injuries caused by an ADS from the Queensland CTP scheme. Anyone injured by an ADS would not be able to access compensation or rehabilitation through MAI schemes. MAIC considers Option 2 to be insufficient to meet the criteria, overarching principle and supporting principles.

Implementing Option 2, without any amendment to other existing cause of action or the creation of a new scheme for ADS crashes, would cause injured people the same uncertainty as implementing Option 1. Injured people would have to rely on the ACL, a claim for breach of contract or a claim for negligence based on a breach of duty of care. These schemes lack the rehabilitative focus of MAI schemes and require significant legal expense over an extended period of time to receive some, if any, compensation.

As these existing causes of action are not designed to meet the needs of individuals injured in ADS crashes, injured people may be precluded, or have their claim for compensation reduced, by caps on damages, limitation periods and manufacturer defences.

## **5.2.3 Option 4: Purpose-built automated vehicle scheme**

Option 4 requires the creation of a purpose-built scheme for those injured in ADS crashes. It could be a national scheme, or a state and territory scheme, designed to mirror existing MAI scheme arrangements in each jurisdiction. This option could co-exist with Option 2. The implementation of Option 4 would be extremely burdensome on government and consumers

alike. This option would reduce in significant duplication of regulatory resources and would be challenging for administering agencies (including registration authorities). MAIC considers Option 4 to be insufficient to meet the criteria, overarching principle and supporting principles.

Regardless of whether a state and territory or national scheme is selected, Option 4 would be costly to government and cause both owners and injured people confusion. It is likely that drivers and owners of automated vehicles capable of human input would have to purchase two policies of insurance: one for when their car is being driven manually and one for when their vehicle is being operated by an ADS. This may lead to affordability issues and consequently a higher proportion of uninsured or underinsured vehicles, for which liability, in Queensland, would fall back onto the Nominal Defendant.

For those injured by automated vehicles, they would have to identify whether a vehicle was being driven by a human or operated by an ADS in order to ascertain against which scheme to claim. This is fraught with difficulty. For those who are seriously injured and are unable to recall an accident or third parties such as pedestrians, cyclists and those in other vehicles, this process of identifying the scheme against which to claim may take some time, require access to police data and prevent the injured person accessing timely rehabilitation.

As the legislation which underpins the NISSQ is mirrored on Queensland's CTP legislation, there may also be uncertainty as to which scheme would manage injuries for those with serious eligible injuries such as a traumatic brain injury or quadriplegia.

## **5.2.4 Option 6: Single insurer**

Option 6 requires a single insurer to provide "fully comprehensive" motor accident insurance under a single policy covering all liabilities (property and personal injury) for automated vehicles. This option could co-exist with Option 2. MAIC considers Option 6 to be insufficient to meet the criteria, overarching principle and supporting principles.

The implementation of this option would only be viable if the existing CTP schemes were disbanded and a common national scheme instituted for non-autonomous and autonomous vehicles. This option also requires private insurers to offer all policies of insurance to participate; including CTP, third party property, automated vehicle and comprehensive insurance. As there are varying levels of coverage, notably within comprehensive insurance, this option would also require the difficult task of attempting to regulate 'how much' comprehensive insurance is required to facilitate the requirements of this option.

The cost of purchasing an all-encompassing insurance policy for vehicle owners is likely to be prohibitive and could lead to a higher proportion of uninsured or underinsured vehicles, for

which liability would fall back onto the Nominal Defendant. It would also remove the ability for vehicle owners to insure their vehicle for occurrences such as property damage at a level they decide. Additionally, as MAIC regulates CTP premiums by setting floor and ceiling prices for all vehicle classes, this mechanism to ensure affordable pricing of these policies is unlikely to be possible and expose consumers to unregulated and increased vehicle ownership costs.

The key benefit of Option 6 is certainty of respondent for any loss or damage arising from an ADS crash. Injured people would not have to identify whether a vehicle was being driven by a human or by an ADS as they would approach the one insurer regardless.

For the reasons described, MAIC considers such a radical overhaul of CTP for all vehicles is an excessive response particularly given the expected gradual adoption of automated vehicles by motorists.

## 6.0 Data

MAIC considers that access to verifiable vehicle crash data is imperative to the successful operation of any insurance option, especially when control of the vehicle will, at lower levels of automation, be shared between the human driver and the automated driving system. Injured people, police and insurers must be able to access this data to determine liability relating to an accident involving an ADS. It is considered that existing legislative processes may not be sufficient nor strong enough to compel an ADSE to provide information identifying who or what was in control of a vehicle at a particular point in time. This is further complicated by current legislative provisions which provide a defence to avoid self-incrimination.

The current data sharing framework under the MAI Act and the *Motor Accident Insurance Regulation 2018* provides for the sharing of information between licenced CTP insurers, law enforcement agencies, hospitals, emergency services and a range of other entities. It is unlikely that existing legislative powers would extend to requiring ADSEs to provide insurers with information on an ongoing basis. It should be noted that any proposed changes to legislation governing data would require formal Queensland Government policy endorsement.

It would be the case that specific legislative provisions would be required to enable efficient and affordable access to information about who, or what, was in control of a vehicle after a crash has occurred. Consideration should also be given to appropriate use and disclosure conditions to ensure information provided for determining liability is not used for other purposes, unless explicitly permitted. A legitimate alternate purpose could include disclosure of accident causes to the regulator, as is currently provided by insurers, to facilitate targeted

road safety initiatives as well as effective pricing of CTP insurance for classes of vehicles. Should an option where recovery from entities in the automated vehicle supply chain is possible, data on accident causes and corresponding recovery amounts would be important to disclose to regulators for purposes such as calculation of premiums and risk relativities. Feedback has previously been provided by Queensland Government agencies to the NTC's 'Regulating Government Access to C-ITS and Automated Vehicle Data' discussion paper on the topics of access and use of data.

A legislative framework is important, not only for a positive power to authorise the collection, use and disclosure of information, but also to address potential breaches of fundamental legislative principles, including privacy. Any access by agencies to data, including by law enforcement agencies, needs to be proportionate, transparent and subject to oversight.

## 7.0 Mutual Recognition of Registration

Queensland legislation requires that interstate registered vehicles on Queensland roads must have a current CTP policy. This ensures protection and recompense for all third parties injured or killed on Queensland roads.

It is essential that the principle of mutual recognition of registration and CTP must be maintained. Ensuring the continuation of this arrangement is a key element of meeting the overarching principle and supporting principles proposed by the NTC. It would be an extremely poor outcome if an automated vehicle with interstate registration was to have an accident in Queensland causing injury without any or sufficient insurance. The injured person would either be left without any recourse, or, the cost of any compensation or rehabilitation would fall back to the Nominal Defendant; putting the interstate owner and/or driver at risk of personal financial liability. Conversely, if a Queensland-registered vehicle is uninsured or underinsured and causes an accident interstate, they too are at risk of personal financial liability.

The adoption of an insurance arrangement which does not facilitate the interstate movement of vehicles with mutual recognition of registration and appropriate insurance cover would put motorists and injured people at risk and is not supported by MAIC.