



# CTP Issues Paper

NSW Government CTP Roundtable

24 July 2013



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# CTP ISSUES PAPER

## Message from the Minister

The current NSW CTP Scheme is failing the community. In the past 10 years NSW motorists have not paid as high a level of premiums as they do now for CTP insurance. At the same time motorists are contributing to a scheme where the majority of money paid out fails to go to those who are injured. Under the current Scheme it can also take years for those injured in a motor accident to access vital financial support.

The people of NSW deserve a simpler, easier to access, no-fault compensation scheme that is fair, effective and affordable. For this reason the NSW Government introduced the *Motor Accident Injuries Amendment Bill 2013* into the NSW Parliament.

This new legislation introduces measures that place downward pressure on prices, supports accident victims quickly and assists those who are injured regardless of the cause of the accident. The proposed Scheme puts the focus on the recovery of the accident victim and introduces greater accountability measures on insurers through the Motor Accidents Authority.

The NSW Government is aware of the concerns held by relevant stakeholder organisations about the legislation. Concerns regarding statutory defined benefits and what this means for legal representation, through to the impact of the Bill on children and motorcyclists are amongst some of the matters raised thus far. However, the Government is keen to hear further from stakeholders and give consideration to these views in anticipation of the debate in the Legislative Council.

The CTP Roundtable, the appointment of a NSW Government CTP Steering Committee and my availability for appointment will also provide further opportunity for organisations, individuals and peak groups to continue consultation during the winter recess of Parliament. I look forward to addressing community concerns and responding to the representations of relevant stakeholders in the weeks ahead.

### **Andrew Constance MP**

Minister for Ageing  
Minister for Disability Services

# 1 About the roundtable

The CTP Roundtable will provide an opportunity for the Government to hear and understand stakeholder perspectives, including views on the issues that influenced the proposed amendments to the *Motor Accident Injuries Amendment Bill 2013*, as well as those issues that led the Government to propose reform of the CTP Scheme in the first place. The roundtable will assist the Government in its consideration of any changes to the Bill.

The roundtable will be chaired by Paul McClintock AO, Chairman of Myer Holdings Ltd, with ABC broadcaster Peter Thompson to act as facilitator. The roundtable will have 25 key participants, most of whom will be representatives of key stakeholder groups.

More than 30 representatives of other stakeholder groups have also been invited to participate. Members of the public have been provided with the opportunity to attend at Parliament House or to observe and participate via webinar.

The program will begin with presentations outlining the proposed changes, and will provide for focused discussion on the key issues raised by stakeholders, with panels formed to explore key issues in depth.

Participants will have an opportunity to express their views following the presentations and as each issue is discussed.

If you are not participating in the roundtable but you would like to provide your comments, we invite you to either:

- join the roundtable via webinar by registering through [greensliproundtable@services.nsw.gov.au](mailto:greensliproundtable@services.nsw.gov.au) or
- go to the NSW Government *Have Your Say* website and provide comments online at <http://engage.haveyoursay.nsw.gov.au/ctpstrategy>.

The Government has appointed a steering committee to consider the issues, options and outcomes of the roundtable and to commission independent peer review actuarial advice. Following the roundtable, the steering committee will provide advice to Government on further considerations for the legislation as it is debated in the NSW Legislative Council in the Spring Session.

Following the roundtable, the Minister responsible for CTP reform, Andrew Constance, will be available by appointment for meetings with relevant stakeholders throughout late July and August 2013.

## 2 Executive summary

Around the world, motor vehicle accidents are a major cause of injury and disability - NSW is no different. For many of us, using the roads is the most dangerous thing we do.

Compulsory Third Party (CTP) insurance should provide a safety net for road users if an accident occurs. However, for many who have paid CTP insurance and get injured in an accident, it becomes a frustrating and disappointing experience as their claim takes years to complete. The Scheme is failing to support people properly and in a timely manner.

Many injured people in NSW are not covered by current CTP insurance and this too is out of step with other parts of Australia. The issue of who causes motor vehicle accidents is often not 'black and white' yet this Scheme penalises accident victims and wastes enormous amounts of time and money. Instead of spending premium dollars finding and apportioning blame, the Scheme can get better outcomes at a lower cost by focusing on helping people to get better, and by providing certainty with speedy income replacement.

The current Scheme is also not providing fair, affordable pricing for customers who are required to purchase CTP policies. NSW Green Slips are the least affordable in Australia.

The NSW Government believes too much of the CTP premium is going to administrative overheads, insurer profit and legal and investigative costs, and that the uncertainty of the current 'common law approach' creates the opportunity for larger than expected profits. That needs to change, and there needs to be tougher regulation of insurers.

The NSW Government's reforms aim to:

- put downward pressure on Green Slip prices,
- strengthen powers of the Motor Accidents Authority (MAA) to regulate insurers to address greater than expected profits and insurer administrative costs,
- build on the progressive roll out of a no-fault scheme by the previous Labor Government with a Scheme that, if implemented, will support an additional 7,000 injured people each year,
- look after people with injuries and disabilities better, by reducing the time it takes for payments to be made to injured people,
- increase certainty of entitlements for injured people through benefits that are determined by legislation as opposed to argument between lawyers and insurers,
- improve the customer service for injured people and reduce disputes, and
- make the Scheme more efficient so more of the premium dollar goes to injured people.

## 3 The reasons for reform

### The reasons for reform

- The CTP Scheme is not providing fair, affordable pricing for the customers who are required by law to purchase CTP policies. The average price for a motor car is now well in excess of \$500 in NSW. As a proportion of weekly pay, it is the most expensive in Australia. A CTP premium for a motor car in Sydney can cost as much as \$767 while it would be \$474 in Victoria and \$328 in Queensland.
- The current CTP Scheme is an out dated insurance product that is not effective in helping injured people in NSW recover from motor accidents.
- The current blame-based Scheme excludes thousands of injured people each year from being looked after if they are injured – even if they, as customers of this compulsory insurance product, have paid for CTP insurance.
- The issue of who causes motor vehicle accidents is often not ‘black and white’ yet the current Scheme penalises people who simply make a mistake and wastes enormous time and money allocating blame.
- The CTP Scheme does not provide optimum recovery and support for injured people or a good customer experience. The lump sum settlement process means that more than half of payments to injured road users are made more than three years after the injury.
- The NSW Scheme is inefficient. Between 2000 and 2010, only 50 cents of each dollar of CTP premium paid to CTP insurers by policy holders ended up in claim payments received by people injured in a motor vehicle accident. This drops to 47 cents in the dollar once extra legal costs paid by claimants based on private arrangements with their lawyers are taken into account.
- In comparison, some other Australian statutory benefit schemes return around 65 to 80 cents in the dollar of the premium collected to claimants. Too much of the premium dollar goes on administrative costs not medical care and support for injured people.
- The uncertainty of the current common law approach creates the opportunity for larger than expected insurer profits, which the Government believes is being taken.
- The Government and the responsible Minister do not have power under the legislation to set CTP prices. Insurers set their prices and the MAA as the regulator ensures they are compliant with legislation. The regulatory functions of the MAA need to be expanded to maintain downward pressure on prices.

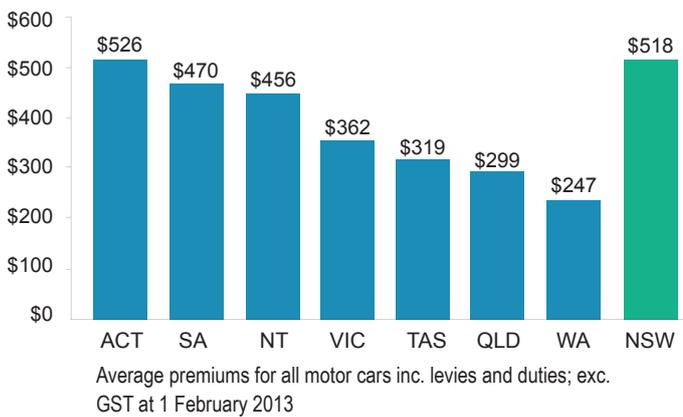
Since 1988, the Government and the responsible Minister have not had power under the legislation to set CTP prices or approve or reject price increases. Insurers set their prices and the Motor Accidents Authority (MAA) as the regulator ensures they are compliant with legislation.

What the Government can do is to propose a change to the legislation to make sure the system works well and the regulator has enough power, and we believe the time has come to make that change.

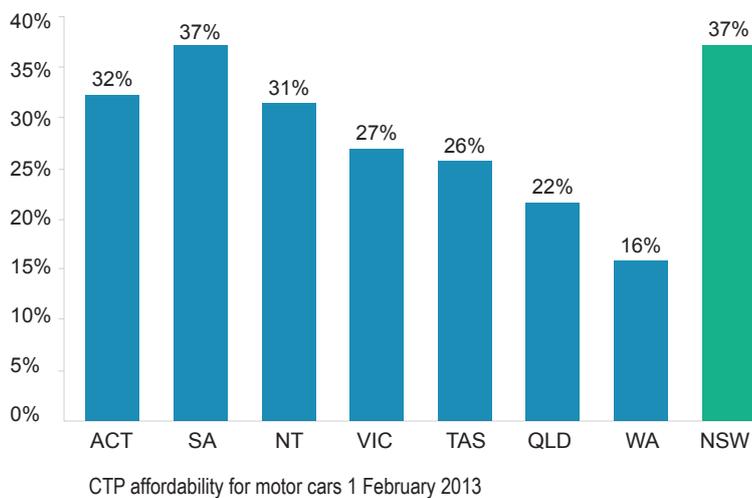
**The CTP Scheme is not providing fair, affordable pricing for the customers who are required by law to purchase CTP policies.**

- The average Green Slip price for a motor car in NSW is now well over \$500. As a proportion of average weekly pay, NSW is the most expensive CTP insurance in Australia for a motor car.
- CTP insurance for a motor car in Sydney can be as high as \$767. It would be \$474 in Victoria and \$328 in Queensland. A 1200cc motorcycle premium in Sydney could be as high as \$997. It would be \$567 in Victoria and \$271 in Queensland.
- NSW CTP insurance premiums are the least affordable of any of the states or territories when measured as a percentage of average weekly earnings (AWE).
- As a percentage of AWE, the average price for a motor car Green Slip in NSW is now 37 per cent. The premium is increasingly unaffordable having climbed from 28 per cent of AWE in 2008.
- By comparison, the equivalent affordability of a CTP policy in Victoria is around 27 per cent of average weekly earnings even though the Victorian scheme covers anyone injured irrespective of fault.
- The average CTP insurer premium for a motor car in NSW has increased in dollar terms by around 70 per cent since 2008 and by 40 per cent in real terms (inflation adjusted).

**Figure 3.1 Average premiums by state and territory in February 2013<sup>1</sup>**



**Figure 3.2 CTP affordability by state and territory (Premium as a percentage of AWE) in February 2013<sup>2</sup>**



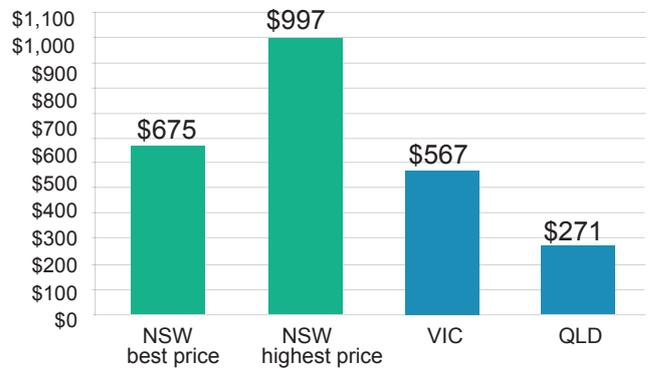
1 Ernst & Young NSW CTP Scheme Performance Update, 2012  
 2 Ernst & Young NSW CTP Scheme Performance Update, 2012

**Figure 3.3: Metropolitan 2009 Mazda3 car CTP price**



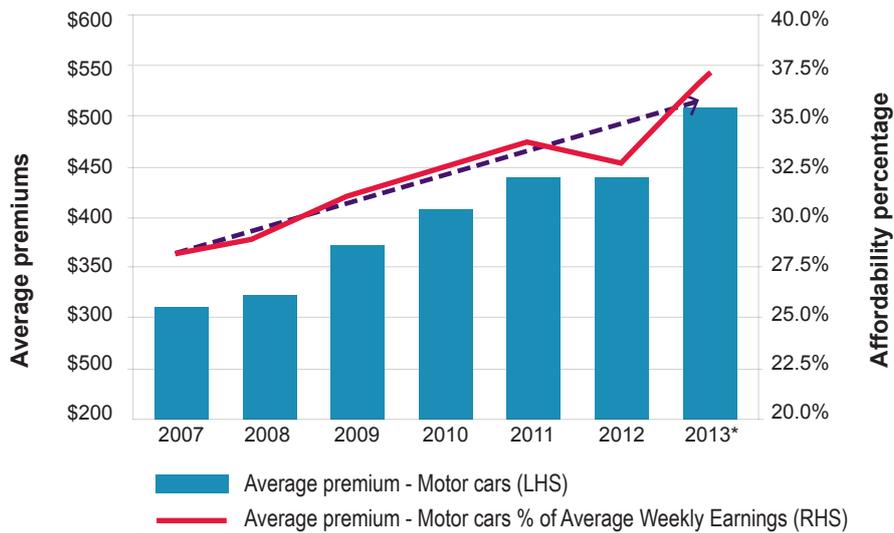
- A 33 year old mother from Liverpool, with a good driving history and a fully insured 2009 Mazda3 sedan could pay as much as \$543 for CTP insurance. This would be \$474 in Victoria and \$328 in Queensland.

**Figure 3.4: Metropolitan 2009 1200cc motorcycle CTP price**



- A 40 year old from Blacktown with a 1200cc 2009 motorcycle could pay as much as \$997 for CTP insurance. This would be \$567 in Victoria and \$271 in Queensland.

**Figure 3.5 Premiums and affordability for NSW motor cars**



\*As at February 2013 using latest insurer premium rate filings

**Around the world, including NSW, motor vehicle accidents are a major cause of injuries and, for many of us, using the roads is the most dangerous thing we do.**

- Globally, every year almost 1.24 million people are killed as a result of motor vehicle accidents with 20 to 50 million more people injured, and many incurring a disability as a result<sup>3</sup>. In NSW 26,366 road users were injured in 2011 and 364 were killed.
- There were 11,876 single vehicle accidents<sup>4</sup>. This figure of 11,876 single vehicle accidents represents 28 per cent of the total number of motor vehicle accidents reported to the NSW Police in 2011<sup>5</sup>. Almost none of these drivers would be fully covered by CTP if they were injured.

**Did you know?**

People who would not be fully covered under the current Scheme include:

- A mum with squabbling children in the back seat, runs off the road,
- A driver with an excellent driving history misjudges a corner on an unfamiliar road,
- A farmer runs into a tree trying to avoid an animal on the road,
- A motorcyclist comes off the bike while cornering in the wet.

**The current CTP Scheme is an out dated insurance product which is not effective in helping injured people in NSW recover from motor accidents.**

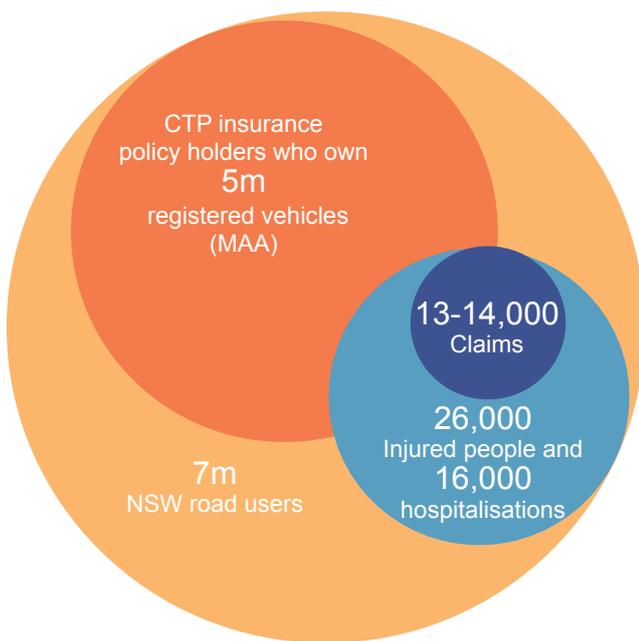
- Compulsory NSW CTP insurance was originally established in 1942 by the McKell Labor Government because injured road users had to sue the person who appeared to be responsible and often found the person they sued did not have the funds to pay the injured person's medical bills. The common law system often had devastating financial consequences for motorists without insurance.
- This early beginning was based on the common law approach to recovering compensation for negligence with 'out dated nineteenth century notions of liability'<sup>6</sup>.
- Since then we have many more vehicles on NSW roads, better road safety, better health care and rehabilitation, the Medicare system and a community that increasingly supports people with disabilities to fully participate in all aspects of life including through the newly established National Disability Insurance Scheme.
- In some other parts of Australia all road users are covered if they are injured in a motor vehicle accident. These schemes are not about allocating blame for an accident. They are about helping injured people recover and get back to their life regardless of how the accident was caused.
- Market research in NSW indicated many in our community expect the CTP Scheme to cover everyone who is injured – and they are surprised to find that not everyone is covered and that even people who pay the CTP insurance may not be covered<sup>7</sup>.

3 World Health Organisation Fact Sheet No 358 Road Traffic Injuries March 2013  
4 Roads and Maritime Services Road Traffic Crashes in NSW: Statistical statement for the year ended 31 December 2011  
5 Roads and Maritime Services Road Traffic Crashes in NSW: Statistical statement for the year ended 31 December 2011

6 Robinson, M.A. Accident Compensation Schemes in Australia - No Fault Schemes, 1987  
7 Newspoll Market Research commissioned by the MAA Understanding of, and Attitudes to the CTP Scheme 2007

- Successive governments in NSW have added benefits to the CTP Scheme to make it fairer - but the result is a complicated and inefficient hybrid scheme that is not serving the people of NSW as well as schemes available in other states and territories.

**Figure 3.6 Customers in the current CTP Scheme**<sup>8,9</sup>



**Many injured people in NSW are not covered by current CTP insurance.**

- The current fault-based Scheme effectively excludes thousands of injured people each year from being looked after if they are injured - even if they, as customers of this compulsory insurance product, have paid for CTP insurance for years or even decades.
- When single vehicle accidents occur, there is very little prospect of the driver or rider being fully covered by CTP.

**The issue of who causes motor vehicle accidents is often not 'black and white' but grey.**

- Most of us understand that motor vehicle accidents can occur even when no one is breaking the road rules. The weather, an unfamiliar road, and poor light conditions can all be factors.
- Sometimes passengers contribute to the cause of the accident by distracting the driver. Sometimes passengers contribute to the cause of their injuries. Even passengers can have their benefits reduced substantially in the current CTP Scheme if they are found to have contributed to the cause of their injuries in some way.
- By providing benefits regardless of who caused or contributed to the injuries, instead of customers' premiums being spent working out how to deny benefits to injured people, these premiums can be directed to helping all injured people.

**The CTP Scheme does not provide optimal recovery and support for injured people or a good customer experience.**

- The existing NSW CTP Scheme is fault-based, complex and adversarial. In some other parts of Australia, CTP systems are more straightforward and injured people can focus on their recovery rather than having to prove someone else is to blame.
- The lump sum settlement process means that more than half of payments to injured road users are made more than three years after injury.
- While the insurance claim for a car damaged in an accident can be resolved in weeks, it often takes years to resolve the claim to look after an injured person.

8 Note: Some people reported as injured may have sustained only minor injuries and are unlikely to make a claim.

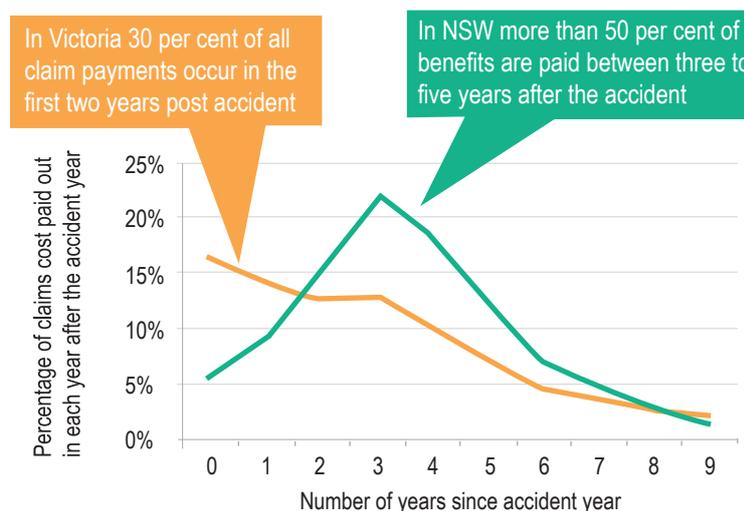
9 Data sources: Australian Bureau of Statistics, MAA, NSW Centre for Road Safety and NSW Ministry of Health.

- This adversarial system can compromise the recovery and health of injured people.<sup>10 11</sup>
- There are also significant delays in payments to injured people. In the Victorian no-fault motor accidents scheme, significantly more is paid to injured people in the first two years. Approximately 30 per cent of all claims payments occur in the first two years post-injury in Victoria compared to only 15 per cent for NSW.
- In order to penalise those who have contributed to their injuries, a lot of

effort and cost is spent determining who is to blame for the accident and to what extent each person involved in the accident contributed to their injuries, so that benefits can be withheld or reduced.

- The current system is complex and often lawyers are required to help injured people navigate the claims process and to help insurers in claims management and investigation.
- Disputes in NSW are far more frequent than in the Victoria because of the scheme design<sup>12</sup>.

**Figure 3.7** Percentage of claims costs paid by year after accident in Victoria and NSW<sup>13</sup>



### The CTP Scheme is inefficient.

- The MAA which regulates the NSW CTP Scheme has released a report by the independent scheme actuary, Ernst & Young, into the performance of the CTP Scheme between 2000 and 2010.<sup>14</sup> The report did not include more recent years in the analysis as so many claims in recent years are still unresolved.

- The report highlights that on average between 2000 and 2010, only 50 cents of each dollar of CTP premium paid to CTP insurers by policyholders ended up in claim payments received by people injured in a motor vehicle accident, and that 50 per cent is before many claimants paid their own lawyers extra out of their settlement payout.

10 Cameron, ID, Rebbeck T, Sindhusake D, et al Legislative change is associated with improved health status in people with whiplash. *Spine* 2008; 33:250-4.

11 Littleton, SM et al The association of compensation on longer term health status for people with musculoskeletal injuries following road traffic crashes: Emergency department inception cohort study Injury(2010)

12 Ernst & Young advice to the MAA

13 See Appendix 1

14 Ernst & Young NSW CTP Scheme Performance Update, 2012

- In comparison, the Victorian no-fault statutory benefit scheme returns about 80 cents in the dollar of the premium collected to claimants and more than 91 cents in every dollar of the Medical Care and Injury Services (MCIS) Levy collected for the no-fault NSW Lifetime Care and Support Scheme goes to services for injured people.
- The rest of the money collected in premiums goes on insurer overheads, insurers and claimants legal and investigation costs, and insurer profits.
- For smaller claims, where people are less severely injured, the efficiency is even worse. For all claims less than \$50,000 only 36 cents of each CTP premium dollar is returned to injured people. These small

claims make up 70 per cent of all claims in the Scheme. For legally represented claims of less than \$50,000 only 28 cents of each CTP premium dollar is returned to claimants due to the higher proportional cost of legal services (after adjusting for contracted-out legal costs).<sup>15</sup>

- Both insurer expenses and insurer profits are also impacting CTP insurance premium prices and reducing CTP Scheme efficiency.
- Since 1999, expenditure on three types of overhead costs (legal assistance and investigations, insurer expenses and insurer profits) in the CTP Scheme have each exceeded the expenditure on medical treatment and rehabilitation for injured people in the NSW CTP Scheme.<sup>16</sup>

#### Notes for Figure 3.8

- The efficiency measure was calculated using the projected target premium for each scheme except for SA which was taken from the SA Government's CTP insurance 2012 Green paper.
- NSW Scheme efficiency 10 year average was calculated on the basis of actual average premiums over 10 years from 2000-2010 excluding contracted out legal costs. This efficiency measure excludes the Lifetime Care and Support (LTCS) Scheme since the efficiency measure has been defined against what the insurers manage for the Scheme. However because the LTCS Scheme has only been operating since 2006 the 10 year average Scheme efficiency measure prior to this does include the cost of catastrophic injuries (for not at fault claims).
- The LTCS Scheme has operated in NSW since 2006. The LTCS Scheme is therefore measured separately for efficiency which is 91.5 per cent (average over last three years). Prior to this catastrophic injuries were managed on another model and covered by the NSW Scheme.
- Scheme efficiency represents the benefit received by claimants as percentage of premium paid.
- No adjustment for contracted out legal costs.

**Figure 3.8** Efficiency of motor vehicle accident insurance schemes in Australia<sup>17</sup>



<sup>15</sup> Ernst & Young NSW CTP Scheme Performance Update, 2012

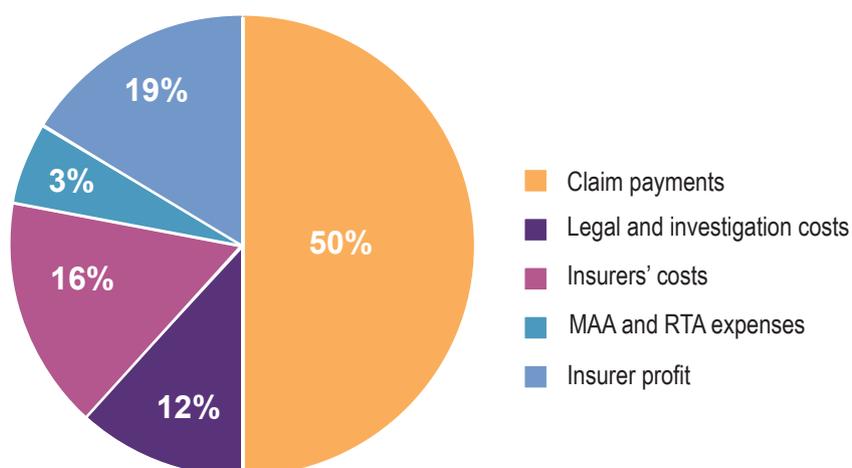
<sup>16</sup> Data source: Ernst & Young advice to the MAA

<sup>17</sup> Ernst & Young NSW CTP Scheme Performance Update, 2012 and data provided by PwC Australia to the Lifetime Care and Support Authority

**The uncertainty of common law benefits creates the opportunity for larger than expected insurer profits.**

- Under the current Scheme the common law benefit design means the amount of benefit an injured person will end up receiving is difficult to predict. In practice, it takes many years to find out what was really required to be paid out on claims because a majority of claims take several years to be settled. The size and number of claims can be higher or lower than forecast.
- Yet when premium prices are set, insurers need to estimate what the future liabilities will be on accidents that are yet to occur. Insurers must collect enough premiums and keep sufficient capital reserves to meet their prudential requirements and avoid the risk of not being able pay their liabilities – and avoid being in deficit. If they collect more in premiums than is actually required years later, the uncertainty has created a larger than expected profit.
- Insurer profits have also been found to account for 19 per cent of the premiums collected, which is higher than the expected profit margins submitted in advance by the insurers when they have proposed premium changes.
- The introduction of a statutory benefits scheme means that claims can be finalised much faster, especially the 70 per cent of claims that involve only minor injuries. The benefits are defined by law and therefore much more predictable. This also means that insurers can more accurately estimate their liabilities with less margin for error and less opportunity for greater than expected profits down the track.
- Under the proposed reforms, the powers of the MAA to regulate the assumptions underlying insurer price setting will be strengthened to further ensure that pricing is fair and consistent.

**Figure 3.9** CTP Scheme efficiency 2000 to 2010



## 4 The NSW Government's proposed CTP Scheme

### The key elements of reform

- put downward pressure on Green Slip prices,
- strengthen MAA powers to regulate insurers to address larger than expected profits and insurer administrative costs,
- build on the progressive roll out of a no-fault scheme by the previous Labor Government,
- look after people with injuries and disabilities better,
- speed up payments to injured people,
- increase certainty of entitlements for injured people,
- provide support for an estimated 7,000 injured people who are currently only eligible for limited benefits,
- improve the customer service for injured people and reduce disputes,
- improve efficiency so more of the premium dollar goes to injured people, and
- reduce all the overhead costs of the Scheme including legal and investigative costs, insurer costs, insurer profits.

### Progressive change towards a no-fault scheme

The Government aims to build on the progressive roll out of no-fault benefits, which has already occurred in the NSW CTP Scheme to date, including:

- no-fault Lifetime Care and Support (LTCS) Scheme in 2006,
- no-fault Children's Benefit in 2006,

- blameless accident provisions in 2006,
- no-fault access to public hospital and ambulance services in 2008, and
- no-fault early payment of up to \$5,000 in 2010.

### Looking after injured people more effectively

The proposed Scheme will be 'first party' so that most injured people can make a claim with the insurer of the vehicle they were travelling in or on. This means that for the first time drivers will be insuring themselves when they buy a Green Slip for their vehicle. As well, injured people will claim against the insurer of the vehicle they were travelling in. There is less need to find out who someone else is insured with - and more often an injured person will deal with their own insurance company.

The proposed Scheme includes a simpler claims process that reduces unnecessary complexity and therefore reduces the need for lawyers.

The proposed legislation is not retrospective and will only apply to new accidents.

In the proposed Scheme, like most no-fault schemes, there will be no right to statutory benefits if the injured driver was committing a serious driving offence or was intending to kill or injure themselves. Serious driving offences include mid and high range drink driving and not stopping when pursued by police and driving recklessly or dangerously.

NSW Police will still be able to charge drivers with traffic and criminal offences, but those injured when they have a momentary lapse of concentration will not be denied benefits.

### All NSW Road users are covered - regardless of the reason for the accident.

The NSW Government's reforms introduce a no-fault statutory benefits scheme that will be simpler and easier to access than

common law damages, with payment commencing soon after a claim is made. Unlike common law damages these benefits are payable regardless of whether the injured person can prove another driver was to blame.

The more seriously injured (those with more than 10 per cent permanent whole person impairment who can prove someone else was at fault) will still be able to claim common law damages for loss of earnings and earning capacity and for non-economic loss (for pain and suffering).

The no-fault Scheme is designed to deliver better support for injured people, while making administration less complicated and expensive. It is a fundamental shift away from an out dated adversarial system to one focused more on recovery outcomes for anyone injured in a motor vehicle accident on NSW roads.

By introducing a no-fault Scheme, more than 7,000 additional people will get greater access to benefits, and there will be a dramatic reduction in technical legal disputes over blame, liability and contributory negligence that increase costs, cause delays and lead to the denial of benefits.

In the old Scheme, drivers or riders who cannot claim against another vehicle are barred from accessing most entitlements regardless of their injuries.

For example, even if they are seriously injured enough to join the LTCS Scheme they are only entitled to a maximum of \$5,000 for lost earnings. These drivers and riders are covered in other Australian schemes such as the Victorian TAC system.

In addition, there are injured people who, while not directly causing the accident, may have contributed to their injuries - for example, a bicycle rider without a helmet or a pedestrian not crossing the road correctly. Sometimes there is no clear party who caused all the injuries. People who are found to have contributed to the cause of the

accident or injuries will have their benefits reduced in accordance with the extent of their negligence.

### Productivity Commission findings

The proposed no-fault, statutory benefits CTP Scheme is consistent with the findings of the Productivity Commission regarding the best design for injury insurance schemes.

A no-fault scheme represents a fundamental shift away from a blame-based system to one focused more on recovery outcomes for those injured on our roads.

The Productivity Commission's 2011 Report on *Disability Care and Support* concluded that no-fault schemes are overall superior to fault-based schemes.

*"Overall, no-fault systems are likely to produce generally superior outcomes compared with fault-based systems. This assessment is consistent with the findings and recommendations of past official inquiries and reports that have investigated the matter."*<sup>18</sup>

The Government's reforms will bring NSW in line with Victoria and are consistent with the directions of Disability Care.

The Productivity Commission's 2011 Report on *Disability Care and Support* criticised fault-based systems because

- *"court outcomes are uncertain, people's future needs are unpredictable and poorly captured by a once-and-for-all lump sum, compensation is often delayed, and there is a risk that lump sums are mismanaged,*
- *adversarial processes and delay may hamper effective recovery and health outcomes"*<sup>19</sup>.

18 Productivity Commission Disability Care and Support - Productivity Commission Inquiry Report 2011

19 Productivity Commission Disability Care and Support - Productivity Commission Inquiry Report 2011

### Injured driver example one

Kris, 42, is a nurse in regional NSW who has paid Green Slip premiums for 20 years and has a good driving history. She had a momentary lapse of concentration while driving home from work and was involved in a motor vehicle accident which left her with head injuries, broken ribs and a spinal fracture. She was considered to be at fault in the accident. Her treatment expenses were more than \$10,000 and she was assessed as having 21 per cent whole person impairment (WPI). She couldn't work for six months during which time she struggled to meet her living expenses. After six months Kris' employer provided suitable duties for her as an administration officer and she earned \$600 per week.

**Under the current Scheme,** Kris would have her ambulance and public hospital bills met, but would be entitled up to only \$5,000 in further treatment expenses and lost earnings. However, if her treatment expenses were high, the \$5000 could be exhausted on medical costs and she would recover nothing for lost wages.

**Under the proposed Scheme,** Kris will lodge a claim with her own Green Slip insurer and be entitled to \$1,045 per week in the first 13 weeks. Between weeks 14 and her return to work, Kris will be entitled to \$880 per week. After returning to work performing limited administrative duties, Kris will be assessed as having an ongoing loss of earning capacity and she will be entitled to a weekly top up, until retirement age. She will be entitled to redeem her claim for compensation for her future loss of earning capacity, as well as for a lump sum permanent impairment statutory benefits payment of \$38,500 regardless of fault. This is separate to common law damages. Kris would also be entitled to any reasonable and necessary medical expenses incurred in the future. Her entitlement is estimated to be up to \$590,000.

### Certainty of entitlements for injured people

Some people may receive a lower financial benefit than they would have under the old Scheme but this would be offset by earlier payment of benefits and certainty about entitlements. In the current Scheme benefits can be unpredictable and may vary between people with similar injuries, impairment and needs.

Under the proposed Scheme the maximum weekly payment to accident victims who are not fit for work will be \$1,903.70 per week gross (indexed for inflation and equivalent to \$98,992 per year). This is \$504.80 per week (or 36 per cent) more than the average weekly earnings in NSW of \$1,398.90.

People on incomes of more than \$1,900 a week can often afford income protection insurance and it is unreasonable for them to be subsidised by the vast majority who earn less than \$1,900 gross per week.

The maximum possible amount of payments for loss of earnings for an injured person with 10 per cent or less whole person impairment, who is not fit for work, would be five years of weekly benefits totalling \$494,962 (or nearly half a million dollars).

## Injured driver example two

Leonie has three children and works as a casual receptionist earning \$550 per week. While driving, Leonie was distracted by the children squabbling in the back seat and lost control of her car and ran into a tree. No other vehicle was involved.

Leonie's injuries were very severe and left her with permanent restricted movement despite a series of surgeries. She had a compound fracture of the right ankle, fractures to the right femur and tibia, and lacerations to her knees and both shins, and was assessed as having a permanent impairment of 14 per cent. She was unable to work for a month but then returned to work gradually increasing her hours to full-time after six months.

**Under the current Scheme,** Leonie would be entitled to have her ambulance and public hospital bills met, but would be able to claim only up to \$5,000 for treatment expenses and lost earnings. As she has no access to sick leave she would struggle to support her family until she could return to work full-time.

**Under the proposed Scheme,** Leonie can lodge a claim with her own insurer and immediately receive weekly payments of \$522.20 per week for the four weeks she is off work and then top up payments until she returns to work full-time. Leonie will be entitled to reasonable and necessary treatment and care for as long as she needs it, and may be entitled to commercial help while she is unable to complete essential domestic tasks. Leonie is also entitled to permanent impairment statutory benefits, which would be available to injured people with a whole person impairment of more than 10 per cent regardless of fault. This is separate to common law damages.

## CTP prices and insurer profit

- NSW CTP premiums are the least affordable of any state or territory.
- It is estimated the reforms in the Bill would reduce the average passenger vehicle premium by up to 15 per cent, however this will vary depending on the final form of the legislation.
- The Government and the responsible Minister do not have the authority to change insurer CTP premiums, however the MAA does have the power to reject proposed premiums if they are not compliant with legislation.
- The Bill addresses larger than expected insurer profits and tackles the risk of future price shocks by providing greater certainty in claims costs and strengthening the MAA's powers to regulate premiums.
- The reforms in the Bill will ensure a sustainable Scheme with reduced risk of future price shocks.

NSW CTP insurance premiums are the least affordable of any state or territory.<sup>20</sup> This issue has dominated complaints to the responsible Minister and the MAA. In the year prior to the release of the policy document *Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme* in February 2013, two thirds of letters to the MAA about the CTP Scheme expressed concerns about high CTP prices. Complaints about high CTP prices feature regularly in the media and talk back radio. In the three months to 30 June 2013, around two thirds of CTP related print, radio and television mentions feature consumer concerns about pricing.<sup>21</sup>

20 Ernst & Young, NSW CTP Scheme Performance Update, 2012

21 NSW Government Media Monitoring Unit data; sourced and analysed 8 July 2013

It is estimated the reforms in the Bill would reduce premiums for an average passenger vehicle by up to 15 per cent, on average once the Government's reforms are fully implemented, depending on the final form of the legislation. Actual savings for individuals depend on their type of vehicle and their individual risk factors.

The reform measures that will reduce costs and premiums include tighter regulation of insurers, clear benefit entitlements set in law which give certainty to claim costs, reduced overheads and administrative costs, and caps on weekly payments and time limits for benefits for less seriously injured people.

Like the current system, insurers will still be able to offer different prices within limits, depending on a policy holder's risk factors, but modified to reflect the no-fault basis of the Scheme. Policy holders will continue to be encouraged to compare prices and shop around using the MAA Green Slip calculator.

The *Motor Accidents Injuries Amendment Bill 2013* addresses greater than expected insurer profits by introducing greater certainty in claims costs, and tackling the underlying causes of high profit margins.<sup>22</sup>

**Table 4.1:** CTP insurer market share

	<b>Market share 4 quarter average to March 2013</b>
AAMI (Suncorp)	8.6%
Allianz	12.5%
CIC-Allianz	4.2%
GIO (Suncorp)	13.3%
NRMA	37%
QBE	17.1%
Zurich	7.3%
<b>Total</b>	<b>100%</b>

The Bill will strengthen the MAA's powers to regulate premiums:

- The MAA will have direct power to determine what expenses, including marketing, legal costs, claims handling and actuarial expenses, and other overheads can be taken into account in setting premiums.
- The MAA will have more powers to reject proposed premiums and require insurers to reduce existing premiums, and audit the basis of insurer premium proposals.
- The MAA will have authority to publish extensive information on insurer performance, to help vehicle owners to make informed choices.

The proposed Scheme will deliver certainty and reduce settlement delays. A simpler claims process will reduce costs, including legal expenses, for both claimants and insurers.

Insurers will therefore be regulated to reduce their premiums over time to reflect the lower costs and risks, and increased certainty inherent in a scheme not reliant on allocating blame.

The Government's reforms aim to attract new insurers to the CTP market.

Competition between insurers should increase. More certainty over claim liabilities and faster payments to injured people should reduce the amount of capital needed, and the time insurers need to reserve capital, making it easier for new insurers to enter the market.

With greater certainty in claims expenses because the Bill introduces defined statutory benefits, the opportunity for excessive insurer profits will be reduced.

Importantly, greater certainty of benefits reduces the risk for insurers, thus reducing the capital needed to offer CTP, and this should increase competition by reducing the cost of entry into the CTP market.

<sup>22</sup> <http://prices.maa.nsw.gov.au>

### Improving the experience of making a claim for injured people

Under the current NSW CTP Scheme the majority of payments are paid more than three years after an accident, which is significantly later than other schemes.<sup>23</sup> In order to claim benefits, the injured person must lodge a claim with the insurer of the vehicle most at fault. There may be disputes over who is to blame, the extent and cause of the injury, and the settlement amount. The dispute processes are often costly and lengthy.

A better dispute resolution system has been included in the *Motor Accidents Injuries Amendment Bill 2013*. Injured people will be encouraged to resolve disputes about statutory benefits with their own insurer in the first instance, and can request an internal review by the insurer.

If this does not resolve the dispute, it can be referred for independent assessment to a claims assessor in the Claims Assistance and Resolution Service (CARS).

The Independent Review Officer established by the Bill will be able to review earnings decisions, and the Supreme Court will be able to hear appeals from the Claims Assistance and Resolution Service on questions of law.

The MAA will continue to provide a claims advisory service to assist injured people.

The Bill aims to reduce delays in payments. It is expected weekly payments would start within four weeks.

Figure 4.1: Savings and improvements

Savings measures	Improvements for customers
Reduced overheads and administrative costs	7,000 extra injured people gain coverage each year
Reduced insurer profits from tougher regulation and claims cost certainty	
Caps and time limits on claim payments	Policy holders protected from future price shocks and premium reductions (depending on the final form of the legislation)

23 Ernst & Young NSW CTP Scheme Performance Update, 2012

**Figure 4.2:** Typical motor accidents claims process for an employed person with minor injuries

Steps	Current Scheme	Steps	Proposed Scheme (Statutory benefits)
1	Report motor vehicle accident to Police.	1	Report motor vehicle accident to Police.
2	Work out who is the insurer of the motor vehicle that caused the accident with help from the MAA.	2	Contact own insurer or MAA and make Provisional Claim.
3	Obtain, complete (with GP) and lodge with insurer an Accident Notification Form (6 pages) to access up to \$5,000 (for a period of up to 6 months) if lodged within 28 days of the accident.	3	Complete Notice of Claim for statutory benefits.
4	Payment for medical treatment commences (at 6 month point balance of \$5,000 can be used to reimburse loss of income).	4	Payment for medical treatment and loss of income commences immediately upon acceptance of claim (within 4 weeks).
5	Upon identifying likelihood that claim will exceed 6 months or \$5,000 Injured person to complete (along with GP) Motor Accidents Claim Form (20 pages) (6 month time limit).	5	Insurer to continue gathering information to quantify and pay claim as it progresses.
6	Insurer to admit liability within 3 months.	6	If the injured person disagrees with a medical decision, an independent medical assessment may be required.
7	Admission of liability leads to the payment of medical treatment on an 'as incurred' basis.	7	The injured person may receive future entitlements under the claim as a lump sum by agreement or with the approval of a claims assessor prior to the end of the 5 year time limit.
8	Insurer to continue gathering information to quantify claim from injured person, treatment providers and employer. May involve multiple medical assessments and medico-legal investigations.	8	If the injured person disagrees with an insurer's decision throughout the claim, they can ask for an internal review by the insurer, an independent review by a claims assessor and if needed, a review by the Independent Review Officer.
9	Claimant to provide all relevant particulars about the claim such as to enable the insurer to prepare an offer of settlement (calculate entitlement to damages).		
10	Insurer to make a reasonable offer of settlement once injury stable / relevant particulars provided.		
11	If the claimant rejects the insurers offer, parties must exchange documents upon which they rely for the purposes of quantifying/ resolving the claim and participate in a settlement conference.		
12	If settlement conference unsuccessful: the parties must make an offer of settlement.		
13	If neither party accepts an offer of settlement: Application made to CARS for a general assessment of the claim.		
14	CARS assessment binding upon an insurer (where liability is not in dispute) but not the injured person who has 21 days from the date of the assessment certificate to accept.		
15	Where CARS assessment is not accepted, the injured person may continue to negotiate with the insurer or commence proceedings in court to resolve the matter (a 3 year limitations period applies).		
16	Where agreement is reached between the parties or judgement obtained, balance of entitlements (economic loss) paid to the claimant.		

## Legal representation and costs

With common law damages claims, an insurer will normally be required to pay a successful claimant's legal costs, but only up to the amount set in the regulation. A lawyer can charge their own client more than this, where the client and lawyer have a private agreement. This means that the 50 cents in the dollar of premiums that gets returned as compensation is further reduced by a claimant's own extra legal fees.

A main driver of increasing claims costs since 2008 is the greater number of people with minor injuries that are legally represented.

*The Motor Accident Injuries Amendment Bill 2013* only permits legal costs for claims for statutory benefits in limited circumstances. An insurer will not generally be liable to pay the legal costs of a successful claimant, and a legal practitioner will not generally be entitled to be paid by their client, for a claim for statutory benefits, e.g. weekly payments.

In exceptional circumstances, such as a legal disability, an injured person can ask an independent claims assessor to decide if they can have legal costs paid for - even in regard to statutory benefits.

Legal costs will continue to be permitted for claims for common law damages and the regulation will continue to fix maximum costs. The Bill does, however, remove the ability of legal practitioners to charge their own clients more than these maximum costs.

The Bill will enable lawyers to focus on helping more seriously injured people with common law claims and those with a legal disability (e.g. they are a child or have an intellectual disability that amounts to a legal disability).

## 5 The Motor Accident Injuries Amendment Bill 2013

- The Bill sets out what you will get in benefits if you are injured in a motor vehicle accident, regardless of how the accident was caused.
- There are clear entitlements for weekly benefits based on the injured person's previous earnings.
- Payments will start within weeks and reduce stress on injured people and their families.
- All reasonable and necessary treatment, rehabilitation and care expenses will be covered.

**In the NSW CTP Scheme it can be easier and faster to have an insurer pay for the car to be fixed after an accident than it is to look after the people who were injured.**

The NSW Government's reforms will mean that injured people will receive better service and clear consistent benefits with less delay and a simple claims process.

This means if you are injured in a motor vehicle accident you can focus on your recovery, not working out how to prove who is to blame and who the insurer is and how to argue for your entitlements.

**The Bill sets out what you will get in weekly benefits.**

If you are injured in a motor vehicle accident and unable to work you will be entitled to weekly benefits, based on your pre-accident earnings. You would generally be entitled to up to:

- 95 per cent of your pre-injury earnings for up to 13 weeks after the accident
- 80 per cent of your pre-injury earnings from 14 weeks up to 18 months after the accident

- 80 per cent of your pre-injury earning capacity from 18 months after the accident.

If you are seriously injured with more than 20 per cent whole person impairment you may be eligible for weekly payments until you reach Commonwealth retiring age. Other injured people may be eligible for benefits for up to five years.

The maximum weekly benefit will be \$1,903.70 per week (gross). This amount will be indexed to keep pace with inflation. It is currently 36 per cent more than the average weekly earnings of a full-time worker in NSW. The reason for introducing this cap is that for a compulsory compensation scheme, such as the CTP Scheme, it is not appropriate for a high-income injured person to be subsidised by the vast majority who earn less than the cap.

If you are injured in a motor vehicle accident and you have a whole person impairment of more than 10 per cent, you will also be entitled to a lump sum permanent impairment statutory benefit payment of up to \$220,000 regardless of who caused the accident. This is separate to common law damages.

If another driver caused the accident, and you have a whole person impairment of more than 10 per cent, you can also claim common law damages for loss of earning capacity up to a cap of \$1,903.70 net per week and a payment for non-economic loss (e.g. pain and suffering) up to \$462,000. If you choose to pursue common law damages, any permanent impairment statutory benefit lump sum you received will be deducted.

If your injury and recovery has not stabilised at the end of five years and an independent medical assessor finds it is highly likely your whole person impairment will exceed 20 per cent, you will continue to be eligible for weekly payments until a final assessment can be made.

Independent medical assessors are engaged by the MAA to resolve disputes about whole person impairment and other medical disputes.

## The Bill sets out what you will get in treatment, rehabilitation and care.

If you are injured in a motor vehicle accident the insurer must meet the costs of your reasonable and necessary treatment and care needs:

- for life if you have a whole person impairment of more than 10 per cent, or
- for up to five years if you are less seriously injured.

If your injury and recovery has not stabilised at the end of five years and an independent expert assessor finds it is highly likely your whole person impairment will exceed 10 per cent, you will continue to be eligible for treatment and care until a final assessment can be made.

If you are injured and you need help with everyday tasks like showering, dressing, eating and cleaning, shopping and laundry, you will be able to claim for the reasonable and necessary costs of these services to be provided by an attendant care professional. Benefits will only be payable for commercially provided services, and not for free voluntary care services.

If you are injured and you usually provide domestic services to a dependant (e.g. a child), but you are unable to do so because of your injuries, you will be able to claim statutory benefits for the cost of employing a person to provide these services, in line with the *Civil Liability Act 2002 (NSW)*.

The Bill recognises the Scheme should not place a care burden on families that may not be able to be sustained by the family, for example, due to ageing or ill health of either the injured person or the family member. The needs of an injured person are likely to change over time (especially for those left with a more serious level of impairment), and the family will not always have the capacity or expertise to provide appropriate injury related attendant care. The Bill ensures coverage to pay for reasonable and necessary services from an attendant care professional.

## Whole person impairment

The 10 per cent whole person impairment (WPI) threshold in the CTP Scheme has been in place since it was introduced by the previous Government in 1999 in order to ensure a high proportion of the CTP Scheme benefits go to those people who are most seriously injured.

To ensure the more seriously injured people receive the most benefits, many injury insurance schemes have the same approach.

In the CTP Scheme independent medical experts assess the permanent impairment (called 'whole person impairment') that an injured person is left with after receiving treatment and rehabilitation.

Approximately 12 per cent of finalised full claims in the current Scheme were made by a person with a whole person impairment of more than 10 per cent.

Most people who are injured make a full recovery, and are not left with any permanent impairment. Others whose whole person impairment is not greater than 10 per cent are generally able to return to a normal and productive life, although some may have to make adjustments as a result of ongoing difficulties.

An example of an injury that may result in more than 10 per cent, but less than 20 per cent, whole person impairment is a severe rupture of the knee ligaments, with ongoing knee pain and limping.

Another example is a significant loss of skin from the knee and upper leg resulting in tightness and restriction of movement, with a fracture, and some ongoing 'ligament laxity' (loose ligaments).

The Bill introduces a further level of entitlements for people whose injuries result in more than 20 per cent whole person impairment.

Injuries that are more than 20 per cent would include spinal cord injury, serious brain injuries, some severe psychological injuries,

significant injury to male reproductive organs, and amputations of a foot or leg or hand or arm, or thumb, or multiple fingers. A small number of people each year with a whole person impairment of more than 20 per cent, such as those with spinal cord injury, would find their injuries and impairment are severe enough to make them participants in the Lifetime Care and Support Scheme.

**Table 5.1 Treatment and care benefits for injured people**

% Whole Person Impairment (WPI)	Current Scheme	Proposed Scheme
0-10%	Up to \$5,000 treatment and care expenses/ loss of earnings regardless of fault Common law damages (assessed for lifetime) if can prove someone else is to blame or under 16	5 years statutory benefits regardless of fault
10-20%	Up to \$5,000 treatment and care expenses/ loss of earnings regardless of fault Common law damages (assessed for lifetime) if can prove someone else is to blame or under 16	Lifetime statutory benefits regardless of fault
20% +	Up to \$5000 treatment and care expenses/ loss of earnings regardless of fault Common law damages (assessed for lifetime) if can prove someone else is to blame or under 16 <b>or</b> If catastrophically injured - treatment and care needs met by the Lifetime Care and Support Scheme	Lifetime statutory benefits regardless of fault or If catastrophically injured - treatment and care needs met by the Lifetime Care and Support Scheme

**Table 5.2 Loss of earnings/earning capacity benefits for injured people**

% WPI	Current Scheme	Proposed Scheme
0-10%	Up to \$5,000 treatment and care expenses/ loss of earnings regardless of fault Common law damages (assessed for lifetime) if can prove someone else is to blame	5 years statutory benefits regardless of fault
10-20%	Up to \$5,000 treatment and care expenses/ loss of earnings regardless of fault Common law damages (assessed for lifetime) if can prove someone else is to blame	5 years statutory benefits regardless of fault Common law damages (assessed for lifetime) if can prove someone else is to blame
20% +	Up to \$5,000 treatment and care expenses/ loss of earnings regardless of fault Common law damages (assessed for lifetime) if can prove someone else is to blame	Statutory benefits to Commonwealth retiring age regardless of fault Common law damages (assessed for lifetime) if can prove someone else is to blame

**Table 5.3 Lump sum benefits for impairment/non-economic loss for injured people**

% WPI	Current Scheme	Proposed Scheme
0-10%	Nil	Nil
10-20%	Common law non-economic loss damages if can prove someone else is to blame	Statutory benefits for permanent impairment regardless of fault Common law non-economic loss damages if can prove someone else is to blame
20% +	Common law non-economic loss damages if can prove someone else is to blame	Statutory benefits for permanent impairment regardless of fault Common law non-economic loss damages if can prove someone else is to blame

## 6 Stakeholder views

- During consultation earlier this year stakeholders raised issues about CTP prices, benefits for injured people, insurer profits or service, and motorcyclists and CTP.
- Some raised issues about whether the proposed Scheme could deliver premium savings or about the perceived erosion of benefits.
- Since the Bill was introduced in May both negative and positive feedback has been received about a number of issues.

Comments from individuals who provided their views through the NSW Government *Have Your Say* website in February, March and April can be summarised as follows.

Just under half the comments supported one or more aspects of the reforms proposed in the policy document.<sup>24</sup> About a third had mixed or neutral views and one in five did not support the reform direction of the policy document.

Of the issues raised by individuals, just over half mentioned Green Slip prices, while a quarter of the individual comments mentioned benefits for people injured in motor vehicle accidents. Around one in five people mentioned insurer profits or service and a similar proportion mentioned CTP issues related to motorcyclists.

Some submissions received in April raised issues including whether a no-fault scheme could deliver premium savings, the perceived erosion of benefits of injured people, limited access to common law and the power imbalance between insurers and claimants.

Since the *Motor Accident Injuries Amendment Bill 2013* was introduced into NSW Parliament in May 2013, a number of issues have been raised by stakeholders.

Several of the key issues raised by stakeholders are outlined in more detail in the separate sections of this Issues Paper.

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<sup>24</sup> Reforms to the NSW Compulsory Third Party Green Slip Insurance Scheme

**Table 6.1 Stakeholder feedback**

Issue raised	Concerns	Support
<b>Benefits</b>	<ul style="list-style-type: none"> <li>Concerns that motor vehicle accident victims would lose their right to recover damages and receive reduced benefits.</li> <li>Concerns those earning more than the weekly benefits cap will need income protection insurance.</li> <li>Benefits should match the damage suffered. Defined statutory benefits do not achieve this.</li> <li>Concerns with how children will be treated. Like adults, children whose injuries do not exceed 10 per cent whole person impairment will have their payments for medical expenses discontinue after five years.</li> </ul>	<ul style="list-style-type: none"> <li>Benefits are clearly defined in the Bill. This will reduce disputes, litigation and uncertainty which would otherwise have adverse impacts on injured people and the Scheme's affordability and financial viability.</li> <li>Benefits will be received earlier and therefore assist recovery.</li> </ul>
<b>Customer experience, dispute resolution and legal representation</b>	<ul style="list-style-type: none"> <li>Lengthy disputes in current system are due to poor insurer claims management and profit motive.</li> <li>People with traumatic brain injury do not usually have the capacity to negotiate the CTP system and liaise directly with insurers. Removing the ability to engage a lawyer as their advocate would put them at a disadvantage.</li> </ul>	<ul style="list-style-type: none"> <li>Reduced administration costs particularly for minor injuries and fewer, shorter disputes will improve the experience for claimants as well put downward pressure on premiums.</li> <li>Private competition is a key driver of innovation and can lead to improvements in pricing, claims management and health outcomes for claimants.</li> </ul>
<b>CTP prices and insurer profit</b>	<ul style="list-style-type: none"> <li>Questions about how premium savings can be delivered given the extra 7,000 claims coming into the system</li> <li>Insurance companies are taking huge profits from the CTP Scheme, much larger than allowed for when the system was started.</li> </ul>	<ul style="list-style-type: none"> <li>The proposed reforms are likely to place downward pressure on CTP premiums and improve the overall efficiency of the Scheme.</li> </ul>
<b>Motorcycle premiums</b>	<ul style="list-style-type: none"> <li>Motorcyclists will become easy targets for profiteering insurance companies.</li> <li>A no-fault system will leave motorcyclists vulnerable to massive premium increases if current relativities are not changed.</li> <li>Motorcyclists believe this could result in premiums as much as \$2,000.</li> </ul>	<ul style="list-style-type: none"> <li>Efforts to reduce litigation and delays will have the support of motorcyclists as long as road users, and motorcyclists in particular, are not disadvantaged.</li> </ul>
<b>No-fault scheme</b>	<ul style="list-style-type: none"> <li>The proposition that accident victims should surrender benefits to provide payments to the drivers who cause their injuries is not fair.</li> <li>Question whether no-fault schemes achieve better health outcomes.</li> <li>The no-fault scheme would generate more claims, cost more to administer and pay out less to injured motor accident victims.</li> <li>Similar schemes in Victoria and New Zealand are operating with billion dollar deficits, even with government backing.</li> </ul>	<ul style="list-style-type: none"> <li>Extending eligibility to compensation to at-fault will improve recovery.</li> </ul>

## 7. Children

### The current Scheme

- Children would receive the same benefits as adults in the proposed Scheme.
  - It has been suggested that benefits for children in the Bill should be extended.
  - This is likely to be the subject of an amendment in the Legislative Council.
- 
- The current Scheme provides for children's treatment and care expenses to be paid regardless of fault with no time limit on the payment of these expenses.
  - The current Scheme does not provide children with compensation for loss of earnings on a no fault basis. Children injured in a motor accident who can prove another driver was at fault are currently able to claim common law damages for any loss of earning capacity they suffer. There is no time limit on the period for which they can claim.
  - Children are less likely to be earning in the years immediately after a motor accident than adults.
  - Under the current Scheme, 8,341 children under 16 years have finalised a claim since 1999. This is 5.7 per cent of all claims. The great majority of these children were not seriously injured. About 93 per cent had a whole person impairment of 10 per cent or less.
  - The average claim payment for the children who have settled a claim in the current Scheme, and who have a whole person impairment of 10 per cent or less, is \$16,000 and the median claim payment is \$2,000. Most claims by children do not involve any payments for economic loss.

### The proposed Scheme

- The Bill provides for children's treatment and care expenses incurred more than five years after the accident if the child has a whole person impairment of more than 10 per cent.
- Children with a whole person impairment of more than 10 per cent, and who can prove a driver was at fault, can claim common law damages for loss of earning capacity. Injured children will also be able to claim statutory benefits for loss of earning capacity, regardless of fault. This is a new benefit that does not exist in the current Scheme.
- Currently in the proposed Scheme, if a child has a whole person impairment that is 20 per cent or less, these payments will be limited to five years after the accident. If they were not at least 15 years and earning at the date of the accident, payments do not start until they turn 18, but still cease five years after the accident.
- Children are, however, less likely than adults to be earning at the date of the accident, and to have any loss of earning capacity in the five years after an accident.
- However, if a child's injury has not stabilised at the end of five years and an assessor finds it is highly probable the whole person impairment will exceed 10 per cent, the child will continue to be eligible for treatment and care until their injury has stabilised and a final assessment is made. If the assessor finds it highly probable the child's whole person impairment will exceed 20 per cent, they continue to be eligible for weekly benefits.
- It is expected the Legislative Council will consider an amendment so that children under the age of 18 would be entitled to statutory benefits for loss of earning capacity until the age of 23 (i.e. five years from when they turn 18).

## 8 Motorcycle riders

- Motorcyclists face different and higher risks than other road users.
- The proposed Scheme will provide benefits to more than 1,000 additional injured motorcyclists who are not covered by the current Scheme.
- Some motorcyclists have expressed concerns that motorcycle premiums are too high, and about the impact of the reforms on their premiums.

Motorcyclists are a growing group of road users with unique safety concerns.

Motorcyclists and pillion passengers share the road with drivers of much larger and heavier vehicles. Motorcyclists can face different and higher risks than other road users.

Motorcyclists make up 4.5 per cent of the total number of Green Slip policy holders in NSW, but under the current CTP Scheme they account for 5.4 per cent of CTP claims against other drivers and 11.3 per cent of claims costs.

In the current CTP Scheme motorcycle riders and pillion passengers are among the most severely injured of all road users so their medical and compensation costs can be very high. Currently the average cost of a claim for a motorcycle rider is \$221,000 compared to \$78,700 for a car driver.

When a motorcycle rider makes a CTP claim, the claim costs will ultimately be reflected in the premiums of the types of vehicles that are found to have caused accidents involving motorcycles.

Approximately, 21 per cent of all people in the Lifetime Care and Support (LTCS) Scheme – which covers the most severely injured irrespective of fault – are either motorcycle riders or pillion passengers.

The average cost of these injuries is more than \$2 million with some as high as \$10 million. The LTCS Scheme is separately funded by the MCIS Levy – not the CTP premium.

Injured motorcyclists also receive no-fault public hospital and ambulance services, funded by the MCIS Levy part of the Green Slip irrespective of fault. They can also claim up to \$5,000 in out of pocket health care and lost income benefits from CTP insurers under the no-fault Accident Notification Form (ANF).

Under the proposed Scheme more than 1,000 additional injured motorcyclists per year who can't prove someone else was at fault would be covered.

However, some motorcycle stakeholders have questioned whether motorcycle riders would prefer to keep a fault-based scheme rather than have no-fault cover. They have asked for information on how increases to motorcycle CTP premiums would be contained in a no-fault scheme, given the extra 1,000 per year expected extra claims from injured motorcycle riders.

The Bill gives the MAA the power to establish a premium setting model and rules to ensure high risk groups, such as young vehicle owners or motorcycle riders, can obtain affordable CTP insurance.

The Motorcycle Working Party, which includes representatives from the MAA and motorcycle groups, has worked together since 2008 to review the fairness of Green Slip prices for motorcycle owners and to develop initiatives to benefit motorcycle owners and riders.

Motorcycle groups have raised concerns that their Green Slip premiums are too high, and suggest therefore they are cross subsidising the rest of the community. They are concerned that as a vulnerable road user, they are paying for their likelihood of being injured, even where another vehicle is at fault.

This issue was the subject of a review in 2010 that resulted in reduction of the average price of CTP insurance for motorcycles of around 12 per cent since 2010 (although actual experience varies by motorbike type and location).

Current motorcycle premiums are 10 per cent higher than in 2006 compared with premiums paid by owners of motor cars which have increased more. The reductions for motorcycle premiums over this period due to specific motorcycle premium regulation changes have been sufficient to offset other cost pressures from inflation and interest rate changes. The LTCS Scheme was also introduced during this period representing a significant extension of cover to catastrophically injured at-fault drivers (including motorcycle riders in single vehicle accidents).

Because the NSW Government will continue to include motorcycles within the CTP Scheme in the event of moving to a no-fault scheme - the Bill allows a special purpose premium model (risk equalisation) to be introduced under the *Motor Accident Injuries Amendment Bill 2013* to ensure premiums for higher risk groups such as motorcyclists remain affordable. The Government will continue to consult with motorcycle groups about how this would operate.

The Government does not expect the special purpose premium model to reduce prices for motorcycle premiums in the proposed Scheme, but it aims to reduce future price shocks.

## 9 Regional NSW

- Motor vehicle accidents in country NSW result in about 14,000 fatalities or serious injuries each year.
- The proposed Scheme will provide benefits to up to 3,000 additional road users who live in country NSW.

People from regional NSW are clearly at risk from motor vehicle accidents. Of the 28,031 motor vehicle accidents in 2011 in metropolitan NSW there were 16,508 injuries and fatalities. Of the 14,992 motor vehicle accidents in 2011 in country NSW there were 10,222 injuries and fatalities.<sup>25</sup> In non-metropolitan areas, a greater proportion of reported accidents result in injury or death – 68 per cent of the 14,922 reported motor accidents in non-metropolitan areas of NSW, compared to 59 per cent of the 28,031 reported accidents in metropolitan areas.<sup>26</sup>

Accidents in regional areas reflect the different driving conditions, distances covered and necessity to travel by motor vehicle. On average, claims cost between 15 and 20 per cent more than claims in non-country areas.<sup>27</sup>

In the current Scheme, people who cannot prove another driver was at fault, such as the driver in a single vehicle accident, are eligible to claim only up to \$5,000 in expenses. The MCIS Levy also covers their public hospital and ambulance services. Under the proposed reforms, such people will be able to claim full benefits. Between 2006 and 2011 there was double the proportion (44 per cent) of casualties from single vehicle accidents in country NSW<sup>28</sup> compared to the Sydney metropolitan area (22 per cent).<sup>29</sup>

In the proposed Scheme, it is estimated that up to an additional 3,000 injured motorists per year, who live in country NSW and cannot prove someone else was at fault, will be covered.

All injured road users from regional NSW would have their treatment, care and rehabilitation costs met, receive weekly benefits for income lost as a result of their injuries, and assistance to return to work.

This would include the cost of travel to receive necessary treatment and rehabilitation services, which can be particularly expensive for those who live in regional and rural areas. Those with serious injuries will also have access to a lump sum impairment payment, regardless of who caused the accident.

People with serious injuries whose accident was caused by the fault of another person will continue to have access to common law damages, including for pain and suffering, as under the current Scheme.

**Table 9.1** Estimated additional injured people who gain full entitlements under the proposed Scheme <sup>30</sup>

NSW Region	Estimated additional injured people who would be covered under the proposed Scheme each year
Sydney (Metro)	Up to 4,900
Sydney (Outer Metro)	Up to 300
Newcastle & Central Coast	Up to 1,300
Wollongong	Up to 250
Country	Up to 3,000
<b>Total</b>	<b>Up to 9,750</b>

<sup>25</sup> Road Traffic Crashes in NSW: Statistical statement for the year ended 31 December 2011 Transport for NSW

<sup>26</sup> Road Traffic Crashes in NSW: Statistical statement for the year ended 31 December 2011 Transport for NSW. 'metropolitan areas' includes Sydney, Newcastle and Wollongong

<sup>27</sup> Source: MAA

<sup>28</sup> Source: MAA As defined on the MAA website

<sup>29</sup> Source MAA The metropolitan area is the Sydney metropolitan zone as defined on the MAA website.

<sup>30</sup> Source: Ernst & Young advice to the MAA  
Note: Some people reported as injured may have sustained only minor injuries and are unlikely to make a claim.

# APPENDIX 1 - CTP schemes around Australia<sup>31</sup>

Feature	Current NSW Scheme	VIC	SA	QLD	TAS	NT	WA	ACT
<b>Underwriting</b>	Private	Public Stamp duty applies	Public with private scheme agent Stamp duty applies	Private Stamp duty applies	Public Stamp duty applies	Public	Public Stamp duty applies	Private
<b>Benefits</b>	Fault-based Modified common law with limited not at fault benefits	No-fault statutory benefits and common law access for serious injury not at fault	Fault-based <sup>32</sup> common law	Fault-based common law	No-fault with statutory benefits and common law access for not at fault	No-fault statutory benefits	Fault-based common law	Fault-based common law
<b>Number of policies (nearest '000 vehicles registered)</b>	4,858,000	4,500,000	1,317,000	3,492,000	474,000	149,000	2,620,000	268,000
<b>Approximate number of claims per year (ALL)</b>	13,000 – 14,000	16,000-17,000	6,000	8,000	2,800	500	4,000	800
<b>Average claim size</b>	\$138,000 (including LTCS) \$108,000 (excluding LTCS)	\$57,000	\$94,100	\$114,000	\$10,286 (scheduled benefits) \$4.07m lifetime support)	\$80,000	\$100,000	~\$160,000 <sup>33</sup>
<b>Number of claims per 10,000 vehicles</b>	29	38	44	20	64	26	14	26
<b>Average premium for a motor car 1 Feb 2013 (inc. levies &amp; duties; exc. GST)</b>	\$518	\$362	\$470 <sup>34</sup>	\$299	\$319	\$456	\$247	\$526
<b>Premium % AWE ***</b>	37%	27%	37%	22%	27%	31%	16%	32%
<b>Efficiency – current filed</b>	47%-50% 10 year analysis 58% current filed	80%	64%	67%	Not available	Not available	Not available	Not available
<b>Disputes</b>	7,500 pa	1,087 resolved	High levels of disputation	Rates of litigation across all CTP insurers decreased from 4.9% in 2003 to less than 1% 2011/12	4 disputed claims recorded in 2010/11 and 5 in 2011/12	<0.5% of claims disputed	Not available	Not available

\*

31 Source: MAA and CTP regulators in other jurisdictions (see notes on next page)

32 In South Australia no-fault benefits for children will apply from July 2013, and further extend to the most seriously injured from July 2014.

33 Estimate based on projected average cost of claims provided by the ACT Scheme Regulator.

34 In South Australia the premium will drop to \$374 following the commencement of reforms in July 2013.

## APPENDIX 2 - Glossary and abbreviations

CARS	the MAA's Claims Assessment and Resolution Service
Common law	basis of the Australian legal system and derived from English legal tradition, common law is based on custom or precedent developed by judges through decisions of courts and similar tribunals rather than statutes.
Commutation	term used in statutory compensation schemes, such as NSW Workers Compensation, for the process of quantification and payment as a lump sum of statutory benefits entitlements.
CTP	Compulsory Third Party Insurance
CTP insurer	the licensed CTP insurers are: Allianz; CIC Allianz; AAMI; GIO; NRMA; QBE and Zurich. These insurers are licensed to provide Compulsory Third Party (CTP) Green Slips.
First Party Insurance	a policy of insurance that provides cover or protection against a specified loss for the policy holder themselves.
Legal disability	a lack of legal capacity, by reason such as age or intellectual disability, to enter into a legally binding agreement (in the civil law context).
LTCSA	Lifetime Care and Support Authority
MAA	Motor Accidents Authority of NSW
MAS	Motor Accidents Medical Assessment Service
MCIS Levy	The Medical Care and Injury Services Levy funds public hospital, ambulance and other services. It is GST free. The MCIS Levy has a Lifetime Care and Support and a Motor Accidents Authority component.
Modified common law	variation of the common law, ordinarily, by an instrument of the Parliament, such as legislation
Redemption or redeeming	term used in statutory compensation schemes, such as Victorian Transport Accident Scheme and Tasmanian Motor Accidents Scheme, for the process of quantification and payment as a lump sum of statutory benefits entitlements
Third party insurance	insurance cover purchased by the insured (the first party is the policy holder) from an insurance company (the second party is the licensed insurer) for protection against another party's claims (the third party in CTP is another injured person).
Statutory benefits	in reference to compensation schemes, those compensation entitlements that are derived from legislation rather found at common law.
Whole person impairment (WPI)	in reference to the NSW Motor Accidents Scheme, a measure (expressed as a proportion of the whole person) of the permanent impairment (e.g. loss of use, function or derangement) of any body part, system or function, determined in accordance with the Motor Accidents Authority's Medical Guidelines.

### Notes from previous page, Appendix 1

\* There are differences between states in the way vehicles are classified and premiums are set. This table provides an indicative comparison with NSW motor cars. The data in this table has been gathered from a range of sources. The MAA is wholly responsible for adjustments made to provide comparable indicators where possible.

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ISBN 978-0-7347-4476-0 (2013)

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