



## FAQs

### MOTOR ACCIDENT INJURY INSURANCE AND AUTOMATED VEHICLES

#### What work is the NTC doing?

The National Transport Commission is working with state and territory insurance agencies to examine Australia's motor accident injury insurance schemes to see if there are barriers to accessing compensation for personal injuries or death caused by an automated driving system. We are seeking views on whether cover should be provided through these existing schemes or alternative insurance models. We released a [discussion paper](#) for [consultation](#) in October 2018. The discussion paper outlines the problems, principles and possible barriers to guide decisions on reform, and seeks feedback on proposed options for change if the current framework is not sufficient.

#### What is the NTC's role?

The National Transport Commission is responsible for developing an end-to-end regulatory system for the safe commercial deployment of automated vehicles in Australia. The NTC is working with states and territories to identify any barriers to accessing motor accident injury insurance schemes by those injured in an automated vehicle crash and potential reform options to address these barriers.

#### What is motor accident injury insurance?

Motor accident injury insurance includes compulsory third party (CTP) insurance and arrangements under the National Injury Insurance Scheme (NIIS) for catastrophic injuries.

#### How is motor accident injury insurance currently regulated?

Each Australian state and territory has laws that require registered vehicles to have MAll (often referred to as 'Green Slip' or CTP insurance). This insurance provides compensation for personal injury and/or death from motor vehicle accidents. Compensation does not extend to property damage caused by a motor vehicle accident.

MAll laws around Australia modify or extinguish (to varying degrees) specific common law rights to actions in negligence based on an alleged failure to take reasonable care to avoid causing injury or loss to someone.

- Western Australia, South Australia, the Australian Capital Territory and Queensland operate fault-based, common law schemes, with various levels of modification. They rely on an injured person establishing negligence against an insured party, usually the driver or owner.
- Victoria, Tasmania and New South Wales (for accidents after 1 December 2017) have hybrid schemes, where access to common law damages is available to varying degrees. For

example, in Victoria people with specified levels of permanent impairment, can commence actions for pain, suffering and economic loss.

- Only the Northern Territory scheme is completely no-fault. Common law liability for motor accidents has been abolished.

MAII premiums are paid as a condition of vehicle registration. The premium may be paid to a statutory body as occurs in Victoria, Northern Territory, Tasmania and Western Australia. Elsewhere, the premium is paid to a private insurer.

The NIIS ensures people who sustain eligible serious or catastrophic, life-time injuries in motor vehicle accidents, regardless of fault, receive necessary and reasonable treatment, care and support. All states and territories have introduced laws (the Australian Capital Territory, New South Wales, Queensland, South Australia and Western Australia) or amended existing laws (Victoria, Tasmania and the Northern Territory) to implement the scheme. The NIIS excludes people who have received a common law compensation payment in respect of their care and support needs.

The NIIS is funded via a compulsory levy, premium or charge that is paid at the time of vehicle registration under different arrangements in each state and territory.

### **What are automated vehicles?**

Automated vehicles are vehicles that include an automated driving system (ADS) that is capable of monitoring the driving environment and controlling the dynamic driving task (steering, acceleration and braking) with limited or no human input.

This could include:

- vehicles based on existing models, with automated functions
- new vehicle types with automated functions
- after-market devices or software upgrades that add automated driving functions to existing vehicles.

New vehicles with high levels of automation are expected to arrive on our roads from 2020. These vehicles will increasingly take control of the driving task away from human drivers in certain circumstances and environments.

### **What are the problems and barriers?**

The following problems have been identified:

- People injured or killed in an automated driving system (ADS) crash may not have the same, or any, access to compensation under existing MAII schemes compared to those injured or killed in a crash involving a motor vehicle controlled at the time by a human driver.
- Current MAII laws do not contemplate an ADS 'driving' a motor vehicle.
- Many MAII schemes require fault to be proved for compensation to be paid. Even if an ADS were considered to be driving, it is not a person. It is not capable of negligence or wrongdoing.
- Current MAII schemes are generally designed to cover injuries caused by human error rather than product faults. If MAII schemes were to cover ADS crash injuries, the cost of product faults would shift from manufacturers to vehicle owners, insurers and governments.

The barriers or gaps in the current MAII laws that may prevent a person injured in an ADS crash from accessing benefits or compensation can be summarised as:

- 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 may be no at-fault insured/indemnified person to claim against in fault-based and hybrid MAll schemes
- an ADS is not capable of negligence or wrong-doing. Even if it were an insured/indemnified person, the requirement for fault in fault-based and hybrid MAll schemes would be absent.

## **What are the principles?**

The Heads of Motor Accident Injury Schemes developed the following principles to guide a uniform approach to identifying barriers and examining options. These principles should be not be considered absolute: it may not be possible for an option to comprehensively meet all principles, and trade-offs between some of the principles may be necessary to achieve a workable solution.

### ***Overarching principle***

- 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.

### ***Proposed supporting principles***

- Reasonable and timely access to compensation should continue regardless of the type of vehicle involved in the injury.
- The arrangements should promote transparency and certainty in accessing compensation.
- 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.
- Existing state and territory benefit regimes should not be required to change.
- The arrangements should include an efficient process to access a standard set of reliable and verifiable vehicle crash data.

The Heads of Motor Accident Injury Schemes is a group comprising the Chief Executives, or delegates, of the agencies responsible for the regulation and/or delivery of motor accident personal injury insurance in Australia and New Zealand. It includes the separate agencies responsible for catastrophic injury insurance resulting from motor vehicle accidents under the National Injury Insurance Scheme.

## **What options is the NTC proposing to address the problems and barriers?**

The NTC has proposed 6 options for comment.

### **Option 1: Make no change and rely on existing legal framework**

Under Option 1, available causes of action for people injured in an ADS crash include making a claim under existing MAll schemes (with uncertainty about cover), under the Australian Consumer Law, in contract law for breach of contract or in negligence based on a breach of a duty of care.

### **Option 2: Exclude injuries and deaths caused by an ADS from MAll schemes**

Under Option 2, the MAll laws in each state and territory would be amended to exclude accidents/injuries caused by an ADS. This option makes it clear that people injured by an ADS would not be able to use the MAll schemes to seek compensation for their injuries. An injured person would have no option but to rely on taking action under negligence, the Australian Consumer Law or contract.

### **Option 3: Expand MAll schemes to cover injuries and deaths caused by an ADS**

Under Option 3, the MAll laws would be amended to remove barriers to accidents/injuries caused by ADSs. Injured people would have access to compensation and benefits regardless of whether the injury was caused by an automated vehicle whose ADS was engaged or a vehicle controlled by a human driver.

Expanding the scheme would shift costs from manufacturers under product liability to vehicle operators and insurers under the MAII schemes. Although insurers would have rights of recovery against manufacturers, it is likely that liability for ADS crashes will be more complex to establish in negligence and product liability. There is a risk that costs would not be recovered.

A modification of Option 3 to address cost shifting, would be to create a national reinsurance pool of compulsory contributions from all parties who could be responsible for an ADS malfunction. Contributing parties could include ADSEs and other parties involved in automated vehicle manufacture, supply including modifiers, installers, repairers and infrastructure and telecommunications providers. MAII scheme claims managers would have access to, or a right to recovery from, the pool. The national reinsurance pool would be administered by a new or existing national entity.

#### **Option 4: Purpose-built automated vehicle scheme**

Under Option 4, a purpose-built scheme would be established to ensure that there is an accessible claims process for people injured by automated vehicles. It could be a national scheme, or a state and territory scheme designed to mirror existing MAII scheme arrangements in each jurisdiction.

The scheme would need to cover liabilities for injuries caused by both driver negligence and product failure, as human driver negligence may still be a factor in an accident involving an automated vehicle which has human driver controls.

#### **Option 5: Minimum benchmarks**

Under Option 5, national benchmarks would be agreed for the scope and coverage of people injured in an ADS crash. The NIIS is an example of this type of approach.

Jurisdictions would retain the responsibility and flexibility to deliver the minimum requirements in the way that best suits their own circumstances. They could implement automated vehicle injury insurance arrangements that may:

- leverage existing MAII schemes
- allow for more private insurer participation
- permit self-insurance by ADSEs
- consider the ownership composition of the fleet in each jurisdiction
- change as the autonomy level of the fleet evolves.

#### **Option 6: Single insurer**

Under Option 6, the MAII laws would be amended to allow for private insurers to provide fully comprehensive motor vehicle insurance (i.e. cover for property damage and personal injury) under a single policy covering all liabilities for automated vehicles. This is a change from existing arrangements in Australia where CTP insurance is purchased as a separate policy to optional third-party property or comprehensive motor vehicle insurance.

Where the ADS causes an accident, the insurer would be able to pursue a recovery claim against the manufacturer. The personal injury costs of ADS failures would be privately underwritten.

Existing MAII schemes would not have to expand beyond covering personal injury caused by human drivers. Jurisdictions in which a statutory corporation or authority exclusively provides third-party personal injury insurance would need to allow private providers to offer this insurance.

#### **Does the NTC have a preferred option?**

No, however we do have a preferred approach to ensure insurance coverage is available while a long-term approach is developed which takes into account evidence of safety risks from early deployments of automated vehicles.

Our analysis indicates that Options 1 and 2 are unlikely to meet with community expectations around equality of access to compensation. Option 3 best meets our assessment criteria and would be the simplest and quickest to implement. However, there are concerns that under this option,

governments will be underwriting private sector risk. Options 4, 5 and 6 are all viable options and each have their own advantages; however, all require significant additional work to develop.

One potential approach could be to implement Option 3 in the short to medium term whilst the number of vehicles with an ADS remains small and their operational design domain remains quite limited. A new approach could then be developed.

We will review these proposed approaches taking into consideration feedback on the discussion paper and will develop a policy paper and recommendations for transport ministers to consider in May 2019. Because a national approach with potential financial impacts on jurisdictions' motor accident injury schemes is involved, the Council for Federal Financial Relations will also need to be involved in the policy development.

### **What consultation has the NTC conducted to date?**

The NTC has consulted with representatives of Heads of Motor Accident Injury Schemes. We also consulted Commonwealth, state and territory transport agencies and the Treasury and Finance Departments.

Feedback on insurance issues raised in the NTC's 2017 automated vehicle issues and discussion papers also informed the development of the [Motor Accident Injury Insurance and Automated Vehicles Discussion Paper](#).

### **How can I provide feedback on the discussion paper?**

The NTC is seeking feedback on the proposed options and responses to the consultation questions. Submissions can be made via the NTC's website [here](#).

### **Next steps**

17 October – 12 December 2018	<a href="#">Submissions</a> open on the <a href="#">discussion paper</a>
January – March 2019	NTC to analyse options and prepare policy recommendations for the Transport and Infrastructure Council meeting in May 2019
May 2019	Australian transport ministers work with the Council for Federal Financial Relations to make policy reform decisions.

### **Relevant links**

[Discussion paper](#)

[Submissions](#)

[Project information](#)

[NTC's automated vehicle reform program](#)