

# **AUTOMATED ROAD VEHICLES**

## **DEVELOPING LIABILITY & INSURANCE CONSIDERATIONS**

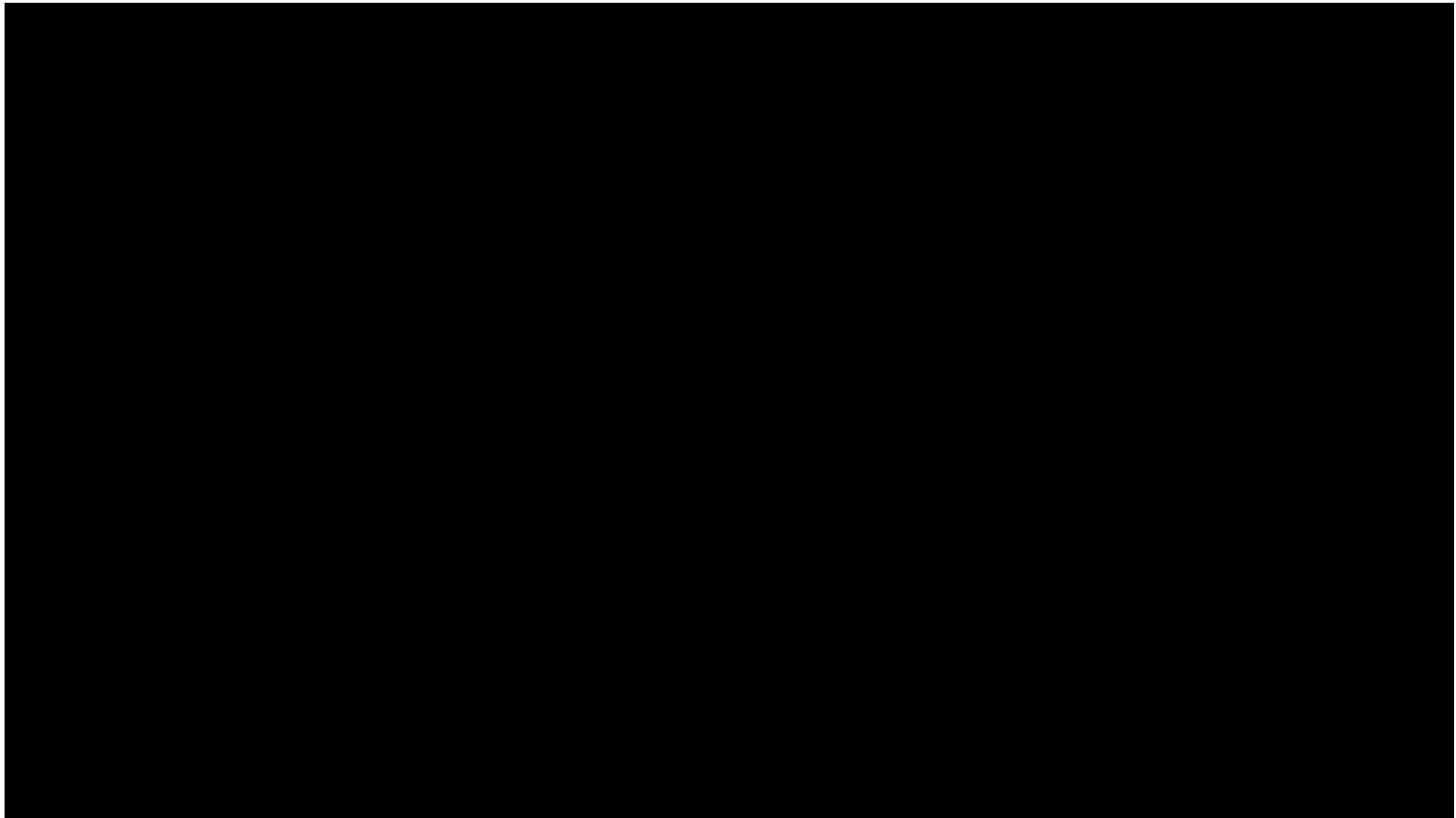
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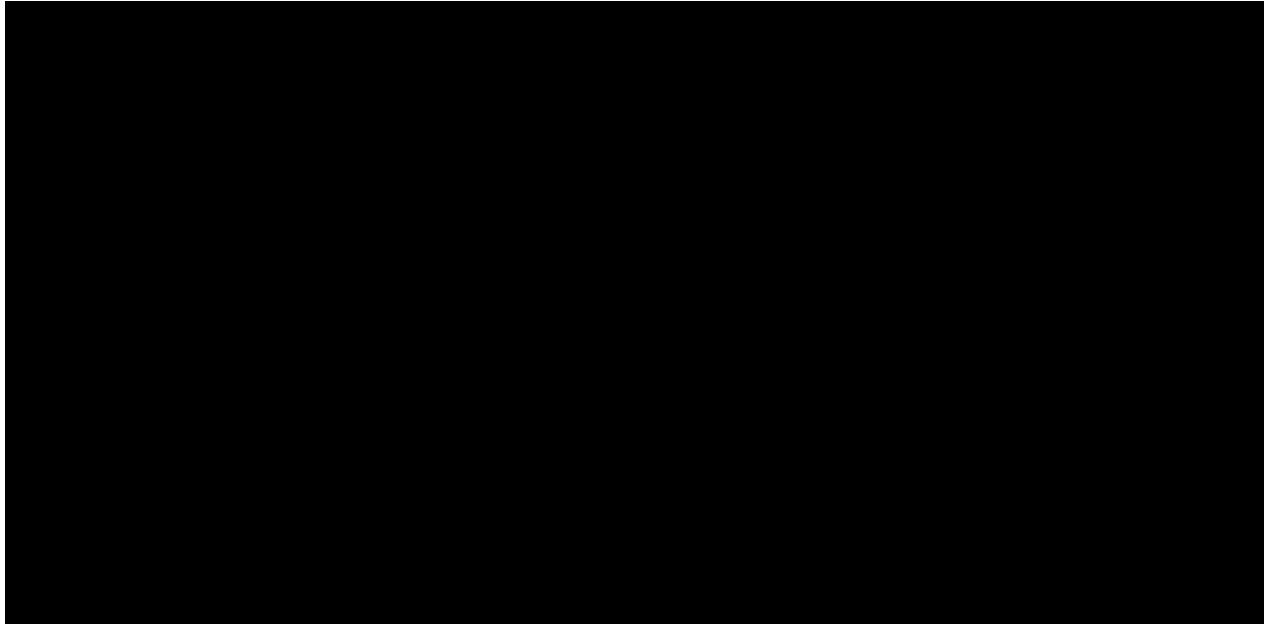
# BLAST FROM THE PAST

- ▶ 2001: A Space Odyssey (1968)



# BLAST FROM THE PAST

- ▶ Knight Rider (1982 - 1986)



# AV & DEVELOPING LEGAL ISSUES

- ▶ AV development throws up a range of legal issues:
  - » road use and regulation
  - » traffic offence responsibility
  - » civil liability for personal injury/property damage
  - » insurance cover
  - » privacy and data security
  - » product liability
  - » road authority liability
  - » communications / software provider liability

# AV & DEVELOPING LEGAL ISSUES

- ▶ But what's new?
  - » shift of liability between current stakeholders
  - » greater complexity in assessing legal responsibility
- ▶ Complexity calls for focus and staged approach to managing the shift
- ▶ My focus today:
  - » Queensland Compulsory Third Party insurance, related information access and recovery
  - » current technology and use of AVs

# CASE STUDY - MAY 16 TESLA ACCIDENT



- ▶ US Department of Transportation - NHTSA investigation report 9 January 2017
- ▶ What if this happened in Queensland?

# TESLA CASE STUDY - CTP INSURANCE

- ▶ S5(1) *Motor Accident Insurance Act 1994 (MAIA)* - the Act applies
- ▶ Policy of insurance - see Schedule to the MAIA:
  - » assume other driver not at fault
  - » what liability is insured: liability for personal injury to which section 5(1) applies and only if the injury arises by reason of a wrongful act or omission (fault based)
  - » who is insured: definition of "*insured person*" - see clause 2 of the Schedule to the MAIA
  - » human driver is an insured person
  - » is Tesla an insured person?
  - » if caused by external system - would system operator be an insured person?

# TESLA CASE STUDY - CTP INSURANCE

- ▶ CTP Insurer has rights of recovery from others in certain circumstances:
  - » the insured person - where (for example) insured person has stolen the vehicle or intended to cause injury or is under the influence of alcohol/drugs
  - » from the manufacturer - if the accident giving rise to injury is attributable in whole or in part to a defect in the motor vehicle and the defect arose from a wrongful act of the manufacturer
  - » manufacturer has a defence if the driver had knowledge of the defect and its likely effect
- ▶ CTP Insurer has right to access information - see s35 of the MAIA



# TESLA CASE STUDY - PROPERTY DAMAGE

- ▶ Consider cover under:
  - » motor vehicle property damage insurance
  - » public/products liability insurance
  - » professional indemnity/design insurance
- ▶ Look out for cyber exclusions and consider the need for cyber insurance

# BROADER LEGAL AND INSURANCE ISSUES

- ▶ See Clayton Utz report - *Driving Into the Future: Regulating Driverless Vehicles in Australia*
- ▶ Trials - Clayton Utz letter to NTC in response to Discussion Paper on National Guidelines for Automated Vehicle Trials

# THE FUTURE

- ▶ Shift of legal liability will likely lead to changes to CTP legislation - either to exclude liability or shift premium burden
- ▶ Continue to follow staged review of legal framework, but focus on immediate needs

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