

3 July 2020

Automated Vehicle Team
National Transport Commission
Level 15, 628 Bourke Street
Melbourne VIC 3000

By email: automatedvehicles@ntc.gov.au

Dear Automated Vehicle Team,

Submission to the National Transport Commission, Review of ‘Guidelines for trials of automated vehicles in Australia’ (Guidelines); Discussion Paper, May 2020.

The Law Institute of Victoria (the ‘LIV’) thanks the National Transport Commission (the ‘NTC’) for the opportunity to provide submissions responding to the Review of ‘*Guidelines for trials of automated vehicles in Australia*’; *Discussion Paper, May 2020* (‘the discussion paper’).

Scope

This submission will be limited in line with the LIV’s earlier submissions to the NTC, specifically it’s submission in response to the *National guidelines for automated vehicle trials Discussion Paper 2016* and to aspects of safety within the context of Victoria.

The LIV remains of the view that management of trials, enforcement, application of the guidelines, and administration would be better discussed by experts in their respective fields.

Submission

In our previous submissions, the LIV submitted that “appropriate” insurance be no less than the level currently afforded to road users under the Transport Accident Act (Vic) 1986 (‘TAA’), including ‘No Fault’ benefits and entitlements. The LIV reiterates that the law should reflect the principle that *‘no person is better or worse off, financially or procedurally, if they are injured by a vehicle whose automated driving system (“ADS”) was engaged than if they were injured by a vehicle controlled by a human driver’*. The LIV submits that any amendments or updates to the Guidelines should continue to reflect that key principle in assessing trial applications.

It is imperative that the same level of protection is afforded to those who are injured on our roads by a vehicle with its ADS engaged. Thus, the LIV maintains its view that in Victoria the Transport Accident Commission (‘TAC’) should remain as insurer for personal injuries sustained in incidents involving vehicles with their ADS engaged.


The TAC has advised of its policy position to extend TAC coverage where a person is injured as a result of an automated vehicle trial. However, the LIV submits that policy assurances do not provide enough certainty and that legislative reform is necessary to enshrine rights and equality of coverage to anyone injured by a vehicle with its ADS engaged, including in any trials. Legislative amendment is required to the TAA to extend the

definition of 'transport accident' to directly include automated vehicles for the purpose of statutory (no fault) entitlements and common law. TAC indemnity for these accidents must also be enshrined in legislation.

Finally, the LIV maintains its support for the proposition that all trials be required to comply with existing privacy laws and principles. This should be managed with a balancing view to ensure the guidelines still capture new technologies and encourage innovation to be trialed in the future while maintaining state-based compensation schemes such as those under the TAA.

If you have any queries please contact Irene Chrisafis, Senior Lawyer and Privacy Officer, Litigation Lawyers Section on telephone number 03 9607 9386 or by email at ichrisafis@liv.asn.au.

Yours sincerely,



Sam Pandya
President
Law Institute of Victoria