

Occupational Therapy Australia - NSW

Submission to the State Insurance Regulation Authority on  
Options for Reforming Green Slip Insurance

21 April 2016

## **Introduction**

Occupational Therapy Australia (OTA) welcomes the opportunity to submit to the NSW Government's review of the NSW Compulsory Third Party (CTP) insurance scheme.

Occupational Therapy Australia is the professional association and peak representative body for occupational therapists in Australia. As of December 2015 there were approximately 5000 registered occupational therapists working across the government, non-government and private and community sectors in NSW. Occupational therapists are allied health professionals whose role is to enable their clients to participate in meaningful and productive activities.

Occupational therapists provide services such as physical and mental health therapy, vocational rehabilitation, assistive equipment advice, home modifications and chronic disease management. They work in diverse roles across the health, disability and aged care sectors, and serve the community through a number of government-funded health initiatives.

Occupational therapists are key providers of services to people who are injured in road accidents. They play a vital role during the rehabilitation process and are well placed to assess how an injury will affect an individual's capacity to participate in everyday activities. They develop strategies to assist their occupational engagement, modify the environment to enable participation, and prescribe equipment to assist with daily tasks. Occupational therapists also perform medico-legal assessments for people seeking access to common law benefits.

### **Section 1: Questions on possible options**

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

OTA is supportive of a scheme that enables early intervention and timely treatment for injured road users with a focus on their recovery. Research has shown that early intervention can significantly improve the functionality and quality of life of people who are injured in road accidents.

OTA also believes that the CTP scheme should be characterised by the following overarching principles:

- Equal access and adequate coverage for all injured road users;
- Individualised care and tailored support;
- Simplicity, so as to make it easier for consumers to navigate; and
- Appropriate provisions to deal with fraudulent claims.

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

A move towards a hybrid scheme, such as those currently used in Victoria and Tasmania, recognises that motor vehicle accidents are often caused by a number of factors that make it difficult to determine which party is at fault. Option 3 ensures that the most seriously injured road users are able to access common law benefits, whereas Option 4 for example, provides defined statutory payments for all injury types.

OTA believes that there is a need for ongoing access to common law benefits for people who sustain severe injuries, as these types of injuries can have a significant long-term effect on an

individual's level of participation in meaningful and productive activities. Occupational therapists who undertake assessments are able to determine the impact of a severe injury on a person's level of occupational engagement.

OTA believes Option 3 would provide appropriate compensation for people with severe injuries while also enabling those at fault to receive care and support within defined limits.

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

OTA believes that it is necessary to ensure that all injured road users are covered.

Option 3 would minimise the number of cases that proceed to common law processes, thereby reducing associated legal costs. Fewer common law cases would mean that funding could be reallocated to rehabilitation costs, which would ensure that those injured are not forced to rely on other forms of assistance at the cost of the taxpayer such as the public health system.

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

OTA believes that both of these factors are equally important. It is necessary to ensure that CTP prices remain affordable for all road users.

Extending benefits to more people injured in motor vehicle accidents would reduce the number of 'at-fault' drivers who are currently reliant on public health services.

Research has shown that the best outcomes for injured road users are achieved through early intervention and tailored support.

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

OTA believes that defined benefits can shift a person's focus from maximising compensation to gradually returning to previous roles and activities.

Prescribed weekly benefits also mean that people will not have to apply for a Centrelink payment. For those whose injuries genuinely limit their capacity to work and engage in everyday activities, regular payments will enable them to focus on their rehabilitation without added financial stress. Additionally, some people are ineligible for Centrelink support because of factors such as their partner's income, which can increase pressure on families and relationships.

It is necessary that appropriate safeguards are in place to prevent fraudulent claims and to ensure that people do not continue to receive benefits when their injury is no longer affecting their capacity to work.

***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?***

OTA believes that people with more severe injuries should receive a higher proportion of funds. Of the two (2) options to fund this, capping benefits for less severe injuries could be a more effective option than introducing an excess which could disadvantage people who are unable to afford the cost of an 'excess'.

***7. If Government retains common law, should there be tighter restrictions and caps on various benefits as is the case in other States, or if the Government adopted defined benefits should the caps and thresholds reflect what is paid in other States?***

OTA believes that there should be tighter restrictions and caps on benefits in line with other states, as this would promote national consistency and could eventually lead to the development of a national scheme.

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

The whole person impairment (WPI) threshold that is currently applied to most schemes in Australia and will consider the likely impact of an injury on a person's quality of life and is therefore a useful tool for determining their eligibility for payments.

There also needs to be clarity provided around how 'severe' injuries are defined, as this would make it simpler to determine what amount people are entitled to.

***9. If Government retains common law, what mechanisms should be adopted to resolve claims more quickly and avoid lengthy negotiations and disputes?***

OTA believes that there is a need to enforce legal proceeding target guidelines in order to avoid lengthy delays. There should also be clear targets for WPI assessments in order to accelerate this process and ensure that people receive the support they need in a timely manner.

OTA supports ongoing dialogue between health professionals, members of the legal profession and personal injury claim bodies.

***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?***

OTA believes that there should be limits to legal expenses for claims. Legal expenses should be linked to the demonstrated and documented work performed, as is the case with all other expenses associated with rehabilitation.

**Section 2: Questions on other 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?***

While expanding the scheme to include other vehicles is likely to result in higher premium costs, it would also provide consistency and equity for those injured on NSW roads. Currently, those injured in non-motor vehicle accidents are managed by the public health system and are not covered for things like loss of earnings, equipment and help at home.

There are, however, important factors to consider if other vehicles are to be included. These include:

- Whether or not they would be covered if they were engaged in risky activities (eg. skateboarding at a high speed);
- Whether the scheme would cover accidents in any environment (e.g. a skate park or bike track) or just on public roads; and
- Whether these types of accidents could be covered by other insurance products (e.g. bicycle insurance, public liability insurance).
- Whether mobility scooters should be considered.

***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?***

OTA believes that a claim against a person's own insurer is beneficial because it allows them to establish a relationship with someone who has a vested interest in looking after them. This would also assist with customer service, make it easier for people to navigate the claims process, and allows the insurer to manage their customers' claims.

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

OTA believes that this will depend on the model that is introduced and the actuarial analysis made. If benefits are fixed, a public underwriting scheme could be beneficial.

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

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

The following changes to the CTP scheme could potentially increase competition:

- Claiming against one's own insurer rather than the insurer of the at-fault driver;
- More effective management of their own claims by insurers, which could lead to more affordable premiums; and
- Defined benefits and limitations on who can access common law.

Should you require further information or wish to discuss these matters in more detail please do not hesitate to contact me

Yours sincerely



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