

## Submission from John Walsh Centre for Rehabilitation Research on the CTP Reform Options Paper

Limited recovery with reference to health and productivity is an unfortunate consequence of involvement in a motor vehicle crash for many people. The current CTP insurance scheme does not adequately assist people to return to good health and to their usual daily lives.

There is now local and international research that explains some of the reasons for this poor recovery. Firstly, speedy recovery may be compromised by limited encouragement and support to resume normal activities and to return to work. Multiple factors contribute to this including needing to continue to prove that the crash is causing problems. Secondly it can be hard to obtain help to recover. It is complex to make a claim and the forms to be completed are difficult for some people. Thirdly, injured people find themselves in situations that are stressful and upsetting. Sometimes this is as a consequence of the insurance scheme, for example, when the person feels that they are under investigation about the circumstances of the accident because it is necessary to establish who was at fault. Fourthly, pre-injury health problems, and socioeconomic disadvantage, are potential barriers to recovery, as is the development of a psychological injury as a result of the crash.

The CTP Reform Paper outlines a number of possible changes. Some of these will assist people to recover and resume normal lives. Option 4 that proposes a fully no-fault, defined benefits scheme with caps, thresholds and no common law payments provides the best option to assist people to recover and also extends benefits to many people who currently have none. Option 4 will not solve all problems but it would provide a platform on which outcomes with reference to health and productivity are improved.

### Response to Questions

1. *What should be the most important features in a scheme reform?*

The most important features should be no fault, first party, defined benefits and with non-economic loss payments for major injuries only. These features have been established as assisting recovery.

2. *On balance which option or combination of options do you believe best addresses the priorities for improving the scheme and why?*

Option four best addresses the priorities, however it does not cover all relevant issues.

3. *Does fault in an accident remain the most acceptable way determining eligibility for benefits or is it more important that anyone injured on the roads is covered even if this means few savings in any reform?*

Taking the view that the scheme should assist people to return to a productive life and good health, it is more important that everyone injured on the road is covered.

4. *Is it more important to reduce CTP prices or to extend benefits to more people?*

Both are important and both can be achieved.

5. *Are people better looked after if receiving a negotiated lump sum (often years) after the accident or receiving prescribed weekly benefits soon after making their claim?*

This is an area that has been investigated extensively in research. A delayed lump sum has many detrimental effects. These include, but are not limited to, the inability of people to resume work, family or other duties and to not experience undue financial hardship. Receiving reasonable weekly benefits is more likely to support a return to normal life.

6. *Should a greater proportion of funds go to the more severely injured even if this means capping benefits or introducing an excess for low severity injuries?*

Yes, a greater proportion of funds should go to more severely injured people. The reasons are that there is no evidence that substantial funding for people with low severity injuries produces any benefit to the injured person.

7. *If government retains common law should there be tighter restrictions or caps on benefits as in the case of other states, or if the government adopted define benefits should the caps and thresholds reflect what is paid in other states?*

The principle of relative equity should apply across Australia. We are a nation that is a federation of states and there should be relative equity no matter where in Australia the injury occurs.

8. *If the government retains common law what is the best method and threshold to determine the eligibility?*

If common law is retained a method based on permanent impairment is best because it is relatively objective. The threshold should be set at a relatively high level which could be either 20 or 30% whole person impairment, depending on affordability. The reason is that this will provide benefits to people who need it most and will reduce disputes around the threshold percentage.

9. *If the government retains common law what mechanism should be adopted to resolve claims more quickly and avoid lengthy negotiations and disputes?*

There are multiple methods that could be trialed. However, it is important to realise that retaining common law is not likely to produce the best overall results for the injured person. Mechanisms could include the allowance of only one medical assessment with reference to permanent impairment, or the reduction of the time within which claims should be resolved. In almost all cases it should be a maximum of two years. There could be a standard dispute process considered which did not include

medicolegal assessments arranged by the parties and the assessment would only be arranged by the regulator. In addition, improved communication between parties, and a major focus on the injured person's perception of recovery and services received, may reduce the rate of dispute overall.

10. *Should there be limits to legal expenses, especially for small claims, and should legal expenses be linked to the work performed or the value of the claim?*

There should be limits to legal expenses and these should be linked to the work performed. There is not equity or fairness for the injured person if the expense is related to the value of the claim. This method also provides incentives to inflate the value of the claim over and above what is reasonable.

#### Response to Questions on Policy Considerations

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

There should be support available for these other road users. These road users do sustain significant injuries causing, in some cases, lifelong disability. The principle of fairness overall would suggest that this should occur.

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

It is best to make a claim against your own insurer because you have an established relationship with that company. It is very confusing for injured people to understand why they have to find out the insurer of the "at fault" driver. They have no relationship with that company and often feel aggrieved when the company queries details they provide of the effect of the injuries.

3. *Should government retain competitive private underwriting, or give consideration to a return to public underwriting delivery?*

This is a complex question. In general terms the recommended approach will be one that uses the CTP insurance premiums that road users pay most efficiently. Presumably public underwriting would not require the same levels of profit that have been required from the current privately underwritten scheme. There is a good example of public underwriting that has operated in Victoria for many years. Many elements of that arrangement could be readily adopted in New South Wales.

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

The concept of fault is not one that assists people to return to normal life and health. It is best not to consider fault as a factor in determining access to insurance. This should

also apply to contributory negligence. With reference to illegal acts, community standards are different and the approach used in Victoria should be adopted.

5. *What changes to the CTP scheme could increase competition?*

This question is a difficult one. Scheme reforms could provide greater certainty for injured people and could reduce uncertainty about possible future payments. This would include a first party system with defined benefits. If this was achieved there could be greater competition. Similarly a first party system in itself may increase competition because insured road users would exert pressure directly on their insurer with reference to premiums.

General Comments on Document

The document does not recognise the impact of psychological and social factors on the experience of people who sustain injuries. In fact, these issues are greater determinants of return to normal life than the actual injury sustained (except in extremely severe catastrophic injuries).

There need to be incentives introduced to reduce the likelihood of legal representation. This could occur with a simpler claims process, potentially with a first party no fault, intermittent payment system and with methods of making claims other than a claim form of 10 to 20 pages. Ideally this could be done by phone or a web based system with interpreters and experienced staff as guides and navigators for the system. Legal advertising should be restricted as it seeks to increase the rate at which people claim after the motor vehicle crash.

A further factor that could be considered to improve the scheme is to improve claims management and disputes procedures. Many people feel that they have not received justice and a recent study has shown that their contact with the insurance scheme is less than fair in their opinion.

It will be important to define minor injury with reference to scheme reforms. This has been the subject of research. As noted elsewhere it is psychological and social factors that are the major determinants of recovery. Injury severity is **not** relevant except in extreme cases. Minor injuries should be defined as injuries that have sufficient severity to lead to substantial contact with health services and substantial loss of productivity or usual activities.

In order to decrease chronic disability, the adoption of a bio-psycho-social screening tool is also recommended. An early stratification of claims based on complexity would help to identify people for whom additional assistance with recovery could be provided.

This submission is supported by the following staff members of the John Walsh Centre for Rehabilitation Research, University of Sydney:

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A further submission from Ian Cameron supports this submission and provides evidence for the statements made.