



A Fair, Affordable and Sustainable CTP Scheme

Suncorp Group's submission to the NSW
Government's Options Paper – *On the
Road to a better CTP scheme.*



One Company
Many Brands



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Executive Summary

The Suncorp Group is the largest private personal injury insurer in the country. We have a proud history of driving reforms that improve the lives of our customers, and working closely with a range of organisations that are also dedicated to making a positive difference to those who have been affected by personal injury.

New South Wales motorists need a simple and easy to understand scheme that provides full coverage for anyone injured in an accident, for a reasonable premium, while getting injured people back to work and in the community as soon as possible.

Unfortunately, the NSW CTP Scheme (the scheme) does not provide this and is in need of major structural reform.

There are several problems with the current scheme that are causing inefficiencies and driving up the cost of premiums, including:

- lump-sum payments as the primary mechanism of resolving claims;
- at-fault cover;
- an increase in fraud and exaggeration;
- rising claims frequency; and
- increased volatility.

The current scheme cannot be fixed by tinkering around the edges. This reform process provides the NSW Government and industry with a real opportunity to make significant and long lasting improvements. Suncorp believes motorists in NSW will be better served through the following policy settings:

- defined benefits;
- no-fault;
- first party;
- reduced Common Law; and
- competitive underwriting.

Based on independent actuarial assessments undertaken by the Insurance Council of Australia (ICA) we believe these reforms could extend coverage to all motorists, regardless of fault, AND reduce the average scheme premium by approximately \$155.¹

With these structural reforms, the NSW Government can also support innovation in the personal injury insurance market through promoting better data sharing, greater harmonisation with the Workers Compensation scheme and allowing the market to develop complimentary top-up products.

¹ Refer to ICA Submission for detailed modelling.

The culture that surrounds motor vehicle injuries must change. We cannot continue to fund a scheme that prioritises financial compensation over rehabilitation.

Other statutory schemes, including the National Disability Insurance Scheme (NDIS) and the National Injury Insurance Scheme (NIIS), have made the transition from full financial compensation to sustainable rehabilitation. Making this fundamental shift in focus will guarantee the sustainability of the NSW CTP scheme for decades to come.

Only the third and fourth option outlined in the NSW Government's options paper will provide NSW motorists with a scheme that provides full coverage and the best social outcomes, while minimising strains on the family budget. Reform will also result in better outcomes for claimants' mental and physical wellbeing, as well as shifting the focus from lengthy legal proceedings to speedy recovery.

Suncorp looks forward to working with all stakeholders to create a fair, affordable and sustainable CTP scheme.

TABLE 1: Benefits of Reform

	Without Reform	With reform (Option 3)
Scheme Efficiency	Continue to return approx. 45% ² of premiums to injured people	Potential return of approximately 65% of premiums to seriously injured people ³
Cost of Premiums	Premiums will continue to rise above inflation	Average passenger vehicle premium would be 28% of Average Weekly Earnings ⁴
Legal Costs	Legal costs continue to rise and persistence of large solicitor-client costs	Substantial reduction in legal costs, particularly solicitor-client costs
Settlement Times	Claims can sometimes take five years to settle, even minor claims take 1.5 years (median) ⁵	Faster, due to more streamlined claims processes. 80% of claims will be finalised within two years of an accident ⁶
Rehabilitation	Recovery is hampered because the focus is on establishing negligence and negotiating financial compensation, rather than rapid rehabilitation	Insurers focus on supporting rapid rehabilitation rather than establishing negligence and negotiating lump sums with lawyers

² Page 3, On the road to a better CTP scheme- Options for reforming Green Slip insurance in NSW <http://www.sira.nsw.gov.au/about-us/have-your-say/Options-for-reforming-Green-Slip-insurance>

³ ICA Submission

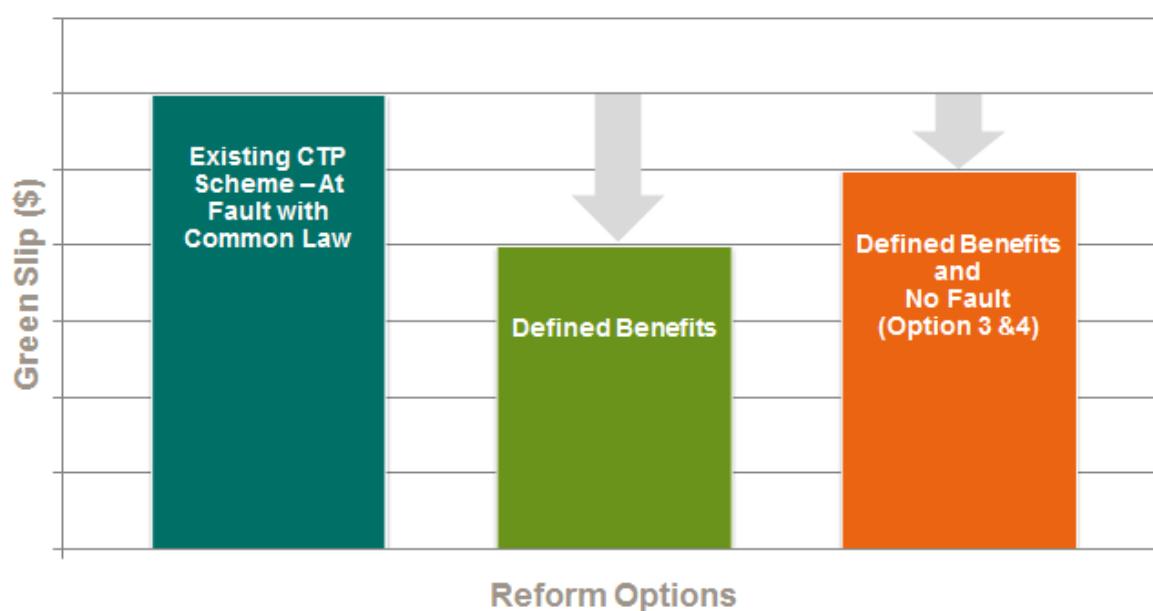
⁴ ICA Submission

⁵ Page 7, Compulsory Third Party 2014 Scheme Performance Report, SIRA <https://www.opengov.nsw.gov.au/publications/15266>

⁶ ICA Submission

	Without Reform	With reform (Option 3)
No-fault accidents	Approx. 7,000 people injured in NSW motor accidents each year will continue not to be covered ⁷	Everyone injured is covered regardless of who or what caused the accident
First Party v Third Party	Injured people will continue to deal with the other party's insurer	First Party insurance will drive competition and empower customers to decide who manages their personal injury claim

GRAPH 1: How Reform is Funded



⁷ Mike Baird, Treasurer and Minister for Industrial Relations speaking in NSW Parliament in relation to the Motor Accident Injuries Amendment Bill 2013, 22 May 2013.

The Suncorp Group

Suncorp Group Limited, and its related bodies corporate and subsidiaries (collectively 'Suncorp'), offers a range of financial products and services including banking (Suncorp Bank), general insurance, compulsory third party (CTP) insurance, workers compensation insurance, life insurance and superannuation across Australia and New Zealand.

Suncorp has around 14,000 employees and relationships with over nine million customers.

Suncorp provides a wide range of insurance products to small and medium sized businesses as well as to corporate customers. These products are distributed nationally, both directly and indirectly, through intermediaries.

Suncorp provides workers compensation insurance in Western Australia, the Northern Territory, the Australian Capital Territory and Tasmania, and operates in the managed fund scheme in New South Wales.

CTP insurance is provided in New South Wales, the Australian Capital Territory, Queensland and South Australia (from 1 July 2016).

Within the NSW CTP scheme, Suncorp operates under the GIO and AAMI brands.

Suncorp has consistently taken a leadership role within the industry to advocate necessary reform to statutory schemes. We have published a number of white papers on the issues of competitive underwriting, scheme design and no-fault lifetime care. As Australia's largest private personal injury insurer, we take this role seriously and will continue to support reform that improves the lives of our customers. Our recent white papers can be found at Appendix B, C, D and E.



Suncorp in the Community

Suncorp's community-focused activity is centred on risk management, injury prevention, social participation and quality of care for those who are injured or have a disability.

We value the communities in which we live and work, and have entered into partnerships with a range of organisations that are also dedicated to making a difference in the lives of people who have been affected by personal injury.

Our community partners are Youngcare, Disability Sports Australia, Wheelchair Sports NSW, Technical Aids for the Disabled, the Australian Road Safety Foundation and ReachOut Australia. Suncorp also works with youth education initiatives such as the P.A.R.T.Y. Program and has a partnership with the Driver Education Centre of Australia, which aims to address some of the root causes of severe personal injury on Australian roads.

Youngcare

Formed in 2005, Youngcare is a not-for-profit organisation that aims to raise awareness and funds to provide more appropriate accommodation options for young people with high care needs. With an estimated 7,500 young Australians currently living in aged care nursing homes, and limited alternatives available, Youngcare set out to build Australia's first age-appropriate facility.

In December 2007, Youngcare's first apartment building opened in Brisbane and now provides a home for 16 young people living with high care needs. Since then, apartments have also been built on the Gold Coast and are soon to be built in Sydney.

One of the major causes of young people needing high level care is acquired brain injury, often the result of a motor vehicle accident. In January 2007, Suncorp Compulsory Third Party (CTP) Insurance partnered with Youngcare to increase awareness of the organisation's work and to help raise much-needed funds.

Suncorp continues to support Youngcare, including taking part in the Youngcare Simpson Desert Challenge, to raise money for age-appropriate care and housing.



Current Scheme Performance

NSW motorists value their wellbeing and spend billions of dollars each year purchasing CTP insurance. CTP is heavily regulated by the Government to ensure the community is protected. Motorists are right to assume that these regulations will work to maximise coverage and promote efficiency,⁸ while remaining affordable and fair.

However the NSW CTP scheme is not currently doing the job that it was designed to do. There are gaps and deficiencies which are impacting all motorists:

- Drivers aren't covered for a minor error of judgment. Around a quarter of all injured people aren't covered by their CTP policy.
- Insurance premiums are going up when they should be going down because of improved vehicle and road safety.
- Only half of every dollar paid in premiums ends up in the pockets of customers who were injured and have made claims.
- Rapid recovery and early return to work is discouraged because of the perverse incentive to delay rehabilitation for higher payouts.
- Customers are left significantly out of pocket, potentially for years, until their claim is finalised.
- Lawyers are routinely pocketing one-third, and as much as half, of a customer's insurance pay-out.
- A disproportionate amount of total payouts are going to people with very minor injuries.
- Insurers have historically made profits in excess of what was predicted due to volatility in the scheme.
- A customer's claim is not managed by the insurance company of their own choosing.

These factors highlight the need for significant structural reform.

If left unchecked, premiums will continue to rise and the scheme will remain inefficient and inequitable.

⁸ A simple definition of the "efficiency" of a personal injury insurance scheme is the proportion of every dollar in premium that goes directly towards injured people.

Fraud and Exaggeration

Fraud and exaggeration in the NSW CTP scheme is driving up premium prices for other motorists. Analysis from 2012 shows that fraud and exaggerated claims could be increasing each individual NSW Green Slip by \$75.⁹ This is money that could be back in motorists' pockets.

There are several ways people can make fraudulent and exaggerated claims. Incidences of 'hard fraud' occur when a person stages an accident and/or claims for an accident that never occurred. This has become easier to do in recent years because NSW Police Force personnel often do not attend minor car accidents due to other priorities.

'Soft fraud' occurs when a claimant grossly overstates their injuries or the circumstances of the incident. Often insurers will see extensive soft tissue and psychological claims for accidents that only resulted in a minor scratch to the car's exterior.

These claims involve time-consuming investigations at significant expense. This time and money could be better utilised rehabilitating those customers who really need it.

The Suncorp Group is actively working to reduce fraud and exaggeration through the following methods:

1. Heightening the level of scrutiny and involvement of licenced investigators to establish liability, resulting in additional costs to the scheme.
2. Interrogating medical evidence to ensure causation of injuries claimed are commensurate with the severity of the accident and damage to the vehicles involved.
3. Evidence based settlements – This involves a move away from making settlements based on commercial decisions and looking solely at the evidence of the claim.

The handling of claims involving children is also a growing cause for concern. These claims are exempt from the Claims Assessment and Resolution Service (CARS) which means they are exempt from the legal cost caps. These claims will often be settled for a higher amount as insurers seek to avoid the high legal costs required to test the veracity of the claim in the District Court. As a result insurers have seen a rise in car accidents involving a large number of children, many of which include claims for psychological injuries.

In the UK, the Cameron Government has implemented reforms to stamp out fraudulent and exaggerated claims for minor motor vehicle injuries. Government modelling estimates motorists could see £1 billion back in their pockets each year, which equates to a saving of around £50 per policy.¹⁰

⁹ Page 16, KPMG General Insurance Survey 2012, <https://www.kpmg.com/AU/en/IssuesAndInsights/ArticlesPublications/Financial-Institutions-Performance-Survey/Insurance/Documents/general-insurance-industry-survey-2012.pdf>

¹⁰ <https://www.gov.uk/government/news/insurers-vow-to-pass-on-whiplash-reform-savings>

Case Study – Minor Claims

This alleged accident occurred in 2016. The claimants stated that the rear of their car was struck while they were stationary in a driveway. The claim form states that their vehicle was "...struck very hard in the right rear end and pushed our car forward".

The accident was reported to the NSW Police Force more than two months later via the Police Assistance Line (phone). The pictures on this page document the damage to their vehicle.

Three claims were lodged from the accident, all from the same family:

1: 14 month old child. The claim form states the injuries as "crying, screaming, angry, scared, shock, anxiety, post traumatic irritability". The medical certificate stated the injuries as "post traumatic irritability – anxiety". This was the child's first visit to this doctor and occurred almost two months after the date of the accident. This type of claim would typically demand around \$25,000 to resolve.

2: 25 year old woman. The claim form states injuries as "headaches, head, neck, chest pain, right shoulder/right arm, wrist, right ribs, lower middle upper back, right leg, ankle, shock, anxiety, depression". The medical certificate stated the injuries as "Sprain injuries cervical spine, right shoulder and lower back". This was the woman's first visit to this doctor, and occurred almost two months after the date of accident. It would prove very difficult to negotiate a settlement for this type of claim for less than \$75,000.

3: 31 year old man. The claim form states injuries as "headaches, head, neck, chest pain, both shoulders (both hands, elbows, wrist) lower, middle upper back, both legs, both knees, shock, anxiety, depression". Medical certificate stated the injuries as "STI bilateral knees, lower back sprain, cervical sprain" from the first visit to this doctor, almost two months after the date of the accident. This type of claim would typically demand around \$70,000 to resolve. This claimant previously lodged a similar CTP claim in 2013 for \$80,000.



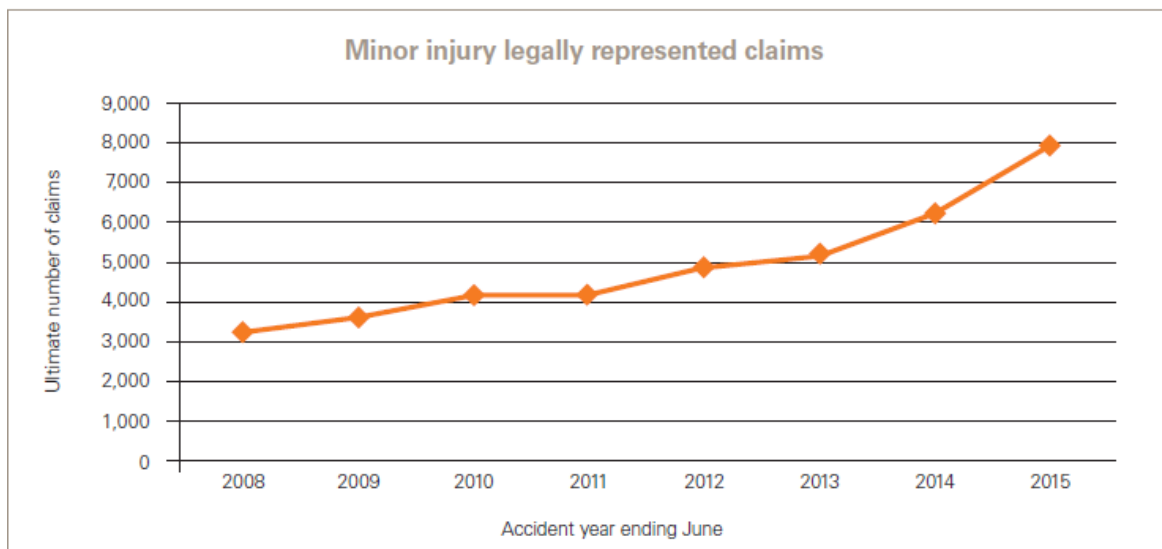
Claims Frequency and Profit Fluctuation

The increase in scheme volatility and claims frequency is well described by the NSW Government in the Options Paper and also by the State Insurance Regulatory Authority's 2014 Scheme Performance Report.¹¹

There has been a significant increase in the number of legally represented claims for very minor injuries in the NSW CTP scheme. These claims are typically the result of motor vehicle accidents which occur at low speeds, and increasingly people are using lawyers to lodge these claims in the expectation of sizeable lump-sum payouts.

The below graph clearly depicts the extent of the increase.

GRAPH 2: Minor Represented Claims



Source: On the road to a better CTP scheme - Options for reforming Green Slip insurance in NSW, p.11.

When insurers set premiums, they have to predict what claims will cost in the future. CTP claims often take years to settle, sometimes up to five years, which means these projections have to extend over several years when determining what price to charge for a CTP policy today.

If the future cost of claims is volatile, an insurer will increase premiums to account for the risk that claims costs will spike in the years ahead. If future claims costs are relatively predictable, insurers do not have to add this 'risk premium' when they set their prices.

¹¹ SIRA, CTP 2014 Scheme Performance Report, November 2015. <https://www.opengov.nsw.gov.au/publications/15266>

The lump-sum payments and escalating levels of legal representation – particularly for people with minor injuries – that characterise the NSW CTP scheme, make the future cost of claims volatile. CTP insurers in NSW carry this risk. They have been consistently factoring this high level of claim-cost uncertainty into their pricing to cater for the need to pay all future claims.

In the past decade, NSW CTP claims costs have ultimately been below expectations, assisted by safer cars, safer roads and effective safe-driving campaigns. Dramatic spikes in costs have not occurred because there have been no significant legal precedents and wages and inflation have been lower than expected.

Insurer profits have recently been higher than expected due to this inherent claims cost volatility, but in future could result in large losses for insurers due to a spike in costs.

Friction Costs

Friction costs refer to the costs incurred in the process of managing and finalising a claim, excluding costs that directly benefit the injured person. Friction costs include insurer expenses, legal, medico-legal and investigation costs.

One of the contributors to friction costs is the process to determine liability. Because the NSW CTP scheme is an at-fault scheme liability generally should be determined before rehabilitation can commence.

Legal and medical fees are also significant friction costs that reduce the efficiency of the scheme, particularly for minor claims. Under the current scheme, lawyers often take about a third of a claimant's pay-out¹² in the form of solicitor-client costs, which is money that is needed for their rehabilitation and care. It is important to have transparency around solicitor-client costs so that the Regulator can better understand where the cost pressures lie.

¹² Anecdotal evidence obtained through claims experience.

Case Study – Legal Fees

A claim managed by the Suncorp Group resulted in a payment to the injured claimants of \$650,000.

Despite not ever going to court, the bill from a prominent legal firm was \$240,000 – 37 per cent of the lump sum. In this instance the injured parties stopped using this legal firm just before the claim was settled and became direct claimants. This allowed Suncorp to review the bill for legal fees, ultimately resulting in an \$80,000 payment to the legal firm.

The substantial amounts that legal firms have been able to extract from the lump sums paid through CTP insurance claims has seen growth in the personal injury legal sector.

Scheme Reform

For the NSW CTP scheme to remain viable into the future there needs to be significant structural reform. Suncorp believes Option 3 and Option 4 provide the most effective mechanisms for balancing the goals of affordability, fairness, efficiency and sustainability.

Option 3 and Option 4 contain the following features:

- defined benefits;
- no-fault;
- first party and customer choice;
- reduced common law; and
- competitive underwriting.

Defined Benefits

A well-established model exists that largely eliminates lump-sum payments and the inefficient distortions that they create. The 'defined benefits' model provides injured people with care, medical treatment and lost income as they require it, rather than a single cash payment based on future projections. The focus of a defined benefits scheme is rehabilitation, not compensation.

It is a model that currently operates in the Victorian CTP scheme and in the NSW Workers Compensation personal injury insurance scheme. For minor injuries, treatment and compensation for lost income is provided, but not indefinitely. A maximum time period (depending on the injury) can apply.

There is an incentive, under this type of scheme, for an injured person to get better sooner. An additional benefit for injured people is that they receive payments for lost income immediately, rather than having to wait months or years for a lump sum.

For people who are off work because of their injuries, being out-of-pocket for a long period of time while their lawyer and insurer negotiate the size of their lump sum can cause financial stress. Under a defined benefits scheme, insurance personnel are able to focus on supporting and co-ordinating a rapid recovery for the injured person, rather than conducting adversarial negotiations with lawyers.

All parties – insurers, injured people, employers and lawyers – have a strong incentive to work towards a rapid recovery and return to work. Since defined benefits were introduced to the NSW Workers Compensation scheme in 2012, premiums reduced by 12.5% in 2013 and then a further 5% in 2014.¹³

¹³ http://www.workcover.nsw.gov.au/data/assets/pdf_file/0019/19108/More-premium-cuts-on-the-way-for-business.pdf

The savings that defined benefits would produce in the NSW CTP scheme would allow the introduction of a full no-fault scheme, removing the risk that every person in NSW faces when they drive or ride in a motor vehicle.

Case Study – When the Money Runs Out

Dr Ros Harrington is a leading academic at the Centre of National Research on Disability and Rehabilitation Medicine (CONROD). Recently she made the following comments about the downsides of lump sum payments at a Queensland Parliamentary Inquiry into support for people who are catastrophically injured.

“Dr Harrington, CONROD, raised the prospect of families of injured people restricting access to necessary services in the post settlement period due to fears that the lump sum payment is not going to last.”

“Dr Harrington stated this may lead to limited opportunities for individuals to develop independence and participate in the community outside of their family which could be detrimental to their recovery.”¹⁴

No Fault

Many motorists are unaware that they are not fully covered for their personal injuries unless they can establish negligence on someone else's part. The introduction of no-fault CTP insurance would provide peace-of-mind to the entire community that they are adequately covered if they find themselves injured in a motor accident.

The absence of full insurance cover for injured drivers is a substantial gap in the NSW insurance landscape, and one that can have devastating consequences for individuals and their families. It means that a driver who has a momentary lapse of judgement, or simply finds themselves in the wrong place at the wrong time, may have to rely on Medicare and Centrelink to support their recovery.

Reforming CTP insurance into a no-fault scheme would extend full coverage to approximately 7,000 at-fault drivers who are injured every year in NSW.¹⁵ Every person injured in a motor accident would be looked after – as occurs when someone crosses the border into Victoria. Extending cover to this large cohort of injuries will increase overall claims costs, but the savings from the introduction of defined benefits would more than offset this increase.

¹⁴ Page 52, Queensland Parliamentary Inquiry into a suitable model for the implementation of the National Injury Insurance Scheme <http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T406.pdf>

¹⁵ Mike Baird, Treasurer and Minister for Industrial Relations speaking in NSW Parliament in relation to the Motor Accident Injuries Amendment Bill 2013, 22 May 2013.

Moving to a no-fault scheme also addresses the equity issue between the person who can prove fault and receive damages and those who cannot. This has been described as a lottery because often the cause of an accident is complicated and in many cases it was simply the result of a lapse of judgement. The end result is reliance upon personal savings, private insurance policies and government schemes, including the NSW public health system.

First Party

First party schemes can provide customers with a guarantee that the insurance company they choose will manage the personal injury claims of anyone in their vehicle, including the driver.

That guarantee cannot be provided with the current at-fault scheme, because all claims are managed by the insurance company of the driver who caused the accident.

A no-fault, first party scheme would allow insurers to compete on the basis of their personal injury claims service, as currently occurs in other classes of insurance.

This could result in insurers advertising to customers the quality of the care they provide, and enhancing their offering, in order to differentiate their brand and gain market share. Insurers could also provide top-up products to people who might want an extra level of cover, for example income protection.

If insurance companies are directly responsible for their client's rehabilitation, there is a natural incentive to expedite their recovery. There would need to be new sharing arrangements or recovery processes between insurers, however this already occurs in relation to Comprehensive Motor policies.

Case Study – Customers First

Suncorp is passionate about creating a positive experience and helping people get their lives back on track following an accident.

Engaging with injured people results in improved health outcomes, as the Claims Advisor and Injury Management Advisor are able to provide more support and focus on the individual's welfare and recovery. It also enables Suncorp to build a relationship of trust, provide customers with more clarity around the process and leads to fast and fair resolution of claims.

Since January 2013 Suncorp has partnered with SIRA in successfully managing a 'warm handover' for customers who phone the CAS (Claims Advisory Service), working closely with the injured customer to ensure their claim is lodged and immediate treatment and rehabilitation needs are met.

The success of our direct customer model is reflected in the 47% of AAMI and GIO brand claims lodged from direct customers. Our retention rate is stable at 96% meaning these claims are resolved without the need for expensive legal representation and the entire settlement amount is paid to the injured customer.

Average claim duration for direct customers is 327 days, compared to 834 days when a lawyer is involved.

Common Law Access

The degree to which common law entitlements are retained under Option 3 has the potential to dramatically impact the efficiency of the scheme, and its affordability for motorists.

The argument for retaining common law damages for seriously injured individuals is that it tailors the compensation to the specific circumstances of the injured person. The more severe the injury, the greater the potential impact on the person's life and the greater the potential that a tailored settlement is appropriate.

However, retaining common law damages adds friction costs (particularly legal costs), delays settlement due to litigation and provides an incentive for injured people to exaggerate injuries or delay their rehabilitation in order to maximise the size of a lump sum payment.

Setting a threshold would ensure money is appropriately directed to the people who need it most. For example, those above the 10% Whole Person Impairment (WPI) threshold could retain access to common law for non-economic loss. In addition, a dispute resolution service could be created to deal with disputes in a transparent and non-adversarial way.

Limited Common Law could also place limits on certain heads of damage, in order to contain costs. For example, the future economic loss cap could be reduced from the current rate of \$4,688 per week¹⁶. Instituting this cap would encourage those on very high incomes to buy top-up products such as income protection.

As lost income is a significant component of the cover provided by a Green Slip, the higher the cap on economic loss, the greater the effective subsidy from low income earners to high incomes earners. Unemployed people are effectively unable to claim economic loss, yet this is not reflected in them playing a lower premium for their Green Slip.

Another measure to deal with high costs would be to define future care based on commercial rates. This simple change would reduce volatility in the amount that is claimed for care costs.

Transparency around legal fees is also important to ensure that claimants and the Regulator are aware of how much of lump sum payouts are going towards legal fees.

Competitive Underwriting

Suncorp believes that motorists are best served by a market of private insurers who compete on customer service, price and rehabilitation outcomes.

The NSW Government's Review of Insurer Profits (the Review) made it clear in its report that the scheme, which is privately underwritten, "continues to meet its original policy goals of affordability, sustainability and efficiency". The Review also noted that "there are structural factors within the Scheme that can be addressed to simplify the premium system and introduce greater transparency."¹⁷

The Victorian TAC is often cited as an example of a scheme that provides no-fault defined benefits cover with public underwriting. However it is important to note that the Victorian scheme remains underfunded (92%)¹⁸ and has failed to reduce premiums in recent years. Underfunded means the scheme does not have enough funds to cover future liabilities.

In addition, by definition, government monopoly providers often fail to innovate and drive customer service improvements. Also, motorists have no choice of insurer and cannot express their dissatisfaction with their current insurer by moving to a competitor.

¹⁶ Page 26, On the road to a better CTP scheme- Options for reforming Green Slip insurance in NSW

¹⁷ http://www.sira.nsw.gov.au/_data/assets/pdf_file/0014/60116/Report-of-the-Independent-Review-of-Insurer-Profit-151015.pdf

¹⁸ Page 6, TAC 2015 Annual Report.

https://www.tac.vic.gov.au/_data/assets/pdf_file/0008/169838/TAC_Annual_Report_2015_WEB.pdf

Canada provides a number of examples where the private sector has successfully underwritten a scheme that broadly aligns with Option 3. The Canadian provinces of Alberta, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario and Prince Edward Island all have private underwriters in a no-fault, defined benefits scheme.¹⁹

Case Study – Competitive Underwriting

In 2014, Suncorp commissioned PWC to look at the macro-economic benefits of competition and competitive underwriting in the personal injury insurance sector. The PWC Report found significant benefits in retaining or introducing private underwriting. In South Australia, the Government will transition the CTP scheme to the private sector on 1 July 2016.

This reform will provide the South Australian Government with a significant capital injection which can be used for vital infrastructure projects. Decisions around scheme design will be retained by Government which highlights how scheme design can be managed separately to scheme underwriting.²⁰

As illustrated below, the reform is also expected to potentially generate \$308m in additional real gross state product over the next 10 years.

GRAPH 3: Macroeconomic benefits of competitive underwriting

Potential macroeconomic effects of privatisation by 2024-25, cumulative deviation from base case of no privatisation. ¹

	NSW Workers Compensation	SA Workers Compensation	SA CTP
Real Gross State Product (\$m) ²	3,067	530	308
Employment (persons)	804	194	95
Productivity (\$GSP/worker)	691	531	311
Tax revenue (\$m)	615	108	67

Source: Page 4, Insurance Insights, States in the Injury Business, The impact of privatising personal injury insurance schemes, November 2104, Published by the Suncorp Group.

¹⁹ Internal analysis.

²⁰ <http://www.suncorpgroup.com.au/sites/default/files/pdf/news/States%20in%20the%20injury%20business%20-%20Suncorp%20white%20paper%20Nov%202014.pdf>

Reform Benefits

A Fairer and More Affordable Scheme

The NSW Government's reform goals are to:

- improve efficiency;
- improve timeliness;
- reduce fraud and exaggeration; and
- improve affordability.

Actuarial modelling undertaken by the Insurance Council of Australia (ICA) shows that reforming the NSW CTP scheme to include defined benefits for minor injuries, and no fault coverage could reduce the average scheme premium by \$155.

This model would improve efficiency with more money going to seriously injured claimants, irrespective of fault.

Timeliness would also be improved, with a majority of claims being finalised within two years, resulting in a reduced reliance on common law proceedings.

Finally, these reforms would directly disrupt the current incentives to lodge fraudulent and exaggerated claims.

See the Insurance Council of Australia's submission for the full modelling.

Innovation and Productivity

Reforming the NSW CTP scheme to focus on rehabilitation rather than compensation would also deliver significant productivity impacts for the State.

The Productivity Commission's recommendations in regard to the National Disability Insurance Scheme (NDIS) referred to the increase in productivity that would result from the introduction of the NDIS.²¹ The objective of national disability reform was to create a system that is both affordable and fair.

Similarly, it is expected that reform to the NSW CTP scheme which includes defined benefits will lead to faster rehabilitation, which has a tangible positive impact on productivity. This has been demonstrated by the 2012 reforms of the NSW Workers Compensation scheme, which resulted in a three per cent improvement in the return-to-work rate to 88 per cent – higher than the national average of 86 per cent.²²

²¹ Why the NDIS makes economic sense - <http://www.everyaustraliancounts.com.au/ndis-makes-economic-sense/>

²² Safe Work Australia report for 2012/13, referenced in NSW Government media release "More premium cuts on the way for business", 17 June 2014.

At a time when Australia's workforce is ageing, the productivity improvements that can be achieved by a more efficient personal injury scheme are substantial. Directing a far greater proportion of the \$2.2 billion²³ in annual premiums of the NSW CTP scheme towards helping injured people recover would assist the community and the economy.

With significant scheme reform there is also an opportunity to increase the degree of harmonisation in the benefit structure between the NSW Workers Compensation Scheme and the CTP scheme. Little justification exists for there to be differences between the two schemes given both are regulated by the Government and are applicable to almost every citizen. It is Suncorp's view that it shouldn't matter whether an injury occurs in the workplace or the car, the level of care provided should be appropriate and consistent.

There is also real opportunity to work with the NSW Government in the implementation of its NSW Data Analytics Centre (DAC)²⁴. The sharing of data between government and industry will inform policy decisions and improve customer outcomes.

Key Fact – Getting People Back to Work

*People who are off work for 20 days have a 70% chance of getting back to work. That figure drops to 50% for people off work for 45 days and only 35% for those off work for 70 days or more.*²⁵

Getting people back to work quickly should be the fundamental priority of the NSW CTP Scheme.

²³ Motor Accidents Authority Annual Report 2014-2015 p.4

²⁴ <https://www.finance.nsw.gov.au/about-us/media-releases/nsw-data-analytics-centre-advisory-board-announced>

²⁵ Johnson D, Fry T. *Factors Affecting Return to Work after Injury: A study for the Victorian WorkSafe Victoria Authority*. Melbourne: Melbourne Institute of Applied Economic and Social Research; 2002.

Social Outcomes

Historically, the CTP scheme has evolved to meet the changing needs of the community. There is no question that this must continue as the social and economic needs of the community evolve.

Suncorp has long argued that accident compensation schemes have a vital role to play in facilitating work-force participation. To do so, it is crucial that accident compensation schemes are aligned with the objectives of the NDIS and NIIS.

Accident compensation schemes should be based on fairness, outcomes and affordability. The principles guiding an effective accident compensation scheme should include social outcomes, sustainability, competition, defined and controlled benefits, national consistency and dispute resolution.

Previous inquiries have raised concerns about various inconsistencies in personal injury compensation law in NSW.²⁶ Suncorp does not support rolling the CTP, workers compensation and civil liabilities laws into one scheme,²⁷ as it is important to maintain discrete funding sources for each scheme.

However, there is a case to argue for greater consistency in benefit structure and claims management, between these three schemes. Principled, consistent reforms based on fairness, outcomes and affordability should be the approach to bring these schemes into alignment with the NDIS and the NIIS.

Workers compensation schemes across the nation are moving away from the culture of 'compensation' to a focus on work, health and safety on the basis that work has health benefits.²⁸ Changing the culture of the CTP scheme to align it with this approach should be seriously considered. A starting point could be an appropriate renaming of the 1999 Act to reflect the change of culture.²⁹

²⁶ NSW General Purpose Standing Committee No 1 – *Personal Injury Compensation Legislation*, December 2005, at Chapter 8, paragraphs 8.1 to 8.4 at page 108

²⁷ *Civil Liabilities Act 2002*

²⁸ Maaïke van der Noordt; Helma IJzelenberg; Mariël Droomers; Karin - *Health Effects of Employment: A Systemic Review of Prospective Studies, 2014* - <http://www.medscape.com/viewarticle/831491>

²⁹ Section 5 (a) and 5 (e) - *Motor Accidents Compensation Act 1999*

Analysis of Other Reform Options

Options 1 and 2

If a central goal of the Government is to substantially reduce CTP premiums then this will not be achieved by Options 1 and 2.

Under Option 1 and Option 2, the retention of common law for minor accidents will continue to be a key driver of costs. Process improvements are welcome and are a key focus of the *Review of Insurer Profit*, however the substantial gains will be made in moving to defined benefits for a majority of injuries, enabling the implementation of a no-fault scheme.

The proposal³⁰ put forward by the Law Society of NSW on 23 March 2016 suggested amending *Motor Accidents Compensation Regulation 2015* to place caps on legal fees for children and small claims. Suncorp supports a cap on legal fees for minor claims and the prohibition of solicitor-client fees. However, these proposals do not constitute substantial reform that will significantly reduce the cost of premiums.

Capping legal fees for minor injuries will reduce the legal component of a payout but will not discourage exaggerated claims at the lower end of the injury scale. If anything it will encourage some claimants to try and exceed the new \$50,000 hurdle.

In Suncorp's view the only way to address the increase in represented claims frequency for minor injuries is to legislate a clear schedule of defined benefits that encourage rehabilitation.

Suncorp will work cooperatively with the legal sector to consider any future proposals.

³⁰ <http://inbrief.nswbar.asn.au/articles/7be4753ee4e26b4fd93440f8190553ff>

Report of the Independent Review of Insurer Profit within the NSW Compulsory Third Party Scheme

The Review found that the NSW CTP market is competitive. Customers shift providers and shop around, which is a key indicator. We believe that there could be more competition and the barriers to entry for new players could be addressed.

The implementation of Option 3 or 4 will encourage more providers to enter the market primarily due to the reduced volatility and capital requirements that are involved with a defined benefits scheme. The simplicity of a no-fault, defined benefits scheme would be attractive to new entrants who would be better able to set premiums and forecast claims costs.

Finally, the introduction of first party cover will mean insurers within the market will be responsible for their customer's claim. This will place a stronger focus on an insurer's customer service and product offering.

A significant disincentive would be the major recommendation of the Review of Insurer Profit which is to institute a high risk premium pool. Allocating high risk customers randomly to market participants is not necessary given that no one is currently refused CTP cover by private insurers. The likely consequence would be discouraging new players to enter the market.

Conclusion

The NSW CTP scheme is in need of major structural reform.

Motorists deserve a scheme that is affordable, provides full cover and incentivises injured people to recover quickly.

Suncorp strongly believes this is best achieved through the implementation of defined benefits, no-fault cover and first party arrangements.

These reforms will ensure the continued viability of the scheme and provide the best outcome for motorists and injured people.

Suncorp appreciates the opportunity to contribute to this discussion and looks forward to working with the NSW Government and other stakeholders on this important reform.

Appendix A – Focus Questions

Policy Questions:

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?**

Yes. Refer to page 16 which outlines our position on no-fault coverage.

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?**

Yes. Refer to page 17 which outline our position on first party insurance arrangements.

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

Retain competitive underwriting. Refer to page 19 for our position on underwriting arrangements.

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

Suncorp supports full no-fault with provisions for criminal behaviour. Refer to page 16.

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

The Review of Insurer Profits states competition is strong, however new entrants would be incentivised through reduced scheme volatility. Refer to page 25.

Questions on Possible Options:

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

Suncorp agrees with the reform principles outlined by the NSW Government. See the Executive Summary.

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

Suncorp believes Options 3 and 4 achieve the priorities outlined by the Government. See body of the submission for reasons.

- 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?**

Suncorp believes a full no-fault scheme is the most equitable solution. See page 16.

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

Both of these goals can be achieved through a no-fault, defined benefits scheme. See the ICA modelling.

- 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?**

Providing rehabilitation support early is vitally important. In some severe cases Common Law access might be appropriate however a schedule of defined benefits for most injuries is preferred. See page 14 for our position on defined benefits.

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

Yes, under Option 3 there is the ability for injured people to have access to lump sums. Suncorp does not believe an excess feature is appropriate for personal injury claims. See page 18 for our position on Common Law access.

- 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 reflects what is paid in other States?**

Yes. See page 18 for our position on Common Law access.

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

As is the case in other schemes a WPI and/or ISV index would be the most appropriate way of determining eligibility and benefits.

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

Represented common law claims inherently involve lengthy negotiations. This might be appropriate for serious injuries however minor injuries should be subject to defined benefits to promote speedy resolution and improved claimant outcomes.

- 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?**

Yes. There also needs to be transparency around legal costs.

Appendix B – Chronic condition

Appendix C – The mechanics of motor injury schemes

Appendix D – States in the injury business

Appendix E – Beyond fault

Appendix F – History of the NSW CTP Scheme

The NSW motor accidents compensation scheme has evolved since its inception to meet the changing social and economic needs of the community. In the days when the only redress was through the courts by instituting a common law negligence claim, many injured parties could ascertain the essential elements of negligence, but could not recover compensation as the negligent driver was uninsured and impecunious.

In 1942, the *Motor Vehicles (Third Party Insurance) Act* was introduced to make third party insurance compulsory. By the early 1980s, reforms were required to address the spiralling costs of premiums due to increasing claims costs.³¹

In response, TransCover was introduced, abolishing common law rights, whilst maintaining a fault-based system. Abolishing common law entitlements was seen as a controversial move within the community. The fault-based system did nothing to ease the upward pressure on premiums.³²

Based on a pre-election platform of restoring common law rights, the newly elected Greiner Government introduced the *Motor Accidents Act 1988* (the 1988 Act). The 1988 Act did restore common law rights, but in a modified form.

Amendments made in 1989,³³ enabled the cost of compulsory third party (CTP) premiums to be set by the market. However, a warning was issued at the time that if a balance between reasonable damages and affordable premiums was not achieved, the only alternative would be a return to minimum levels of compensation under TransCover.³⁴ The fully deregulated market commenced operation in July 1991.

While the 1988 Act was initially successful in its stated aims of green slip affordability,³⁵ it was necessary to introduce the *Motor Accidents Compensation Act 1999* to maintain affordability of premiums by “limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries while preserving

³¹ NSW Parliamentary Library Research Service – *Workers Compensation and Motor Accidents Compensation in NSW*, Briefing paper No 039/95 at page 18

³² NSW Parliamentary Library Research Service – *Workers Compensation and Motor Accidents Compensation in NSW*, Briefing paper No 039/95 at page 25

³³ *The Motor Accidents (Amendment) Bill 1989*

³⁴ NSW Parliamentary Library Research Service – *Workers Compensation and Motor Accidents Compensation in NSW*, Briefing paper No 039/95 at page 26

³⁵ State Insurance Regulatory Authority – *The Scheme History* - <http://www.maa.nsw.gov.au/about-us/about-the-nsw-ctp-scheme/the-scheme-history>

principles of full compensation for those with severe injuries involving ongoing impairment and disabilities”.³⁶

Despite these amendments, and taking into account the prevailing economic conditions,³⁷ Suncorp estimated that average CTP premiums would be over \$600 as of December 2005, if the 1999 reforms had not been introduced.³⁸ Further, it was reported that the 1999 reforms significantly reduced friction costs.³⁹

Since 2006, the CTP scheme has been reformed a number of times to provide coverage for those at fault in certain circumstances, namely:

- a no-fault benefit for medical treatment, rehabilitation and care expenses for children aged up to 16 from October 2006;
- the establishment of a no-fault Lifetime Care and Support (LTCS) scheme for children who suffer very severe injuries from October 2006 and for adults from October 2007. The LTCS scheme provides medical treatment, rehabilitation, care and support for the rest of injured person’s life, on a needs basis;
- compensation entitlements for injury or death resulting from a blameless or inevitable motor vehicle accident⁴⁰ from October 2007; and
- the early accident notification process, which covers all persons injured as a result of a motor vehicle accident, regardless of fault, for up to \$5,000 in medical costs and lost wages incurred within six months of the motor accident. This process commenced in April 2010.

Despite these changes, the issues that remain at the heart of the current CTP scheme are affordability, fairness, scheme efficiency and transparency of friction costs. The big question today is whether the current scheme is fit for purpose for today’s social and economic conditions in circumstances where the intergenerational report⁴¹ identifies mounting pressure on Australia’s future prosperity and the rise of the shared economy.

³⁶ Section 5(e) - *Motor Accidents Compensation Act 1999*

³⁷ The collapse of HIH on 15 March 2001, September 11, 2001 terrorist attacks on the US, fluctuations in the insurance market and the general stock exchange volatility

³⁸ NSW General Purpose Standing Committee No 1 – *Personal Injury Compensation Legislation*, December 2005, at paragraph 9.48 at page 71,

³⁹ NSW General Purpose Standing Committee No 1 – *Personal Injury Compensation Legislation*, December 2005, at paragraph 12.12 at page 108,

⁴⁰ A blameless or inevitable motor vehicle accident is one where no one is considered to be at fault in the accident, such as those accidents arising from a driver experiencing a sudden medical illness or condition whilst driving.

⁴¹ 2015 Intergenerational Report – Australia in 2055 -

<http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/2015-Intergenerational-Report>