

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

Re: Public submission – Motor Accident Injury Insurance and Automated Vehicles

The Royal Automobile Club of Queensland (RACQ) thanks the National Transport Commission for the opportunity to provide this submission to the *Motor Accident Injury Insurance and Automated Vehicles* discussion paper.

As Queensland's peak motoring organisation and a licensed motor accident injury (CTP) insurer in Queensland, the RACQ has a strong interest and stake in the future of Queensland's transport network. On behalf of RACQ's 1.7 Million members and over 785,000 Queensland CTP policy holders, we exist to make a positive difference to the lives of our members now and into the future. RACQ is ready to meet the evolving mobility needs of all our members regardless of where they sit on the technology-adoption spectrum and we advocate to ensure Queensland's transport system maximises safety, affordability, and sustainability.

At present, there are insufficient autonomous vehicles ('AVs') on Australian roads that warrant radical changes to the relevant legislation. It is also unknown how many motor vehicle accidents have occurred on Australian roads where automated driving systems ('ADS') are considered responsible.

Forecasts have AVs reaching penetration levels of approximately 20% on Australian roads between year 2030 and 2040. This highlights there is a long-term future risk that injured people may not have the same access to existing motor accident injury insurance ('MAII') schemes unless they are amended.

It is acknowledged the national network will require significant overhaul before level 4 and 5 AVs can safely populate Australian roads. This is further complicated by interdependencies on infrastructure, road, safety and injury legislation, licencing, registration and consumer perception. It is for this reason that any amendments to existing MAII legislation remain uncomplicated and agile, in order to evolve as vehicle technology does and remains affordable for all motorists who contribute to these schemes.

It is important to recognise that any national amendments to MAII schemes, for both the short and long term, have the injured person at the centre of change. The MAII schemes should not discriminate against the injured person where those injuries have been sustained by fault of a machine-driven vehicle, no more than they should if a person was driving the vehicle.

The faster the injured person can access relevant MAII schemes, the timelier funding for treatment and recovery support can be provided, which aids in more expedited recovery of that injured person and increases the likelihood that recovery can be maintained over the longer-term. This is the cornerstone of MAII schemes as they currently operate.



Ease of process and procedure for the injured person to access their relevant MAII scheme is paramount. The more complicated the process, the longer the delay for the injured person to access rehabilitation and recovery benefits. It is for these reasons we agree with the principles proposed by the Heads of Motor Accident Injury Schemes.

Scheme design in Australia varies across state and territories with designs of no fault, hybrid and fault based. Under no-fault and hybrid schemes, an injured person would be able to access some form of benefits where the ADS is responsible as the policy follows the vehicle.

This is not the case with fault-based schemes, or for benefits in hybrid designs where access to some benefits operate based on determination of fault. It will become problematic for people to access MAII benefits (excluding NIIS eligibility) in the event they are injured because of a vehicle's technology failure if the definition of 'driver' does not evolve to include the machine. This applies similarly to the definition of 'driving of the vehicle' and 'operation of a vehicle'.

A harmonised approach across the national MAII schemes which enable these schemes to respond and provide the benefits they do today, irrespective of whether a human driver or machine driver is responsible for the crash, will provide a greater chance that reform to accommodate AVs remains uncomplicated and effective.

RACQ believes that option 3 is the most suitable option, with amendments to ensure simplicity, transparency and ease of transition for all stakeholders through evolving vehicle technology.

For option 3 to remain fit for purpose for the short term, RACQ proposes:-

1. Nationalised definitions for '*driver*', '*operation of a vehicle*', '*driving of a vehicle*' to include both human and machine;
2. Recognition that the human occupying the driver's seat of a vehicle to be 'the driver' or 'fall-back ready user' for levels of 1-3 automation;
3. Remove the need for a 'reinsurance pool' for recovery as insurers rights of subrogation currently exist and the implementation, management and regulation of that pool is overcomplicated and costly in proportion to the count of AVs;
4. Utilise a recovery framework as the basis for a national recovery mechanism within all MAII schemes to create a simple, timely and transparent recovery of costs by insurers from an ADS Entity ('ADSE').

RACQ believes that proposed options 1 and 2 are insufficient for the injured person in the current national environment. Similarly, option 4 would be an expensive scheme to create, implement and monitor for the responsibility of a small number of AVs without national MAII scheme harmonisation. However, is not to be dismissed as a potential longer-term solution when level 4 and 5 automation exists and has reached critical mass in the Australian transport network.



RACQ does not support option 5 as it disadvantages the injured person by forcing the injured person to meet eligibility criteria to access the relevant MAll scheme. RACQ considers option 6 to be far too radical a solution for the current environment and would create a significant and unnecessary level of administrative complexity.

RACQ notes the solution should not be designed in isolation of other transport reforms to accommodate the evolving technology and welcomes the opportunity to provide feedback on further Discussion Papers.

As a member of the Insurance Council of Australia ('ICA') we support the submission of the ICA to this Discussion Paper. RACQ has provided further information to each of the Discussion Paper options and consultation questions in the body of this submission on behalf of our members.

RACQ thanks the NTC for the opportunity to provide this submission and contribute to shaping the future of Australia's transport network and associated MAll schemes. Should you need to discuss any of the items raised in this letter, you can contact Tracy Green, General Manager Insurance Product and Pricing on Ph. (07) 3666 9154 or email tracy.green@racq.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'John Myler'.

Mr John Myler
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RACQ provides the following submissions in response to the consultation questions contained within Motor Accident Injury Insurance and Automated Vehicles Discussion Paper ('Discussion Paper').

Chapter 1: Context

1.7 Principles

Q1. Do you agree that the proposed principles are suitable? Should there be any additional or different principles?

RACQ agrees the proposed principles outlined within the Discussion Paper are suitable.

The differences between MAII schemes across the country have been well documented throughout the Discussion Paper. The proposed principles are appropriate given some schemes are fault-based, some no-fault and others are of a blended nature. It becomes important to note that the injuries sustained by a human driver do not leave the injured person any worse off financially, or procedurally, than if they were injured by an automated vehicle ('AV'). The overarching principle should be equitable application for both human and the Automated Driving System ('ADS').

RACQ submits that it is critical to ensure the injured person remains at the centre of any MAII scheme reform. Where changes are made to any scheme, particularly to accommodate AVs, the injured person's access to compensation should not be delayed.

Further, a principle worth considering centres on minimising transition time from human-driven to highly automated fleet and removing any barriers associated with that transition time. This principle would ensure injured people are not left vulnerable by delays associated with any resulting legislative changes.

1.8 Problems

Q2. Do the problems identified cover the key challenges of personal injury and automated vehicles? Are there any other problems we should consider?

RACQ agrees with the identified problems outlined in the Discussion Paper. Key challenges that should also be considered include:

- *Financial administration:*

RACQ submit that should the NTC introduce a 'reinsurance pool' proposal within option 3 or the purpose-built AV scheme proposed in option 4, there would be onerous financial administration to ensure adequate funds are held in reserve to accommodate claims that may eventuate well into the future.

- *Prudential regulation:*

RACQ submit that prudential regulation of a 'reinsurance pool' proposed in option 3 would be required to ensure the pool maintains capital adequacy particularly should a catastrophic event occur. This could be the experience of an unprecedented number of injured people making



claims to the MAII schemes from a single event where insufficient funds were held in reserve to fund those claims.

For example, in 2001 the Medical Research and Compensation Foundation ('the Foundation') was formed by companies Amaba and Amaca, subsidiaries of James Hardie Industries Limited ('JHIL') and given \$293 million to fund asbestos injury claims. In December 2003 the Foundation warned that it faced a serious funding shortfall and within a few years it would be unable to pay asbestos compensation claims. Further, it was noted in 2004 during the Jackson Inquiry, Counsel estimated the total cost of injury claims against the Hardie Group could amount to \$2.24 billion. Complications for injury victims arose following the Hardie Groups transfer of company assets offshore and will be remembered as '*...one of the most morally and repugnant acts in Australian corporate history.*'¹

- *Scheme affordability:*

RACQ further submits that existing MAII and NIIS equivalent schemes are funded by motorists or state and territory taxpayer. Should any additional scheme be introduced where the funding of that scheme is essentially borne by the motorist/taxpayer, scheme affordability remains a key issue for ongoing consideration.

Chapter 3: Barriers

Q3. Have we accurately identified the key gaps and barriers in legislation? Are there other gaps or barriers we should consider?

RACQ supports the identified barriers assessed by the Heads of Motor Accident Injury Scheme in Section 3 of the Discussion Paper. In addition, the following gaps or barriers should also be considered:

- *Licencing and registration*

Licencing of drivers of AVs and/or the associated ADSE together with registration of vehicles and the mechanism for collection of statutory MAII premium are critical legislative components that should not be overlooked. RACQ recognise that this barrier was addressed in previous National Transport Commission Discussion Papers.

- *Automation levels*

While automation levels are considered 1-5, there are variations in the technology functions and maturity that add layers of complexity to the automation model. For example, Thatcham Research conducted a review of regulating automated driving from the UK Insurer perspective. They recommended for automated vehicles (less than or equal to SAE level 3) a minimum risk manoeuvre should initiate a safe stop if drivers become disengaged and the system deactivates. However, this 'safe stop' differs depending on the sophistication of the Automatically Commanded Steering Function technology. For vehicles with less advanced capabilities (but potentially within the same level), the minimum risk manoeuvre was recommended to be disengagement of the system and slow down with an ultimate stop and hazard lights operating.

¹ Parliamentary Library, Department of Parliamentary Services, Research Note, 2004-2005, No. 12 10 August 2004



But, for vehicles with more advanced technology, the minimum risk manoeuvre recommendation was to pull over to the side of the road, as far out of running lanes as possible. The level of risk is not equal between these responses and will vary from manufacturer to manufacturer even within the same automation levels².

Subsequently, RACQ submits that any MAII changes will need to consider how automation features within levels are evaluated during the recovery process.

- *Data implications*

Should an accident involve an AV and there is investigation into the cause of that accident, the provision of data of that ADS is a critical component in that investigation. Privacy surrounding that data is crucial and would need consideration, particularly regarding who owns the data, whether the data is stored on-shore or offshore and how access is provided. Further, legislative provisions should be considered to mitigate and deter data from being misused in cases such as data-mining, remote access and GPS tracking. RACQ acknowledge this issue has been addressed in previous National Transport Committee Discussion Papers.

- *Intentional acts of violence*

Some states and territories have varied levels of protection for victims of terrorism injured by motor vehicles. For example, section 5(4) of the *Motor Accident Insurance Act 1994* (Qld) states that the Act does not apply if the motor vehicle is 'used for the actual doing of an act or making of a threat that is an act of terrorism'. This is concerning, given the increased opportunity to use motor vehicles as weapons to intentionally injure people³. With the rise of AVs with remote access, MAII legislation with respect of intentional acts of violence should be reviewed to not disadvantaged the injured person.

- *Technology defects*

RACQ submits the recovery framework in its current form in some MAII schemes would require slight expansion to account for technology defect should the definition of mechanical defect be inadequate.

Chapter 4: Options

Q4. Is more research needed before a preferred option can be selected? If so, what research?

RACQ prefers a short-term view of MAII reform for AVs and that any option selected for accommodating the AVs into the MAII schemes within Australia will need to be agile enough to cater for technology evolution without overcomplicating existing scheme operation. If the option is not flexible enough, it is likely this process of MAII scheme review will be required regularly, which could become a costly exercise, ultimately funded by taxpayers.

For a long-term option to be considered, time is a crucial research tool. At present, there is insufficient data or evidence to support more radical amendments to the existing MAII schemes.

² <https://www.abi.org.uk/globalassets/files/publications/public/motor/2017/07/regulating-automated-driving/>

³ <https://www.cnn.com/2016/07/21/could-autonomous-trucks-be-the-next-weapon-for-terrorists.html>



Research that could help inform these discussions include:

- *Consumer perception*

Consumer perception of AVs is relevant research that could assist with forecasting the potential penetration points of AV's on the roads. This consumer perception research could be likened to the shift between a horse and carriage to automobile or the consumer acceptance of mobile phone devices.

- *AV implementation predictions*

Forecasting has been modelled by a variety of entities to date. The Victoria Transport Institute has produced a forecast that identifies the length of time for full saturation on Australian roads⁴.

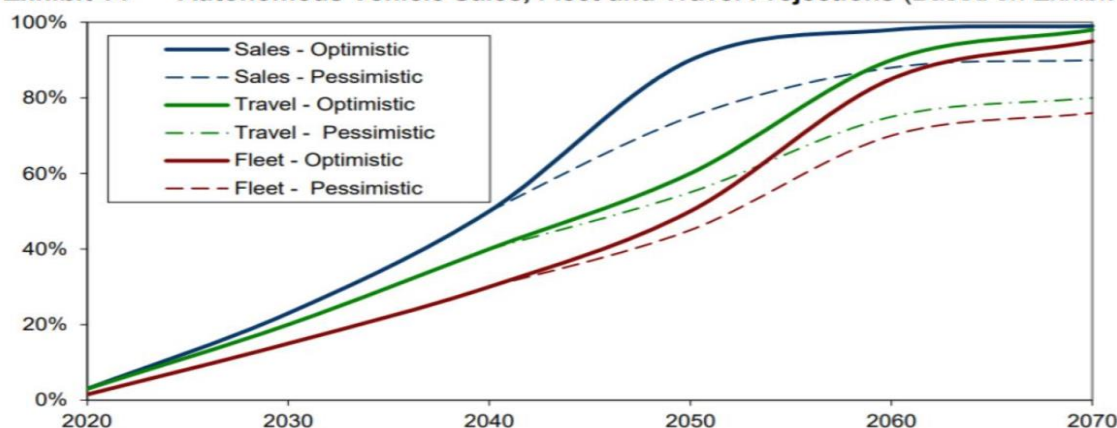
Autonomous Vehicle Implementation Predictions: Implications for Transport Planning
Victoria Transport Policy Institute

Stage	Decade	Vehicle Sales	Veh. Fleet	Veh. Travel
Available with large price premium	2020s	2-5%	1-2%	1-4%
Available with moderate price premium	2030s	20-40%	10-20%	10-30%
Available with minimal price premium	2040s	40-60%	20-40%	30-50%
Standard feature included on most new vehicles	2050s	80-100%	40-60%	50-80%
Saturation (everybody who wants it has it)	2060s	?	?	?
Required for all new and operating vehicles	???	100%	100%	100%

Autonomous vehicle implementation will probably take several decades.

Exhibit 14 illustrates these deployment rates.

Exhibit 14 Autonomous Vehicle Sales, Fleet and Travel Projections (Based on Exhibit 13)



If they follow previous vehicle technologies autonomous vehicles it will take one to three decades to dominate vehicle sales, and one or two more decades to dominate vehicle travel, and even at saturation a significant portion of vehicle travel may continue to be human operated, indicated by the dashed lines.

An optimistic view for AV travel on Australian roads forecasts 50% penetration to be within the year 2050 or thereabouts and the year 2030-2040 for approximately 20% of the fleet. This is supported by modelling produced by the Queensland Department of Transport and Main Roads at the Australia and New Zealand Driverless Vehicle Summit⁵.

⁴ <https://www.vtpi.org/avip.pdf>

⁵ https://minister.infrastructure.gov.au/pf/speeches/2017/pfs015_2017.aspx



Alternatively, IAG published an estimate of AV penetration on Australian roads in 2018 which highlights Level 4 automated driving to reach a saturation point of 48% by the year 2040⁶.

Q5. Which option best meets the policy principle outlined in Chapter 1? Is there another option not referred to in this paper that would better meet the principles? If so, please explain how this would work.

For note, within RACQ's submission outline below, 'the injured person' is referenced in the context of a person being injured as the direct result of a motor vehicle accident caused by a failure with the AV.

OPTION 1. No change - Rely on existing legal framework

This option is certainly cost effective to implement because it supports no change. However, noting the overarching principle outlined within the Discussion Paper 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***, option 1 is not suitable for either the short or long term.

For an injured person to gain access to their relevant MAII scheme benefits including rehabilitation and recovery support they would first need to overcome the scheme definitions of 'driver', 'operation of a vehicle', 'driving of a vehicle' and others that are outlined within the Discussion Paper. If they were unable to overcome the definition obstacle, the MAII policy may not respond which could prevent the injured person gaining entry to the relevant MAII scheme.

Where the injured person pursues a claim under Australian Consumer Law ('ACL'), the process would require the injured person to commence an action within the applicable Court where rules of evidence and court processes would apply. This pathway is expensive, lengthy and there is a risk the injured person would experience significant delays in accessing rehabilitation and recovery support and further, may not be awarded enough compensation to recoup their litigation expenses making the exercise ineffective.

Alternatively, should the definitions be nationalised then the existing framework may be suitable albeit other legislative deficiencies, including access to data to determine fault of the AV, may impact liability decisions particularly in fault-based and hybrid schemes.

If the existing legal framework remain as it is without any remedial action, it could cause potential impacts on the injured person from accessing compensation in a timely manner from their relevant state and territory scheme. Further, those injured by AVs may be disadvantaged by pursuing a claim for damages under a lengthy and costly ACL pathway.

⁶ <https://www.iag.com.au/sites/default/files/Documents/Announcements/IAG-2018-Investor-Day-5-Zone-Future-of-motor-insurance.pdf>



OPTION 2. Exclude injuries caused by an ADS from MAII Schemes

Overall, option 2 is not a suitable alternative to existing MAII schemes to cater for AV on Australian Roads. It would cause significant delays to the injured person accessing appropriate and timely rehabilitation and recovery support from their respective scheme. This option suggests that those people who are injured by an AV would be treated differently than those people injured by human-driven vehicles. The preferred option for implementation should not discriminate against the injured person irrespective of what type of vehicle causes the accident and subsequent injuries.

As identified within option 1 above, ACL requires a consumer to commence an action against a manufacturer to recover compensation where a defective product has been supplied and has caused injury. This process is a litigious pathway which could be expensive for the injured person where rules of evidence and court processes would apply.

It is critical for an injured person who sustains any injury from a motor vehicle accident, particularly minor spinal injuries, to have early access to relevant rehabilitation therapies to achieve a more favourable long-term recovery outcome⁷. The longer the delay an injured person experiences in accessing necessary rehabilitation and/or recovery support, the longer those injuries will take to reach maximum medical improvement. Further, there is a higher probability of a greater financial impact to that injured person. It is also accepted that the longer an injured person remains off work⁸ the greater chance the injured person will feel the impact of those injuries for the remainder of their life, particularly financially.

A key guiding principle within the Discussion Paper is to support the injured person's access to compensation in a timely and efficient manner. This principle would span across the process for claim lodgement, the provision of automated driving system data for accident causation and liability decisions, payment of compensation or rehabilitation treatment and support where relevant.

The ACL does not make those provisions for an injured person during their injury claim and instead an injured person would be forced to incur all those expenses for rehabilitation and recovery support themselves until the claim against the manufacturer has resolved. Self-funded rehabilitation and medical expenses would be burdensome for the national Medicare scheme where recovery from the relevant liable entity may not exist. This would put pressure on the Federal Government and ultimately the taxpayers.

Further, there is evidence that some well-established car manufacturers do not always prioritise human wellbeing, community values, or legislated standards when making corporate decisions related to data, reporting, and transparency. For example, in September 2015 it was discovered that VW had installed software code in many of its diesel vehicles which allowed them to cheat U.S. emissions testing, and Australia's leading advocacy group, CHOICE, reported in March

⁷ Journal of Occupational and Environmental Medicine: January 2000 – Volume 42 – Issue 1 – p35

⁸ Johnson D, Fry T. Factors Affecting Return to Work after injury: A study for the Victorian WorkCover Authority, Melbourne: Melbourne Institute of Applied Economic and Social Research; 2002.



2018, even after being ‘fixed’ the vehicles were found to be using more fuel and emitting more noxious emissions than allowed under Australian standards. VW is also claiming it has no responsibility to compensate Australian’s due to vehicle approvals being obtained in Europe before export to Australia⁹.

In addition to rehabilitation and recovery support expenses incurred by the injured person, the likelihood the injured person would incur additional litigation expenses and likely delays prior to recouping any form of compensation from the manufacturer under ACL is high.

RACQ recognises that claims made by the injured person against the manufacturer under ACL would alleviate any concerns with data disclosure delays as the data is presumed to be made readily available to the manufacturers to defend such actions. But timeliness of access may still be an issue.

The efficiency of MAII schemes in their current form, support and assist the injured person through their rehabilitation and recovery phase until those injuries are at a stage of recovery when future injury prognosis is much clearer. Further, and if applicable, compensation to finalise the claim can commence or the injured person naturally exits the relevant MAII scheme. The exception to this general process is where catastrophic injuries have been sustained, and that injured person may qualify for lifetime care and support under the relevant state and territory NIIS schemes.

OPTION 3. Expand MAII schemes to cover injuries caused by an ADS

RACQ agrees that the most preferred option of those outlined in the Discussion Paper is option 3 without the reinsurance pool. The changes to the MAII schemes should not be overcomplicated nor prejudice the injured person from accessing timely support and should be agile enough to withstand technology developments longer term. RACQ propose that minor amendments to existing MAII schemes legislation would suffice for the current environment.

The varying definitions of ‘driver’, ‘operation of a vehicle’, ‘driving of a vehicle’ and others as outlined within the Discussion Paper require nationalisation in all MAII schemes. This will ensure that the injured person whose injuries were caused by AV will have adequate access to compensation, rehabilitation and recovery support.

RACQ submits that a ‘reinsurance fund’ contributed to by ADSE’s would not be an appropriate mechanism for recovery by MAII insurers. The Discussion Paper to which this submission responds, together with a variety of others produced by the National Transport Commission in this series of AVs, showcase the vast array of liable entities that can be linked to the safety of an AV on the road. This includes, but is not limited to, infrastructure owners, software developers, vehicle manufacturers and telecommunication companies. By establishing a reinsurance fund, this suggests that the sole responsibility for the failure of an AV rests with the automated driving

⁹ <https://www.choice.com.au/about-us/media-releases/2018/march/vw-emissions>
<https://www.abc.net.au/news/2018-03-05/vw-emissions-scandal-australian-car-owners-get-day-in-court/9502952>

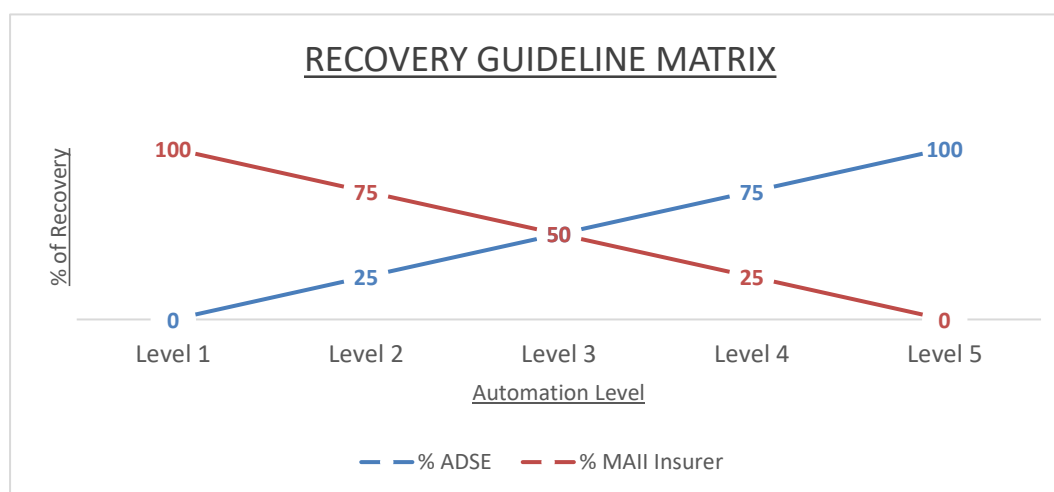


system entity ('ADSE'), and post ADSE recovery to the MAII insurer, the ADSE may pursue the relevant liable party separately. This practice would add another layer of complexity to the process, albeit not to the disadvantage of the injured person.

The reinsurance fund would also require burdensome financial administration and prudential regulation to ensure capital adequacy is maintained and funds remain available to injured persons particularly in the event of a nation-wide catastrophic event. It is also noted that injury claims arising from road traffic accidents can materialise well into the future after an accident has taken place. RACQ submits that lessons on implementation, management and regulation of such a fund could be learned from the lack of funds contributed to the Foundation for asbestos injury claims made against James Hardie¹⁰.

Should a reinsurance fund be introduced, it also adds further complexity as each state and territory scheme is state-run and would require differing levels of ADSE contribution. Financial contribution by the ADSE becomes problematic as does the responsible entity managing the fund. It is uncertain whether the Federal Government would administer the funds from the ADSE, State Governments or a private entity.

As an alternative to the reinsurance fund, RACQ proposes the MAII insurers exercise their existing rights of subrogation against the relevant liable entity following the resolution of the injured persons claim. The MAII insurers have the financial means and expertise in exercising those rights however, the recovery process and procedure would require consideration. RACQ suggest recovery guidelines be introduced into relevant MAII legislation that ease the subrogation process by way of the following example:



Another option to aid an efficient recovery process is consideration to applying a reversal of onus of proof through regulation so that the ADSE is required to prove they weren't responsible. The ADSE has access to the data and applying a reversal such as this could have the effect of placing positive friction in the environment for information to be shared in a timely manner.

¹⁰ <https://www.theaustralian.com.au/news/nation/actuary-disciplined-over-hardie-advice/news-story/47db4459c53658cc3d1862d67b13176b>



RACQ also propose that entry into fault-based schemes by human drivers whose AV failure are the likely cause of the accident, are defined within the relevant MAII legislation. Adoption of the following framework could be considered:

Level of Vehicle Automation	Party in Control of the Vehicle	Party Responsible for the Vehicle	Party Entrance to Scheme
0-3	Human Driver	Human Driver	Nil
4-5	ADSE	ADSE	Human Driver

Timing of the decisions for scheme entry are a critical milestone for early rehabilitation and recovery support funding to be considered for the injured person. RACQ recognises that the timing of these decisions where an AV is involved is dependent on the release of relevant ADS data and relevant investigation into ADS responsibilities and function. Where there are delays with data disclosure, a judicial decision may be required to determine responsibility to limit the prejudice against the injured person. This would require ongoing consideration as time passes.

OPTION 4. Purpose-built automated vehicle scheme

Currently, RACQ suggests this option 4 is not suitable as a short-term solution, noting the low count of AVs in production and/or operational on Australian roads. However, it may naturally evolve with time and may be suitable in the future, when ADSE vehicles form the majority of the fleet.

Having a purpose-built scheme specific for AVs in the current market where the number of AVs on Australian roads is relatively small, would be a costly exercise and likely funded by taxpayers. The questions of who or what entity would be responsible for paying the ongoing premium for this scheme, as well as the management and regulation of it, then becomes critical.

This option could be implemented on a national basis with MAII schemes maintained at a state level. However, harmonisation will need to exist between each state and territory MAII scheme. While each state and territory have different levels of MAII cover available to the injured person, this option would require state-based management which is not ideal as there may be very few ADSEs within Australia having to bear the expense of signing up to separate schemes with a very small market within each. Further, RACQ submits that a purpose-built AV scheme and existing MAII scheme would be co-dependent, noting the risks associated with multiple vehicles involved in accidents, some of which may be human-driven but connected to the cause of an accident.



An additional, purpose-built automated vehicle injury scheme within each state and territory would also add complexity to the litigation process potentially including multiple defendants being involved for multi-vehicle accidents. There could also be concurrent court proceedings on foot which would need to be heard together or consolidated into one joint proceedings. This would be contradictory to principles regarding efficient litigation processes.

The purpose-built scheme would need to reflect the existing MAII schemes in their entirety to not disadvantage the injured person. RACQ considers this exercise costly and ineffective.

OPTION 5. Minimum Benchmarks

Overall, RACQ submit that this option is not suitable for either a short or long-term solution.

Under this option, the eligibility criteria for an injured person's access to the MAII scheme is connected to the type of vehicle that injures them. This would discriminate against the injured person just because an AV caused the accident and not a human-driver. Therefore, the minimum benchmarks contradict the overarching guiding principle 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.***

A minimum benchmark requirement for an injured person to be able to gain access to any form of compensation under this option is likely to require the AV to be responsible for the cause of the injuries themselves. Liability determination would take a significant period unless appropriate legislative amendments are made, compelling ADSE's immediate delivery of data to the relevant MAII scheme insurer. This delay of data disclosure could contribute to long-term impacts of the injured person's rehabilitation and recovery and would continue to contribute to the recovery process by MAII insurers, particularly where liability for accident circumstances remains undetermined.

RACQ recognise the benefits and disbenefits of this option and note the National Insurance Injury Scheme ('NIIS') as the inspiration. However, if the only change to existing MAII schemes is to implement a set of minimum benchmarks for injured person's access to the scheme, the recovery pathway for insurers managing the claims from those injured persons remains.

OPTION 6. Single Insurer

RACQ does not support option 6 as it creates a large level of administrative complexity that is costly and extreme for an emerging technology product.

RACQ does recognise the benefits and disbenefits of this option. However, by introducing a blended product of statutory and optional property insurance specifically for AVs, whilst limiting the impact to the injured person, creates a larger issue of redesigning registration and licencing frameworks.



There are multi-layers of potentially liable parties involved in the failure of an AV from technology, infrastructure deterioration and telecommunication disruptions. Where a single insurer may offer the level of coverage for injured persons and damage to the vehicle, the inadequacy of an appropriate recovery mechanism against the rightful liable party remains an issue.

Q6. Are the criteria sufficient for assessing the options? Are there alternative or additional criteria that you think should be considered?

RACQ submits that the assessment criteria are appropriate however, disagree with the degree of some of the initially assessed levels (see below). Further, without appropriate mechanisms to determine AV fault, this could prompt broader MAII scheme redesign and should be considered through this assessment.

Criteria 1 'Ensures a person injured by an ADS is no worse off financially or procedurally than if they were injured by a vehicle controlled by a human driver'

RACQ submits that until benchmarks are defined, the initial assessment should be amended from Medium to Low.

Minimum benchmarks by nature suggest eligibility criteria must be met by the injured person in order to gain access to the designated scheme which is indicative of the NIIS schemes. There is a risk that some injured people may become ineligible for any access to compensation and this is not consistent with the guiding principles.

Criteria 4 'Sends an appropriate price signal to those responsible and associated with automated vehicle product/system/technology failures and risks'

Option 1:

RACQ submits that unless the ADSE is held liable through appropriate recovery mechanisms this assessment should be amended from Medium to Low.

By not amending the existing MAII schemes and having the injured person reliant on existing legal framework outlined in option 1, gaining access to compensation benefits does not provide appropriate price signalling to those responsible noting the inconsistencies of various scheme role definitions. Where existing MAII schemes do not have adequate definitions on roles and responsibilities, insurers may not have rights to subrogation and therefore the MAII policy may not allow for actual recovery from the "truly at-fault party". In addition, where the existing MAII policy does not respond, the injured person would be left to pursue the ADSE directly and noting the litigious and lengthy nature of actions made pursuant to ACL, a large proportion of these actions may never eventuate.

Option 2:

RACQ submits this assessment should reflect a Low rating as the possibility of appropriate price signalling being sent to those responsible is low.



Option 2 proposes exclusion of all injuries from MAII schemes which would eliminate any immediate pathway for compensation for the injured person. Subsequently this would prompt a decision by the injured person to pursue an action under ACL. This exercise is a litigious and lengthy process which could see the injured person unable to recoup the legal expenses incurred to pursue it.

Option 5:

RACQ submits the assessment rating of High be amended to Medium as only eligible injured persons meeting the minimum benchmarks would enter the relevant MAII scheme.

Minimum Benchmarks, as proposed by way of option 5 suggests by nature, of those people whose injuries were caused by AVs, only eligible persons meeting the benchmark criteria would qualify for compensation. RACQ submits that should eligible persons injured by AVs be able to gain access to compensation benefits, then similarly a proportion of those injured persons will not. As a result, those responsible and associated with AVs would only receive price signalling for those injured persons eligible for compensation.

Q7. Do you agree that the entity most able to manage the risk should be responsible for the cost of damages if the risk eventuates?

As a principle of law and good risk management, yes. However, it has previously been identified that several entities or parties are likely to be involved in AVs safely manoeuvring on the roads. This may include state government departments for infrastructure defects to sensor technology manufacturers.

RACQ submit that until such time as an appropriate recovery mechanism has been identified or sufficiently mapped out, then the entity to which the recovery is sought remains unclear. Therefore, this may require Court intervention in the initial stages.

Q8. Should different insurance models be used depending on the level of vehicle automation (conditional, high or full automation)?

RACQ reiterates that MAII scheme changes that occur to accommodate the advancements of technology should be agile and allow the injured person adequate ease of access to the relevant scheme.

As technology evolves and additional levels of AVs are deployed, the insurance models would need adjustment based on relevant research and evidence. AVs may also operate at multiple automation levels in a single journey and therefore different insurance models would not be a realistic or appropriate approach. It may also create additional delay to the injured person entering a scheme as vehicle data would need to be accessed and reviewed to determine which



automation functions were engaged at the time of the incident to determine the level of automation being used and the appropriate insurance model to be applied.

Q9. If you support option 3, are current rights for recovery for insurers sufficient? If not, please indicate what additional rights or powers would be required and why.

RACQ highlights that the risk associated with any proposed recovery against an ADSE reinsurance pool is heavily reliant on the provision of data, particularly in fault-based schemes. RACQ reiterates that timely and secure access to transparent data is paramount in the determination of causation and liability for an accident in which an AV is involved. Should fault be established against the ADSE, and the MAII schemes make the necessary amendments to allow for the relevant MAII policy to respond, RACQ believes the rights of subrogation should be sufficient without the implementation of a reinsurance pool.

Should the intention of an ADSE be to assume all liability for injuries sustained from a road traffic crash caused by their AV, then the recovery mechanism should be clear for insurers. However, where there is an infrastructure or sensor defect and an alternate liable party is identified which is not the ADSE, it is presumed that the ADSE would reimburse the MAII insurer first and then seek their own recovery from that liable party directly.

RACQ does not support the creation of a reinsurance pool. However, should it be implemented, then we reiterate that the management of that pool and its associated funding be regulated to ensure capital adequacy and long-term sustainability.

Q10. 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 MAII schemes and caps or thresholds.

RACQ does not support option 4 and therefore provides no commentary.

Q11. If you support option 5, how could the minimum benchmarks be defined?

RACQ does not support option 5 and therefore provides no commentary.



Q12. 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 previously submitted.

In addition, legislation requiring the storage of data for adequate periods of time should also be reviewed, noting that claims generated from road traffic injuries may not materialise for a lengthy period following an accident. Access to this data must not be hindered by any storage arrangements or approval processes due to the manufacturer holding the data offshore.

Q13. 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?

RACQ notes that as option 3 is the preferred short-term solution, this would satisfy existing mutual recognition of registrations.

RACQ thanks the National Transport Commission and Heads of Injury Schemes for the opportunity to provide feedback on this Discussion Paper.