



KPMG Actuarial Pty Ltd
Australian Financial Services Licence No. 392050
10 Shelley Street
Sydney NSW 2000

PO Box H67
Australia Square NSW 1215
Australia

ABN: 91 144 686 046
Telephone: +61 2 9335 7000
Facsimile: +61 2 9335 7001
DX: 1056 Sydney
www.kpmg.com.au

Contact Natasha de Souza, 02 9335 8924

5 April 2013

Motor Accidents Authority
Level 25, 580 George Street
Sydney NSW 2000

To whom it may concern

NSW COMPULSORY THIRD PARTY INSURANCE – PROPOSED REFORMS

KPMG welcomes the opportunity to provide comments on the proposed reforms to the NSW CTP Scheme as outlined in the document titled “Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme” (the Paper). Our firm has a strong presence in providing advice to insurers and schemes (both CTP and other compensation classes) and in providing this submission for your consideration, we have brought to bear our experience of issues of legislative reform within compensation schemes.

We note that the proposals contain a number of positive elements, in particular the extension of support for rehabilitation to allow return to work for claimants from motor vehicle accidents, rather than this being restricted to workers compensation. Furthermore, from a social perspective, the move to no fault removes an arbitrary limitation on availability of compensation.

However, we also wished to bring to your attention a number of implications of the proposals, or areas where we felt additional clarity would be of value. In summary these areas are:

- Scheme design: There were a number of areas where the intended benefits or scheme structure was unclear. We have suggested where we believe greater clarity is needed.
- Comparability to other schemes: The proposals are benchmarked to the NSW Workers Compensation Scheme and the Victorian Transport Accident Scheme. However, we believe that private underwriting for the NSW CTP presents some additional complexities relative to those Schemes.

- Impacts on risk premiums: We have raised a number of issues that will impact premiums. It is not transparent from the paper whether these have been factored into the scheme actuary's calculations, and we have brought these to your attention as further areas to be considered in the costing of savings.
- Uncertainty, profit margins and capital: We set out potential constraints with respect to the timing of recognition of the changes in insurer assumptions that impact pricing.
- Measurement of effectiveness: We emphasise the need for agreed performance metrics that measure the success of the proposed reforms.

We expand on each of these areas below.

Scheme design

A number of comments are made in the Paper pertaining to benefit levels and access to benefits. A number of these are quite brief and we have set out below some areas where we believe additional clarity is needed to understand the implications for the Scheme:

- The Paper is relatively silent on how the existing Lifetime Care and Support Scheme (LTCS Scheme) will be impacted by the changes. Given the move to no-fault it could be argued that a single Scheme may again be achievable, although the counter arguments to this are that keeping these claims separate allows the LTCS Scheme to operate on a specialised basis (and hence achieve efficiencies and expertise in these claims) and removes a more uncertain component from private underwriting (which have a flow on impact to required profit margins). As the proposals are developed, a clear position as to how the LTCS Scheme will be impacted should be communicated.
- Page 10 of the Paper (Section 3.6) notes that "Limited common law rights will be retained for those with injuries which meet the current greater than 10% whole person impairment threshold." While it is unclear what the limitations will be, we note that the maintenance of this access presents an inconsistent continuum of benefit access, assuming the LTCS Scheme stays in place. The following table summarises our understanding of benefits available under the proposals.

Injury severity	Care and treatment benefits	Other benefits
Less than 10% WPI	As needed, periodic Possible lump sum when stabilised	As needed, periodic Possible lump sum when stabilised
Above 10% WPI but not catastrophic	Common law access Alternatively, lump sum redemption when stabilised	Common law access Alternatively, lump sum redemption when stabilised
Catastrophically injured	As needed, periodic (LTCS Scheme)	Common law access

The table suggests that claimants who are above 10% whole person impairment (WPI) but not catastrophically injured have the most extensive access to common law. Given the potential for this group to be the source of significant superimposed inflation, this approach appears counter to a goal of sustainability. We would suggest that the “Limited” common law access should remove the ability to receive common law payments for care and treatment costs, in order to be consistent with the LTCS Scheme. Similarly, the access to a lump sum for care and treatment costs is inconsistent with the LTCS Scheme.

- On page 9 one of the principles for reform is “Consistency of administration, benefits and dispute resolution mechanisms across NSW compensation Schemes is desirable.” In addition, page 10 states “Where applicable, payments will mirror workers compensation provisions for lost earnings...” We have implied, although it is not explicitly stated, that this will include stepdowns in payments for lost earnings and some defined points, with complete cessation of benefits depending on capacity to work.

The South Australian CTP reforms will include less than 100% replacement for less seriously injured, and the proposed National Disability Insurance Scheme (NDIS) and National Injury Insurance Scheme (NIIS) both target people with disabilities or injuries at the more severe end. Each of these examples suggests that a further trend in the Australian compensation landscape is a move to directing funds to those most in need. Therefore, we would recommend that:

1. A clear position on this matter is clarified.
2. If relevant, the principles should be amended to incorporate an emphasis on providing support to the more seriously injured, or similar wording.

- On page 9 an additional principle quoted is “Consistency of administration, benefits and dispute resolution with the National Disability Insurance Scheme is desirable.” The NDIS is intended to provide care and treatment expenses only to those people with severe or profound disabilities. As the equivalent group of claimants within a motor vehicle injury context are within the LTCS Scheme, the applicability of this principle is unclear, unless the current two motor injury schemes are to be combined. We also note that the retention of conversion of claims to lump sums on page 10 presents a clear point of difference to the NDIS and LTCS Scheme, which emphasise ongoing care and support benefits paid as they are needed, not in advance via a lump sum.

Comparability to other schemes

The Paper notes that the proposals draw on elements of the NSW Workers Compensation Scheme and the Victorian Transport Accident Scheme models. In particular, the affordability of the Victorian Scheme has been referenced. However, we note the following factors that may well influence the effectiveness of the reforms:

- The outcomes of compensation schemes are influenced by claimant behaviours (and how entrenched these are) and cultural factors. Attitudes to claiming, including propensity to claim, expectations of claimants and propensity to litigate, will play a part in the success of the reforms. In particular, the operation of the current scheme may influence claimant expectations of the new scheme and lead to delays in fully realising anticipated savings.

We note that the capacity to convert a claim to a lump sum is retained where the person’s injuries are stabilised (page 10). This has the potential to maintain the “lump sum compensation mindset” as referred on page 3. Access to lump sums (“redemptions”) has been an issue in a number of workers compensation schemes, with access being restricted in a number of these schemes in Australia to those with more severe injuries.

- The cited Schemes are both based on a single central fund / insurer model. We believe the current multiple insurer scheme has the potential to introduce added complexity in relation to the proposed changes. Some examples of this include:
 1. Page 9 of the Paper states “Insurers will share costs in a shared clearing house so the vehicle at fault still pays.” Given the emphasis on reducing legal costs relating to disputes as to who was at fault, the need to allocate costs in this way retains the potential for legal costs being required (and therefore reduced less than expected) to establish the at fault vehicle. While this removes the need for the claimant to be involved in a protracted dispute, it may simply move the costs elsewhere. We appreciate that there is currently a system for sharing costs of claims that does not appear to cause excessive levels of dispute, therefore the extent of this issue may be limited.

2. On page 9 of the Paper it is stated that claimants would approach the insurer of their own vehicle in the first instance, other than in cases where someone is injured outside of a vehicle, in which case they would approach the third party vehicle insurer. Again, the multiple insurer environment adds complexity to that first step to claim. While the intention appears to be to make the initial approach to an insurer straightforward, the appropriate approach would need to be carefully communicated to potential claimants, to avoid a scenario where the current complicated claim form is replaced by an inconsistent process for claiming – presenting a new barrier to claim.

Furthermore, when there is a choice of who to claim against, this might lead to claimants “shopping” for a preferred insurer. For example, if a vehicle owner was hit by another car while cycling, would they have the option of having their claim handled by their own insurer even though their car was not involved in the accident? Alternatively, if they were driving their own car, but were hit by another vehicle, do they have the choice of approaching the third party insurer? Page 9 also refers to the increased emphasis on customer service and competitiveness amongst insurers, however, where there is an option of insurer there is the potential scenario of vehicle owners benefitting from customer service they didn't pay for. Under the latter example above, the driver may have chosen the cheapest possible premium, knowing the insurer had average customer service levels, but opts to claim against the other driver's insurer, which is known for excellent customer service (but has slightly higher premiums reflecting additional internal costs).

Impact on risk premiums

We understand that your Scheme actuary has already completed cost estimates suggesting immediate savings (page 5 of the Paper). While the parameters of those estimates are unclear, we believe there are other factors that might impact premiums:

- Page 3: “only around half the people who could make a claim actually doing so”. This implies that a significant increase in claim numbers is to be expected as a consequence of the reforms. We would also observe that it is likely that the potential claimants who currently choose not to claim would be less severely injured (i.e. the more severely injured would have a greater incentive to overcome the difficulties of claiming due to the greater need for support and compensation). This could result in upward pressure on premiums that might erode some anticipated savings. We also anticipate that insurers will need to respond to this through increased numbers of claims handling staff.

Page 7 of the Paper goes on to note that smaller claims in NSW are expensive relative to other Schemes, and as noted above, these claims will grow in number on a no-fault basis. Therefore, the effectiveness of the reforms in simplifying and

reducing cost for those claims will be key to whether the projected savings will eventuate.

Anecdotal evidence on the CTP experience in the United Kingdom over the past five years has shown a significant rise in small claims fraud (such as whiplash claims which are difficult to prove) due to the ease of claiming under that system. The rise in small claims coupled with intense competition has eroded premium adequacy resulting in the exit of several major insurers and significant increases in premiums.

The Scheme/insurers should therefore ensure the appropriate mechanisms are in place such that the emerging number of claims is not a cause for uncertainty within the industry, as this will impact premiums charged.

- On Page 3 of the Paper it is noted that “Compensation can also be reduced if it is determined that the injured person was partially at fault in the accident.” With the move to a no-fault scheme reductions of this nature would be removed. We understand from our work with insurers that findings of contributory negligence have become more commonplace in the NSW Scheme in recent years. While we appreciate that this has likely driven the view that this is an issue that requires addressing (in terms of benefit access for injured people in need), it also highlights that in costing reforms, an increase in claim size for current claims within the scheme should be incorporated.
- Under the current Scheme some claimants approach the Workers Compensation Scheme for compensation in the first instance, with the Workers Compensation Scheme then seeking recovery from the CTP Scheme. It is unclear whether the reforms would lead to changes in the extent of recovery against the CTP Scheme.
- In implementing the Scheme reforms, insurers are likely to incur additional costs such as one off training, hiring of additional claims assessors (given the expected increase in numbers of claimants) and system modifications to handle ongoing payments and recording of information. This may impact the premiums proposed by insurers.
- On page 10 (section 3.7) of the report, “insurers will not be permitted to charge vehicle owners in their premiums for the cost of disputes where the claimant is successful”. There is uncertainty on how this policy would be enforced in practice, given the difficulties in allocating claims handling expenses across various activities.
- The Paper also alludes to the fact that the premium impacts may not be similar between vehicle owners (page 11). For example, the cost of claims and therefore premiums relating to motorcycles is likely to increase under a no-fault system to a greater extent than premiums for a sedan, as there are fewer passengers on

motorcycles and therefore a higher proportion of injuries will relate to the driver (who may be at-fault).

- Section 6 of the Paper comments that there will be “Increased flexibility for insurers to write risk in selected markets”. Whilst there are segments of the market that will be actively targeted by insurers (and given premium discounts), there are other sections that will see increases in their premiums. We note that CTP insurance must be affordable for all. The trade-off between giving insurers greater pricing flexibility versus ensuring premium affordability for all, as well as the role of the MAA, is not clearly discussed.

Uncertainty, profit margins and capital

The Paper notes that the level of uncertainty for insurers will be reduced post implementation. A reduction in uncertainty means, all else being equal, insurers are able to charge a lower profit margin in their premiums. Currently, uncertainty exists due to the long delays to settlement, impact of tort reform and developments in medical technology. Due to the uncertainty, insurers are required to hold a significant amount of capital to support the writing of CTP policies.

A reduction in uncertainty from the speeding up of claims and lower involvement of the legal profession will theoretically result in a lower amount of capital required to be held by insurers. The lower capital required should translate into lower premiums. In practice, before an insurer can lower its capital and profit margins required for CTP, they will need to contend with several factors such as:

- The need for sufficient claims experience to emerge before there is a comfort level with the new Scheme;
- Unchanged capital requirements from APRA despite Scheme changes;
- The need to satisfy audit and external peer review actuaries that lower risk margins can be held – which has flow on impacts to the capital required and the implied profit margin;
- The risk appetite of the insurer.

As a result, the quantum and speed to which insurers reduce the capital required (and hence premiums charged) can be uncertain. In our role as peer review actuary to a number of insurance and Scheme portfolios that have been impacted by reforms, we have observed considerable delays before the intended changes are reflected in actuarial assumptions.

Page 11 of the Paper recognises these issues and notes that “Special legislative provisions will be adopted to ensure insurers deliver on the price savings in the short term” (although what these might be and how they might be implemented is not

articulated). This addresses some of the issues above, although the unchanged regulatory capital requirements will continue to be a factor. The insurance environment will need to be considered in setting expectations for insurers' responses to the changes.

Measurement of effectiveness

The report has noted several areas where savings in premiums can be made along with improvements to the current process. Whilst we expect that the changes will provide those who have been injured with a better level of care and service, it is unclear what measures will be used to determine whether the objectives of the Scheme are being met. We recommend that a series of performance measures and review processes be embedded in the Scheme to ensure Scheme objectives are achieved.

We thank you again for opportunity to comment on the proposals. We are available to clarify any of the points raised in this submission.

Yours sincerely



Laurel Kong

Executive

KPMG Actuarial Pty Ltd



Natasha de Souza

Executive

KPMG Actuarial Pty Ltd