



**Government  
of South Australia**

TRS19D1204

**Treasurer**  
Level 8  
State Administration Centre  
200 Victoria Square  
Adelaide SA 5000  
GPO Box 2264  
Adelaide SA 5001  
DX 56203 Victoria Square  
Tel 08 8226 1866  
treasurer.dtf@sa.gov.au

Hon Stephen Mullighan MP  
Member for Lee  
Unit 1, 62 Semaphore Road  
SEMAPHORE SA 5019

[lee@parliament.sa.gov.au](mailto:lee@parliament.sa.gov.au)

  
Dear Mr Mullighan

**APPLICATION UNDER THE *FREEDOM OF INFORMATION ACT 1991***

I refer to your application made under the *Freedom of Information Act 1991* (FOI Act), dated 10 May 2019.

Your application seeks access to:

*"All minutes, briefings and correspondence titled 'Submission to National Transport Commission (NTC) Discussion Paper: Motor Accident Injury Insurance & Automated Vehicles' as described on the Objective document management system, between 12 July 2018 and 10 May 2019."*

The legislative prescribed timeframe to determine this application has expired and is now deemed to have refused you access to all documents relevant to your application. I refer to my letter dated 26 May 2019 where I sought additional time to make my determination.

The purpose of this letter is to advise you of my determination. An extensive search was conducted within this office. A total of 1 document was identified as answering the terms of your application.

I grant you access in part to 1 document; a copy of which is enclosed.

Document 1 is a briefing prepared by DTF in relation to an agency response from the Department for Treasury and Finance to the National Transport Commission (NTC) Discussion Paper: Motor Accident Injury Insurance and Automated Vehicles.

Both the NTC Discussion Paper (Attachment 1) and DTF's submission to the discussion paper (Attachment 2) are publicly available on the NTC website and therefore have not been provided to you.

Specific parts of the briefing have been redacted as this was commercial information provided by individual insurers at confidential discussions during consultation.

Further redactions have also been made relating to confidential discussions that occurred with the Heads of Motor Accident Injury Schemes (HMAIS).

As such this information is commercial in confidence and protected under section 17(6) of the *Compulsory Third Party Insurance Regulator Act 2016*.

As the briefing also contains legal advice, I determine this exempt pursuant to clause 10(1) to the FOI Act.

## **Exemptions**

### **Clause 10 – Documents subject to legal professional privilege**

- (1) *A document is an exempt document if it contain matter that would be privileged from production in legal proceedings on the ground of legal professional privilege.*

Please note, in compliance with Premier and Cabinet Circular PC045 - *Disclosure Logs for Non-Personal Information Released through Freedom of Information* (PC045), the Department of Treasury and Finance is now required to publish a log of all non-personal information released under the *Freedom of Information Act 1991*.

In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

As I am determining this application as Principal Officer, Section 29(6) of the Act does not provide for an internal review. If you are dissatisfied with my determination you are entitled to exercise your rights of external review with the Ombudsman.

Alternatively, you can apply to the South Australian Civil and Administrative Tribunal. If you wish to seek a review, Section 39(3) of the Act states you must do so within 30 calendar days of receiving the determination.

If you require any further information, please contact Vicky Cathro on 8226 9769.

Yours sincerely



**Hon Rob Lucas MLC**  
*Principal Officer*

22 August 2019

**RELEASE IN PART**

MINUTE

10/12/2018  
T18/040  
TRS 18 D 2550

T/Fin?



Government of South Australia  
Department of Treasury and Finance

MINUTES forming ENCLOSURE

File N/A

Doc No A972367

To The Treasurer

**SUBMISSION TO NATIONAL TRANSPORT COMMISSION (NTC) DISCUSSION PAPER:  
MOTOR ACCIDENT INJURY INSURANCE & AUTOMATED VEHICLES**

Timing: URGENT – Submission to be lodged with NTC by 12 December 2018

**Recommendations/Issues:** It is recommended that you:

- note the information provided below concerning the attached submission prepared by the CTP Regulator in response to the NTC Discussion Paper: Motor Accident Injury Insurance and Automated Vehicles.

Noted / Approved / Not Approved

- approve this submission as an agency response from the Department of Treasury and Finance (DTF), signed by the Chief Executive of DTF, to be lodged on the NTC website, before close of business on Wednesday 12 December.

Noted / Approved / Not Approved

- approve DTF as the appropriate agency to lead the work to develop a whole-of-government position on AVs subject to responsible Ministers' endorsement of the approach.

Noted / Approved / Not Approved

Hon Rob Lucas MLC  
Treasurer

16/12/2018



### Key Points:

- The National Transport Commission (NTC) has initiated a number of projects to identify regulatory barriers and policy issues in readiness for the introduction, from 2020, of automated vehicles (AVs) into the Australian market.
- NTC has engaged with CTP Schemes through the Heads of Motor Accident Injury Schemes (HMAIS). The CTP Regulator (Regulator) has been represented on the NTC HMAIS Working Group which contributed to the development of the NTC Discussion Paper (DP), entitled, 'Motor Accident Injury Insurance and Automated Vehicles' (MAII), how crashes involving Automated Driving Systems (ADS) could be covered by existing MAII Schemes (**Attachment 1**).
- The DP was released for public comment on 17 October 2018. Public submissions close on Wednesday 12 December 2018. NTC has sought a whole-of-government response. Due to this time constraint, most HMAIS representatives advised NTC there would be insufficient time for whole-of-government responses to be approved by this date.
- The Regulator has prepared the attached public submission (**Attachment 2**) to be lodged as an agency response by the Department of Treasury and Finance (DTF) and signed in my capacity as Chief Executive of DTF on the basis the submission does not represent the position of the South Australian Government.
- Therefore, the views expressed in this submission are agency-based and do not necessarily represent the final position of the SA Government. The Regulator recommends that DTF is the appropriate agency to lead the work to develop a whole-of-government position on AVs from early 2019. This position would need to be conveyed by the Minister for Transport, Infrastructure and Local Government to the Transport and Infrastructure Council; by you in your capacity as Treasurer to the Heads of Treasuries and the Council on Federal Financial Relations; and, if required, to the Council on Australian Governments.

### Regulator's Preferred Option

- The Regulator supports Option 3 (refer pages 45 to 51 of Attachment 1) which ensures the overarching principle recommended by HMAIS, and agreed by the NTC, is met, i.e. that no person should be worse off, or better off, financially or procedurally, in the relevant jurisdiction, 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 key benefits of this option are:
  - little, if any, disruption to existing benefits/compensation under MAII Schemes
  - injured persons deal with the usual insurer in the jurisdiction (whether a government or privately underwritten Scheme) and access well established claims management models
  - no need to determine whether the vehicle was under human control or an engaged ADS at the time of the crash
  - motorists continue to make premium payments as regulated under the MAII Schemes. In the early years of transition to fully automated vehicles, passenger cars with limited self-driving capabilities (Level 3 automation) would be registered in Premium Class 1, while fully automated vehicles (Levels 4 and 5 automation) such as shuttle busses currently trialled in SA would be put into new Premium Classes. This

can be reviewed over time once data becomes available as to the incidence of ADS failure in crashes. This position is supported by the Approved Insurers.

- In relation to recovery against manufacturers in the event of ADS failure, the Regulator's consultation with Approved Insurers indicated that they consider existing rights of recovery under product liability law and/or Australian Consumer Law sufficient. The Australian Government will require all overseas manufacturers who sell to the Australian market to have Australian registered subsidiary companies which would enable an insurer to sue. These rights of recovery exist for both private and government underwritten MAAI Schemes.

#### Legislative Changes

The *Motor Vehicles Act 1959* (MV Act) contains no definitions of 'drive', 'driver' or 'control'. These concepts are subject to judicial determination and based on a human in control of the steering-wheel and of the vehicle. [REDACTED]

[REDACTED] The Approved Insurers have also suggested that definitions of 'manufacturer' and 'consumer' under product liability law may need review.

#### Current Shuttle Bus Trials

In SA there are currently four shuttle bus trials using the exemption legislation in Part 4A of the MV Act. The shuttle from the former Holden Carpark to the Lyell McEwin Hospital travels on the public road network. Another shuttle is operational in the carpark of the Flinders University and it is proposed that this shuttle will join the road network in late 2019 once the Darlington Interchange is completed. Public trials have been approved by the Minister for Transport, Infrastructure and Local Government to commence shortly in Renmark and on the Glenelg Foreshore. [REDACTED]

#### Consultation

- *Approved Insurers*

All Approved Insurers support Option 3. The Insurance Council of Australia in the development of its submission which also supports Option 3. The Approved Insurers have indicated their preference to rely on existing recovery rights against a manufacturer for failure of an engaged ADS; they agree that Level 3 automated passenger cars could be registered in Premium Class 1 and they would be prepared to provide CTP Insurance cover for AV shuttle buses.

Approved Insurers do not support the NTC suggested modification to Option 3 of the establishment of a reinsurance pool. They consider it would be administratively complex and see no basis for this model in the early years of the transition to AVs but suggest it could be revisited as a possible option once claims' experience and data for AVs becomes available over time.

- *Lifetime Support Authority (LSA)*

AVs will become commercially available in Australia during the 2019 to 2020 premium year. The LSA actuaries will provide their LSS levy assessment prior to the LSA Board meeting on 23 February 2019. Given the Regulator's recommendation that an iterative

approach be adopted to the introduction of AVs, coupled with the lack of any AV actuarial data for possibly many years, it is not possible to predict what the likely impact of the introduction of AVs will have on the LSS risks and costs. However, there seems to be no basis at this time for any changes to the process for the setting of the LSS levy. A copy of the attached Submission has been provided to the LSA CE for comment. LSA also supports Option 3.

- *HMAIS*

Regulator's senior officers attended a special meeting of HMAIS in Sydney on 8 November 2018. All Schemes were in attendance except Victoria due to their Government being in caretaker mode.

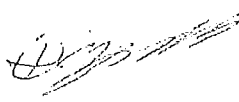


- *DPTI*

The Regulator's senior officers engage with their DPTI counterparts about the NTC MAIL Working Group; DPTI is the lead SA agency on the NTC Senior Advisory Group and keep the Regulator informed of its work about NTC projects on Government access to data and the development of in-service safety for AVs. Discussions at officer level indicate DPTI's preference that DTF be the lead SA agency to develop a whole-of-government position on AVs; that the Regulator comment in detail on the DP concerning MAIL and AVs; and DPTI will comment on other NTC Discussion Papers relating to regulating Government access to AV Data and in-service safety of AVs.

Next Steps

- Note and approve the Chief Executive of DTF submitting to NTC the attached agency-based public submission to NTC's Discussion Paper on Motor Accident Injury Insurance and Automated Vehicles.
- Approve DTF as the appropriate agency to lead the work to be undertaken to develop a whole-of-government position concerning all aspects likely to impact the Government from the introduction of AVs subject to endorsement of this approach by responsible Ministers.



**David Reynolds**  
**CHIEF EXECUTIVE**

10/12/2018

|                  |                          |
|------------------|--------------------------|
| Contact Officer: | David Reynolds           |
| Telephone:       | 8228 9670                |
| Email address:   | David.Reynolds@sa.gov.au |

ATTACHMENT 1: NTC Discussion Paper: Motor Accident Injury Insurance & Automated Vehicles October 2018  
ATTACHMENT 2: DTF Submission to NTC Discussion Paper





**Government of South Australia**

Department of Treasury  
and Finance

Document No: A971050

December 2018

State Administration Centre  
200 Victoria Square  
Adelaide SA 5000  
GPO Box 1045  
Adelaide SA 5001  
DX56205  
Tel 08 8226 9500  
<http://www.treasury.sa.gov.au>  
ABN 19 040 349 865

Mr Geoff Allan  
Acting Chief Executive  
National Transport Commission  
Level 3/600 Bourke Street  
MELBOURNE VIC 3000

[www.ntc.gov.au/submissions](http://www.ntc.gov.au/submissions)

Dear Mr Allan

**Motor Accident Injury Insurance and Automated Vehicles**

I refer to the Discussion Paper published on 17 October 2018 by the National Transport Commission entitled, "*Motor Accident Injury Insurance and Automated Vehicles*".

I welcome the opportunity to comment on the discussion paper and attach a submission representing the departmental views of the South Australian Department of Treasury and Finance.

Yours sincerely

David Reynolds  
CHIEF EXECUTIVE

Attachment - Submission