

The Robots are coming - an update on Automated Vehicles

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Summary

On 11 September 2017, the House of Representatives Standing Committee on Industry, Innovation, Science and Resources (the Committee) tabled their long-awaited report, 'Social issues relating to land-based automated vehicles in Australia' (the Report).¹ The Report examined how government and industry could respond to the imminent uptake of automated vehicles in Australia.

While it will be many years before Australians see a high volume of automated vehicles on the roads, insurers should take this opportunity to consider how their products will respond when they assess claims involving automated vehicles and what products and services will need to be offered to respond to automated and non-automated fleets of vehicles.

Insurers can also take this opportunity to engage with Government to shape the future of legislative and regulatory reform as automotive vehicles become commonplace in Australia. Such opportunities may arise should the Government adopt the Committee's recommendation that a working party with industry and academic stakeholders be established.² Although it is somewhat early days, it is undeniable that Australia will see a steady increase in automated vehicles and with this increase comes new opportunities and challenges for insurers.

Background

The use of automated vehicles in Australia is becoming less 'sci-fi' and more common, with most modern vehicles utilising some form of automation. Further, with the introduction of smart car manufacturers such as Tesla into the Australian market, the rate of adoption of automated vehicles is set to increase. This trend prompted the House of Representatives Standing Committee on Industry, Innovation, Science and Resources to commence an inquiry into the use of automated vehicles in December 2016.

The Committee received 47 written submissions from industry members, insurers, legal experts, academics and individuals and held ten days of public hearings before tabling their Report in Parliament on 11 September 2017. The Report which was tabled in the House of Representatives sets out a blue print of how government and industry may respond to the increasing uptake of automated vehicles in Australia.

The Findings – Part 4: Legal Responsibility and Insurance

As noted by the Report, one of the key concerns expressed by motorists surveyed is who may be held legally responsible for accidents and how might insurance policies respond. Indeed, 92% of respondents surveyed in the Australian Driverless Vehicle Initiative 2016³ listed being legally responsible for an accident involving automated vehicles as a major concern.

The National Transport Commission provided evidence to the Committee that it is the government's policy position that human drivers remain in full legal control of a partially or conditionally automated vehicle.⁴ The government's policy position would suggest that in the event of an accident involving an automated vehicle, the

driver would be held legally responsible for any damage resulting from an accident. Such a position, if applied to most Comprehensive Motor Vehicle Insurance policies would see the at-fault driver's insurance responding to the claim even if the vehicle was in an automated mode.⁵ This issue is, at the time of publication, yet to be fully agitated before the courts. However, manufacturers are responding to this issue with Volvo Australia giving evidence that it 'will accept full liability for damages or injuries whenever one of its cars is in fully autonomous mode.'⁶

It was noted by the Committee that the approach to insurance of vehicles would shift 'radically' should Australians adopt automated vehicles. Such a shift may see premiums reduced by 75% as liability is shifted away from the driver and onto the manufacturers of the vehicle and/or the manufacturers of the technology.⁷ Should this shift occur, and in the event of a vehicle being fully automated, individuals may soon only hold CTP insurance with the vehicle's manufacturer holding a comprehensive insurance for any damage which may arise as a result of the vehicle's automation.⁸ Indeed, as noted by the Insurance Commission of Western Australia:

Manufacturers and suppliers should have insurance that is appropriate and sufficiently broad to cover a number of risks including public liability, product liability and cyber risk.⁹

The Recommendations

The Committee gave 10 recommendations in the Report. Of note for insurers are:¹⁰

Recommendation 4

The Committee recommends that the Commonwealth Government further investigate the issue of data rights for consumers, vehicle manufacturers and third parties such as insurers and relevant government agencies.

Recommendation 5

The Committee recommends that the Commonwealth Government establish a working party with industry and academic stakeholders to identify industry needs regarding the development of automated vehicles and support services. . .

Recommendation 10

The Committee recommends that the Commonwealth Government consider the merits of establishing either a dedicated national body or a cross-agency taskforce... to coordinate Australia's preparation for the introduction of land-based automated vehicles... including:

...

- Legal liability and insurance implications of automated vehicles.

In the event the Commonwealth Government acts on the Committee's recommendations, insurers should consider taking an active engagement with the Government.

Implications

The Committee's Report into automated vehicles in Australia is the beginning of what may be a long process of consultation between the government and industry as the legislature attempts to respond to the ever increasing presence of automated vehicles in Australia. This consultation process will afford the industry a valuable opportunity in contributing towards how automated vehicles operate in Australia.

For insurers, as the automated vehicle market develops it will present both opportunities and challenges. This point was noted in evidence given by Cecilia Warren of Insurance Australia Group'. . . we do not know what will happen in terms of new risks that might emerge. . . [but] compulsory third-party insurance is a key one going forward.'¹¹ The development of the automated vehicle market will also see the development of new case law from the courts, which will assist insurers in responding to claims made by individuals and from automated vehicle manufacturers.

This is an area which will continue to rapidly develop as more automated vehicles hit Australian roads. It is therefore important that insurers consider how their products will respond should a claim involving an automated vehicle be made tomorrow.

¹ House of Representatives Standing Committee on Industry, Innovation, Science and Resources, Parliament of Australia, Social issues relating to land-based automated vehicles in Australia (2017).

² Ibid, iv.

³ Australian Driverless Vehicles Initiative, Submission No 9 to House of Representatives Standing Committee on Industry, Innovation, Science

and Resources, Social issues relating to land-based automated vehicles in Australia, February 2017, 7.

⁴ National Transport Commission, Submission No 28 to House of Representatives Standing Committee on Industry, Innovation, Science and Resources, Social issues relating to land-based automated vehicles in Australia, February 2017, 9.

⁵ This is general speculation based on the assumption that the policy does not contain an exclusion for automated vehicles or vehicles with an 'auto-pilot' feature engaged.

⁶ Volvo Car Australia, Submission No 11 to House of Representatives Standing Committee on Industry, Innovation, Science and Resources, Social issues relating to land-based automated vehicles in Australia, February 2017, 7.

⁷ Swinburne University of Technology, Submission No 39 to House of Representatives Standing Committee on Industry, Innovation, Science and Resources, Social issues relating to land-based automated vehicles in Australia, February 2017, 10.

⁸ House of Representatives Standing Committee on Industry, Innovation, Science and Resources, Parliament of Australia, Social issues relating to land-based automated vehicles in Australia (2017), 45.

⁹ Insurance Commission of Western Australia, Submission No 36 to House of Representatives Standing Committee on Industry, Innovation, Science and Resources, Social issues relating to land-based automated vehicles in Australia, February 2017, 4.

¹⁰ House of Representatives Standing Committee on Industry, Innovation, Science and Resources, Parliament of Australia, Social issues relating to land-based automated vehicles in Australia (2017), iii-v.

¹¹ Evidence to House of Representatives Standing Committee on Industry, Innovation, Science and Resources, Parliament of Australia, Sydney, 4 May 2017, Hansard 11 (Cecilia Warren).

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