



Maurice Blackburn Pty Limited
ABN 21 105 657 949

Level 21
380 Latrobe Street
Melbourne VIC 3000

DX 466 Melbourne
T (03) 9605 2700
F (03) 9258 9600

12 December 2018.

Att: Automated Vehicle Team
National Transport Commission
Level 3/600 Bourke Street
Melbourne VIC 3000

By email: automatedvehicles@ntc.gov.au

Dear Sir/Madam,

Thank you for the opportunity to respond to some of the issues outlined in the Motor Accident Injury Insurance and Automated Vehicles discussion paper dated October 2018.

We congratulate NTC on the methodical and comprehensive nature of the analysis contained within the discussion paper.

Please do not hesitate to contact us if we can further assist with the Commission's important work.

Yours faithfully,

Andrew McKenzie
Principal Lawyer
MAURICE BLACKBURN

(07) 5430 8746
AMcKenzie@mauriceblackburn.com.au

Tamara Wright
Lawyer
MAURICE BLACKBURN

(03) 8102 2160
TWright@mauriceblackburn.com.au



Maurice
Blackburn
Lawyers
Since 1919

Submission in Response
to the Motor Accident
Injury Insurance and
Automated Vehicles
discussion paper

December 2018

Table of Contents

Page

INTRODUCTION.....	4
OUR SUBMISSION	4
RESPONSES TO QUESTIONS IN THE DISCUSSION PAPER	5
Question 1: Do you agree that the proposed principles are suitable?.....	5
Question 2: Do the problems identified cover the key challenges of personal injury and automated vehicles?	5
Question 3: Have we accurately identified the key gaps and barriers in legislation?.....	6
Question 4: Is more research needed before a preferred option can be selected?	7
Question 5: Which option best meets the policy principles outlined in Chapter 1?	7
Question 6: Are the criteria sufficient for assessing the options?	9
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?	10
Question 8: Should different insurance models be used depending on the level of vehicle automation?.....	10
Question 9: If you support option 3, are current rights of recovery for insurers sufficient? 10	
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 MAll schemes and caps or thresholds.....	10
Question 11: If you support option 5, how should minimum benchmarks be defined? ..	10
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?	10
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?.....	11
 APPENDIX A: MAURICE BLACKBURN'S RESPONSE TO THE INQUIRY INTO THE SOCIAL ISSUES RELATING TO LAND-BASED DRIVERLESS VEHICLES IN AUSTRALIA (MAY 2017)	 12

Introduction

Maurice Blackburn Pty Ltd is a plaintiff law firm with 32 permanent offices and 29 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions.

Maurice Blackburn employs over 1000 staff, including approximately 330 lawyers who provide advice and assistance to thousands of clients each year. The advice services are often provided free of charge as it is firm policy in many areas to give the first consultation for free. The firm also has a substantial social justice practice.

Our Submission

Maurice Blackburn has been a proud contributor to this important ongoing conversation, and we are pleased to be able to offer our expertise in road safety matters for the benefit of the Commission.

In this submission, we present our input in response to the questions outlined in the Motor Accident Injury Insurance and Automated Vehicles Discussion Paper, October 2018 (the Discussion Paper).

Maurice Blackburn supports the overarching principle, agreed by the Heads of Motor Accident Injury Schemes and articulated on page 18 of the Discussion Paper. We endorse the position that whatever model is agreed on should be underpinned by the overarching 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.

To this end, we do not support an insurance regime whereby separate systems exist for those injured by an automated vehicle, and those injured by a non-automated vehicle.

We do not believe that setting up a framework which would require people to switch between regimes depending on the circumstances of their accident, would be an appropriate course of action.

Importantly, we believe that there should be a non-delegable duty of care on the person in control of the vehicle (unless, of course, the injury is caused through manufacturer error). In our opinion, if the person in control of the vehicle chooses to switch the vehicle to its automated setting, they should be responsible for what happens while the vehicle is on that setting.

Further, we believe that the framework should be set up such that the insurer (be that government or private, depending on the jurisdiction) should not have to 'pick up the tab' if the injury was caused through the fault of the manufacturer.

We respond in more detail to the specific questions in the Discussion Paper over the following pages.

Responses to Questions in the Discussion Paper

Question 1: Do you agree that the proposed principles are suitable?

Yes.

Maurice Blackburn supports the overarching principle, agreed by the Heads of Motor Accident Injury Schemes and articulated on page 18 of the Discussion Paper, that whatever model is agreed on should be underpinned by the overarching 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.

Maurice Blackburn further supports the proposed supporting principles, listed on page 19 of the Discussion Paper, namely:

1. *Reasonable and timely access to compensation should continue regardless of the type of vehicle involved in the injury.*
2. *The arrangements should promote transparency and certainty in accessing compensation.*
3. *The arrangements should ensure insurance for personal injuries caused by automated vehicles is fully funded and affordability is considered - for example, by minimising potential litigation between insurers and manufacturers/ADSEs.*
4. *Existing state and territory benefit regimes should not be required to change.*
5. *The arrangements should include an efficient process to access a standard set of reliable and verifiable vehicle crash data.*

Maurice Blackburn does not believe there should be additional or different principles.

Question 2: Do the problems identified cover the key challenges of personal injury and automated vehicles?

Yes.

Maurice Blackburn believes that the problems identified and articulated in section 1.8 of the Discussion Paper cover the key challenges of personal injuries and automated vehicles.

We agree with the sentiment expressed in section 1.8.1 that:

Without national agreement to change and a co-ordinated national approach to the changes, people injured in an ADS crash may have access to compensation in some jurisdictions, but not in others. (p.19)

As a national plaintiff law firm, we are well placed to advocate strongly for a co-ordinated national approach to ensure comparable legislative amendment across all States and Territories.

We emphasise that we do not advocate for a national compensation system, but rather a nationally consistent approach to broadening each State and Territory's existing laws and schemes to ensure that in each State or Territory, injured persons are not disadvantaged based on the involvement of an automated vehicle.

We strongly endorse the notion articulated in section 1.8.4 of the Discussion Paper, in relation to the potential redesign of existing MAlI schemes, that:

Any changes would need to ensure that the cost of ADS crashes is borne by those who can control the risks.

In relation to fault-based entitlements, we believe that the NTC should consider whether there should be a non-delegable duty of care on the person in control of the vehicle (unless, of course, the injury is caused through manufacturer error).

In our opinion, if the person in control of the vehicle chooses to switch the vehicle to its automated setting, they should be responsible for what happens while the vehicle is on that setting.

Further, we believe that the framework should be set up such that the insurer (be that government or private, depending on the jurisdiction) should not have to 'pick up the tab' if the injury was caused through the fault of the manufacturer. By ensuring there is financial repercussion to the 'at fault' party (ie. the manufacturer), this creates incentive to improve the technology and prevent future accidents. If conversely there is no financial repercussion to the 'at fault' party and therefore no internalising of the negative externality, then it is possible that safety outcomes would be compromised.

Question 3: Have we accurately identified the key gaps and barriers in legislation?

Yes.

We agree that the barriers or gaps in current MAlI laws that may prevent a person injured in an ADS crash from accessing benefits or compensation, have been well documented in the Discussion Paper, namely:

- *an accident/injury caused by or involving 'the driving of the vehicle' or the vehicle 'running out of control' may not apply when the ADS is engaged*
- *the ADS may not fall within the definition of 'driver', so there would be no insured party and so is not an indemnified party in fault-based and hybrid MAlI schemes*
- *an ADS is not capable of negligence or wrongdoing. Even if it were an indemnified person, the requirement for fault in fault-based and hybrid MAlI schemes would be absent. (p.34)*

We believe that these barriers and gaps can be relatively easily addressed through:

- changes to the definition of driving and/or to the definition of the types of accidents included in each state and territories' scheme, to ensure ADS accidents are included;
- implementation of a rebuttable presumption of fault against the ADSE where an accident was caused by the ADS, of the type referred to in Appendix C.1.3 Option 2, in the Discussion Paper (p.79);
- expansion of indemnification under MAlI schemes.

In **Appendix A**, we have included our submission to the inquiry by the Standing Committee on Industry, Innovation, Science and Resources into the social issues relating to land-based driverless vehicles in Australia. In this submission, we detailed the changes we believe necessary to adjust State and Territory laws to ensure ADS accidents are included, to allow for benefits and compensation to be sought.

The recommendations in Appendix A are similar, in the majority of cases, to the recommendations from the Heads of Motor Accident Injury Schemes, as detailed on pages 32 & 33 of the Discussion Paper.

Question 4: Is more research needed before a preferred option can be selected?

No.

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

Maurice Blackburn supports the assessment criteria by which the NTC has compared the options for change, namely that the scheme should:

- i. Ensure 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;
- ii. Provide timely payment of claims to injured persons;
- iii. Address an identified gap or barrier to personal injury compensation created by using automated vehicles;
- iv. Send an appropriate price signal to those responsible and associated with automated vehicle product/system/technology failures and risks; and
- v. Be able to accommodate evolving technology, automated vehicles and ownership models.

Maurice Blackburn agrees with the NTC's assessment that Option 3 best meets these assessment criteria.

We note the concerns raised by the NTC in relation to this option, including that it may result in insurers underwriting private sector wrist. Accordingly, we suggest a number of modifications to this Option which are detailed below.

Expansion of the current scheme – indemnification

In agreeing with the NTC's assessment that an expansion of existing MAlI schemes to cover injuries caused by ADS (Option 3) is the best option, we are mindful that we must consider how injuries caused by vehicle defects in the context of **traditional vehicles** are currently treated.

Changes to the definition of driving and the types of accidents included in schemes will allow for compensation to be recovered by those injured in an accident involving an ADS. However it does not ensure that the State or Territory insurers will indemnify the 'at fault' party, being the ADSE. Accordingly, we submit that indemnification under MAlI schemes must also be amended.

Victoria's Transport Accident Commission (TAC) will only indemnify the owner or driver of a vehicle whose negligence has resulted in the claimant's injuries. The TAC will not indemnify a manufacturer. Therefore where a claim is brought against the manufacturer, the claim is handled outside of the TAC scheme.

It is expected that in the future, with the increased use of automated vehicles, a higher proportion of accidents will be caused by vehicle defects as opposed to driver error. Extending this logic, it is expected that there will be an increased number of claims brought where the TAC will not indemnify the 'at fault' manufacturer (ie. the ADSE) because that party is neither the owner nor the driver.

Therefore, an increasing number of motor vehicle claims will be treated differently to those where a person is injured by a traditional vehicle.

This unjust result would contravene the NTC's specified assessment criteria, namely that a person injured by an ADS be no worse off financially or procedurally than if they were injured by a vehicle controlled by a human driver.

To address this concern, we submit that indemnification should be expanded to cover an ADS when engaged. The insurer would then seek recovery from the ADSE through the reinsurance model (see below).

This right of recovery from the ADSE provides a remedy to the concerns addressed in Appendix C.1.2 Option 1 in the Discussion Paper (p.79), being that if the ADS is indemnified then the cost of injuries would be passed from the ADSE to vehicle owners and insurers. Further it addresses the concerns in Option 2 being that if the ADSE is indemnified then the insurer would not be able to pursue a right of recovery against their own insured.

The right of recovery

We note the concern expressed by NTC, in relation to Option 3, that:

Expanding the scheme would shift costs from manufacturers under product liability to vehicle operators and insurers under the MALL schemes. Although insurers would have rights of recovery against manufacturers or ADSEs, it is likely that ADS crashes will be more complex to establish in negligence and product liability, with the risk that costs would not be recovered. (p.3)

Maurice Blackburn is satisfied that, when properly exercised, recovery rights provide sufficient protection for operators and insurers.

We invite the NTC to consider the WorkCover system, where a model of recovery against third parties operates effectively.

To provide more certainty for insurers regarding their prospects of successfully recovering costs, we submit that where an accident was caused by the ADS, there should be a rebuttable presumption of fault against the ADSE of the type referred to in Appendix C.1.3 Option 2, in the Discussion Paper (p.79).

The ADSE is the party responsible for certification before a car is released to market as well as the entity responsible for compliance with safety and traffic obligations. The ADSE is therefore best placed to take action against risk of defect and therefore the presumption would be appropriate. We acknowledge that this would not deal with after-market issues such as servicing and software updates.

This rebuttable presumption would also reduce barriers to claimants pursuing compensation via negligence claims rather than through the Australian Consumer Law. We concur with the NTC's comments regarding the difficulties of pursuing compensation through the Australian Consumer Law, particularly where this would likely result in procedural disadvantage to injured persons when compared with the way that current traditional vehicle negligence claims are handled pursuant to MAll schemes.

We note the UK system, as described in section 1.9.1 of the Discussion Paper (p.21), where insurers can limit their liability if ADS was tampered with or updates not installed or updated by the insured. We believe this is worthy of consideration.

Further, assuming the adoption of automated vehicles results in a reduction in accidents as a result of the technology over time, there will be resultant savings for insurers due to a decreasing volume of claims.

The reinsurance pool model

In relation to the proposition to set up a reinsurance pool as a way of addressing cost shifting from manufacturers to MAll policy holders, Maurice Blackburn respectfully asks the NTC to consider the following:

We are concerned that a reinsurance pool model, without modification, does not directly hold accountable those responsible for the defect as the contribution to the pool would not vary depending on safety outcomes from particular manufactures. Therefore, it does not encourage wrongdoers to create change. Additionally, it may require 'faultless' parties, who have never contributed to any defect causing an accident, to continually have to contribute to the pool and pay the costs of those parties who have contributed to a defect.

We understand however that it is necessary for funds to be provided upfront rather than solely upon the occurrence of injury caused by the defect. This issue could be addressed by modifying the reinsurance pool model so that funding is provided at two different points:

1. by the ADSE (as the party responsible for certification before a car is released to market as well as the entity responsible for compliance with safety and traffic obligations) upon the sale of each automated vehicle; and
2. by the ADSE upon the resolution of a damages claim made in relation to a defect for which that ADSE is responsible.

The second form of contribution would have the effect of an excess to be paid when a claim is successfully made.

This modified model addresses the need for upfront funding while assigning additional cost to those parties who are at fault, thereby providing cost incentive to remedy and improve upon defects.

Question 6: Are the criteria sufficient for assessing the options?

Yes.

As mentioned in our response to Question 5, Maurice Blackburn supports the assessment criteria by which the NTC has compared the options for change.

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?

Yes.

Please refer to our response to Question 3.

Question 8: Should different insurance models be used depending on the level of vehicle automation?

No.

Question 9: If you support option 3, are current rights of recovery for insurers sufficient?

No.

Please refer to our response to Question 3, in relation to recovery against ASDE / manufacturers / reinsurance pool AS WELL AS the issue of traditional vehicle defects.

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 MAIL schemes and caps or thresholds.

N/A

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

N/A

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?

No.

Maurice Blackburn acknowledges that access to data will be vitally important in dealing with issues of fault involving automated vehicles.

We believe that a streamlined and cost-efficient mechanism to access event data could rationalise the process of insurance claims and reduce litigation. This would be favourable to all parties and reduce the burden of protracted and complicated litigation on the public purse, particularly if the data can be made available soon after the accident in order to settle questions of fault.

We note that currently, the only mechanism for a vulnerable injured person to access event data is through a direct request to the owner of the data, which could be refused, or through discovery processes as part of actual or anticipated legislation. We submit that this creates a significant disadvantage to the injured person and affords an inequitably powerful position to the owners of the data (likely manufacturers) who, as the potential defendant, have an

interest in protecting the data. We need to protect against manufacturers being allowed/enabled to hide data, and ensure that requests for data must be satisfied in a timely manner.

Therefore, we submit that any legislative change should enable vulnerable road victims to enjoy early and transparent access to event data in order to ensure issues of fault are dealt with expediently and to avoid issues of power imbalance.

We submit that this will be essential to community acceptance of automated vehicle technology. Without regulation of early access to data, concern around unfair disadvantage in assignment of fault after an accident could result in a reduced uptake of the technology.

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?

The Discussion Paper describes the current situation as follows:

....the insurer of the vehicle (whether public or private) is liable for damages for injuries caused by the insured parties in other states and territories. The actions would be governed by the relevant laws of the other jurisdiction. (p.68)

The Discussion Paper goes on to note that:

If one jurisdiction changed its laws to ensure those injured in ADS crashes were covered by its MAll scheme, insurers in other jurisdictions may be exposed to unfunded claims for damages arising from ADS crashes. (p.68)

This highlights the need for national uniformity and consistency, in ensuring interstate recognition.

To this end, we submit that comparable legislative amendment across all States and Territories would ensure consistency, fairness and a nationally uniform approach.

Appendix A: *Maurice Blackburn's response to the Inquiry into the social issues relating to land-based driverless vehicles in Australia (May 2017)*



12 May 2017

Committee Secretary
Standing Committee on Industry, Innovation, Science and Resources
PO Box 6021
Parliament House
Canberra ACT 2600

By email: iisr.reps@aph.gov.au

Maurice Blackburn Pty Limited

ABN 21 105 657 949

Level 21

380 Latrobe Street
Melbourne VIC 3000

DX 466 Melbourne

T (03) 9605 2700

F (03) 9258 9600

Dear Secretary,

We welcome the opportunity to provide further submissions to the Committee's Inquiry into the social issues relating to land-based driverless vehicles in Australia.

Please do not hesitate to contact me on (03) 9784 6100 or at kminogue@mauriceblackburn.com.au if we can further assist with the Committee's important work.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Katie Minogue". The signature is fluid and cursive, with a long horizontal stroke at the end.

Katie Minogue
MAURICE BLACKBURN



Maurice
Blackburn
Lawyers
Since 1919

FURTHER SUBMISSIONS
TO THE STANDING
COMMITTEE ON
INDUSTRY, SCIENCE AND
RESOURCES

May 2017



Table of Contents

	Page
INTRODUCTION.....	1
SUMMARY OF OUR RELEVANT PREVIOUS SUBMISSION.....	2
AUSTRALIAN CAPITAL TERRITORY	2
NEW SOUTH WALES.....	3
NORTHERN TERRITORY	4
QUEENSLAND	4
SOUTH AUSTRALIA.....	5
VICTORIA	5
WESTERN AUSTRALIA..	6

Introduction

Maurice Blackburn Pty Ltd appeared before the Standing Committee on Industry, Innovation, Science and Resources on 11 April 2017.

Specifically, we made submissions regarding the potential for accidents involving autonomous vehicles to fall outside of the legislative framework currently in place to address persons injured in such accidents. We are grateful to have been invited to provide further submissions in relation to this issue.

Summary of Our Relevant Previous Submission

It has recently been identified that accidents involving automated vehicles may not always fall within definitions of "transport accident", "driving" and similar terms used in relevant legislative frameworks. Such terms are generally used to entitle persons injured in transport accidents to compensation and statutory benefits in relation to those injuries.

Generally, in order to constitute 'driving', at the least some positive action is required on the part of the driver concerning the movement of the car. Partially automated vehicles that utilise features such as collision avoidance, automated emergency braking, park assist, adaptive cruise control and lane keep assist may not meet the definition of 'driving' whilst the autonomous features are engaged. As more highly automated vehicles are introduced to our roads, the definition of 'driving' is less likely to be met.

For the reasons previously submitted, it is crucial that legislative amendment take place to counteract this uncertainty and to ensure that persons injured in accidents involving autonomous vehicles are not treated differently from those who are injured in accidents involving 'traditional' vehicles. Further, we submit that comparable legislative amendment across all States and Territories would ensure consistency, fairness and a nationally uniform approach.

Australian Capital Territory

We support a legislative amendment to section 7 of the *Road Transport (Third Party Insurance) Act 2008* (ACT) ("the ACT Act") which would expressly extend the definition of 'motor accident' in the following way:

"motor accident" means an incident that:

- (a) involves the use or operation of a motor vehicle; and*
- (b) causes personal injury to an individual (the injured person); and*
- (c) happens when:*
 - (i) someone is driving the motor vehicle; or*
 - (ii) someone or something collides with the motor vehicle; or*
 - (iii) someone takes action to avoid colliding with the motor vehicle; or*
 - (iv) the motor vehicle runs out of control.*
 - (v) an autonomous vehicle driving system is in operation.*

We support a legislative amendment to section 8 of the ACT Act which would expressly extend the definition of 'use' of a motor vehicle in the following way:

"use", a motor vehicle, includes:

- (a) *drive, park or stop the vehicle on a road or road related area; and*
- (b) *maintain the vehicle; and*
- (c) *if the vehicle is towing a trailer – use the trailer while attached to the vehicle; and*
- (d) *if the vehicle is a tow truck towing or carrying an uninsured motor vehicle – use or operate the uninsured vehicle being towed or carried; and*
- (e) *anything else prescribed by regulation.*
- (f) *operation of an autonomous vehicle driving system.*

We support a legislative amendment to the Dictionary of the ACT Act which would expressly extend the definition of 'drive' in the following way:

"drive", a vehicle, includes:

- (a) *be in control of the steering, movement or propulsion of the vehicle; and*
- (b) *if the vehicle is a trailer—draw or tow the vehicle; and*
- (c) *if the vehicle can be ridden—ride the vehicle.*
- (d) *or where the autonomous vehicle driving system is in operation.*

We support the associated legislative amendment of the ACT Act in the following way:

"autonomous vehicle driving system" means a system that is capable of performing any part of the dynamic driving task at any of levels one (1) through five (5) of automation as set out in SAE Standard J3016.

New South Wales

We support a legislative amendment to section 3 of the *Motor Accidents Compensation Act 1999* (NSW) ("the NSW Act") which would expressly extend the application of the Act in the following way:

"driver" means a person driving a motor vehicle, and includes:

- (a) *a person riding and operating a motor cycle, and*
- (b) *a person for the time being in charge of a motor vehicle.*
- (c) *an autonomous vehicle driving system when the autonomous features of the autonomous vehicle driving system are engaged.*

"motor accident" means an incident or accident involving the use or operation of a motor vehicle that causes the death of or injury to a person where the death or injury is a result of and is caused (whether or not as a result of a defect in the vehicle) during:

- (a) *the driving of the vehicle, or*
- (b) *a collision, or action taken to avoid a collision, with the vehicle, or*
- (c) *the vehicle's running out of control, or*
- (d) *a dangerous situation caused by the driving of the vehicle, a collision or action taken to avoid a collision with the vehicle, or the vehicle's running out of control.*
- (e) *the operation of an autonomous vehicle driving system.*

We support the associated legislative amendment of section 3 of the NSW Act in the following way:

“autonomous vehicle driving system” means a system that is capable of performing any part of the dynamic driving task at any of levels one (1) through five (5) of automation as set out in SAE Standard J3016.

Northern Territory

We support a legislative amendment to section 4A(2) of the *Motor Accidents (Compensation) Act* (NT) (“the NT Act”) which would expressly extend the circumstances in which a ‘motor accident’ can take place in the following way:

A motor accident is caused by or arises out of the use of a motor vehicle if, and only if, it results directly from:

- (a) The driving of the motor vehicle; or*
- (b) The motor vehicle moving out of control; or*
- (c) A collision, or action to avoid a collision, with the motor vehicle (whether the motor vehicle is stationary or moving).*
- (d) the operation of an autonomous vehicle driving system.*

We support the associated legislative amendment of section 4 of the NT Act in the following way:

“autonomous vehicle driving system” means a system that is capable of performing any part of the dynamic driving task at any of levels one (1) through five (5) of automation as set out in SAE Standard J3016.

Queensland

We support a legislative amendment to section 5(1) of the *Motor Accident Insurance Act 1994* (Qld) (“the Qld Act”) which would expressly extend the application of the Act in the following way:

This Act applies to personal injury caused by, through or in connection with a motor vehicle if, and only if, the injury:

- (a) is a result of:*
 - (i) the driving of the motor vehicle; or*
 - (ii) a collision, or action taken to avoid a collision, with the motor vehicle; or*
 - (iii) the motor vehicle running out of control; or*
 - (iv) a defect in the motor vehicle causing loss of control of the vehicle while it is being driven or autonomously operated;*
 - or*
 - (v) the operation of an autonomous vehicle driving system;*
- (b) is caused, wholly or partly, by a wrongful act or omission in respect of the motor vehicle by a person or entity other than the injured person.*

We support the associated legislative amendment of section 5 of the Qld Act in the following way:

“autonomous vehicle driving system” means a system that is capable of performing any part of the dynamic driving task at any of levels one (1) through five (5) of automation as set out in SAE Standard J3016.

South Australia

We support a legislative amendment to section 99(3) of the *Motor Vehicles Act 1959* (SA) (“the SA Act”) which would expressly extend the application of the Act in the following way:

Subject to subsection (3a), for the purposes of this Part, death or bodily injury will be regarded as being caused by or arising out of the use of a motor vehicle only if it is a direct consequence of:

- (a) the driving of the vehicle; or*
- (b) the vehicle running out of control; or*
- (c) a person travelling on a road colliding with the vehicle when the vehicle is stationary, or action taken to avoid such a collision.*
- (d) the operation of an autonomous vehicle driving system.*

We support the associated legislative amendment of section 99 of the SA Act in the following way:

“autonomous vehicle driving system” means a system that is capable of performing any part of the dynamic driving task at any of levels one (1) through five (5) of automation as set out in SAE Standard J3016.

Victoria

In our previous submissions, we outlined the relevant definitions and case law in relation to the *Transport Accident Act 1986* (Vic) (“the Victorian Act”).

We support a legislative amendment to section 3(1A) of the Victorian Act which would expressly extend the definition of ‘transport accident’ in the following way:

For the purposes of the definition of transport accident in section 3(1) an incident includes an incident:

- (a) involving a motor vehicle, a railway train or a tram which is out of control;*
- (b) involving a collision between a pedal cycle and an open or opening door of a motor vehicle;*
- (c) involving a collision between a pedal cycle and a motor vehicle while the cyclist is travelling to or from his or her place of employment;*
- (d) involving the opening or closing of a door of a bus, tram or railway train;*
- (e) involving the operation of an autonomous vehicle driving system.*

We support the associated legislative amendment of section 3 of the Victorian Act in the following way:

“autonomous vehicle driving system” means a system that is capable of performing any part of the dynamic driving task at any of levels one (1) through five (5) of automation as set out in SAE Standard J3016.

Western Australia

We support a legislative amendment to section 3 of the *Motor Vehicle (Third Party Insurance) Act 1943* (WA) which would expressly extend the application of the Act in the following way:

7. *For the purposes of this Act, the death of or bodily injury to any person shall not be taken to have been caused by a vehicle if it is not a consequence of the driving of that vehicle or of the vehicle running out of control.*

8. *For the purposes of this Act, the death of or bodily injury to any person shall be taken to have been caused by a vehicle if it is caused by the operation of an autonomous vehicle driving system.*

We support a legislative amendment to section 4 of the *Motor Vehicle (Catastrophic Injuries) Act 2016* (WA) which would expressly extend the application of the Act in the following way:

1. *A motor vehicle accident is an incident caused by or arising out of the use of a motor vehicle.*

2. *For the purposes of subsection (1), an incident is caused by or arises out of the use of a motor vehicle if, and only if, it results directly from:*

- (a) the driving of the motor vehicle; or*
- (b) the motor vehicle running out of control; or*
- (c) a collision, or action to avoid a collision, with the motor vehicle (whether the motor vehicle is stationary or moving); or*
- (d) the operation of an autonomous vehicle driving system.*

We support the associated legislative amendment of both Acts in the following way:

“autonomous vehicle driving system” means a system that is capable of performing any part of the dynamic driving task at any of levels one (1) through five (5) of automation as set out in SAE Standard J3016.