

DIRECT LINE: (03) 6336 4831
E-MAIL: pkingston@maib.tas.gov.au

OUR REF:
YOUR REF:

12 December 2018

National Transport Commission
NTC Discussion Paper - Motor Accident Injury Insurance and Automated Vehicles
Level 3/600 Bourke Street
Melbourne VIC 3000

MAIB Submission to the National Transport Commission Discussion Paper: *Motor Accident Injury Insurance and Automated Vehicles*

This submission is the Motor Accident's Insurance Board's response to the National Transport Commission (NTC) discussion paper on Motor Accident Injury Insurance (MAII) for Automated Vehicles (AVs).

The submission builds on the response provided to you by the Tasmanian Department of Treasury and Finance on 2 October 2018, which represented the views of Treasury and the MAIB.

Principles

The overarching principle and the supporting principles in the paper are appropriate and provide a sound basis to address the issues identified. A minor enhancement to the wording of the overarching principle is proposed (changes in bold):

"No person should be worse off, **or better off**, financially or procedurally, **in the relevant jurisdiction**, 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 MAIB's position is that:

- all injured parties should be afforded fair and equal protection regardless of the type of vehicle that is involved in the accident;
- the ultimate solution devised to deliver this outcome should be through existing MAII schemes; and
- the resulting regulatory arrangements should provide for cost effective and timely solutions for resolving the issues.

While the MAIB supports the existing principles in the Paper, several additional principles are proposed to help guide the development of a solution for MAII for AVs:

- Simplicity in design and administration.
- Secure a fair and equitable distribution of the costs associated with motor accidents caused by automated vehicles between manufacturers, automated vehicle owners, traditional vehicle owners, insurers and taxpayers. In any solution design, liability should be assigned to the right entity. That is, the right people should pay for the risk they are putting on the road. Existing MAII schemes should

not be taking on more risk without appropriate means to securing the necessary funding to underwrite that risk.

- Ensure that the model is flexible and future proof in order to account for the gradual development of the automated vehicle industry and the ability of the model to support an initial mixed fleet of AVs and human controlled vehicles.
- Promote competition and safety innovations: The model should focus on stimulating competition between automated vehicle manufacturers and ADS developers in terms of vehicle safety.

Options

As outlined in the Tasmanian response on 2 October 2018, the MAIB re-states that of the six options outlined in the Paper to address the issue of compensation under AV caused accidents, only two options are viable and most likely to deliver outcomes consistent with the principles:

- Option 3: expanding all schemes to cover injuries caused by autonomous vehicles, with the potential for variations between states and territories; and
- Option 5: establishing minimum benchmarks to apply to all states and territories.

The other options either do not address the issue (ie. Options 1 and 2), or propose a new scheme and/or bodies to provide personal injury insurance which would be unnecessarily costly and would not be required given that there are already multiple schemes operating across Australia.

Further comment on the MAIB's preferred options is provided below.

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

This is the preferred option for the MAIB, as it provides an effective solution to protecting the rights of all injured people. However, effective implementation of this option is crucial in ensuring that the financial sustainability of the MAll schemes is not compromised, including minimising legal costs and disputes and optimising recovery rights of the MAll schemes from liable entities where AV's are involved in accidents.

To achieve these objectives, it is proposed that the implementation of this option should include the following elements:

- The injured person should deal with the existing MAll scheme/insurer (in their jurisdiction) for claims management, regardless of whether the vehicle involved had its autonomous system activated or not at the time of the accident.
- The vehicle owner should continue making premium payments (regulated under the relevant MAll scheme) to the MAll insurer as currently occurs (NB: AV owners may need to pay additional AV policy insurance - refer notes below).
- If the vehicle "at-fault" is an autonomous vehicle AND the ADS system was engaged at the time of the accident, then the MAll insurer is automatically entitled to a recovery payment. This recovery payment is a strict liability payment.

This approach relies on:

- Specifying AV's for the purposes of determining fault and assigning recovery payments - including whether all levels of AVs should be treated in the same way, or whether lower levels of automation may move such vehicles into the non-automated vehicles for the purposes of this model. Further, how vehicles will be identified in the MAIB scheme or other State and Territory MAll schemes (e.g. through a new class/classes of vehicles).
- An appropriate recovery payment system that minimises legal disputes, administration costs, time delays AND ensures that the liability is borne by the entity responsible.

- Identifying the entities that should be making the recovery payments (e.g. AV vehicle manufacturers, software companies, etc).
- The amount of the recovery payment, when it is made and how the recovery payments process and funds would be managed. For example, through a separate AV recovery pool (something like the terrorism reinsurance pool) or the AV vehicle owner taking out additional AV policy insurance.

The MAIB, in conjunction with all other Heads of Motor Accident Injury Schemes (HMAIS), is still exploring details of several options in order to address these outstanding matters.

Option 5: Minimum Benchmarks

The MAIB supports the potential for a series of minimum benchmarks to assist in guiding the implementation of solutions in each jurisdiction (the benchmarks could supplement a solution devised under Option 3). These minimum benchmarks could assist in stopping the existing variations across HMAIS becoming more pronounced with the introduction of AVs.

The minimum benchmarks, if required, could include the following:

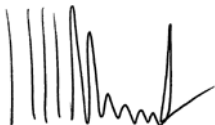
- Injured people only have to deal with one insurer.
- Injured people have access to the same rights and benefits, regardless of the ADS status.
- There is an automatic right of recovery to indemnify the insurer for loss incurred through the payment of a claim resulting from an accident caused by an ADS, against the companies capable of managing safety risks associated with their operation.
- There is a recovery mechanism which ensures that those in control of the risk pay for it to enable the right of recovery.
- The scheme is compulsory for automated vehicles.

Conclusion

The MAIB remains committed to the implementation of an appropriate model to manage the personal injury insurance arising from the introduction of AV's and is willing to continue to work with the NTC and all HMAIS to develop a refined solution that meets the principles outlined in the Discussion Paper, most notably ensuring that all people injured in motor vehicle accidents have equal access to compensation and that the cost and complexity of implementation is minimised.

If you have any queries in relation to this submission, please contact me (pkingston@maib.tas.gov.au or 0475 941 114).

Yours sincerely,



Paul Kingston
Chief Executive Officer