



Insurance Commission
of Western Australia

Date: 17 March 2017

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

Level 13, Forrest Centre
221 St Georges Terrace
PERTH WA 6000

GPO Box U 1908
PERTH WA 6845
Tel: (08) 9264 3333
Fax: (08) 9264 3966
icwa.wa.gov.au

Dear Committee Secretary

RE: INQUIRY INTO THE SOCIAL ISSUES RELATING TO LAND-BASED DRIVERLESS VEHICLES IN AUSTRALIA

The Insurance Commission of Western Australia appreciates the opportunity to make this submission to the inquiry into the social issues relating to land-based driverless vehicles in Australia.

Our organisation provides motor injury insurance to owners of over 2.8 million registered vehicles in Western Australia. The issue of liability for the costs of personal injury that may result from potential driverless vehicle crashes is the key issue that we have addressed in our submission. The core point we make is that driverless vehicle manufacturers and suppliers should be liable to compensate injured parties in the event that driverless vehicle technologies fail.

If you have questions on this submission, please do not hesitate to contact me on +61 8 9264 3333 or kane.blackman@icwa.wa.gov.au

Sincerely

A handwritten signature in blue ink, appearing to read 'Kane Blackman'.

**KANE BLACKMAN
COMMISSION SECRETARY**



**Insurance Commission
of Western Australia**

**Submission to the Commonwealth
Standing Committee Inquiry into the
Social Issues Relating to Land-based
Driverless Vehicles in Australia**

March 2017

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About the Insurance Commission

The Insurance Commission of Western Australia (Insurance Commission) is a statutory corporation and Government Trading Enterprise owned by the Western Australian Government. We are the State's insurer providing motor injury insurance to more than 1.8 million drivers and 2.8 million vehicles in Western Australia (WA).

The Insurance Commission runs the Motor Injury Insurance Scheme in WA and has provided motor injury insurance since 1943. Over that time, we have assisted more than 100,000 injured motorists, passengers, pedestrians and cyclists paying over \$7 billion in compensation payments to people injured in motor vehicle crashes.

The motor injury insurance policy provides owners and drivers of WA registered vehicles with unlimited indemnity against personal injury claims for injuries they cause to others in motor vehicle crashes. The policy now also provides cover to all persons catastrophically injured in motor vehicle crashes in WA.

Background

Driverless or autonomous vehicles are expected to have a significant impact on transport systems around the world when they enter the market in large numbers.

The Insurance Commission, along with other insurers and government agencies, has been responding to consultation papers released by the National Transport Commission (NTC) on automated vehicle policy issues.

Transport officials from various jurisdictions had initially appeared to advocate the shift of responsibility for personal injury costs away from autonomous vehicle manufacturers to Compulsory Third Party (CTP) motor injury insurers.

The Insurance Commission and a number of insurers and car manufacturers do not share the view that CTP insurers should assume liability for what are likely to be essentially product failures.

Terms of Reference, Item One: Legal Responsibility and Insurance

This submission sets out the position of the Insurance Commission on issues associated with insurance and legal responsibility.

Autonomous vehicles hold out the encouraging prospect of fewer vehicle crashes and the resultant desirable outcome of fewer insurance claims in the long term.

Autonomous vehicle manufacturers and suppliers should compensate injured parties in the event that autonomous vehicle technologies fail and cause injuries.

The Insurance Commission submits that it is unreasonable to expect CTP insurers and/or governments to bear the insurance cost burden of potential automated vehicle technology failures. Vehicle manufacturers and/or suppliers should retain liability for costs arising from any failure of automated vehicle technology manufactured or sold by those entities.

The manufacturer or supplier of the automated driving system is legally obliged to provide a product to the consumer that is safe, free from defects and fit for its purpose. This is part of Australian Consumer Law. An extensive body of court decisions set out manufacturer and supplier liability. Manufacturers and suppliers are also liable in tort for the negligent manufacture of goods and under contract law for the supply of goods in breach of an express or implied warranty.

Manufacturers and suppliers should have insurance that is appropriate and sufficiently broad to cover a number of risk areas, including public liability, product liability and cyber risk. People injured in the event that automated vehicle technology fails should be easily able to claim on that insurance. This cover should extend to all people injured in any crash including passengers, cyclists and pedestrians.

A mature functioning market exists, offering insurance that covers public liability, product liability and cyber risks for manufacturers and suppliers. There is no market failure of liability or insurance cover that would require the shift of private sector manufacturer liabilities to a Government-run or privately-run CTP insurer. In time, the market for insurance covering autonomous vehicle liability will mature as the prospect of the introduction of autonomous vehicles in large numbers on our roads.

Entities wishing to trial or operate automated vehicle technologies in Australia should demonstrate they have appropriate insurance to meet statutory requirements under existing Australian Consumer Law. Some legislative or regulatory efforts may need to be made to make sure that insurance cover is adequate, and potentially replicate CTP insurance provisions. Insurance coverage should cater for the long-term cost of personal injuries encountered in vehicle crashes, including economic loss and requirements for life long care and support.

Some autonomous vehicle manufacturers (Mercedes, Google and Volvo) have offered to self-insure their automated vehicles, but the scope of those arrangements are not yet known. Mercedes and Google are reported to say that:

‘...if their technology is at fault once it becomes commercially available, they’ll accept responsibility and liability.’¹

Mercedes also stated:

‘Manufacturers are responsible for damages which flow from product defects.’²

The Insurance Commission notes the position put to this Commonwealth Standing Committee Inquiry into the Social Issues Relating to Land-based Driverless Vehicles in Australia by Volvo:

‘Volvo’s public position on liability is very clear. Volvo will accept full liability for damages or injuries whenever one of its cars is in full autonomous mode’.

The Insurance Commission agrees with this statement in the Volvo submission to this Inquiry that:

‘...the Australian government should mandate that all manufacturers who sell fully driverless cars in Australia must accept liability for cars involved in accidents that were in full autonomous mode at the time of the accident.’

It is not clear why there would be merit in taking a different approach to responsibility and liability for potential product failure when major vehicle manufacturers seeking to sell autonomous vehicles have expressed an intention to assume liability and provide insurance cover for any failure of that product.

Scheme Reviews

The Insurance Commission recognises that the definitions of driver, driving, control and proper control in relevant legislation will need to be clarified to facilitate autonomous vehicle use. The Insurance Commission expects to participate in the review of those definitions with the Western Australian Transport Portfolio and other agencies.

The Insurance Commission does not share the view expressed in the NTC paper that a review is required of Western Australia’s motor injury insurance scheme to bring automated vehicles into the scheme. That position follows from the points made above that autonomous vehicles should not be insured in CTP schemes.

¹4 October 2015, <http://www.cbsnews.com/news/self-driving-cars-google-mercedes-benz-60-minutes/>
<http://jalopnik.com/mercedes-google-volvo-to-accept-liability-when-their-1735170893>

² 21 April 2016, <https://www.mercedes-benz.com/en/mercedes-benz/next/automation/autonomous-driving-the-legal-framework/>

In the WA CTP scheme, a person is eligible to claim if they are injured in a motor vehicle crash, and are able to prove that another driver was negligent. Importantly, the injuries sustained must be directly caused by the driving of a vehicle. The determination of liability and the payment of compensation applies now if a crash occurs with a vehicle with automated features, as the driver remains responsible for being in control of the vehicle.

If a person is catastrophically injured in a crash, motor injury insurance schemes around Australia already cover treatment, care and support irrespective of driver negligence. In WA, this scheme is known as the Catastrophic Injuries Scheme (CIS), and was introduced on 1 July 2016 to provide treatment, care and support to all people catastrophically injured in vehicle crashes.

No review of the eligibility of motor injury insurance schemes (either CTP or CIS) is therefore required in WA.

Suggestions have been made that governments should amend CTP schemes to be nationally consistent for autonomous vehicles. State and Territory schemes throughout Australia differ from each other. Schemes differ on eligibility, cover and the level of compensation provided through state and territory court systems, or for the 90 per cent plus majority, out of court settlements. Each state is empowered to make laws with respect to state insurances. To successfully pursue scheme consistency between Australian jurisdictions would be a very long term and challenging proposition.