

**NSW GOVERNMENT CTP ROUNDTABLE**

**REPORT BY PAUL McCLINTOCK AO, CHAIR**

**19 AUGUST 2013**

Mr Laurie Glanfield AM  
Director General  
Department of Finance and Services  
Level 22, 2-24 Rawson Place  
HAYMARKET NSW 2000

Dear Mr Glanfield

I am writing to you in your capacity as Chair of the Steering Committee for the CTP Reform Consultation Process.

As Chair of the CTP Scheme Roundtable, which was held at Parliament House on 24 July 2013, I am pleased to enclose my report on the outcomes of that event.

When the NSW Government announced that it would hold a Roundtable, it made clear that the primary purpose of the event was to bring key stakeholders together, so that it could listen to and understand the various concerns and perspectives relating to the *Motor Accident Injuries Amendment Bill 2013*, with a view to informing the Government's position going forward. In my view, the Roundtable succeeded in this objective, and I am sure it would also have helped all stakeholders to appreciate the full gamut of issues and to consider their positions within a wider context. There was robust yet ordered and respectful discussion around a number of issues and themes that coursed through the day's proceedings.

My report takes its cue from the Roundtable's objectives. Thus, I have sought to represent as fairly as possible the key issues that attracted discussion and the various views that were presented. In this respect, I hope the report is useful in distilling the major policy tensions that emerged on the day.

The Roundtable's objectives did not include resolving differences of view, and it is not for me to advise the NSW Government or any stakeholder on how this matter is to be advanced. Nonetheless, while there appeared to be fundamental differences of view on certain matters between some stakeholders, the Roundtable exposed a range of issues which, I felt, could benefit from further analysis and where greater common ground might be reached. These issues included the duration of statutory benefits for less severely injured people, benefits for children, measures to encourage behaviours among stakeholders that stress effective injury management, and the nature and degree of legal representation in claims management. Of course, as I note in my report, adjusting Scheme design inevitably involves consideration of trade-offs, such as the impact on premium price.

Lastly, I would like to thank the NSW Government for providing me with the opportunity to chair the Roundtable. As someone with a deep and abiding interest in public policy, I found the Roundtable highly stimulating and was glad to be part of it.

Yours sincerely



Paul McClintock AO

## INTRODUCTION

The Compulsory Third Party (CTP) Scheme Roundtable, held at Parliament House on 24 July 2013, was initiated by the NSW Government following ongoing concerns raised by stakeholders in relation to the *Motor Accident Injuries Amendment Bill 2013* (“the Bill”). A steering committee, established by the Government, will consider the outcomes of the Roundtable, including this report, and further consultations with stakeholders in advising the Government on a way forward.

What purpose should the CTP Scheme serve and how should it be designed? These were among the issues that the Roundtable grappled with. That CTP arouses passionate views is not surprising. It is the means by which many injured motorists obtain vital assistance, and its resources rely upon mandatory contributions by vehicle owners paid through premiums to private insurers.

The NSW Government has presented a view that the CTP Scheme is not sustainable in its current form, and could operate more effectively, affordably and efficiently. That view was reinforced in the Government’s *CTP Issues Paper*, which was released prior to the Roundtable, and reiterated at the Roundtable itself by the then Minister for Ageing and Disability Services (now Minister for Finance and Services), The Hon Andrew Constance MP, the then Director General of the Department of Finance and Services, Mr Michael Coutts-Trotter, and others.

Listening to the various contributions at the Roundtable, I was left with little doubt of a shared view among the bulk of participants that operate within the Scheme that reform is needed. However, as amply demonstrated by the discussions, there are clearly differing perspectives on the nature and degree of reform required.

As I indicated in my introductory remarks on the day, the purpose of the Roundtable was not to achieve consensus on the various issues that have been raised since the NSW Government announced its intention to reform the CTP Scheme. Rather, it was an opportunity for interested parties to express their views, so that the Government could gain a clearer appreciation of stakeholder concerns and perspectives, both in relation to the current system and the proposed system. I believe that the Roundtable served that purpose well, and I note that the Minister for Finance and Services also intends to meet with stakeholders over the course of August as part of the CTP review process.

My report on the Roundtable has been prepared in that context. It is not intended to be a solutions document, but rather a distillation of the key issues, differing perspectives and policy tensions raised at the Roundtable. The body of the report is therefore organised around the key themes of discussion, which broadly accord with the three topics that were explored by individual panels: CTP Scheme coverage and benefits; CTP prices and profit; and claimant experience and dispute resolution. Each theme is divided into topic areas, and I have included background material under each theme, incorporating a précis of what I understand to be the NSW Government perspective and drawing on material provided during the Roundtable presentations, to set the context for the ensuing discussion of issues.

There are many issues for the Government to think about, and, with a view to assisting the process from here, I have also attempted to draw out areas which may benefit from further analysis and consideration.

I hope that the report informs not only the Government's ongoing deliberations, but also the thinking of all those who participated in the Roundtable (either directly or via video link) or who are interested in the reform program generally.

## **KEY THEMES**

### **CTP Scheme coverage and benefits**

#### Coverage

*Background:* At present, the CTP Scheme is predominantly a fault based common law scheme, where access to the main compensatory benefits relies upon an injured person proving that another driver is at fault. Under the *Motor Accident Injuries Amendment Bill 2013*, demonstration of fault by another party will not be required, except where more severely injured people choose to pursue common law claims in addition to any statutory benefits that they receive.

According to the Government's *CTP Issues paper*, the changes will mean that about 7,000 additional drivers, including over 1,000 motorcyclists, who are deemed "at fault" will obtain benefits which they would otherwise be unable to obtain. At this point, it is necessary to be clear about what "at-fault" means, an issue which John Walsh covered in his presentation. As "at-fault" refers to all drivers who are unable to establish that another driver caused an accident, it includes not only those drivers who may have caused an accident involving another vehicle through carelessness or negligence, but also drivers who may have caused accidents in response to an unavoidable situation, and drivers in sole vehicle accidents.

The creation of a no-fault motor accidents compensation scheme is based on a view, which the Government has articulated as a reason for the proposed reforms, that the interests of the injured person and of society are best served when the injured person is helped to recover and continue leading a productive life to the best of his or her ability regardless of fault, rather than confining such benefits to those who can establish fault by another party.

It is a concept that underpins the establishment of other no-fault elements of the CTP Scheme, such as the *Lifetime Care and Support Scheme* in 2006, and, as noted by John Walsh in his presentation, was advocated by the Productivity Commission in its work on the National Disability Insurance Scheme and the National Injury Insurance Scheme. As indicated by Professor Ian Cameron, closely linked to this concept are philosophies that stress the need for early intervention and rehabilitation of persons to avoid costly crisis interventions down the track. These have increasingly gained currency in policy domains such as health, disability and justice.

The Centre for Road Safety produced data on road safety trends which was pertinent to the discussion on coverage. The data suggested that various groups, including younger

drivers, older drivers, motorcyclists and drivers in regional areas, are more likely to be denied benefits under the current Scheme because of the nature of their involvement in the incidents concerned. Based on the Centre's proxies for measuring fault, younger drivers, for instance, have a relatively high likelihood of causing accidents. The Government has taken the view that, in the public interest, benefits should not be denied to such people.

*Discussion:* While several stakeholders expressed strong support for the principle of no-fault, concerns were raised from two angles. One observation, put forward by the Pedestrian Council and the Motorcycle Council, was that the Scheme should continue to distinguish between at-fault and not-at-fault drivers to ensure that there are incentives for safe driving. Of course, this implies that "at-fault" drivers are always blameworthy, which, as noted above, is not necessarily the case. As to the suggestion that the design of a compensation scheme can influence driver behaviour, John Walsh was of a different view, suggesting that other measures – random breath tests, fines, suspension or loss of licence, and so on – are more likely to be at the forefront of drivers' minds when they take to the wheel.

Other stakeholders, such as the Injured Persons Association, the NSW Bar Association and the Australian Lawyers Alliance, while not appearing to be opposed to the principle of no-fault, considered that at-fault drivers should not receive benefits if this resulted in a reduction in current entitlements for not-at-fault drivers, or where the at-fault driver receives more benefits than the injured person who was not-at-fault because of the relative severity of injuries.

The NSW Bar Association considered that fault represents a fair way to ration a limited resource, having regard to notions of justice and fairness. That is, a person who did not cause his or her own injuries has a stronger case for accessing benefits than someone who did. John Della Bosca, for example, did not agree with this view, suggesting that people who make a driving mistake should not be penalised for the rest of their lives through being denied adequate assistance. Mr Della Bosca pointed to the *Lifetime Care and Support Scheme*, which is a no-fault scheme, as a guide to moving forward.

## Benefits

*Background:* The new Scheme proposed by the Government moves away from a system of compensation negotiated at common law to one where payments for care and rehabilitation, and loss of earnings are provided in the form of weekly benefits. These benefits would be set in the legislation and their duration determined according to the severity of injury ("whole person impairment - WPI") and ongoing need. In essence, while more severely injured people will continue to be eligible for lifetime benefits (weekly benefits and/or common law negotiated settlements depending on the head of damage), the less severely injured (those with a WPI of 10% or less) would receive weekly benefits of up to 5 years.

The use of WPI thresholds to determine the scope and duration of benefits is consistent with the 2012 reforms to the NSW Workers Compensation Scheme and the Victorian no-fault motor accidents scheme.

The NSW Government's view is that the payment of weekly statutory benefits, when combined with the removal of the requirement to prove fault, will ensure that motor accident victims receive early assistance, thereby providing the means and incentives for them to get better and return to normal activities as soon as possible. In addition, the reforms are aimed at matching assistance more closely to need, without the level of uncertainty that applies to the determination of common law lump sum payments.

*Discussion:* These benefits were acknowledged by various stakeholders. However, some stakeholders noted the similarity of the reforms to those which were introduced in relation to the Workers Compensation Scheme in 2012, which were still being bedded down and, according to some stakeholders, having adverse impacts.

In addition, concerns were expressed about the potential impacts of the CTP reforms on particular groups, especially some adults with a WPI of 10% or less, and children. I shall deal with each in turn.

#### *Adults with WPI of 10% or less*

Concerns were expressed by a range of groups, including the Australian Lawyers Alliance, the NSW Bar Association, the Injured Persons Association, the Australian Association of Social Workers and the Australian Rehabilitation Providers' Association, that the benefits for persons with injuries that do not meet the 10% WPI threshold would cease after five years. In particular, it was considered that some of those at the upper end of the tier could be disadvantaged, depending on their vocational or other circumstances, as they may have injuries that could continue to be a significant impediment, and may require surgery or other treatment outside the 5 year limit. It was estimated that 80% of traumatic brain injuries would not meet the 10% threshold, and concerns were expressed that benefits for such people would always terminate at 5 years.

#### *Children*

Under the Bill, children (persons under 16 years of age) would receive the same benefits as adults, meaning that children with a WPI of 10% or less would not receive payments for care and treatment beyond five years. This was of particular concern to a number of stakeholders. The Australian Association of Social Workers and Sydney Children's Hospitals Network, for example, emphasised that when children are injured they are still developing, and thus the need for treatment may extend into, or not emerge until, adulthood.

Similarly, the Bill provides that children with a WPI of 10% or less will receive statutory benefits for loss of earnings for no more than 5 years after the accident. I note from the *CTP Issues Paper* that a proposed amendment to the Bill providing for more generous loss of earnings benefits for children was expected to be considered by the Parliament.

Specific concerns were also raised in relation to the following matters.

- People who suffer consecutive injuries: Stacks The Law Firm expressed concerns that under the Bill a person who suffers consecutive injuries each of which is assessed as 10% WPI or less would be limited to benefits applicable to the severity

of the injury concerned even though the cumulative effect of the injuries means that the person has a WPI of more than 10%.

- **Gratuitous attendant care services:** The Bill provides that no statutory benefits are payable for expenses incurred from the provision of “gratuitous” care. Such care is normally provided by friends and family, for which the injured person has not paid and is not liable to pay. The MAA pointed out that payments for such care had grown substantially in the last ten years, and the proposal to abolish such payments was based on evidence that relying on families or friends for long term care needs was often not in the best interests of the family, as it can change family structures and result in individuals becoming the sole source of revenue for the family. The MAA noted that in 2012 the Parliament had passed amendments providing that payments for gratuitous care would not be available under the *Lifetime Care and Support Scheme*.

The Law Society of NSW nonetheless expressed the concern that such provisions could adversely affect people in rural areas, where the availability of commercial attendant care may be limited.

- **Trustee management of lump sum payments:** The Bill provides that lump sums payable for the benefit of persons under the age of 18 or persons with a disability, in redemption of statutory benefits or as benefits for permanent impairment, may be directed to the NSW Trustee to manage on trust. The Financial Services Council, however, voiced concerns that such provisions do not allow such payments to be directed to private trustees, who under current arrangements may manage lump sum payments on trust for the persons concerned. The MAA agreed to consider this matter further.

## **CTP prices and profit**

### Prices

*Background:* The NSW Government has stated that one of the key imperatives for reform is to place downward pressure on premium prices.

Scheme efficiency is relevant in this context. In his presentation, John Walsh asserted that the most efficient compensation schemes achieve positive outcomes relative to cost and usually have higher premium efficiency, which is the proportion of premium dollars that are paid to claimants. Compared with other jurisdictions, such as Victoria, and based on advice from Ernst & Young, the CTP Scheme’s independent actuary, NSW’s scheme has high cost and low premium efficiency.

In the Government’s view, the high cost and lack of efficiency is directly attributable to the complex at-fault nature of the Scheme in which high levels of legal assistance are needed to help people, the bulk of whom have relatively less severe injuries, navigate the claims process. The Government’s *CTP Issues Paper* argues that a driver of increasing claims costs since 2008 has been the greater number of people with minor injuries that are legally represented. Conversely, as noted by the Issues paper, the Scheme’s actuaries indicate that only 28 cents of each premium dollar is estimated to be paid to claimants who are less severely injured and are legally represented.

*Discussion:* The Roundtable verified concerns about growth in premium prices among some stakeholders. NRMA Motoring and Services, which represents over 2.4 million drivers in NSW and the ACT, pointed out that the cost of motoring is a significant issue for its members, and welcomed reforms that would lead to a reduction in CTP premium prices. Industry specific stakeholders, such as the Taxi Council and the Bus and Coach Association of NSW, also voiced concerns about the rise in premiums and the consequences such rises have for business viability, given that such costs need to be passed through to consumers.

For the Insurance Council of Australia, the issue was one of certainty: the more certainty that the insurance industry has around the cost of claims and nature of those claims into the future the more likely that the industry can deal with pressures on price. In this regard, the Insurance Council expressed the view that, because the existing scheme is an at-fault scheme where claims can emerge or be settled over long periods of time and involve protracted litigation, insurance companies need to make assumptions to ensure they have the capital to deal with such claims and make a return for their shareholders. This uncertain environment influences price. It can also lead to high insurer profits, which I will deal with further below.

The Insurance Council went on to comment that, as the reforms introduce statutory benefits thereby reducing the level of disputation that currently occurs, the claims environment should be less uncertain, which should have benefits for pricing. The Insurance Council, however, declined to guarantee that premiums would decrease, as it did not have sufficient clarity on the final detail of design that would flow out of the new Scheme, and which would ultimately drive price. The Roundtable reaction to this position is discussed further in my concluding observations.

Based on the discussions at the Roundtable, I felt that there was a general acceptance that the Scheme could be more efficient. However, the matter became more complex in the context of discussions about proposed provisions which restrict legal representation. This will be discussed further under the theme on claimant experience and dispute resolution.

Efficiency of insurer operations was raised briefly as a driver of price. NRMA Motoring and Services questioned whether the MAA would have the necessary powers to examine an insurance company's efficiency when that company files a proposal to increase premiums. This was not addressed directly, but I note that the Bill empowers the MAA to set *Premiums Determination Guidelines*, specifying the factors that can be taken into account by the MAA in determining the reasonable cost of claims, whether a premium is excessive, and so on. On its face, this would appear to allow for the kind of inquiry suggested by the NRMA, but obviously whether such inquiries are made would be a matter for the Government to determine in preparing the Guidelines.

Another driver of price that attracted discussion was the need for prevention of injuries. While data presented by the Centre for Road Safety shows that the number of motor vehicle related fatalities and injuries have decreased substantially over the last few decades, a number of participants, such as the Pedestrian Council, Bicycle NSW and the NSW Police Force, stressed the ongoing importance of prevention. Fewer incidents mean fewer injuries and fewer claims, and therefore less pressure on price. The Taxi

Council, which has a high risk profile, declared its commitment to work with the MAA on preventative measures.

Competition within the insurer market attracted little discussion, although the Insurance Council of Australia considered that healthy competition was good for driving efficiency and innovation, and placing downward pressure on price.

### Insurer profit

*Background:* In the *CTP Issues Paper*, the NSW Government expressed concern about the magnitude of insurer profits in the past decade or so. The scope for larger than expected insurer profits was traced to the uncertainty generated by the design of the current Scheme. The Government expects that, with the introduction of defined benefits, there would be less uncertainty and therefore less risk of excessive profits. In addition, the Bill includes enhanced powers for the MAA to regulate premiums, including the power to determine what expenses, including marketing, legal costs, claims handling and actuarial expenses, can be taken into account in setting premiums.

*Discussion:* The issue of insurer profits drew considerable attention at the Roundtable. The Insurance Council of Australia appeared to be of the view that the potential for large profits was essentially a function of current Scheme design, where the future costs of claims had a high degree of uncertainty. In response to a question submitted via the webinar querying why insurer estimates of profit submitted to the MAA in recent years were significantly lower than actual profits, the Insurance Council noted that claims frequency for a period of time had ultimately proved to be much lower than estimated when prices were set. The reason for this was said to be unclear.

The issue of profit threw focus on the existing and proposed mechanisms for regulating price. The Insurance Council pointed out that under the current Scheme insurance companies were subject to regulatory oversight by the MAA in respect of their filings for premium changes. As explained by the Institute of Actuaries, this oversight involves the use of independent actuaries to assess whether proposed premium rates are sufficient to meet the administration and reinsurance costs of the insurer, meet expected claims payments and provide adequate return on capital.

While the MAA noted that it had introduced tighter regulatory assessments of filings in recent years, in its view the current Act assumes that insurers in a competitive market will, in general, act rationally with regard to price, as reflected by the MAA's powers, which are powers of rejection rather than approval. The then Director-General of the Department of Finance and Services emphasised that the Bill seeks to respond to concerns about insurer profit by equipping the MAA with powers to examine proposed premium rate increases in light of past profits, and adjust such increases if necessary during transition and potentially going forward.

It is further noted that Minister Constance identified a potential to involve IPART in a review role, to ensure that the overall regulatory framework in the proposed model works effectively.

## Scheme sustainability

*Background:* The CTP Scheme is a privately underwritten Scheme, and the NSW Government has not declared any intention to alter this arrangement. In the Government's view, its reforms will boost the sustainability of this arrangement by reducing risks for insurers, placing downward pressure on premiums and increasing the attractiveness of the CTP market to new insurers.

*Discussion:* Some stakeholders, such as NRMA Motoring and Services and the Motorcycle Alliance, questioned whether a privately underwritten no-fault scheme was sustainable in the long term. In particular, the Alliance suggested that a no-fault scheme could force premiums up, particularly for higher risk groups, resulting in a reduction in benefits. The Alliance particularly sought some legislative assurance around affordability.

The Insurance Council of Australia, while noting that a privately underwritten no-fault scheme was relatively novel for Australia, expressed confidence in the insurance industry's ability to deliver such a scheme. As noted above, the key issue for the Insurance Council in maintaining premiums at acceptable levels was certainty.

The MAA advised that there are a number of privately underwritten schemes in Australia and elsewhere that are no-fault, including in the workers compensation area.

The Transport Accident Commission (TAC) of Victoria, which administers a publicly underwritten no-fault scheme, attracted attention in the context of this discussion. Some stakeholders suggested that it was operating at a deficit, and thus demonstrated the potential risks of a no-fault scheme. The TAC did not accept this observation, pointing out that it was operating within a funding ratio approved by the Victorian Government and under close prudential oversight. The TAC also pointed out that it pays a dividend to the Government each year, operates on commercial principles, and has an administrative cost ratio of 9.8% and falling.

## **Claimant experience and dispute resolution**

### Claimant access to early treatment

*Background:* As noted above under *CTP Scheme coverage and benefits*, the NSW Government considers that the existing Scheme does not perform well in providing access to early treatment because the system is inherently adversarial. In the Government's view, removing the requirement to prove fault and providing weekly benefits will minimise the degree of contestability over claims, and help people to get better earlier and resume normal activities.

Professor Cameron of the University of Sydney presented findings of research indicating that design features of a compensation scheme, such as early access to treatments and whether there are incentives for claimants to resume normal activities as soon as possible, can either help or hinder recovery. Similar observations were made by John Walsh, who also stressed the importance of people with relatively minor injuries

gaining access to early treatment to avoid the risk of their injuries escalating into more serious conditions.

*Discussion:* Ron Delezio of the Day of Difference Foundation highlighted the emotional and psychological impact that injuries, particularly injuries to children, can have on families, and stressed the importance of effective and early assistance to support both victims and their families.

There were differing views on the existing Scheme's success in facilitating early treatment. The NSW Bar Association argued that the existing Scheme allowed for adequate early intervention through no-fault early payments of up to \$5,000, and continuing treatment expenses which are met by the insurer following an admission of liability within 3 months of a claim being submitted. However, other stakeholders, including those involved in the treatment and care of motor accident victims, criticised the current system for not effectively helping people to get back on their feet. The Australian Rehabilitation Providers Association, for example, pointed out that the average delay in referrals had increased from seven and a half months, four years ago, to three years and two months currently. Nonetheless, caution was also expressed about modelling the CTP reforms on the revised Workers Compensation Scheme while this was still being implemented.

#### Dispute resolution

*Background:* The MAA confirmed that the Government's Bill outlines a much more limited role for the legal profession. The Government's proposition appears to be that defined benefits type schemes typically have fewer disputes, or at least a reduced need for dispute, and, by extension, a reduced reliance on legal professionals to help claimants navigate the system. The Government's *CTP Issues Paper* states that disputes in the Victorian system are less prevalent than in the current NSW system. The Government has also stated that claimants will be able to access external assistance via the MAA, assessors and an independent review office.

The rights of claimants to engage legal professionals will not be affected in relation to those matters for which common law claims can still be pursued (eg claims for loss of earnings by people with a WPI of more than 10%).

*Discussion:* Professor Tania Sourdin, Director of the Australian Centre for Justice Innovation, argued that in designing a compensation scheme consideration needs to be given to how people perceive the dispute resolution process, and that how people are treated during that process can be just as important to the individual as the financial outcome. A similar view was expressed by Justice Alan Wilson, President of the Queensland Civil and Administrative Tribunal, who suggested that if parties perceive that they are being listened to and treated with respect they tend to accept an outcome even if it is not in their favour.

A number of stakeholders expressed strong concerns about the conduct of insurers under the current Scheme, particularly in relation to their response to requests for rehabilitation and other treatments. That said, it was suggested by others that insurer conduct should be viewed in the context of the current system, where access to the main compensatory benefits requires proof of fault through common law proceedings.

The Insurance Council of Australia observed that, because the new Scheme will be first party in respect of statutory benefits, a direct client relationship between the claimant and the insurer will be created, with the insurer having a strong incentive to treat clients well. However, other stakeholders, such as Slater and Gordon Lawyers, the Australian Lawyers Alliance and the NSW Bar Association, argued that first party claims will not necessarily mean that insurers will not dispute claims, such as the actual cause of the injury, without valid cause. In this respect, these stakeholders expressed strong concerns that the Bill only permits legal costs for claims for statutory benefits in limited circumstances. They argued that many motor accident victims will not be in a position to negotiate effectively with insurers without legal support. On the other hand, the MAA argued that a statutory benefits scheme lessens the need to negotiate.

Slater and Gordon Lawyers drew attention to the allowance of legal representation under the Victorian no-fault scheme. The TAC verified this, but pointed out that the costs and nature of any legal participation in matters are clearly defined and closely regulated.

Slater and Gordon Lawyers also expressed concerns about the behaviour of some legal representatives in the current CTP Scheme (eg unnecessarily creating disputes), and declared that the Victorian TAC model could provide useful guidance on behaviour protocols for various stakeholders.

Kieran Fraser of the Injured Persons Association emphasised that freedom and control were key issues for motor accident victims in the claims process, including the freedom to use lawyers.

Stacks The Law Firm raised concerns about the financial impacts of the proposed changes on some legal firms, predicting that legal costs as a proportion of settlements would decline significantly.

## **CONCLUDING OBSERVATIONS**

I would like to conclude this report with some observations that may help the various parties to advance at least some aspects of the reform package that have led to contention.

Transparency was an issue that was raised throughout the proceedings, especially in relation to discussions on CTP prices. As noted above, the Insurance Council of Australia indicated that that it could not guarantee that premiums would drop under the reforms. This statement, along with the fact that the Scheme would be extended to cover an additional 7,000 motorists, reinforced the view of several Roundtable participants that the Government should release the actuarial costings which underpinned its claim that the reforms would achieve up to a 15% reduction in the average price of premiums, based on estimated prices for 2014. At the time, the Government indicated that there were sensitivities around releasing such information from a regulatory standpoint, but acknowledged the concerns about non-disclosure.

As I suggested in my closing remarks on the day, making more information available would help people to understand the thinking behind some of the reforms. In my view,

the Government's subsequent decision to release those costings was a constructive and positive step in advancing discussions.

The Roundtable discussion on Scheme coverage highlighted fundamental tensions. Whichever Scheme design is chosen will influence the price of premiums. The Government has core design objectives. These include making the Scheme no-fault whilst also placing downward pressure on premiums, and providing benefits that are more closely linked to actual need, with a view to encouraging injured motorists to recover and regain normal working and social arrangements as soon as possible. Achieving these objectives inevitably means trade-offs.

The reforms providing for statutory benefits, linked to severity of injury, have generated unease among various quarters in terms of their impacts on children, and adults who are at the upper end of the 10% or less WPI threshold. There may be a need for further consideration of thresholds or duration of benefits. However, as noted above, these design elements affect premium price. Any relaxation of such elements may lessen the degree of downward pressure placed on premiums. These are the kinds of trade-offs that the Government and stakeholders may need to consider moving forward.

Other issues raised in relation to statutory benefits, such as trustee management of lump sum payments and people who suffer consecutive injuries, may be worth further exploration. In addition, given the significance of these reforms, the suggestion made by NRMA Motoring and Services that there be a 5 year review provision might also be contemplated.

Insurer behaviour aroused considerable discussion, and I noted a high level of mistrust. In particular, there is a concern that, notwithstanding the introduction of no-fault statutory benefits, insurer treatment of claims may not differ greatly from the status quo. Similarly, for John Walsh, a critical issue is whether insurance companies can become effective injury managers. Legislative frameworks can be changed, but such changes may not alter mindsets and behaviours without additional measures, such as behaviour protocols or codes of conduct. Such measures might also be considered to alleviate concerns in relation to insurer behaviour or behaviours by other Scheme participants, such as lawyers.

The Government is evidently keen to maximise the efficiency of the scheme. Reducing the extent to which legal advisers need to be engaged in claims processes is key mechanism for that achieving that objective. However, concerns were raised among a number of stakeholders about potential risks associated with the current proposals on legal representation. Consideration may need to be given to whether legal representation should be permitted in certain circumstances to allay such risks. The Victorian TAC model may provide guidance in this regard.

A strong theme coming through on the day was that more consultation is desirable. The Government and the Minister in particular is embarking on further meetings following the Roundtable, and this report in itself may help the debate.

Finally, it is not for me to recommend to Government what its policy position should be. What is clear is that there are a lot of passionate views that are in conflict with each other, but there are also some areas where common ground might be reached. The

Roundtable was an important exercise in helping inform the Government and stakeholders about the various views and trade-offs to be considered in navigating a way forward for the CTP Scheme.