



29 September 2017

Citizens' Jury on CTP
c/o Financial Framework Management and Insurance Branch
Chief Minister
Treasury and Economic Development Directorate
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ACT Compulsory Third Party Insurance

Thank you for the opportunity to provide feedback to assist the Citizens' Jury in their consideration of the ACT Compulsory Third Party Insurance Scheme (the Scheme).

The Insurance Council of Australia (ICA) is the representative body for the general insurance industry in Australia¹. ICA members provide a range of insurance products including compulsory third party (CTP) insurance in a number of jurisdictions in Australia, including the ACT.

To assist the Citizens' Jury, the ICA wishes to outline some of the key characteristics of the the Scheme as well as the role of insurers within the Scheme.

The role of the ACT CTP Insurance Scheme

The Scheme is part of an important social support framework for ACT road users.

It provides many road users with a source of financial support should they be injured in a motor vehicle accident.

The Scheme also plays an important community role as it provides financial protection for motorists that have caused personal injury to other road users. At-fault motorists are protected from incurring substantial financial loss, as they are covered (indemnified) by their CTP insurer against personal liability to pay compensation to an injured road user.

Without CTP insurance, there would be enormous financial consequences for both those injured in motor vehicle accidents and for road users who have caused injury to others.

¹ Our members represent more than 90 percent of total premium income written by private sector general insurers. ICA members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance). ICA members are also involved in statutory insurance schemes such as workers' compensation and compulsory third party motor vehicle injury insurance (including the ACT CTP Scheme) as both underwriters and scheme agents.

A third party CTP scheme

The Scheme is a 'third-party' insurance scheme. This means that ACT CTP insurance policies are designed to insure the policy holder against liability for any personal injury they cause to other road users (third parties).

ACT CTP insurance policies provide limited personal injury cover or compensation to the actual policy holder in the event they themselves are injured in a road accident.

Coverage under the current ACT CTP Scheme – an 'at-fault' insurance scheme

State and Territory CTP schemes in Australia are often described as being either 'at-fault' or 'no-fault' insurance schemes. The terms "at-fault" and "no-fault" refer to whether or not an injured must establish fault on the part of someone else to access to benefits.

The ACT CTP Scheme is an at-fault insurance scheme. This means that, in most circumstances, a person injured on ACT roads will only be able to receive compensation under the Scheme if someone else (eg. the driver of another vehicle) is found to be at fault.

Therefore, where a road user sustains injuries in a 'blameless' motor vehicle accident where no one is found to be at-fault, they are not entitled to compensation under the Scheme.

For example, in a situation where a motorist collides with a kangaroo through no fault of their own, the driver and their passengers would not be eligible to receive compensation under the ACT CTP Scheme.

Also, where an injured road user is found to have been at-fault for the motor vehicle accident they will only have access to very limited compensation under the ACT CTP scheme. This applies even in cases where the injured person has merely made an innocent mistake or where there are other factors that contributed to the accident that were out of their control.

In these two examples above, these injured people would only be eligible to receive payment for medical expenses up \$5000 and only for those expenses incurred in the first six months following an accident. If they were catastrophically injured, they may also be able to access treatment and care support under the ACT Lifetime Care and Support Scheme but would not be able to claim other damages. Examples of catastrophic injuries covered under the LTCSS include a traumatic brain injury, spinal cord injury and permanent blindness.

To this extent, the at-fault design of the ACT CTP Scheme does not provide universal coverage for all road users injured on ACT roads and can produce unfair outcomes.

By contrast, in no-fault CTP insurance schemes, such as the Victorian scheme and the recently reformed NSW scheme (scheduled to begin on 1 December this year), any person injured in a motor vehicle accident is eligible to receive benefits for injuries sustained in a motor accident, regardless of whether they were found to be at-fault. Benefits are also available to people injured in blameless motor accidents where no one was at fault.

There are strong public policy arguments that no-fault insurance schemes provide greater benefit to injured road users and to the community more broadly as they cover a greater proportion of people injured in motor vehicle accidents. No-fault schemes arguably produce fairer outcomes for

all injured road users as the primary focus of these schemes is to address the health and care needs of all injured road users rather than focussing on who is liable for an accident.

The role of insurers in the ACT CTP Scheme

Insurance companies undertake a number of roles within the ACT CTP Scheme, including:

- **Setting CTP premiums**
Premiums are calculated by insurers but approved by the ACT CTP Regulator. This process ensures premiums are sufficient to cover the cost of current and future claims, while remaining affordable for motorists.
- **Managing claims**
When an injured person makes a claim, the process is managed by an insurer. This includes investigating the circumstances of an accident and determining which person, if any, was at fault.
- **Determining compensation**
When an injured person is eligible for compensation, the insurer will assess the amount of compensation they are entitled to and negotiate a final settlement (often with the involvement of lawyers).

Common law access and defined benefits

Unlike other CTP schemes, another characteristic of the Scheme is that all injured road users that are eligible to receive compensation can access common law damages.

This broad access to common law damages is a unique characteristic of the Scheme. Other CTP schemes in Australia have either incorporated additional rules that limit access to common law damages compensation to those injured road users who have sustained a certain minimum level of injury/impairment (as occurs in South Australia, WA, Queensland and, from 1 December, NSW) or only allow the most seriously injured road users to access to common law damages (as occurs in the Victorian CTP scheme).

In these schemes, broad access to common law damages have been replaced by systems of defined benefits for less injured road users. This has helped shift the focus of these schemes from an adversarial court process and more towards providing care and rehabilitation.

Thank you for the opportunity to provide this information. We hope the Citizens' Jury will find it useful.

Yours sincerely



Robert Whelan
Executive Director and CEO