

28 July 2017

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

Dear Sir/Madam,

**Regulatory options to assure automated vehicle safety in Australia - Discussion Paper
– June 2017**

Maurice Blackburn Lawyers thanks the National Transport Commission for the opportunity to make submissions in response to the *Discussion Paper – June 2017: Regulatory options to assure automated vehicle safety in Australia* (“the Discussion Paper”).

Please do not hesitate to contact Katie Minogue or Tamara Wright if we can further assist with the Commission’s important work.

Yours sincerely,



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Since 1919

**SUBMISSIONS TO THE
NATIONAL TRANSPORT
COMMISSION**

Maurice Blackburn Pty Ltd primarily and relevantly engages in work in the personal injuries field, particularly in regard to injuries resulting from transport accidents. We see the devastating impact of road trauma on victims, their families and their communities every day. For this reason, our submissions address the important aspects of any safety assurance system in relation to protecting road users. It is imperative that autonomous vehicles are subject to a robust safety assurance system, ensuring a reduction in death and injury on our roads.

In relation to the specifics of the system type and workings, we defer to the judgment of those stakeholders with more extensive experience of Australia's current safety assurance system.

We understand that there is some concern that safety requirements may stifle ingenuity and technological advances. However the concept of an industry balancing advancements with safety risk to humans is not a new one. As a society, we consistently value human safety above the faster introduction of technology where it presents a safety risk. In our submission, the increasing introduction of autonomous driving systems should not be treated differently.

We acknowledge and look forward to a time where autonomous driving systems may improve the safety of motor vehicles and reduce injuries caused in transport accidents. However at this initial introductory stage where arguably the safety risk is at its greatest, we submit that care must be taken to ensure that Australian laws and regulations continue to prioritise the safety of road users by requiring the highest level of safety.

Question 2: Should governments be aiming for a safety outcome that is as safe as, or significantly safer than, conventional vehicles and drivers?

It is our submission that the chosen system type should require a standard of safety (and therefore achieve a 'safety outcome') *at the least*, at a level that is safer than human-driven vehicles.

We submit that this should be supported by a legislated primary safety duty that imposes an affirmative duty of care on all parties in the chain of responsibility to ensure safety, so far as is reasonably practicable. We believe the primary safety duty in Section 53 of the Rail Safety National Law (NSW) provides a good model for the shape the primary safety duty for autonomous vehicles should take.

A primary safety duty would be consistent with similar Australian safety schemes. The courts would interpret the meaning of 'so far as is reasonably practicable' according to contemporaneous standards of safety and technology. This ensures that the standard of safety required continues to grow and evolve as technology becomes able to achieve higher levels of safety.

We submit that a dual standard approach (that is, at least as safe as human-driven vehicles supported by a primary safety duty) will ensure that autonomous vehicles do not enter the marketplace until consumers can be assured that they are safer than the current system *and* that required safety standards do not become outdated as technology improves. For example, in ten years' time it would be reasonable for society to expect more than just a level that is safer or significantly safer than human-driven vehicles. A primary safety duty will ensure safety outcomes continue to improve as a result of technological advances and do not stagnate. This would also ensure that safety standards are not compromised in order to

facilitate other goals such as, for example, decreased compliance costs or increased speed of introduction of technology.

Question 7: Should self-certification be supported by a primary safety duty to ensure automated vehicle safety?

Where transport accidents eventuate and a person is injured or property is damaged, in order for those affected to access compensation there must be a specific party or parties who have acted negligently. This first requires a duty of care owed to the injured person that has been breached. In order to establish this duty, there must be certainty about which party in the chain of manufacturing, programming or supplying has a responsibility and what the specifics of that responsibility are.

In a system of self-certification, it is our submission that it is crucial that there are clear and certain designations of responsibility for specific safety measures.

Question 12: How should governments ensure compliance with the safety assurance system?

We submit that compliance with any safety assurance system should be mandatory rather than voluntary.

In order for consumers and the broader public to have confidence in the safety of automated driver systems, it is crucial that both the perception and the reality of such a safety assurance system is that it prioritizes safety and that there are mechanisms in place to ensure this occurs. To this end, manufacturers and suppliers alike must be seen to be held to high standards of safety.

Maurice Blackburn welcomes the introduction of a safety assurance system that is designed to uphold, with the utmost importance, the safety of road users. We need look no further than the recent worldwide Takata airbag disaster to see what happens when a safety assurance system fails to detect deadly safety defects. Autonomous vehicles have the potential to reduce death and injury on our roads. We must ensure that we enable this outcome with a safety assurance system that prioritises road user safety above all else.