



**INSURANCE
COUNCIL**
OF AUSTRALIA

**On the road to a better CTP scheme:
Options for reforming Green Slip
insurance in NSW**

ICA response to the NSW Government Options
paper on Compulsory Third Party insurance

May 2016



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Dear Sir/Madam

On the road to a better CTP scheme: Options for reforming Green Slip insurance in NSW

Introduction

The Insurance Council of Australia (ICA) is the representative body of the general insurance industry in Australia. ICA members represent more than 90 per cent of total premium income written by general insurers¹. Insurance Council members, both insurers and reinsurers, are a significant part of the Australian financial services system.

The New South Wales motor accidents compensation scheme (scheme) is currently underwritten by four insurers under six licences that are issued by the NSW State Insurance Regulatory Authority (SIRA), namely NRMA Insurance, QBE, Allianz (Allianz and CIC-Allianz) and Suncorp (AAMI and GIO).

The NSW Compulsory Third Party (CTP) scheme is part of an important social support framework for motorists and those injured on the state's roads.

The scheme ensures that those injured in a motor accident by another driver have a dependable source of financial support. Those who have been injured by another driver can make a claim against the CTP insurer of the at-fault driver.

The scheme also provides cover for motorists who cause personal injury to others. This protects at-fault motorists from incurring substantial financial loss, as they are indemnified against personally paying compensation to an injured person.

In some circumstances, the scheme provides "no-fault" compensation. This includes limited compensation for those at-fault, through the Accident Notification Form, and also for children under 16, and people who sustain a catastrophic, lifelong injury (via the NSW Lifetime Care and Support Scheme).

¹ "General insurers" refers to those organisations authorised to conduct general insurance business in accordance with the *Insurance Act 1973* (Cth) and the prudential framework overseen by the Australian Prudential Regulation Authority (APRA).

The ICA agrees with the NSW Government's assessment that there are serious challenges to the scheme. Concerning trends, such as an increase in potentially fraudulent and exaggerated claims, are placing upward pressure on the cost of Green Slip premiums.

The ICA and its members are directly involved with a number of measures that seek to address these areas of concern. We are represented on the NSW CTP Fraud Taskforce and the ICA has made available the Insurance Fraud Bureau of Australia (IFBA) Fraud Hotline to support the objectives of this Taskforce.

We are also engaged with other reviews that impact the NSW CTP scheme, such as the Independent Review of Insurer Profit, and SIRA's Premium Review. We will be working closely with SIRA as it develops adjustments and reforms to the premium framework for the scheme. The ICA understands that adjustments to the premium framework will take account of recommendations in the Report of the Independent Review of Insurer Profit, as well as potential scheme reforms developed in response to this consultation process.

We welcome the opportunity to work with the NSW Government on the Options for reforming Green Slip insurance in NSW (Options Paper). The ICA supports the Government's commitment to delivering a sustainable CTP scheme and we appreciate the consultative process that has been established.

Our submission to the Options Paper details the ICA's objectives for compulsory accident compensation schemes; provides comment on the Government's four key objectives and questions raised; provides an actuarial analysis of a reform model proposed by the ICA; identifies process improvements to enhance the scheme; and provides commentary on the benefits of competitive underwriting.

The actuarial analysis of a reform model provided (see attached) has been assessed against the Government's key objectives. The analysis has been prepared by Finity Consulting for the ICA and represents the industry's preferred option for scheme reform. It is a hybrid scheme with:

- defined benefits for treatment and loss of earnings for all those injured in a motor accident regardless of fault and payable for a set period of time; and
- common law rights for those with a 'serious injury' (as defined) caused by the negligence of another.

The ICA submits that this reform model analysis provides important information for the NSW Government and stakeholders in understanding the nature and extent of reforms that may be necessary to meet the Government's stated objectives.

As noted in the Options Paper, this consultation is the first step in an ongoing process. We recognise that further work will be needed to develop the full details of scheme reform. This will include legislative and regulatory changes, as well as an implementation timetable that takes into account the significant operational adjustments that will be required.

The ICA and NSW CTP insurers support, and are ready for, significant change. We look forward to working alongside the NSW Government, SIRA and other stakeholders to deliver

a more efficient, timely and affordable CTP scheme for NSW motorists and those injured on the state's roads.

1. The ICA's objectives for compulsory accident compensation schemes

As noted in the Options Paper, CTP scheme design and the benefits provided vary significantly between Australia's states and territories.

In NSW, Queensland and the Australian Capital Territory, the motor accident injury schemes are competitively underwritten by general insurers. In South Australia, competitive underwriting will commence from 1 July 2016.

The ICA supports the following key objectives for all compulsory accident compensation schemes:

- sustainable scheme design that achieves an acceptable balance between affordable premiums and fair compensation for injured people;
- competitive underwriting; and
- personal injury management and benefits frameworks that are focused on achieving optimal health and work outcomes for injured people.

With regards to the levels of benefits available under a compulsory accident compensation scheme, the ICA submits that it is for governments, as a matter of public policy, to determine the balance between affordability for motorists and benefits for injured people.

In this regard, it is important to note that ICA members underwrite a variety of schemes with differing benefit designs, including fault-based, no-fault and hybrid schemes. Regardless of the scope of a particular scheme, the ICA also supports the following objectives for competitive underwriting for compulsory accident compensation schemes, namely:

- a long-term commitment by government to competitive underwriting, due to the significant allocation of capital required by general insurers, as well as funding for infrastructure costs;
- full scheme funding, and risk pricing (with affordability supported by a limited form of community rating);
- a regulated pricing framework that is free from political interference;
- the capacity to earn a reasonable return on capital;
- no significant exposure for general insurers to adverse risk selection;
- no retrospective changes that would increase incurred claims costs – without the opportunity to collect premium to cover those liabilities; and
- effective controls to minimise superimposed inflation in order to limit scheme volatility.

The ICA notes the discussion of underwriting considerations on page 13 of the Options Paper. The ICA respectfully disagrees with the statement that defined benefits, no-fault schemes are typically delivered by publicly underwritten monopoly providers. Workers' compensation schemes in the states and territories are no-fault schemes, and they principally provide defined benefits for most injured workers. ICA members are competitive

underwriters of the workers' compensation schemes in Western Australia, the Australian Capital Territory, the Northern Territory and Tasmania.

Additionally, the ICA does not agree with the expressed concern that "private capital does not work well in schemes in which some injured people may need benefits for the rest of their life". While a mechanism to commute such claims does provide a greater level of certainty for insurers, ICA members have confirmed that they can indeed manage CTP claims with lifetime benefits, given the anticipated number of such claimants will be relatively low.

Further, the current NSW CTP scheme has embedded cross-subsidies between the most and least risky drivers that are designed to ensure that CTP premiums remain affordable for all drivers. Subsidies such as this are part of the environment in which ICA members have been working for over 20 years. Insurers will continue to liaise with SIRA in relation to any adjustments that may need to be made to the premium system to adjust scheme design reforms.

2. NSW Government's objectives for the CTP scheme

The NSW Government has identified four principal objectives that a reformed scheme should deliver, namely:

- increase the proportion of benefits provided to the most seriously injured road users;
- reduce the time it takes to resolve a claim;
- reduce opportunities for claims fraud and exaggeration; and
- reduce the cost of Green Slip premiums.

General comments are provided below for each objective.

As noted above, we have also attached an actuarial analysis (reform model analysis) of a scheme reform model that has been measured against the Government's four reform objectives.

i) Proportion of benefits (efficiency)

The Options Paper notes that the low proportion of scheme funds (45%) that go towards injured people is largely a result of scheme design. The common law fault-based system requires insurers and lawyers to spend significant resources on the establishment of fault.

We note that the benefits payable to those who are catastrophically injured are not included in the percentage of premium paid to injured people. The Report of the Review of Insurer Profit notes that combining the efficiency measure of the CTP scheme and the NSW Lifetime Care and Support scheme could make the efficiency of the scheme more comparable to the schemes of other states. This Report notes:

"...across the underwriting years 2000 and 2013, the efficiency of the scheme averaged 51.5%. ... The MAA noted that efficiency in the Scheme is low compared to other accident compensation schemes, which reach levels of around 65%. However, cross-scheme comparisons are complicated by the fact that the benefits payable under each scheme differ. In particular, some stakeholders have noted combining the efficiency measure of the CTP scheme and the LTCS Scheme would make this

more comparable to the...schemes in other states. Between the premium filing periods 2007-08 and 2011-12, the MAA reported that the combined measure of efficiency of the NSW CTP Scheme and LTCS Schemes averaged 64.4%.²

Regardless, the ICA strongly supports the reform objective to provide a greater proportion of funds for the more severely injured³. The industry considers that an appropriate means to achieve this is to allow common law benefits to only be accessible to injured people who are over the impairment threshold and who are not at-fault. The reform model proposed by the ICA (attached) provides that the severely injured person who is at-fault will have access to defined benefits for up to five years. This will ensure that all those with severe injuries have the necessary support to recover, at the same time as ensuring that the scheme remains affordable (through capping and defined benefits allowed for those with less severe injuries).

In order to more generally improve the efficiency of the scheme by inhibiting or reducing “friction” costs associated with the determination and finalisation of a claim, the ICA also sets out below suggested improvements for claims management and dispute resolution in the scheme.

The ICA has also welcomed recent changes to the *Motor Accidents Compensation Regulation 2015*. The changes, in place since 1 October 2015, require a legal practitioner who represents a claimant to provide SIRA with the cost break-down of a CTP claim once the claim is finalised. These disclosure requirements provide transparency on contracted out legal costs that are paid out of a claimant’s settlement money. This information gathered by SIRA will enable a complete picture of scheme costs, and thereby support an appropriate policy decision on reforms that can improve overall scheme efficiency.

The Options Paper also notes the inherent uncertainty in the current scheme design and the need for insurers to take this into account when setting premiums. The pricing by insurers for uncertainty has contributed to higher than anticipated profits being realised by insurers. The ICA acknowledges stakeholder concerns about the levels of profit that have been historically realised by insurers. The ICA generally submits that reforms designed to *significantly* reduce uncertainty and volatility in the scheme will reduce the overall amount of capital that insurers will need to hold against “long tail” risks. This in turn should reduce the required profit margin for insurers underwriting the CTP scheme, and thereby also support the objective of a higher proportion of premium being paid to the most severely injured. In addition, reduced uncertainty should close the gap between intended profit margins and realised profit margins, which has been a key source of concern. The ICA acknowledges that this matter has been the subject of detailed examination by the Independent Review of Insurer Profit, and we will liaise further with SIRA on these matters as it considers the recommendations of this Review, and undertakes its Premium Review.⁴

² *Report of the Independent Review of Insurer Profit within the NSW Compulsory Third Party Scheme*, October 2015, pp 11-12.

³ Refer Question 6 in the Options Paper, p 22.

⁴ *Report of the Independent Review of Insurer Profit within the NSW Compulsory Third Party Scheme*, October 2015, pp 20-39.

ii) Timeliness of payments

The current common law based scheme means payment of an injured person's benefits are often made as a single lump sum upon final settlement of the claim. Payments for necessary medical treatment and rehabilitation expenses are paid as they are incurred, and in some cases advance payments may be paid directly to an injured person in cases of hardship. The reform model proposed by the ICA (attached) includes defined benefits for all injured people. This will ensure that all injured people have immediate support for medical treatment, in addition to economic loss.

We have identified some process improvements that may assist with the time needed to settle claims. The reform model analysis also identifies the anticipated impact of proposed scheme reforms on the time it takes to finalise claims.

It must be noted, that whilst the ICA supports initiatives to improve timeliness of payments, our members are also being asked to thoroughly investigate claims to ensure their integrity. Balance will be needed between timeliness of payments and claims finalisations, and requirements for robust investigation in response to current levels of potential claims fraud and claims exaggeration in the scheme.

The ICA also notes the statement on page 13 of the Options Paper that contemplates a defined benefits, no-fault scheme under which some injured people may need benefits for the rest of their life. The preferred industry model for scheme reform provides defined benefits for a period of up to five years for the most seriously injured. If however, the NSW Government considers that some injured persons may need benefits for the rest of their life this would impact the average time it takes across the scheme to settle a claim. The ICA understands that the numbers of people for whom lifetime benefits would be necessary would be relatively low, thereby having a marginal impact on the overall average time it takes to finalise claims.

iii) Fraud and exaggeration

The ICA and our members remain increasingly concerned with the potential levels of fraud and exaggeration in the scheme. The examples of fraud and claims exaggeration cited in the Options Paper pose a significant threat to the affordability of the scheme and the scheme's overall sustainability.

NSW Government data indicates that fraudulent and exaggerated claims are contributing to a \$75 increase for each NSW Green Slip.⁵

SIRA's 2014 CTP Scheme Performance Report indicates that from 2008 to 2014, the number of claimants with minor severity injuries has increased by more than 120 per cent for the Sydney Metropolitan region. SIRA suggests that there may be some patterns in the cohort of recent minor injury claims that warrant further investigation.⁶

⁵ Ministerial Media Release, *New Taskforce to Tackle CTP Green Slip Fraud*, 2 March 2016.

⁶ SIRA, *2014 Scheme Performance Report*, p 23.

The insurance industry is taking this very seriously and we are pleased to be part of the NSW CTP Fraud Taskforce. This Taskforce will provide a collaborative cross-sectoral approach to tackling this issue, and it will make recommendations to the NSW Government on strategies to deter, detect and respond to unmeritorious and fraudulent CTP claims.

Ultimately, changes to the CTP scheme should incorporate embedded measures to deter fraud. There are also measures that could be implemented in the interim to help address this issue. For example, we note that in comparison to other jurisdictions the maximum penalty for committing fraud in the scheme is relatively low.⁷ This should be increased to support the NSW Government's message of zero tolerance for fraud in the scheme.

We would also support increasing SIRA's powers to deal appropriately with instances of fraud. In Queensland, the Motor Accident Insurance Commission (MAIC) has the authority to investigate and take action against fraud. We submit that a similar authority should be given to SIRA. It is appropriate that the regulator of the scheme has robust powers to deal with potential fraud.

The reform model analysis also identifies the anticipated impact of proposed scheme reforms on claims fraud and claims exaggeration.

iv) Affordability

The ICA submits that there is a lack of understanding across the broader community of the benefits available to people injured in a motor accident in NSW. Whilst the average CTP premium may be currently higher in NSW than in other states, the benefits available under the current scheme are more generous. In considering scheme reform options, the NSW Government will decide on the balance between meeting the objective of affordability but ensuring fair and appropriate benefits are available to those injured, and especially for the most severely injured.

Affordability is an important scheme measure for NSW motorists. According to SIRA, affordability can be measured by comparing the average Green Slip price for all passenger vehicles with the NSW Average Weekly Earnings (AWE). The lower the ratio the more affordable premiums are considered to be.⁸ As at 30 June 2014, the average NSW premium represented 34 per cent of AWE.⁹

In this regard, it has been estimated that the reform model proposed by the ICA (attached) will reduce the average scheme premium by \$155. Finity Consulting estimates that under this model the *average passenger vehicle premium* would be 28 per cent of AWE.¹⁰

⁷ Options Paper, p 4.

⁸ SIRA, *2014 Scheme Performance Report*, p 19.

⁹ *Ibid*, p 19.

¹⁰ Calculated as Average Class 1 Premium/NSW Full Time Ordinary Time Weekly Earnings. This calculation is consistent with the affordability ratio in the *SIRA 2014 Scheme Performance Report*.

3. Options Paper: reform options

The Options Paper details four options for reform. These options range from retaining the current common law fault-based scheme to moving to a full no-fault, defined benefits scheme.

Provided that an adequate return on capital can be obtained, our members can underwrite a range of models. However, the NSW Government has set out clear social objectives for the CTP scheme. Some of these options are better placed to fulfil these objectives than others.

The ICA notes the questions on possible options set out on page 22 of the Options Paper. The ICA does not propose to directly address these questions. Rather, many of these questions can be considered in the context of the reform model analysis that is attached to this submission.

Option 1 – Retain the current common law, fault-based scheme with process improvements

The ICA agrees that process improvements are needed. We have detailed improvements that we consider worthwhile later in the submission. We submit however, that process improvements on their own will not be enough to deliver comprehensive change to the scheme.

This option will not adequately address the Government's objectives. We therefore do not consider this an option to be pursued.

Option 2 – Retain the current common law, fault-based scheme with adjustments to benefit levels as well as process improvements

The key proposal in this option is to make adjustments to current benefit levels. These could include removing access to funding for gratuitous care and establishing thresholds before legal expenses can be made.

These changes could help to bring the benefit levels available under the scheme in line with benefits available in similar schemes in other jurisdictions. The reduction in benefits available should help to improve the affordability of the scheme.

Proposals suggested under Option 2 may provide some immediate means to curtail fraud and exaggeration in the scheme. They may also help to reduce some of the cost drivers that are impacting premium prices.

We consider the changes suggested noteworthy, however whilst they may deliver some immediate benefits, they are not enough to safeguard the scheme's overall sustainability.

Option 3 – Move to a hybrid no-fault, defined benefits scheme with common law benefits retained in parallel

Many of the concerning trends that have been identified in the Options Paper can be attributed to having a scheme that is predominately based on the common law. The need to determine fault for all claims, and the extent to which individuals may have contributed to an accident, takes up significant resources, time and expense.

Nonetheless, the ICA also recognises many of the benefits of the common law and we acknowledge that it can play an important role in compulsory accident compensation schemes. This is especially so for people with more serious injuries. It enables the circumstances of individual claimants to be taken into account and allows the injured person to seek the maximum amount of benefit.

We also recognise the advantages of a no-fault defined benefits scheme. These advantages include:

- injured people having greater certainty as to the benefits they can receive;
- a higher proportion of benefits delivered to those most seriously injured;
- the potential to reduce the time needed to finalise some claims – with consequential reductions in the impact of movements in bond yields and insurer capital requirements;
- legal costs are reduced;
- superimposed inflation may be contained;
- levels of benefits paid are more consistent and objective, with a greater likelihood of stability for the pricing of premiums; and
- the need for formal decisions on quantum will be reduced.

Option 3 has the potential to harness all of these benefits, whilst restricting some of the volatilities associated with a full common law based scheme.

For this reason the ICA supports Option 3 as the most appropriate option for reforming the NSW CTP scheme.

There are many scheme design models that fit comfortably within the parameters of Option 3. Decisions will need to be made as to where the threshold for allowing access to common law benefits is set; and what the amount and duration of defined benefits will be. Adjusting these benchmarks will have varying impacts on the Government's objectives and some trade-offs amongst the objectives may be required.

To assist the NSW Government as it considers the details of reforms required to meet the four objectives, please refer to the attached reform model analysis.

Option 4 – Move to a fully no-fault, defined benefits scheme with caps, thresholds and no common law

Option 4 would completely eliminate access to common law and negate the need to establish fault.

This is likely to significantly reduce the number of disputes within the scheme and provide increased certainty around benefit entitlements. However, it is arguable that such a scheme does not offer enough flexibility to appropriately take into account an individual's needs and circumstances, particularly the most seriously injured. We consider this option to present challenges with regards to equity and fairness.

The ICA submits that Option 3 provides a more acceptable balance to NSW motorists and people injured in motor vehicle accidents.

4. Questions on policy considerations (Options Paper, p 15)

- *Should there be support or a safety net for anyone injured on the roads by vehicles that are not part of the insurance system (like bicycles) even if that increases the overall cost of CTP?*

The ICA considers that this is ultimately a decision for the NSW Government. In 2015, the ICA participated in the NSW Government's Bicycle Compensation Working Group which examined the issue of access to compensation or support for people injured by a cyclist. The Working Group explored a range of potential solutions and the matter was then referred to the relevant Minister.

- *Is it better to make a claim against your own insurer as opposed to the insurer of the at-fault driver? If so, why?*

The insurance and claims mechanism for the ICA's preferred model is a matter of detail that can be determined between SIRA and insurers once the details of scheme reforms have been settled.

- *Should Government retain competitive private underwriting, or give consideration to a return to public underwriting?*

Please refer to the section in this submission below for a detailed answer to this question.

- *How should Government best deal with fault (including injuries without another party to sue), illegal acts and contributory negligence in any reform?*

The ICA supports maintaining the current Nominal Defendant scheme whereby people injured by uninsured or unidentified vehicles are still able to make a claim.

The ICA also supports the current arrangements under the *Motor Accidents Compensation Act 1999* (NSW) in relation to the right of a person to make a claim under the scheme, if that person has committed an illegal act as part of the event or events giving rise to the claim.

- *What changes to the CTP scheme could increase competition?*

SIRA and insurers will seek to address this issue as the recommendations from the Report into Insurer Profit within the NSW CTP scheme are considered in detail and addressed.

5. Process improvements

The ICA acknowledges that significant change is needed to reform the NSW CTP scheme to safeguard the scheme and ensure its sustainability.

The process improvements detailed below may assist with alleviating some of the concerning trends that have been identified in the Options Paper. These could form part of the broader package of scheme reforms or could be implemented as interim measures.

i) Early notification and simplified claims process

Resolving claims early without the need for dispute resolution or court intervention should also help to reduce costs in the scheme.

Requiring full and early disclosure of claims information will help to increase the speed of settling claims without the need for dispute resolution.

The Queensland CTP scheme requires that a claimant provide their insurer with copies of reports and other documentary material (including written statements made by the claimant or by witnesses) in the claimant's possession within one month. This includes information about the circumstances of the accident, the claimant's medical condition, medical history, treatment obtained and prospects of rehabilitation.¹¹ There is a similar onus on insurers to share documentation with the claimant.

This is a broader requirement than the NSW legislation, which requires all claimants to give relevant particulars to their insurer, but only requires an exchange of documentation if a claim proceeds to a pre- Claims Assessment and Resolution Service (CARS) settlement conference.

Earlier notification of accidents would also assist with early resolution. In WA, the Insurance Commission has partnered with the WA Police to provide an online accident reporting facility. An online reporting system such as in WA could allow insurers to start investigating a claim without unnecessary delay.

ii) Dispute resolution

The following suggested reforms could facilitate earlier resolution and more consistent dispute resolution outcomes.

- 1. Appointment of full-time, fixed-term assessors.** Approximately 70% of the current panel of CARS assessors are solicitors who also practise as plaintiff representatives. We suggest that more CARS assessors be appointed on a full-time basis for a fixed term. This should help to improve timeliness of matters being heard by assessors and final decisions made.

¹¹ Section 45, QLD *Motor Accident Insurance Act 1994*.

2. **Transparency around decision-making.** Greater transparency in the CARS process will result in a greater understanding of the assessments made, and could also result in greater consistency in decisions. The provision of CARS assessors' reasons to parties, as well as Practice Notes provided by the Principal CARS Assessor, will give all parties a clearer understanding of the relevant issues and likely outcomes in the CARS process.
3. **Active case management.** Strengthening the requirements on CARS assessors to actively manage cases would assist with earlier resolution of claims.
4. **Enforcement of limitation period.** Introduction of a statutory limitation period for matters to be referred to CARS would support the earlier resolution of claims.

iii) Superimposed Inflation

Superimposed inflation is a measure of the increase in claims cost above the level of inflation. If insurers could rely upon the regulator to respond promptly to adverse trends, then insurers could reduce their prospective assessment of superimposed inflation.

The industry would be pleased to discuss with SIRA (as part of the process for implementing scheme reforms) concrete measures that could be implemented to consistently contain superimposed inflation.

iv) Prosecution

As we noted earlier in the submission, the Queensland Motor Accident Insurance Commission (MAIC) has the responsibility, together with broad powers, to investigate and take action against fraud¹². Replicating this approach would increase the confidence of all stakeholders in the integrity of the NSW scheme.

¹² Part 5A, *Motor Accident Insurance Act 1994* (Qld), particularly section 87T.

6. The benefits of competitive underwriting for statutory insurance schemes

The Options Paper poses the question, “should Government retain competitive underwriting, or give consideration to a return to public underwriting delivery?”

On 10 June 2014, the ICA made a submission to the federal Government’s Competition Policy Review. This submission emphasised that government monopolies in the provision of statutory insurance schemes are contrary to national competition principles.

The personal injury motor accident schemes of Victoria, Western Australia, Tasmania and Northern Territory are government monopolies. These governments are providing a financial service to their motorists and road users and they are not subject to competition.

Further, statutory insurance schemes underwritten by general insurers are supported by the strong prudential regime under the *Insurance Act 1973* (Cth).

In contrast, it is submitted that government monopoly schemes for statutory insurance are typically not subject to any consistent prudential regulatory oversight. This results in significant variations in the solvency ratios, financial positions and investment strategies of government monopoly statutory insurance schemes. It is further submitted that:

- the financial positions of government monopoly schemes can be volatile;
- such volatility can be driven by under-pricing or overpricing of risk for political reasons, and investments in assets that can be subject to significant volatility such as equities, listed property trusts and infrastructure projects (without the overlay of the prudential requirements that apply to general insurers);
- where a scheme is in deficit, this can create inter-generational inequities between the policyholders of today, and future policyholders; and
- where a scheme is in surplus, some State schemes deliver a “dividend” to the government, which is effectively a tax on motorists.

We note for example that Victoria’s Transport Accident Commission’s funding ratio at 30 June 2015 was 92.3%. Despite the scheme not being fully funded, the scheme paid a final dividend to the Victorian government of \$162.5 million relating to the 2013-14 financial year, and an interim dividend of \$90.65 million relating to the 2014-15 financial year.¹³

The ICA also contends that there are specific benefits for consumers of competitively underwritten personal injury motor accident schemes. We define consumers of statutory insurance schemes as policyholders and injured people who make a claim. It could also be argued that, due to the mandatory nature of these schemes, consumers also include the jurisdiction’s taxpayers and the community at large.

The following benefits flow to consumers of competitively underwritten personal injury motor accident schemes.

- Competition among insurers encourages innovation in risk management and claims management.

¹³ Transport Accident Commission of Victoria, *2014-15 Annual Report*, June 2015, p 22.

- As noted above, general insurers are subject to the detailed prudential requirements and prudential oversight by APRA. This provides consistent protection for policyholders and third party claimants.
- Competitive underwriting between general insurers enables governments to de-risk balance sheets, and to concentrate on the role of regulator of insurers licensed to operate in a scheme.
- Competitive underwriting between general insurers removes the pressure on governments to price premiums to meet political objectives.
- Insurers highly value their reputation and brand. Competing insurers will aim to provide the best service and innovative products (for example, multi-product discounts). Motorists have choice in selecting an insurer based on pricing, products, performance and customer service.

It is also well accepted by ICA members that statutory insurance schemes (as mandatory schemes) have strong policy objectives such as fairness, efficiency and affordability - that must be achieved for the public benefit. The public policy objectives of competitively underwritten statutory insurance schemes are supported by the regulatory framework for the scheme, with specific duties and obligations for general insurers that underwrite the scheme. As is the case with the NSW CTP scheme, when these public policy objectives are being challenged, insurers are ready and willing to work with government to ensure that appropriate reforms are implemented.

The benefits of competitive underwriting have recently been acknowledged within the Australian Capital Territory and South Australian CTP schemes.

In their review of the *Road Transport (Third-Party Insurance) Act 2008*, the scheme actuary for the ACT CTP scheme noted that increased competition since July 2013 has contributed to greater choice in product offerings and reduced premiums for ACT motorists.¹⁴

In the 2014-15 State Budget, the South Australian Government announced that from 1 July 2016, the SA Motor Accident Commission would cease its role as the sole provider of CTP insurance in favour of competitive underwriting of CTP insurance.¹⁵

The decision by the SA Government and the findings of the ACT CTP scheme actuary are consistent with the federal Government's national competition policy agenda.

In this regard, the Final Report of the Competition Policy Review identified competition reforms as fundamental for improving productivity and supporting innovation in the economy.¹⁶ In response to this Review, the federal Treasurer, the Hon Scott Morrison MP stated:

"Competition policy is one of the surest ways to lift long-term productivity growth and generate economic benefits that can be shared by everyone. Increased productivity driven by a more efficient

¹⁴ ACT CTP Scheme Actuary, *Section 275 Review of the Road Transport (Third-Party Insurance) Act 2008*, Executive Summary p 1.

¹⁵ Government of South Australia, *2014-15 Budget Paper 1: Budget Overview*, June 2014 p 7.

¹⁶ Commonwealth of Australia, *Competition Policy Review: Final Report*, March 2015, p 7.

market will drive innovation, entrepreneurship and more productive investment. Previous National Competition Policy reforms in response to the Hilmer Review in the 1990s and early 2000s delivered efficiency improvements that boosted Australia's GDP by 2.5 per cent. We will now build on this legacy as we seek to reboot competition reform policy."¹⁷

The recent publication by the Productivity Commission on the latest Australian Bureau of Statistics productivity figures also notes the benefits of competition reforms in the Australian economy. This Productivity Update notes:

"In recent years, despite comparatively low MFP growth, Australia has maintained its position in the rank of per capita GDP relative to other developed economies. In 2014, the Australian economy was ranked 5th in per capita GDP among OECD countries, behind Luxemburg, the United States, Iceland and Norway. ... Australia held similar positions in the 1950s but its ranking slipped over the following two and a half decades. It dropped to 15th in 1983 and again in 1991 and 1992. Since then Australia's international ranking has risen. This improvement has been linked to sustained economic reforms during the 1980s and 1990s, including: the opening up of trade and capital markets to competition; partial deregulation, commercialisation and privatisation of state owned enterprises; labour market reforms that reformed the centralized wage fixing system; and National Competition Policy reforms (PC 1999). These resulted in better utilisation of labour and capital by business and enabled the Australian economy to innovate, taking advantage of newly developed information and communication technologies. As a result, Australia's MFP increased by 1.8 per cent a year between 1993-94 and 2003-04 and its ranking in per capita GDP was lifted to 8th by 2003."¹⁸

General insurance is a financial service. Personal injury motor vehicle accident schemes provide insurance for motorists, and benefits for injured people. In this regard, the ICA strongly submits that the benefits of a competitive market for this class of insurance, as well as the principles of national competition policy be considered.

7. Implementation of reforms

Reforming the CTP Scheme will involve significant change and will require insurers to implement substantial operational, technical and procedural amendments. Retraining of staff will also need to occur. The ICA requests that the NSW Government, in consultation with all scheme stakeholders, work to develop an agreed implementation plan. Allowing reasonable time for implementation will be critical in minimising the disruption to motorists and injured people, and ensuring the success of the new scheme.

The last time the NSW CTP scheme underwent significant reform was in 1999. In 2006 the Lifetime Care and Support Scheme commenced and it was expanded in 2007 to cover all people catastrophically injured in a motor vehicle accident.

We recognise that further meaningful change to the NSW CTP scheme is now due. The ICA and its members are willing and prepared to work alongside the NSW Government, SIRA and all stakeholders on the full details of scheme reform and the extensive implementation

¹⁷ The Hon Scott Morrison MP, Media Release – Turnbull Government to promote more choice, better services, stronger growth, November 2015.

¹⁸ Productivity Commission – Productivity Update, April 2016, p18.

requirements. We look forward to the delivery of a fairer, more affordable and more sustainable CTP scheme for NSW.

If you have any question in relation to this submission please contact Vicki Mullen, General Manager, Consumer Directorate on (02) 9253 5120 or vmullen@insurancecouncil.com.au

Yours sincerely



Robert Whelan
Executive Director and CEO

5 May 2016

Mr Rob Whelan
Executive Director and CEO
Insurance Council of Australia
Level 4, 56 Pitt Street
SYDNEY NSW 2000

Dear Rob

Assessment of NSW CTP Reform Options

The Insurance Council of Australia (ICA) has asked Finity to assist them in assessing the impact of various options to reform the benefit design and delivery of benefits to people injured in motor vehicle accidents in NSW. Our assessment of options has been made relative to the objectives included in the NSW Government Options Paper “On the road to a better CTP scheme” being –

- **Efficiency** – increase the proportion of benefits provided to the most seriously injured
- **Timeliness** – reduce the time it takes to resolve a claim
- **Fraud** – reduce opportunities for fraud and claims exaggeration
- **Affordability** – reduce the cost of Green Slip premiums

We also considered the main risks to the sustainability of the scheme under the options.

This letter sets out our assessment of the ICA’s preferred option. Full details of our approach and assumptions are contained in a separate technical report.

ICA Preferred Option - Overview

The preferred scheme is a hybrid with:

- **defined benefits** for treatment and loss of earnings for all those injured in a motor accident, regardless of fault and payable for a set period of time
- **common law rights** for those with a ‘serious injury’ (as defined) and whose injury was caused by the negligence of another.

The following table summarises the benefits available to injured people.

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Sydney

Tel +61 2 8252 3300
Level 7, 155 George Street
The Rocks, NSW 2000

Melbourne

Tel +61 3 8080 0900
Level 3, 30 Collins Street
Melbourne, VIC 3000

Auckland

Tel +64 9 306 7700
Level 5, 79 Queen Street
Auckland 1010

Table 1 – ICA Preferred Option – Benefit Summary

Section	Head of benefit	Coverage	Limitation
Defined benefits	Treatment	Reasonable and necessary treatment	18 months from date of accident If >10% WPI 5 years from date of accident
	Loss of earnings	Lost earnings (earners only)	18 months from date of accident; maximum 1.5 x AWE per week If >10% WPI lost earnings may continue from 18 months to 5 years at 80% pre injury earnings subject to work capacity assessment; max pre-injury earnings 1.5 x AWE
	Care	Only reasonable and necessary commercial care	Only if injured person admitted to hospital 18 months from date of accident If >10% WPI may continue from 18 months to 5 years
Common law	Serious injury defined as WPI more than 10% ¹		
	Treatment	Reasonable and necessary past and future treatment	None
	Loss of earning capacity	Earners and children/students only	Maximum 1.5 x AWE per week
	Non-economic loss	NEL scale dependent on injury severity	Minimum \$5,500, maximum \$550,000
	Gratuitous care	None	None
	Paid care	Only reasonable and necessary commercial care	Only if injured person admitted to hospital

Note that higher thresholds will apply for **psychological harm** to contain leakage.

Regulated levels of **legal costs** may be reimbursed for defined benefits claims where there is a dispute.

For **common law** claims, the same legal regulations would continue to apply as currently.

We note that an extension of this option would be for reasonable medical and treatment amounts to be payable for life for seriously injured claimants. We estimate that this could impact around 1.5% of claimants and insurers are confident that this could be incorporated within this option.

¹ Using an Injury Scale Value (ISV) as in Queensland and South Australia would be an alternative to WPI for defining thresholds.

Assessment against Government criteria

Efficiency

We estimate that in the current scheme the proportion of benefits going to the most seriously injured is 47%²; under the ICA preferred option this increases to 64%.

Timeliness

80% of claims will be finalised within two years of the accident, with medical and loss of earnings paid as they are incurred. The common law claims are subject to similar procedures as at present, although it is possible that process changes may lead to shorter settlement timeframes for many claims.

Fraud/exaggeration

Most of the increase in claims costs over the course of the scheme has been due to an increase in the future loss components of compensation for less seriously injured claimants. Access to this future loss compensation also provides the financial incentive for the recent increase in frequency due to fraud/exaggeration. The defined benefit nature of compensation for the less seriously injured virtually eliminates the incentive for fraud/exaggeration for both claimants and their representatives.

Affordability

This option is estimated to reduce the average scheme premium by \$155. We estimate the average *passenger* vehicle premium would be 28%³ of average weekly earnings.

Risks to Sustainability

The key areas of risk for the preferred option which may impact sustainability are –

- Erosion of the threshold for access to common law rights
- Buffers for future loss components under common law, especially with the reduction in NEL amounts
- For defined benefits, the existence of periodic payments leading to longer time off work and higher levels of medical utilisation to support this.

These risks will need to be considered in the detailed design of the scheme – especially the income replacement eligibility approach, the definition of what constitutes fair and reasonable treatment costs and the dispute resolution processes for defined benefits.

Our assessment of the cost of the ICA preferred option assumes that these processes will be effective in ensuring the sustainability of the scheme.

² The NSW Government options paper provides a measure of efficiency on page 6 as claimant benefits / premium excluding GST and LTCS Levy; on page 5 efficiency is described as the proportion of benefits going to the most seriously injured. We have used this measure.

³ Calculated as Average Class 1 Premium / NSW Full Time Ordinary Time Weekly Earnings. The calculation is consistent with the affordability ratio in the SIRA “2014 CTP Scheme Performance Report”.

Reliances and Limitations

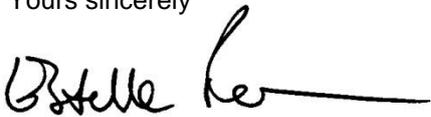
The assessment prepared by Finity is based on an overview of the proposed scheme changes without details of legislation, claim processes and dispute resolution systems. The actual outcomes will depend on the detail of the legislation and regulations, how it is implemented and the behaviour of various stakeholders.

In estimating the cost of a new scheme much is unknown and unknowable. Limited data is available, especially in respect of 'at fault' drivers and other non-compensable persons. The cost estimates must be taken as indicative and as a basis for further consideration.

Finity cannot say with certainty that insurers would underwrite the proposed scheme at any given premium rate or that the cost of claims under a new scheme would be reasonably close to the estimates made.

We understand that this report will be included with the submission made by the ICA to the NSW Government on the options paper.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Estelle Pearson', followed by a horizontal line.

Estelle Pearson

A handwritten signature in black ink, appearing to read 'Geoff Atkins', followed by a horizontal line.

Geoff Atkins

Fellows of the Institute of Actuaries of Australia