

QUESTIONNAIRE FOR AIDA WORLD CONGRESS, RIO, 2018

New Technologies

(Autonomous Vehicles and Robots- Cyber Risks- New Technologies and Insurance Process)

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I. DRIVERLESS/AUTONOMOUS VEHICLES AND VESSELS

1 Are there any specific laws already adopted in your jurisdiction, or proposals for laws, relating to liability in tort for injuries inflicted by the use of such vehicles or vessels? If so, please provide a short explanation.

Comment: answers may include the liability of drivers, producers of vehicles and the suppliers of satellite technology.

Australia has not adopted any specific laws relating to liability in tort for injuries inflicted by the use of autonomous vehicles. Therefore, at this stage, tortious liability for such injuries would be dealt with through common law and existing statutes (including, in relation to product liability for the driverless technology, the Australian Consumer Law).

The National Transport Commission (**NTC**), an independent statutory body concerned with national transport policy, has completed extensive research regarding the regulatory barriers to automated road vehicles in Australia and developed a comprehensive roadmap to reform.¹

In terms of liability in tort, the submissions received by the NTC generally agreed that the current framework for liability was sufficiently robust and adaptive for automated vehicles, but that assigning fault would be a more complex exercise.

As of November 2016, the NTC supports relying on existing liability regimes to resolve liability on a case by case basis plus governments supporting the development of industry guidance, including information and education campaigns about liability.²

This favouring of the status quo is reflective of the view that it is too soon to legislate in this area as complexity will likely grow as increasingly automated cars enter common usage.

Australia has not adopted any specific laws regarding liability in tort for injuries inflicted by the use of autonomous vessels, nor is the author aware of any proposed specific laws.

2. Are there any specific laws already adopted in your jurisdiction, or proposals for laws, relating to compulsory insurance coverage for injuries inflicted by the use of such vehicles or vessels? If so, please provide a short explanation.

Comment: answers may relate to motor vehicle insurance and product liability insurance.

Apart from the South Australian laws relating to vehicle trials discussed below, Australia has not adopted any specific laws relating to compulsory insurance coverage for injuries inflicted by the use of autonomous vehicles.

All Australian states and territories have in place a compulsory third party insurance regime (**CTP**) covering bodily injury or death resulting from a motor vehicle accident. The work of the National Transport Commission has identified that there may be some difficulties in applying the existing scheme to automated vehicles. For example, in schemes such as the NSW scheme where a driver must be at fault for a claim to be made under the scheme.

A review into CTP insurance for automated vehicles by the National Transport Council is currently in the planning stage for delivery in 2018.

¹ <http://www.ntc.gov.au/roads/technology/automated-vehicles-in-australia/>

The NTC initially also considered automated rail vehicles but quickly concluded that there were no regulatory barriers.

² [https://www.ntc.gov.au/Media/Reports/\(32685218-7895-0E7C-ECF6-551177684E27\).pdf](https://www.ntc.gov.au/Media/Reports/(32685218-7895-0E7C-ECF6-551177684E27).pdf)

South Australia has amended its *Motor Vehicles Act 1959* to facilitate testing of driverless cars. Section 134H of the Act requires that a person authorised to undertake a trial of a driverless vehicle must ensure that there is in force at all times:

- a policy of public liability insurance indemnifying the owners and any authorised driver or operator of the vehicle in an amount not less than the amount specified by the Minister in relation to death or bodily injury caused or arising out of the use of the vehicle on the road; and
- a policy of public liability insurance indemnifying the owner and any authorised driver or operator of the vehicle in an amount not less than the amount specified by the Minister in relation to the trial in relation to damage to property caused by or arising out of the use of the vehicle on the road.

Australia has not adopted any specific laws, nor proposed any specific laws, relating to compulsory insurance for injuries inflicted by the use of autonomous vessels.

3. How do you envisage the future of personal lines in motor vehicle insurance in the next 5-10 years in your jurisdiction?

Comment: *you may wish to comment on the future of motor vehicle insurance and the plans being made by the industry for new products*

With research estimating that over 90% of car accidents are a result of human error, reliable automated driving is sure to have an impact on the insurance market. However, the impact that automated technology is likely to have in the next 5 to 10 years will depend on the uptake of the technology and with estimates that self-driving cars will only make up 10% of auto sales by 2035, it is unlikely that the motor vehicle insurance market will become unrecognisable overnight.³

Some issues that are likely to have an impact in the next 5 to 10 years as a result of advancing technology include:

- reduction in premium incomes for insurers due to fewer vehicles being on the road if private vehicle ownership falls due to increase in shared ownership or increased uptake of other transport options;
- reduction in premium incomes if fewer vehicle owners elect to take out insurance (excluding CTP) due to reliance on the safety of the automated systems and assurances given by vehicle manufacturers that the manufacturer will accept liability for accidents caused by its automated vehicles (as has been announced by Volvo and others);
- increased use of data recorded by vehicles to assess claims, with potential increases in efficiency and ability to combat fraudulent claims;
- increased complexity in assigning liability for accidents where fault potentially lies with human driver, vehicle manufacturer, software suppliers, road managers etc.

A further change may involve auto makers selling insurance as part of the vehicle price, such as has been done by Tesla in Asia.⁴

In order to combat potential losses flowing from the above, insurers may develop new products or try to cross-sell products covering new risks such as the cyber risks inherent in connected and autonomous vehicles.

4. Driverless cars and autonomous vehicles apart, how do you assess the following technological developments that are expected to not only reshape the auto sector but also the insurance industry around it?

- (a) connected cars (i.e., Internet enabled vehicles, (IEV));*
- (b) automated driver assistance systems (ADAS);*
- (c) car/ride sharing;*
- (d) alternative fuel vehicles.*

Comment: *answers may include identifying the legal and regulatory regime and provisions in your jurisdiction.*

(a) Connected cars

³ <https://www.canstar.com.au/car-insurance/driverless-cars-what-does-that-mean-for-car-insurance/>

⁴ <https://www.businessinsider.com.au/driverless-cars-could-negatively-affect-insurance-industry-2017-2>

Connected cars may affect the insurance industry in a multitude of ways, particularly in relation to their ability to collect data. Given that consumers will be able to demonstrate their driving habits, they will be able to demand reduced premiums or usage based insurance.

Cyber risk and data privacy will also be relevant for connected cars and insurers will likely be able to develop new income streams by offering relevant cover as additional optional benefits or in new products.

Connected cars also have potential applications in shared ownership and vehicle hire scenarios, allowing vehicles to be found or left almost anywhere.⁵ This may result in decreased private car ownership, with knock on impacts on the insurance sector.

Connected cars that are not substantially automated may also have impacts on the insurance sector simply by causing more accidents due to driver distraction.

(b) ADAS

There are currently a number of ADAS systems available in the Australian market including blind spot monitoring, active cruise control, forward collision warning, lane keep assist, lane departure warning, self-parking, adaptive headlights, fatigue warning and traffic jam assist. While the author is not aware of any readily available data on the impacts of these technologies, it is assumed that as the percentage of cars on the road with these features increases there will be a reduction in accidents.

The impact of ADAS on insurance appears to have been minimal thus far, however some insurers do offer lower premiums where autonomous emergency braking is installed.⁶

(c) Ridesharing

Until recently, standard personal car insurance policies excluded cover for vehicles being used to carry paying customers. Drivers were therefore required to rely on backup liability insurance taken out by Uber⁷ that would pay in the event that the driver's own insurance did not respond. This still left the driver with the possibility of not being covered for damage to their own property. More recently, insurers have offered rideshare extensions to their personal car insurance products.⁸

As ridesharing becomes more popular, possibly in combination with driverless vehicles, personal car ownership may reduce, having an impact on the insurance industry.

(d) Alternative fuel vehicles

While alternative fuel use is on the rise, including encouragement by Australia governments to use E10 fuel, the insurance sector does not seem to have much to say on the issue. That said, there are some insurers that offer discounts on premiums for fuel efficient vehicles.

II. CYBER RISKS

5. Identify the concerns have emerged in your jurisdiction as a result of cyber risks. Is there any legislation in place or under consideration that might affect such risks?

Comment: possible matters include cyber-terrorism, hacking, computer or software failure and financial fraud.

Cyber risks have been the focus of much discussion in Australia in recent years. While Australia has had laws for some time prohibiting hacking and other malicious uses of technology, cyber security is now being given greater attention, including through a prominent Cyber Security Strategy hosted by the Department of the Prime Minister and Cabinet.⁹

⁵ <https://www.digitalpulse.pwc.com.au/connected-car-steer-future/>

⁶ <https://www.canstar.com.au/car-insurance/high-tech-ways-reduce-insurance-costs/>

⁷ <https://www.uber.com/en-AU/drive/insurance/>

⁸ <https://www.finder.com.au/car-insurance/rideshare/>

<https://www.canstar.com.au/car-insurance/ticket-ride-allianz-offers-ridesharing-insurance/>

⁹ <https://cybersecuritystrategy.pmc.gov.au/first-annual-update/>

Privacy and protection of data is a major talking point given the various well reported data breaches that have occurred globally. In February 2017, the federal parliament passed mandatory data breach notification legislation that will, from February 2018, require organisations that are subject to the *Privacy Act 1988* (Cth) to investigate and report eligible data breaches.

6. *How has the insurance industry responded to cyber risks? In particular:*

- (a) *do property policies cover losses from cyber risks, or is special insurance required?*
- (b) *is insurance and reinsurance readily available?*
- (c) *are there any special restrictions imposed on cyber risks, e.g. event limits or deductibles?*

(a) Type of insurance required

The property damage and business interruption insurances traditionally carried by companies were not sufficient to cover losses related to cyber risk as they generally required physical damage to trigger coverage. Additionally, many policies contained general exclusions related to losses connected with destruction, distortion, misuse or misappropriation of electronic data, or a failure to send or receive electronic data unless caused by physical damage to or theft of the computer hardware.

(b) Availability of insurance

Within the last five years, many insurers acting in the Australia market have introduced tailored policies covering cyber risk, privacy and data security losses. The policies are generally hybrid products providing cover for first-party losses such as data breach response costs and business interruption losses, regulatory cover for fines and penalties and liability cover including data breach and privacy liability, media liability and network security liability. Cover is also available for cyber-extortion and value-adds such as credit monitoring and call center costs.

Many of the insurers also offer 'breach coaching' as opposed to traditional claims management and value added services such as cyber resilience training and cyber risk assessment.¹⁰

(c) Special restrictions

As cyber risk policies are generally customised, the deductibles and limits cannot be considered special restrictions.

In terms of cyber-extortion, insurers and companies should be aware that payment of ransom to a terrorist organisation may contravene Australia's counter-terrorism laws. Payment to an entity or individual named in the consolidated sanctions list maintained by the Department of Foreign Affairs and Trade may contravene the United Nations Security Council sanction regime or Australia's autonomous sanction regime. Policies provided by insurers generally address this by imposing conditions on cyber-extortion cover, such as the requirement that the threat be credible and that prior written consent of the insurer is obtained, and by imposing exclusions for conduct that is criminal or in violation of economic or trade sanctions.

III. NEW TECHNOLOGIES AND THE INSURANCE PROCESS

7. *To what extent have the availability of new technologies affected the way in which insurance policies are placed? In particular:*

- (a) *has there been any effect on the traditional use of agents and brokers?*
- (b) *has the underwriting process been affected by the availability of information, particularly big data, from sources other than the applicant for insurance?*
- (c) *has the means of providing information to policyholders changed significantly, e.g. are written documents provided or are policyholders directed to websites?*

(a) Use of agents and brokers

While there has been some concern that disruptive technologies will render intermediaries redundant, change of that scale is yet to be seen. However, it is clear that insurers are looking to build their customer engagement and technology allows them more opportunity to communicate with the customer without the

¹⁰ <http://forms.minterellison.com/files/Uploads/Documents/Publications/Articles/CyberReport2017.pdf>

intermediary's involvement and allows customers to seek out information about insurance without engaging a broker. Communication with insurers facilitated by technology will likely increase even further as the Internet of Things, telematics and wearable technology become more common and insurers are thus able to garner information from customers almost continuously and offer policy adjustments or market further products accordingly.

(b) Big data and the underwriting process

Availability of data is having an impact on the underwriting process. For example, the Insurance Reference Service provides a database of 10 years' worth of home and motor claims that can be accessed by member insurers and contains information relevant to underwriting.¹¹

New underwriting technology is also being adopted by insurers, particularly in respect to property risks, with software developers producing applications that integrate relevant internal and external data and apply company specific algorithms to assess location related risk.¹²

Big Data has also been recognised as potentially transformative in the life insurance sector, though insurers are yet to put it to work.¹³

(c) Means of providing policy documents

As Australian law requires certain documents to be 'provided' or 'given' to customers (for example, Product Disclosure Statements), sending documents by hard copy remains the default. Electronic disclosure is permissible in certain circumstances, however the Insurance Council of Australia is advocating for further legislative change to facilitate electronic disclosure of insurance documents to customers.¹⁴

Australian personal lines insurers generally make their policies (Product Disclosure Statements) available online. Insurers will also often allow customers the option (and encourage the use) of email transmission of policy and renewal documents.

8. To what extent is genetic testing regarded as important by life and accident insurers? Is there any legislation in place or in contemplation restricting requests for genetic information, and are there any relevant rules on privacy that preclude its disclosure?

While private health insurance is community rated and consumers can therefore not be denied cover or charged an increased premium due to genetic testing, genetic testing can have a large impact on customers seeking products in the life insurance category (including life insurance, permanent disability, trauma and income protection insurance). Genetic tests do not have an impact on existing life insurance policies unless customers wish to alter their policy as life insurance in Australia is guaranteed renewable.¹⁵

Life insurance products are subject to the *Insurance Contracts Act 1984* (Cth) and therefore impose on a person applying for such cover a duty to disclose any matter relevant to an insurer's decision to accept the risk.¹⁶ This would include genetic test results that reveal an increased risk of disease. In any event, insurers ask for these results in their application material.

¹¹ <http://insurancereferenceservices.com.au/>

¹²

<http://www.insurancebusinessmag.com/au/news/breaking-news/aussie-insurers-to-benefit-from-new-underwriting-technology-56446.aspx>

¹³ <https://www.mlc.com.au/content/dam/mlc/documents/pdf/media-centre/big-data-report.pdf>

¹⁴

http://www.insurancecouncil.com.au/assets/submission/2016/2016_08_10_Mr%20James%20Kelly_Treasury_Submission_Electronic%20Disclosure.pdf

¹⁵

<http://www.genetics.edu.au/publications-and-resources/facts-sheets/fact-sheet-20-life-insurance-products-and-genetic-testing-in-australia/view>

¹⁶ Section 21

How insurers deal with this information is rather opaque and the lack of regulation regarding the use of genetic information by the Australian life insurance industry has been described as 'concerning'.¹⁷ Insurers can use genetic information to refuse cover, charge increased premiums or apply certain exclusions. While anti-discrimination law requires insurers to justify such decisions, it has been noted that there is no practical way to require insurers to explain their decisions.¹⁸

The industry does self-regulate on the use of genetic information through the Financial Services Council, whose genetic testing policy provides (paraphrased):

- insurers should not ask applicants to provide genetic test results that were obtained solely for use in a medical research study where the applicant does not know the results;
- when assessing cumulative risk, insurers should consider the potential beneficial effects of the knowledge provided in the test results on the applicant's long term health outlook;
- insurers should ensure that genetic test results are only obtained with the informed written consent of the applicant;
- insurers should only use the genetic test result for the tested applicant (that is, not their relatives);
- insurers should apply strict standards of privacy, confidentiality and data security to genetic information (in accordance with privacy law);
- privacy and confidentiality should be preserved when dealing with any third party;
- insurers' employees should sign confidentiality agreements regarding personal and medical information of applicants;
- insurers should consider adopting the standard wording: *Have you ever had or are you considering having a genetic test where you have received (or are currently awaiting) an individual result?*;
- insurers should inform applicants of the rationale for an unfavourable underwriting decision and provide information about avenues for review;
- if an insurer concludes that the risk is too great and cannot result in a viable insurance offer, it should endeavour to offer alternative terms or products;
- a competent and efficient dispute resolution service should be provided;
- insurers' compliance with the policy should be reviewed and certified annually;
- subject to privacy law, insurers agree to participate in the FSC's regular collection of de-identified data on applications involving genetic test results, with such de-identified data being permitted to be made publically available by the FSC.¹⁹

In its 2003 report, the Australian Law Reform Commission concluded that it was not necessary to alter an applicant's duty to disclose genetic test results to a prospective life insurer, but that a watching brief should be kept on the matter.²⁰

The life insurance industry in Australia is currently the subject of a parliamentary inquiry, which may result in reform in this space. The report is due by late 2017.²¹

It should be noted that group rated life insurance products with capped limits are also available in Australia through superannuation funds and that there is no requirement to disclose genetic information in relation to those products.

9. Has the assessment of claims been affected by the availability of data. In particular, are there any industry-wide arrangements in place whereby insurers can share information on fraud?

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<http://theconversation.com/australians-can-be-denied-life-insurance-based-on-genetic-test-results-and-there-is-little-protection-8133>

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<http://theconversation.com/australians-can-be-denied-life-insurance-based-on-genetic-test-results-and-there-is-little-protection-8133>

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¹⁹ <https://www.fsc.org.au/resources/standards/11s-genetic-testing-policy-final.pdf>

²⁰ http://www.alrc.gov.au/publications/26-genetic-discrimination-insurance/inquiry%E2%80%99s-views#_ftn98

²¹ http://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/LifeInsurance

With insurance fraud costing an estimated \$2 billion annually in Australia²², prevention, detection and prosecution of this crime is of importance to the industry and the general public, who ultimately bear the cost through increased premium. The Insurance Council of Australia has established the Insurance Fraud Bureau of Australia to help combat insurance fraud. As part of this mandate, IFBA coordinates information exchange between insurers. However, the IFBA has not publicised any information regarding the technology utilised to carry out this task.

In relation to home and motor insurance claims, the Insurance Reference Service is an organisation comprised of many of Australia's general insurers which maintains a claims database with 10 years' worth of claims data. The database is particularly aimed at allowing members to identify previously denied, withdrawn or cancelled claims and multiple or unusual claim patterns.²³

Various private companies offer software analytics to monitor an individual insurance company's data for signs of fraudulent claims

10. Are there any other ways in which the new technologies have affected the insurance process in your jurisdiction?

Apart from the matters discussed above, the primary way in which new technologies have affected the insurance process thus far is through the way in which customers can access information and communicate with insurers. Smart phone applications that allow customers to buy insurance and manage their policies are common place, as are accident assistance applications in the car insurance space.

While there has been discussion on the various other ways that new technologies may impact the insurance process, for example use of drones in claims assessment, connected homes and wearable tech,²⁴ there is little evidence that the insurance process has been greatly impacted thus far.

IV. OTHER NEW TECHNOLOGY RISKS

11. Are there any other particular risks from new the new technologies that have been identified in your jurisdiction? If so, is there any legislation in place or under consideration to regulate them?

Data security is always of concern, with the increased data being produced by the ever expanding number of connected devices. Additionally, technologies such as blockchain have been identified as areas where the risks may not yet be completely understood. Otherwise, there has not been a great deal of public discussion regarding other potential risks emerging from new technologies.

²² <https://ifba.org.au/#intro>

²³ <http://insurancereferenceservices.com.au/>

²⁴

<http://www.theaustralian.com.au/business/business-spectator/innovation-in-australias-insurance-industry-/news-story/e445f70d04dac6cdf29b077b1a6bc3a6>