



12 December 2018

Attn: Motor Accident Injury Insurance and Automated Vehicles Discussion Paper
National Transport Commission
Submitted online via the NTC submission portal

Thank you for the opportunity to provide feedback on the Motor Accident Injury Insurance and Automated Vehicles Discussion Paper.

IAG's preferred model is a combination of option three for the immediate-term and option five for the longer term. We believe a staged approach that removes today's barriers, whilst giving opportunity for the future to be shaped by continuous learning from today's trials to help build to a future which is truly designed to keep the safety of people at the heart of any future scheme design. We believe there is a once in a generation opportunity to create consistency and to consider extending cover if we can reduce risk and cost from the scheme through technology.

Option three offers the opportunity for states and territories to open their schemes to automated vehicles without undertaking large scale change and introducing layers of complexity to the way in which participants in Motor Accident Injury Insurance (MAII) Schemes operate today. It is IAG's view that changes should be made in an incremental fashion, allowing schemes to learn and develop as the understanding of the real-world experience of connected and automated vehicles develops.

In the long term, IAG has consistently supported the principles in option five of the Discussion Paper. The development of a national regulatory framework for Motor Accident Injury Insurance removes the different experiences that road users are subject to when they cross state and territory borders and is important for reasons of both fairness and simplicity.

About IAG

With this response, IAG continues with contributions to the range of NTC discussion papers as we aim to take a leadership role in promoting the safe and sustainable introduction of connected and automated vehicles onto our roads.

Our purpose is to make your world a safer place, which means we are working to create a safer, stronger and more confident tomorrow for our customers, partners, communities, shareholders and our people throughout Asia Pacific. IAG is the parent company of a general insurance group, with operations in Australia and New Zealand. Our businesses sell insurance under many leading brands, including: NRMA Insurance, CGU, SGIO, SGIC, Swann Insurance and WFI in Australia; NZI, State, AMI and Lumley Insurance in New Zealand.

As one of the largest motor vehicle insurers in the Asia-Pacific, IAG develops, underwrites, sells and manages claims for general insurance products that are sold directly and indirectly to customers and businesses. IAG insures over 3.2 million passenger vehicles in Australia. IAG also provides CTP insurance in New South Wales, South Australia and the Australian Capital Territory.

NTC Discussion Paper Questions

IAG endorses the content of the Insurance Council of Australia submission and provides the following further comments:

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

IAG has consistently called for the need for a national, principles-based approach to MAll schemes. We are therefore supportive of the NTC's methodology of defining and identifying scheme principles to provide guidance when assessing and developing options for supporting people injured in a motor accident involving an automated vehicle.

MAll schemes aim to provide timely, effective and efficient support to assist injured people's health recovery and to return them, as much as possible, to their previous levels of social and economic participation. In providing this service, MAll schemes work to reduce the financial burden of injury on the individual and on society.

The NTC discussion paper outlines the following overarching principle for MAll's (developed by the Heads of Motor Accident Injury Schemes).

"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"

IAG believes that this principle should be re-stated so that people injured in motor vehicle accidents are able to simply and easily access equitable levels of support whether they were injured by a vehicle controlled by a human driver or by an autonomous vehicle with its ADS engaged.

The NTC paper goes on to list five supporting principles which underpin the above overarching objective. IAG believes that these principles provide preliminary criteria to assessing MAII scheme options but do not adequately address the key focus of the scheme which is the injured person. Instead, MAII scheme principles must be customer focused and designed around customer needs. A customer focused scheme is one that is simple to access, enables and promotes recovery and facilitates access to the right benefits when they are needed.

IAG also questions the feasibility of principle four “Existing state and territory benefit regimes should not be required to change”. All MAII schemes have experienced changes in their benefit structures to meet changing community expectations and ensure scheme sustainability. It is not unreasonable to expect that scheme benefit regimes will continue to change.

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

The NTC has described three scheme design features which have the potential to prohibit MAII schemes from being able to support a person injured in an automated vehicle crash (where the ADS is engaged). These features are: the legislated definitions of “control of”, “driving” and “driver” that have been adopted by schemes, the need for fault to be established in some schemes to access compensation and the significant focus on establishing human error rather than product fault.

IAG agrees these scheme features are challenges and that the definitions of “control of” “driving” and/or “driver” will need to be amended in most, if not all, jurisdictions to provide a clear mechanism to enable MAII and NIIS schemes to support those who are injured by in an automated vehicle crash (where the ADS is engaged). If MAII schemes are going to support people who are injured in accidents with automated vehicles, then IAG believes that it will be necessary for fault-based schemes to consider reform to enable all injured people, regardless of fault, access to early support. Without such review, people injured in automated vehicle accidents may be precluded from being provided timely recovery support where a fault determination is complex and protracted.

IAG believes that there are also additional challenges (alluded to but not discussed in the NTC paper) that need to be considered if MAII schemes are going to be able support people injured in AV accidents. These challenges relate to the connectivity of automated vehicles and those instances where the connectivity infrastructure has failed. This may include scenarios where a telecommunication provider experiences a disruption to their service, a sensor fitted on external infrastructure (eg. stop sign) fails or there is a major cyber security event. In these instances, “control of” or “driving” of the automated vehicle

does not solely rest with the ADS. Instead it rests with the interaction between the external environment and the ADS. IAG believes that these types of accidents also need to be defined and included in legislation to enable MAll schemes to respond to those who are injured in accidents involving connectivity disruption.

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

The NTC discussion paper identifies that the process of establishing product fault versus driver fault in automated vehicle crashes will be a challenge for MAll schemes. IAG believes that this challenge will need to be met by not only examining the legislative framework for MAll schemes, but also considering the interplay of other legislative frameworks such as the design rules for motor vehicles and state and territory licensing regulations. These frameworks work together to ensure the safety of vehicle fleets on our public roads and to establish the obligations of those who cause a vehicle to be in the road network.

An example of how these frameworks might interact to support the safe operation of automated vehicles on the road is provided in the paper. In this example, Germany have amended their Road Traffic Act to require that an automated vehicle must be fitted with a black box to identify whether the driver of the ADS had control at the time of the accident. This amendment supports an efficient approach to determining fault in automated vehicles on German roads. Therefore, IAG proposes that the incremental development of MAll scheme legislation must be in concert with the registration and licensing regimes to which it is inextricably linked. This concurrent calibration of the complementary legislation will provide the best results for road network users.

A second issue raised within the Discussion Paper is how the costs of ADS malfunction and the resultant contribution to personal injury costs will be apportioned to MAll scheme costs. Existing consumer law may be inadequate to ensure that insurers have an efficient right of recovery against an ADS and additionally may not cover the broader range of people eligible for benefits under MAll schemes. To assist with the recovery process, IAG supports the NTC's proposal that an ADS must be an Australian domiciled corporate entity. These entities should be required to hold product liability insurance and ensure they have adequate assets so that insurers within MAll schemes could pursue recovery. This would facilitate the rights of insurers to pursue any parties at fault in an automated vehicle crash, including manufacturers.

The proposal of a national reinsurance pool to facilitate cost shifting from MAll schemes to manufacturers may create a streamlined means of recovery for insurers, however IAG believes that it may be premature at this time to proceed with this. Awaiting greater understanding of the emerging use of automated vehicles and the characteristics of automated vehicle crashes would be preferable. Deciding which parties should contribute to the pool and the amounts that they should pay would be challenging when there is limited data to guide its development.

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

IAG acknowledges that there is a need for something to occur quickly to ensure that people who are injured on Australian roads can access timely treatment, care and recovery support because vehicles with highly autonomous features are already available in the market. For this reason, we suggest that as a first step an approach is selected without the need for further research, while a longer-term solution is developed based on observed experiences and a movement towards national alignment.

IAG believes option three proposed in the paper provides a good first step. Option three leverages the current MAII schemes and ensures that all people injured in vehicle accidents can access equitable and efficient access to treatment and recovery support.

Question 5: Which option best meets the policy principles outlined in Chapter 1?

As discussed above, IAG considers that option three offers the best intermediate solution to meeting the policy principles outlined by the Heads of Motor Accident Injury Schemes. Expansion of the current MAII schemes to include people who are injured in automated vehicle crashes will ensure that they receive equitable and timely access to support which is essential to optimising health recovery. IAG believes that there is a significant risk that an injured person's recovery will be hampered if they cannot access MAII schemes and instead must pursue compensation through product liability and contract law provisions. It is well recognised that these are not designed to deliver timely, health focused support.

Expanding the current MAII schemes also provides a single compensation access pathway for all people injured in vehicle crashes in each state and territory, regardless of the type of vehicle involved. This single pathway will promote transparency for injured people and facilitate greater understanding and certainty around the types of support and compensation that they can access.

For option three to meet principles three and five proposed by the Heads of MAII schemes, legislative changes would be required not only for MAII frameworks but for vehicle registration and licensing frameworks. For example, automated vehicles would require a data recording device to be mandatory in the design rules to meet registration conditions so that liability in an accident could be quickly determined. In addition, the obligations of those who own automated vehicles would need to be clearly defined in registration and/or licence conditions. This could include ensuring that "state/territory-based" rules have been uploaded to the vehicle for all jurisdictions in which it will be travelling. Therefore, IAG proposes if the MAII scheme is to be expanded, the resultant MAII legislative changes are calibrated and coordinated with state/territory-based licensing and registration legislative frameworks.

It is noted that option three may not meet policy principle four as outlined by the Heads of MAII schemes.

However, IAG sees this objective of “no change in benefits” as somewhat simplistic as it fails to recognise that MAll schemes have regularly changed throughout the last three decades in response to public opinion and road innovations e.g. seat-belt use, community expectations of providing support for those with catastrophic injuries sustained in an at fault accident. Options one, two and four may better meet the principle of “no change to benefits” however these options would not support principles one and two within the Discussion Paper.

A further benefit of option three as a first step approach to supporting people who are injured in AV crashes, is that this option requires no significant investment in new infrastructure. This approach allows for time in which learnings can be taken from the automated vehicle driving experience and can be assessed and monitored. When the characteristics of automated vehicle crashes are more clearly understood, states and territories will be in a better position to determine the optimal legislative and insurance frameworks for these vehicles.

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

IAG believes that the primary objective of MAll schemes is to provide timely, effective and efficient support to assist injured people return, as much as possible, to their previous levels of health, social and economic participation. We believe that the NTC proposed options need to be assessed against their ability to support this objective.

It is widely acknowledged that making a personal injury compensation claim can be a stressful experience and that increased levels of stress can hamper an injured person’s recovery. IAG suggests that the NTC options be assessed against additional criteria that include the following: ease of access to treatment and care, ease of navigation within the scheme and promotion of health recovery.

IAG notes that one of the criteria that the NTC proposes for assessing MAll options is their ability to provide a price signal to manufactures of automated vehicles to reduce risks of technology failures. IAG supports that there needs to be a mechanism to attach long term fiscal responsibility to automated vehicle manufacturers.

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?

IAG agrees with the NTC’s proposal that the ADS will need to have a legal entity, domiciled within Australia, to facilitate insurers being able to pursue recoveries where the ADS has been found to have malfunctioned.

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

IAG supports the need for a stepped approach to managing personal injuries arising from automated vehicle crashes. We acknowledge that it is difficult to predict the rate of uptake of automated vehicles, and the rate of progression in vehicle automation, as this will be dependent upon many factors such as government support and community acceptance. It is reasonable to expect that different insurance models may need to be considered when most of our road fleet is automated, and most vehicles are operating at high and full automation.

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

See answer to question 3.

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 MAlI schemes and caps and thresholds.

IAG does not support option four. Our experience of recent MAlI reform in NSW and our participation in the ACT MAlI scheme review has highlighted the complex and time-consuming nature of developing MAlI schemes. IAG does not believe that this option would provide an efficient or cost-effective solution for supporting people injured in an automated vehicle accident.

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

IAG believes that option five offers the best approach for a long-term solution for MAlI schemes in Australia. The current arrangement whereby each state and territory has different legislation governing access to support following a motor vehicle accident, leads to confusion and uncertainty for injured people. It also results in differing levels of access to rehabilitation and financial support, depending upon where an accident occurs and in which state or territory the injured person resides. IAG believes that a nationally consistent scheme, based on a set of national principles will reduce this inequity and uncertainty for injured people.

The NTC recognises that the NIS has established a precedent whereby states and territories worked together to ensure that people catastrophically injured in motor vehicle accidents would all be able to access a minimum level of support. IAG believes, that when there is more certainty around automated vehicle performance on our roads, states and territories should collaborate to establish national benchmarks for supporting injured road users across Australia.

A set of national standards for MAll schemes will provide certainty for injured people and promote equity and fairness across schemes. Recent research has highlighted that injured peoples' perceived fairness of their compensation scheme is associated with their health outcomes, with poorer health outcomes being related to lower levels of perceived fairness¹. If recovery from injury is to be the primary purpose of a personal injury insurance scheme, then promoting fairness across schemes must be a priority.

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?

IAG agrees that insurers will require access to both crash data and connected and automated vehicle behaviour data, which may be sourced through different means. Standardisation, readability and accessibility of data will be critical to ensure efficient outcomes for all entities participating in the connected and automated vehicle network. The types of data produced, the length of time for which it is stored and who can access it and how should all form parts of a robust legislative framework. A framework which should balance individual's rights to control their own personal data with the needs of insurers, and others, to access substantial amounts of data to deliver services necessary in an automated vehicle world. Inability of an automated vehicle manufacturer to supply crash and other data in a prompt and useable manner should be reason to refuse to allow the vehicle onto the road.

Access to data is determined by the nature of the data in question and a national approach to classifying data is consistent with IAG's view that the injured person should not experience any additional friction points by the introduction of connected and automated vehicles on the road. Opportunities from nationalising the approach may include the immediate availability of crash data to insurers. This offers the opportunity to intervene even earlier than is possible today by providing treatment, rehabilitation and support within potentially hours of the crash occurring, rather than waiting weeks or months in some cases to be notified by the injured person.

However, while a proliferation of data and connectivity provides a vast range of opportunities to improve the way services are delivered, IAG considers it essential that individuals' personal data remains their own, not for distribution or re-use. Automated vehicles are predicted to become recorders of highly personal data by biometric sensors, and vehicle occupants must be able to own and control this data. They must be able to opt out of supplying all their data, except that which is necessary to provide the service.

Given the importance of data to the successful adoption of connected and automated vehicles, the importance of ethical use, privacy and appropriate access cannot be overstated. As Australia adopts this

¹ Elbers et al., (2016). Differences in perceived fairness and health outcomes in two injury compensation systems: a comparative study. [BMC Public Health](#) 16:658.

new technology, the framework to retain data to enable participants to learn and improve services is critical, and there should be a preference for greater amounts of data storage and retention than bare minimum standards. But data collection and retention must always be done with the first lens of examining whether it is personal data to ensure appropriate rights and restrictions are applied.

A national approach to data collection, use and access is necessary to ensure that rights applied in one state are not unwittingly eroded in another when a vehicle occupant crosses a border.

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 it be addressed?

Mutual recognition of AV registration by states and territories could be jeopardised if different states adopt diverse types of insurance for AVs. It will be critical that registration, licensing and MAII and motor vehicle insurance legislative frameworks are considered concurrently when determining the best methods for promoting automated vehicle deployment, supporting injured people and prioritising road safety for all road users. IAG believes that in the long term, a principle-based, nationally consistent approach to registration, licensing and insuring automated vehicles will provide the best result for road users.

IAG welcomes the opportunity to discuss any issues raised in this submission further. Please contact Louise Kerkham, Principal, Public Policy & Industry Affairs on 02 9292 1206 or Kate Hopman, Manager, Road Safety & Regulatory Policy on 02 9088 9836.

Sincerely,

A handwritten signature in blue ink, appearing to be 'CW', with a long horizontal flourish extending to the right.

Cecilia Warren
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IAG