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National Transport Commission
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MOTOR ACCIDENT INJURY INSURANCE AND AUTOMATED VEHICLES

Suncorp Group Limited (Suncorp) welcomes the opportunity to provide a submission in response to the NTC's discussion paper - *Motor Accident Injury Insurance and Automated Vehicles*.

About Suncorp

As Australia's largest private personal-injury insurer and one of Australia's largest motor vehicle insurers, the discussion paper affects Suncorp and its customers in various ways. This includes in our capacity as a provider of compulsory third party (CTP) motor injury insurance in New South Wales, Queensland, South Australia and the Australian Capital Territory, as well as workers compensation insurance in all competitively underwritten Australian jurisdictions. Suncorp also offers a range of general insurance, life insurance, banking and superannuation products through various brands and distribution channels.

Executive Summary

Suncorp supports Option 3 (unmodified) because covering everyone injured under CTP insurance schemes (referred to as motor accident injury insurance (MAII) schemes in the discussion paper) will provide the best outcomes for injured people. It utilises Australia's existing personal injury portfolio and claims-management capability, infrastructure and regulatory oversight, whilst meeting the overarching principles contained in the discussion paper.

Option 3 delivers certainty for injured people that they will be provided a consistent level of care, support and (where applicable) access to financial compensation, regardless of the degree of automation of the vehicles involved in the accident. These people will avoid complex, multi-party common law proceedings and the costly uncertainty it generally entails. Further, Option 3 can be expected to maintain affordability for policy holders and financial stability for Australia's CTP schemes.

Whilst we agree that a mechanism to minimise the friction costs associated with insurers recovering claims costs from automated driving system entities (ADSEs) may be required at some point in the future, a reinsurance pool is not necessarily the most cost-effective and workable mechanism. Therefore, *Suncorp does not recommend commencing the process of establishing a reinsurance pool at this point in time.*

Suncorp has long advocated for CTP schemes to provide no-fault coverage, delivered primarily through defined benefits. We note that the introduction of automated vehicles into at-fault schemes brings additional complexity, due to the issues of negligence and liability impacting the degree of support provided to the people injured. *Suncorp recommends the NTC highlight the advantages of states and territories adopting no-fault, defined benefits CTP schemes to facilitate the uptake of automated vehicles.*

Option 3: benefits and risks

CTP schemes throughout Australia have been constructed on the premise that a human driver, sitting in the driver's seat, is in control of the vehicle. In jurisdictions with at-fault cover, the basis of the scheme is tort law, meaning the negligence of a driver is required for the CTP insurance policy to respond.

Accidents caused by automated vehicles are inconsistent with this model. The first priority should be to ensure that people injured in an accident caused (or caused in-part) by an automated driving system (ADS) vehicle are not disadvantaged by being left without the same level of care and support provided to those injured as a result of the negligence of a driver.

Benefits of Option 3

Utilise existing capability

Option 3 leverages the existing infrastructure, expertise and regulatory frameworks that have been established with respect to CTP insurance policy management. This includes premium collection, community-rated price setting and prudential oversight (APRA for private-sector insurers), which are managed to maintain affordability for motorists and financial sustainability for the scheme.

Further, managing the claims of people injured in motor accidents is complex. If conducted poorly, it can have devastating health, social and financial impacts on the injured and their families. Extensive investment in systems, capability and regimes of regulatory oversight has occurred over many decades in each jurisdiction. Option 3 is the most efficient as it utilises this existing claims-management infrastructure and delivers the benefits of this investment to injured people.

Achievable equity within jurisdictions

The different jurisdictions within Australia provide substantially different CTP insurance benefits regimes, with the degree of no-fault cover being the most obvious discrepancy. Whilst equity *across* jurisdictions may be desirable, it is not realistically achievable in the NTC's desired timeframe. Option 3 does achieve equity between ADS and non-ADS vehicles *within* jurisdictions. It is achievable because jurisdictions do not have to substantially reform or align their benefits regime to comply.

Maintaining progress towards no-fault, defined benefits

Whilst generally founded on the principles of tort law, Australian CTP schemes have been progressively moving from fault-based, common law schemes towards no-fault, defined benefits scheme designs. In essence, this is an evolution towards a recovery model, rather than the historical focus on an adversarial process resulting in financial compensation. This evolution has occurred because no-fault defined benefits are generally more efficient, directing more of every dollar in premium towards injured people, rather than towards 'friction' costs (particularly legal costs).

Further, statutory CTP schemes have extensive legislation, subordinate legislation and guidelines that direct CTP insurers to provide all reasonable and necessary medical treatment and support. In many jurisdictions, income replacement is also provided in order to minimise the financial stress to injured people.

Excluding people injured in ADS vehicle accidents from the extensive array of entitlements and protections that exist within CTP schemes and forcing them to seek compensation through alternative common law mechanisms would constitute a retrograde step. The implications for the health and financial wellbeing of these injured people are likely to be negative, with potentially severe long-term consequences for those with serious injuries.

Risks of Option 3

Option 3 is not without risks. If a workable mechanism for CTP insurers to recover claims costs from ADSEs cannot be established, all CTP policy holders would effectively subsidise ADSEs. This would create the perverse result of

the ADSEs with the worst safety record (causing the most injuries) benefiting the most. This is unfair and may compromise the financial stability of schemes over time.

ADSEs may be able to utilise the 'state of the art' defence, limiting the ability of insurers to successfully recover incurred claims costs. ADSEs may also adopt a highly adversarial approach, which could drive up the cost of the recovery process for CTP insurers (and lifetime care schemes), rendering the recovery process unviable.

While Option 3 has the advantage of not requiring jurisdictions to substantially change their scheme design, it may entrench the current discrepancies that mean injured people (particularly drivers) have dramatically different levels of support depending on where in Australia their accident occurs.

Option 3: reinsurance pool modification and recovery mechanisms

Expanding CTP insurance schemes to cover injuries caused by an ADS vehicle means that CTP insurers will require the ability to recover claims costs from the liable ADSE (or other relevant liable entities) in an efficient and cost-effective manner. This may require the introduction of a mechanism and/or a suite of provisions to minimise the friction costs to CTP insurers that are generated by the process of recovering claims costs.

A reinsurance pool is a potential mechanism to achieve this, and is likely to make it easier for CTP insurers to recover claims costs. However, establishing a reinsurance pool may prove to be a substantial and complex undertaking, bringing associated costs. Without data from which to base the calculation of payments into the pool, it may be difficult to gain agreement from ADSEs and other parties on their individual levels of contribution.

Different manufacturers will develop varying systems of hardware and software to provide the automation capability for each of their vehicles. Manufacturers may argue their systems are far less likely to fail than those of their competitors, and therefore their vehicle should pay less into the pool. A pool risks disadvantaging those manufacturers who have invested more in ensuring their vehicles are safe, and advantaging those manufacturers who have not.

ADS vehicles are expected to reduce accidents, but it is not yet known if that will occur and, if it does, the degree to which accidents causing injury (and injury severity) will reduce. Any levy¹ on ADSEs would increase the purchase price of ADS vehicles, creating a barrier to uptake.

In the absence of robust data that quantifies the relative safety of each vehicle with ADS functionality, levies could ultimately prove to be inadequate or excessive. Therefore, *Suncorp considers it premature to conclude that a reinsurance pool is necessary and the preferred option to address the potential issue of prohibitively high recovery costs.*

Our initial analysis² has not identified any substantial barriers in the existing legislative and legal framework that would prevent us undertaking recovery proceedings against an ADSE in the event their vehicle caused an accident resulting in injury.

Suncorp recommends an approach of allowing the existing recovery framework to operate, in order to test its effectiveness in enabling CTP insurers (and lifetime care schemes) to recover from ADSEs or other relevant liable entities.³

¹ It is assumed that this levy would be in addition to the requirement for each vehicle to have CTP insurance.

² Comprehensive analysis of this issue has not yet been conducted by Suncorp.

³ It is important to note that the existing recovery process can be costly and time consuming, mean recovery of low-value claims may not be economically viable.

A number of elements will be required to support the implementation of Option 3. To enable CTP insurers to consistently and efficiently undertake recovery, it would be necessary for ADSEs to have an Australian-based entity with prudential oversight to ensure solvency.

Further, it is recommended that *clear requirements for ADSEs and other relevant parties to provide easily accessible accident data (from a source within Australia to avoid the need to pursue overseas discovery) be implemented*, in order to enable CTP insurers to determine liability. This is likely to expedite the recovery process and reduce recovery costs. The data should be unedited, readable and standardised.

Suncorp also recommends that *comprehensive national data concerning ADS vehicle accidents that result in injury is gathered and distributed to all CTP insurers (public and private)*.⁴ This data would enable early identification of systemic issues (that may precipitate a product recall) and potentially form the basis of a future mechanism to minimise recovery costs.

As more ADS vehicle accidents occur, this data will inform the question of whether a bespoke recovery mechanism is necessary and the best design of this mechanism. A number of options are potentially available including a statutory dispute resolution entity, sharing agreements between insurers and ADSEs, the development of specialised insurance policies for ADSEs, a reinsurance pool or indeed a solution that has not yet been conceived.

At-fault vs no-fault

No-fault CTP jurisdictions can more easily absorb ADS vehicles into their schemes because the complexities of determining liability are avoided. In at-fault schemes the question of liability determines the benefits available to the injured person, particularly the driver. A vehicle's CTP insurance policy does not respond to cover injuries sustained by the driver of that vehicle in an at-fault scheme.⁵

Issues may arise in at-fault (and hybrid) schemes when the 'driver' of an ADS vehicle is injured due to a failure of the ADS, resulting in an accident. The driver may assert that they were effectively a passenger at the time the accident occurred, and therefore they should receive the same coverage from CTP insurance as other passengers.

If the same coverage passengers receive was extended to these drivers, there would then arguably be a degree of inequity between drivers of ADS vehicles and non-ADS vehicles – particularly injured non-ADS drivers where the cause of the accident was not definitively their negligence but another factor (such as hitting a kangaroo).

Providing no-fault coverage is desirable in and of itself. The introduction of ADS vehicles adds to the rationale for at-fault schemes to reform their coverage and benefit structure, bringing greater equity to people injured in the various Australian jurisdictions. *Suncorp recommends the advantages of no-fault coverage and defined benefits be highlighted in the process of facilitating the uptake ADS vehicles in Australia.*

Option 3 pathway

Potential elements of the progression towards Option 3 may include:

- CTP legislative amendments to ensure accidents involving ADS vehicles are recognised by the scheme⁶

⁴ Sharing of this data would also assist Motor insurers and could expedite product recalls when systemic faults are identified.

⁵ Lifetime care and support schemes for motor accidents now operate on a no-fault basis in all Australian jurisdictions, but only provides care to those with catastrophic injuries.

⁶ This would include addressing the issues of the definition of "driver".

- amendments to ensure CTP insurers are ‘on risk’ for accidents involving ADS vehicles and therefore required to manage the claims of each injured person in accordance with the requirement of the relevant jurisdiction⁷
- requirements for ADSEs (adjacent to the safety accreditation process) to have an Australian presence with appropriate prudential oversight to ensure they remain solvent and able to meet all financial obligations that result from claims cost recovery processes by CTP insurers
- standards relating to the provision of data from ADSEs to insurers (CTP and Motor) to determine the distribution of liability with respect to the cause of an accident
- national collection and distribution (to insurers) of ADS vehicle crash data in order to facilitate early identification of systemic issues and compile a data set for potential use in a future cost-recovery mechanism
- ongoing industry-wide monitoring of the recovery process with a view to potentially establishing a mechanism to minimise recovery costs
- initiatives to maximise consistency of coverage across jurisdictions, including the expansion of no-fault cover.

Response to additional discussion paper options

Option 1 – Rely on the existing legal framework

Suncorp does not support Option 1. This option does not provide certainty for people injured in accidents involving ADS vehicles and may require them to pursue a common law claim against an ADSE or other entity. This is likely to be an expensive exercise over an extended duration, with no provision of medical care or income support in the interim. Claims may be unsuccessful due to ADSEs utilising the ‘state of the art’ defence.

Option 2 – Exclude injuries caused by an ADS from MAII schemes

Suncorp does not support Option 2. Whilst in theory it provides clarity that CTP insurers are not liable for injuries caused by ADS vehicles, in practice there is likely to be a blend of driver negligence and ADS failure, rather than a clear distinction. Separating the various elements of liability would be problematic, creating greater uncertainty for injured people and insurers, potentially resulting in poor health outcomes and scheme instability.

As with Option 1, injured people excluded from the MAII scheme may have to pursue a common law claim, which is likely to be highly prohibitive and would not produce the best outcomes for those injured.

Option 4 – Purpose-built automated vehicle scheme

Suncorp does not support Option 4. Establishing an additional scheme constitutes unnecessary duplication. Further, it may be unclear which vehicles would be assigned to the purpose-built scheme and which would be assigned to the MAII scheme. As with Option 2, the absence of a clear separation of liability in many accidents would create uncertainty for injured people and insurers, with a high potential for friction between the two schemes.

⁷ A potential mechanism to ensure CTP insurers accept the claims of injured people is to deem the human ‘driver’ (the person sitting in the driver’s seat) negligent, with the legislation framed in a manner that does not hinder the ability of CTP insurers to recover from ADSEs. Deeming the driver negligent is likely to be a workable mechanism until a significant number of level 5 vehicles are operating on the road. All ADS vehicles below level 5 provide assistance to the human driver, but ultimately the driver has a measure of accountability for being in control of the vehicle.

Option 5 – Minimum benchmarks

Suncorp considers that aspects of Option 5 have merit. As noted above, Suncorp has long advocated for no-fault coverage and statutory benefits. We support the creation of minimum benchmarks that provide cover for all people injured in motor vehicle accidents in Australia, regardless of the severity of their injury or how the accident occurred.

However, given that several jurisdictions have substantial degrees of at-fault cover and the pace of scheme reform, we do not consider Option 5 to be an adequate response in and of itself to the issue of coverage for people injured in ADS vehicle accidents, particularly given the NTC's desired timeframes.

It would be problematic for at-fault, common law jurisdictions to introduce no-fault coverage for ADS vehicle accidents when it is not available to other injured people.

Further, the management of personal injury claims under statutory regimes is complex, requiring extensive legislation, subordinate legislation and guidelines, as well as ongoing regulatory oversight. Allowing more private insurers and self-insurance by ADSEs could create an excessive burden on regulators, potentially compromising regulators' ability to scrutinise insurers to ensure they are meeting the required standards with respect to managing personal injury claims.

Establishing minimum national benchmarks for non-catastrophic injuries is a worthy endeavour and should be pursued over the long term. Option 5 could be advanced in conjunction with Option 3.

Option 6 – Single insurer

Suncorp does not support Option 6. Adopting a single insurer would require a high degree of change in the Australian insurance landscape. It is therefore unrealistic to achieve this degree of change within the NTC's desired timeframes.

As CTP insurance currently exists as a discrete product (often underwritten by a government monopoly), Option 6 may require these CTP insurers to expand their coverage to include property as well as personal injury. This is unlikely to occur.

If providers of a single insurance policy (personal injury and property) were introduced in parallel with current Motor and CTP insurers, it is likely to create complexity and friction costs. In multi-vehicle accidents that include both ADS and non-ADS vehicles, questions of the distribution of fault will be complex.

The cost-sharing arrangements that currently exist in multi-insurer jurisdictions and are applied when multiple vehicles (with different insurers) are involved in an accident, have evolved because of the complexity of allocating proportional liability amongst vehicles. Additional insurers who are not party to these sharing arrangements would add to this complexity.

As noted with Option 5, the management of personal injury claims under statutory regimes is complex, requiring extensive legislation, subordinate legislation and guidelines, as well as ongoing regulatory oversight. If Option 6 resulted in a substantial increase in the number of insurers providing personal injury insurance, this could create an excessive burden on regulators, potentially compromising regulators' ability to scrutinise insurers to ensure they are meeting the regulatory requirements of managing personal injury claims.

Response to discussion paper questions

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

Suncorp supports the overarching principle, particularly that no person should be "procedurally" worse off. As noted above, whilst access to support through common law processes outside of personal injury claims management statutory frameworks may theoretically provide equivalent coverage for an injured person, the practical reality can be dramatically different.

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

Option 3 serves to address the primary problem of people injured potentially being left without support and does not require more research. As noted, Suncorp recommends data is collected regarding Australian ADS vehicle accidents and resulting injury severity, and then distributed to CTP insurers without delay.

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.*

As noted above, Suncorp has not identified significant barriers to recovery at this point in time. However, it is possible that issues will emerge when recovery procedures are initiated. We recommend that ADSEs are required to maintain solvent, Australian-based entities from which CTP insurers and lifetime care schemes can recover.

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?*

As noted above, Suncorp agrees that it is important mechanisms exist to ensure appropriate accident data to determine liability is easily obtainable. This is necessary to expedite the recovery process. Whilst our assumption is that the existing processes will allow us to access relevant data, it is not possible for us to come to a firm conclusion at this point in time due to a lack of actual experience.

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?*

Potentially yes. Option 3 (unmodified) would mitigate these potential difficulties. It should be noted that the discrepancy between coverage in at-fault and no-fault schemes currently generates some complexities with regards to the management of CTP claims for out-of-state registered vehicles.

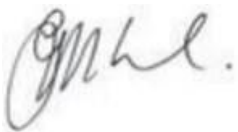
Conclusion

The introduction of ADS vehicles does require change to ensure injured people are looked after, premiums remain affordable and schemes maintain financial stability. Given the complexity of adapting to this change, Suncorp recommends an approach that utilises the existing infrastructure and legislative frameworks to the greatest degree possible. Option 3 (unmodified) best delivers to these objectives.

There is an opportunity to have the introduction of ADS vehicles precipitate reform that results in all Australians injured on the road being supported in a cost-effective manner, expediting the recovery of their health and wellbeing.

Thank you for the opportunity to further contribute our views on this reform. Should you have any questions or require further information, please do not hesitate to contact Lachlan Rees, Senior Advisor – Government, Industry and Public Policy on 0419 861 990 or by email to lachlan.rees@suncorp.com.au.

Regards



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