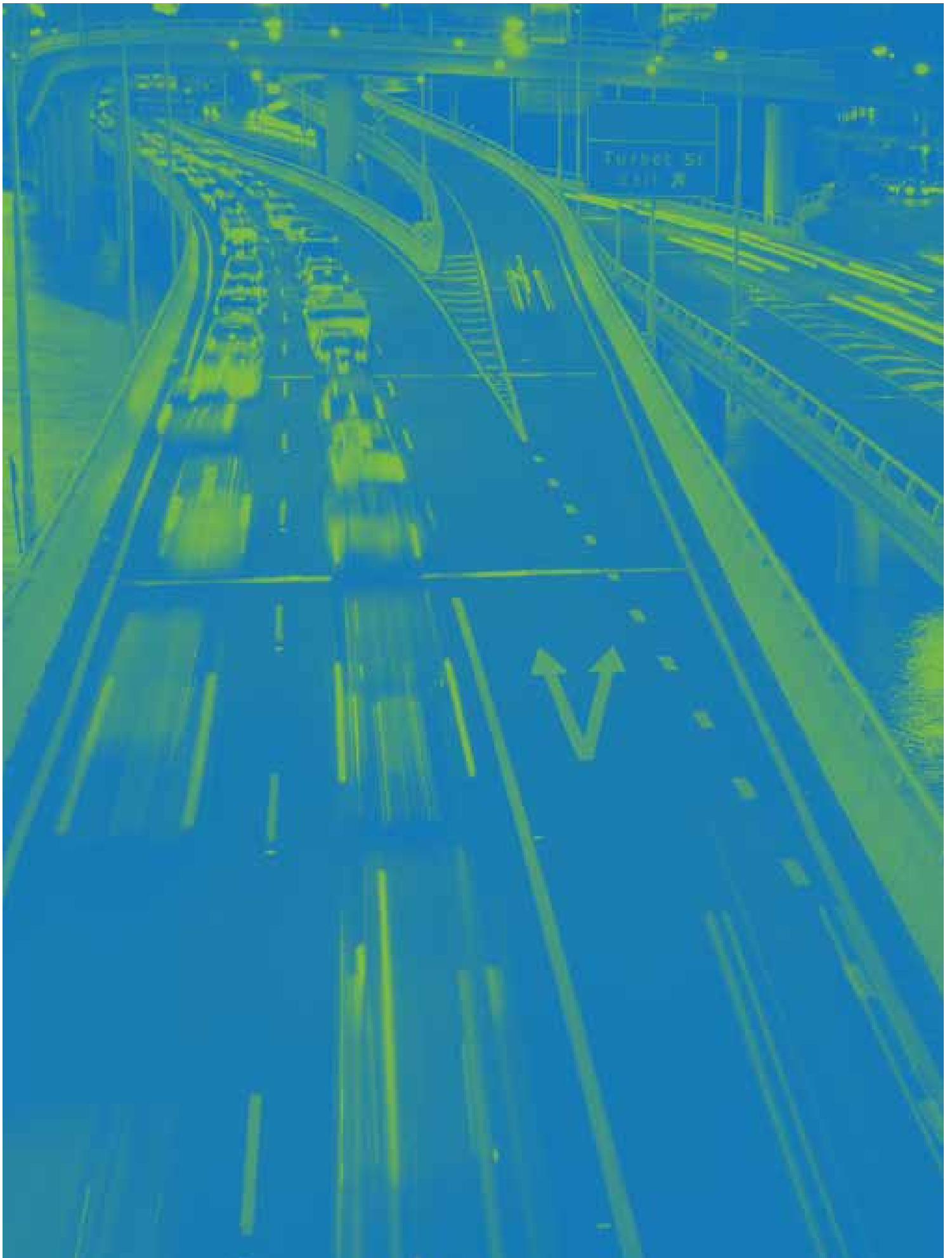




DISCUSSION PAPER

A REVIEW OF QUEENSLAND'S
COMPULSORY THIRD PARTY INSURANCE SCHEME



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1.0

REASONS FOR THE REVIEW

Our Compulsory Third Party (CTP) Insurance Scheme (the Scheme) has been protecting Queenslanders for 80 years and is widely regarded as one of the most stable and affordable personal injury schemes in the country. Indeed, we have one of the few remaining CTP Schemes which preserve an injured party's common law rights while ensuring Queensland motor vehicle owners pay the second lowest CTP premiums.

The Scheme ensures those injured in motor vehicle accidents through no fault of their own can obtain fair and timely compensation and can access the medical, rehabilitation and care services they need to recover as quickly as possible. For the at-fault driver or motor vehicle owner, CTP provides unlimited indemnity, protecting them from being personally sued for any compensation claims made against them.

The National Injury Insurance Scheme Queensland (NIISQ) is a key milestone in the history of our Scheme and came into effect from 1 July this year. NIISQ provides an important extension to CTP coverage by ensuring that any person who is catastrophically injured receives lifetime care and support benefits, not only assisting the injured person but also providing peace of mind to their family and carers. While this important social reform does come at a modest cost to motorists, Queensland's CTP premiums are still among the most affordable in Australia. Even so, the Queensland Government is committed to making sure our CTP Scheme is working as well as it can be and that we continue to explore opportunities for improvement.

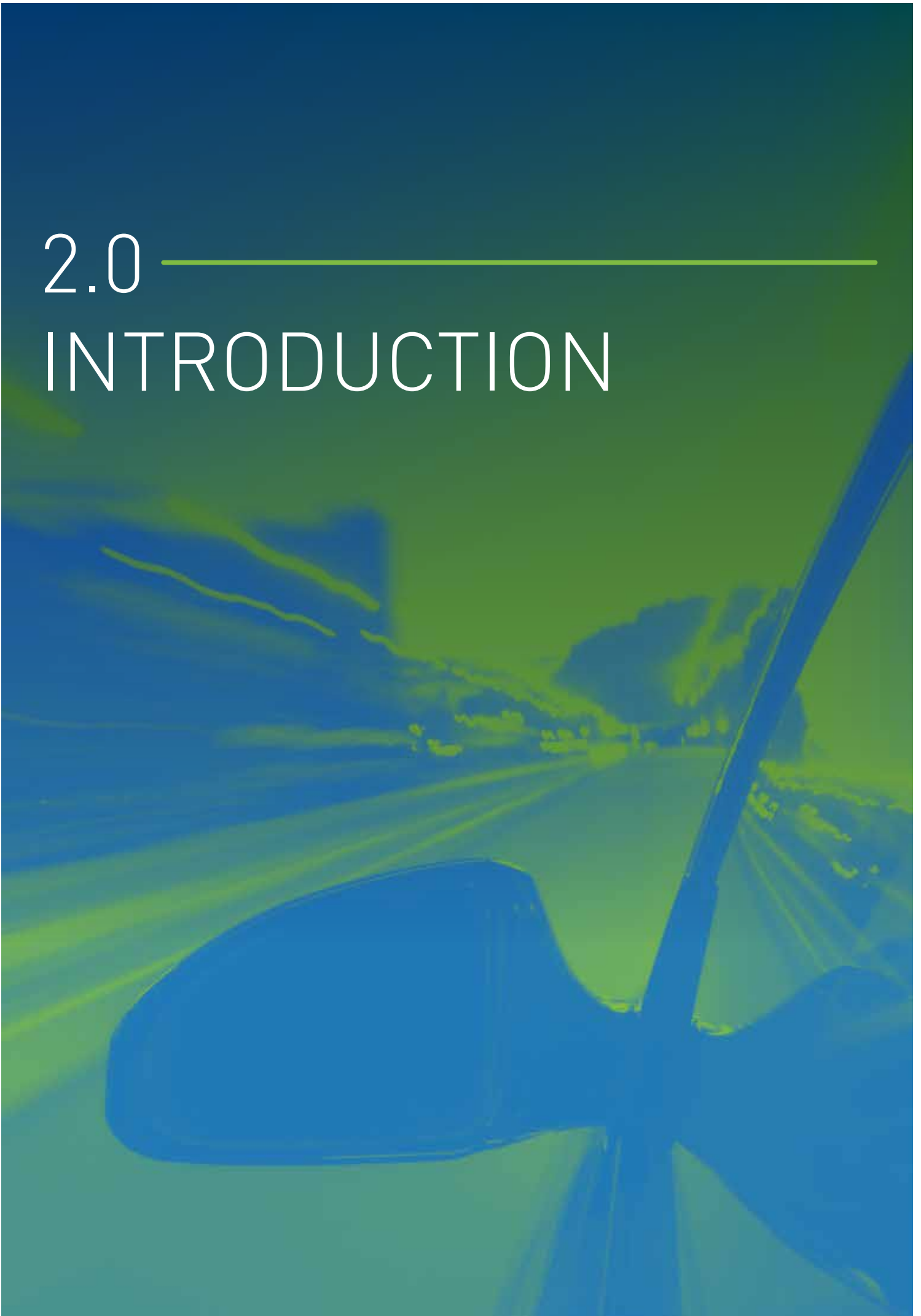
The importance of having an efficient, sustainable and well-balanced CTP Scheme cannot be overstated. Now, more than ever, we are in the midst of significant economic, social and technological change. The introduction of the NIISQ, the emergence of connected and automated smart vehicles, advances in medical science and increasing focus on paperless service delivery, all create opportunities for the CTP Scheme. We need to ensure that the Scheme is meeting the needs of Queensland road users and is also sufficiently flexible to be able to take advantage of emerging opportunities and innovations. We want our Scheme to lead the way rather than be an impediment to beneficial change.

While the Motor Accident Insurance Commission (MAIC) has been diligent in monitoring the operation of the Scheme, it has been six years since the last Scheme Review. It is therefore timely and appropriate that we review whether previous reforms are having their intended effect and investigate new options to further improve the affordability, efficiency, fairness and flexibility of Queensland's CTP Scheme. We want to make sure that premiums are as low as possible for motor vehicle owners while still being sufficient to cover the cost of delivering fair and timely compensation to injured people.

Your feedback is welcome on the various issues raised in the discussion paper which is an important part of the Scheme review process.

2.0

INTRODUCTION



2.1 / Terms of reference

A review of Queensland's CTP Scheme is being undertaken in accordance with the terms of reference in Appendix A. The review is being chaired by Mr Henry Smerdon with the assistance of committee members, Ms Jo Blades and Mr Rowan Ward.

2.2 / Purpose of the discussion paper

The purpose of this discussion paper is to seek your feedback on Queensland's current CTP Scheme and whether it is meeting its objectives. Your input will help inform the Government on whether reforms to the Scheme are required, and if so, what changes should be considered.

The discussion paper is structured as follows:

- section 3 sets out the guiding principles of the Scheme
- section 4 provides a brief overview of the current Scheme
- section 5 explains why changes to the Scheme may be required
- section 6 outlines the issues for consideration.

We have included a number of key questions addressing various issues raised in the paper. We encourage you to respond to these questions where relevant so that your input directly feeds into the consideration of the issues and the evaluation of any potential reform options. We would also appreciate any information or evidence you can provide that might assist us in understanding and analysing the issues that have been identified.

The views expressed in this discussion paper are not government policy. The information presented is designed to generate discussion and suggestions for improvement.

2.3 / How to have your say

Your feedback on this discussion paper is invited. Please send your written submissions to:

Email: maic@maic.qld.gov.au

Mail: CTP Scheme Review Team
Motor Accident Insurance Commission
GPO Box 2203
BRISBANE QLD 4001

Submissions will be received until **5pm on Friday, 16 September 2016.**

All written submissions will be published on the MAIC website within two weeks of the closing date for submissions. If you do not want your submission published and would prefer all or part of your feedback to remain confidential, please indicate this in your submission. Submissions not marked as confidential may be published in full or quoted in public documents or may be available to applicants under the *Right to Information Act 2009*.

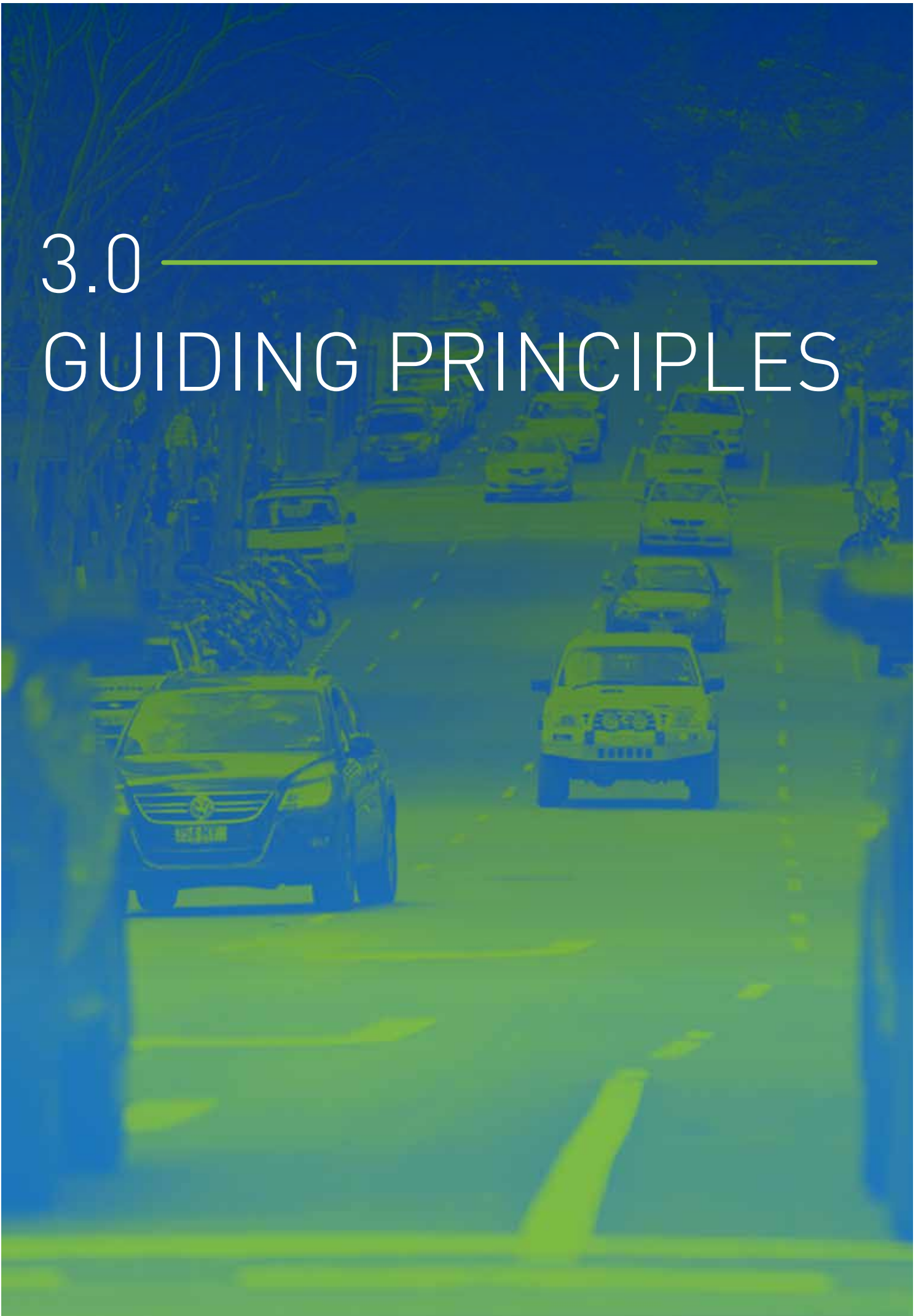
For further information, please call MAIC on 1300 302 568 or email maic@maic.qld.gov.au

2.4 / What happens next

The Review Committee is due to present its final report to Government by 9 December 2016. It is intended that any changes identified by the Review Committee will then be considered, and agreed actions will be progressed to take effect from 1 July 2017 or as soon as practicable in time for the 2017 premium setting process.

3.0

GUIDING PRINCIPLES



In order to evaluate how well the current Scheme is performing and to identify where there may be room for improvement, it is important to establish from the outset the principles which should underpin an effective CTP Scheme. These are:



AFFORDABILITY



EFFICIENCY



FAIRNESS



FLEXIBILITY

These principles are discussed in more detail in the following paragraphs.

3.1 / Affordability

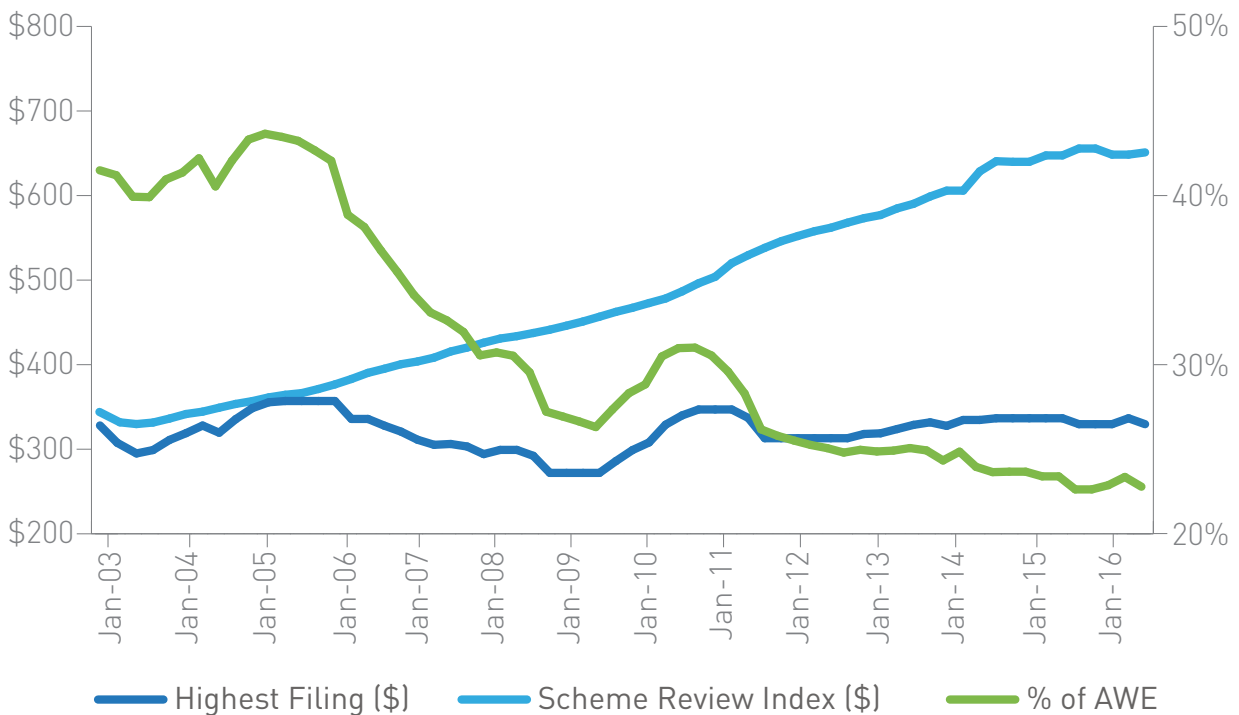
In order to ensure a viable and fully-funded Scheme, CTP premiums, paid at the time of motor vehicle registration, need to be sufficient to meet the cost of compensation claims but not be so excessive as to become a source of budget stress for motorists. Affordability is also important to help ensure a high proportion of insured and registered vehicles.

The Affordability Index – a feature of the Scheme since October 2000 – focuses attention on the overall cost of CTP insurance relative to a selected index of income, Average Weekly Earnings¹ (AWE). A review of the Scheme’s affordability is triggered when the highest Class 1² premium filed by insurers exceeds 45 per cent of AWE in Queensland. Once triggered, MAIC is required to make recommendations to the Minister on possible changes to the Scheme.

The current Scheme Review Index is \$651 (45 per cent of AWE). The annual Class 1 insurance premium for the majority of motorists has been \$336.60 which is around 23 per cent of AWE, making the Scheme one of the most affordable in Australia. As shown in Chart 1, affordability has trended favourably over time.

The NIISQ³ which commenced from 1 July 2016 brings Queensland into line with the other states and territories by providing lifetime treatment, care and support benefits to people seriously injured in motor vehicle accidents, irrespective of fault. NIISQ will be funded via a levy from 1 October 2016 payable at the time of motor vehicle registration or renewal. Whilst the overall cost of the CTP and NIISQ levy will increase by a net amount of \$32 per vehicle, the Scheme continues to be affordable compared to other jurisdictions and when judged against the Affordability Index.

Chart 1 - Scheme Review Index vs Highest Filed Class 1 CTP Premium



¹ The calculation of scheme affordability is prescribed under Part 1, 3(b) and 4 of the *Motor Accident Insurance Act 1994* (MAI Act).

² Class 1 being cars and station wagons. The majority of registered vehicles are in Class 1.

³ Information regarding the NIISQ is available at www.niisq.qld.gov.au

3.2 / Efficiency

In addition to being affordable, the Scheme also needs to be efficient, meaning:

- a) Persons injured in motor vehicle accidents are able to readily access, in a reasonable timeframe, compensation for injuries sustained in an accident where a third party is totally or partially at fault.
- b) Scheme delivery costs are reasonable, as measured by the proportion of claimant benefits to the total premium, reflecting the amount of each premium dollar that is returned to injured claimants.
- c) Innovation is encouraged to simplify and/or improve processes, reduce the time required for decision making and reduce overall costs to the Scheme to the benefit of all stakeholders.
- d) Information is available to enable motorists to make decisions in relation to their CTP insurance on a fully informed basis.
- e) The risk of fraud is minimised.

Affordability and efficiency need to be assessed in unison to ensure both remain 'in balance'.

3.3 / Fairness

The Queensland CTP Scheme is first and foremost beneficial legislation designed to protect injured people. Doing so in an affordable and efficient manner goes hand in hand with this as it needs to be delivered at a price the motorist is prepared to pay. However, fundamentally it is the fairness of the Scheme that is a true test of its value to the broader community.

Fairness is about ensuring injured people get prompt access to treatment and rehabilitation support, decision making is timely to reduce stress and delay, financial compensation is fair, and delivered in a manner that is ultimately affordable. This also requires that fraud be deterred to prevent extra costs being incurred that impact on affordability.

It is equally important that the Scheme be fair in how it expects motorists to fund the Scheme. The opportunity and incentive for innovation also needs to be encouraged and enabled.

Fairness also strikes a balance between ensuring premiums are sufficient to fully fund the Scheme while also ensuring they are not excessive.

3.4 / Flexibility

In the face of a rapidly changing environment, an effective Scheme should be flexible so as to enable, encourage and support innovation and improvement in technology and service delivery.⁴

The internet has fundamentally changed many aspects of service delivery. Vehicle technology is rapidly evolving and tele-health and medical science are making significant advances in treatment and health outcomes. Each of these areas can help to improve Scheme outcomes, but it is essential that the Scheme is sufficiently flexible to respond to these innovations.

Supporting beneficial innovation and investment isn't just about improving the Scheme itself – it is equally important to improve key external factors that have an effect on Scheme experience and ultimately deliver benefits to the community. The Queensland Government is making significant investments in road safety including the development of the *Road Safety Action Plan 2015-2017*. Fewer injuries on Queensland roads not only saves lives and reduces the incidence of road trauma, it flows through to the CTP Scheme with fewer claims needing to be made.

QUESTIONS

1. Do the guiding principles as outlined represent an appropriate framework to underpin the Scheme? Do you have any comments on how they should be assessed?
2. Is the current Affordability Index still an appropriate benchmark for deciding when a scheme review needs to be undertaken? Do you have any suggestions of alternative approaches for assessing affordability?

⁴ Innovation and digital trends in the CTP Scheme are explained in more detail in the report "The Future of CTP" found at maic.qld.gov.au/tomorrows-ctp-scheme

4.0

OVERVIEW OF CURRENT QUEENSLAND CTP SCHEME

4.1 / Coverage

Queensland operates a common law 'fault' based CTP insurance Scheme, first introduced in 1936. Since that time, it has been underwritten by licensed insurers.

The Scheme is governed by the *Motor Accident Insurance Act 1994* (MAI Act) and regulated by MAIC. It provides motor vehicle owners with an insurance policy that covers their unlimited liability for personal injury caused by, through or in connection with the use of the insured motor vehicle. The protection afforded by the CTP policy extends indemnity to the driver of the vehicle and passengers, for example, whose negligence in respect of the insured motor vehicle causes injury to a third party. CTP is a mandatory insurance policy, paid at the time of vehicle registration or renewal and only covers liability for personal injury arising from motor vehicle accidents. It should not be confused with optional comprehensive or third party property insurance.

For those injured in motor vehicle accidents, the Scheme provides access to compensation entitlements where negligence against a third party can be established. As the Scheme is fault-based, circumstances can arise where a driver or injured person cannot bring a CTP claim because he or she is solely to blame for the accident or there is no other negligent party against whom he or she can bring an action.

Since 1 July 2016 however, an at-fault driver or any other person who sustains catastrophic injuries as a result of a motor vehicle accident, may be eligible to receive lifetime medical, care and support services under the new NIISQ. Whilst feedback is sought on many aspects of the current Scheme, NIISQ is outside the scope of this review.

The Nominal Defendant is established under the MAI Act to provide access to compensation for injured persons where the at-fault vehicle is uninsured or cannot be identified. The Nominal Defendant is also required to meet the cost of claims in the event a CTP insurer becomes insolvent (as was the case with FAI, a licensed CTP insurer and subsidiary of the HIH Insurance Group which collapsed in 2001).

4.2 / Operation

CTP personal injury schemes operate in all states and territories of Australia, although the underwriting models vary as does scheme coverage and the type and level of benefits payable to injured claimants. A jurisdictional comparison of CTP schemes is provided at Appendix B.

Queensland, New South Wales (NSW), the Australian Capital Territory and more recently South Australia (SA), have privately underwritten schemes, where CTP insurance is provided by the private sector. As such, the associated profits and losses are borne by private insurers licenced to provide CTP insurance. The remaining states have schemes underwritten by government.

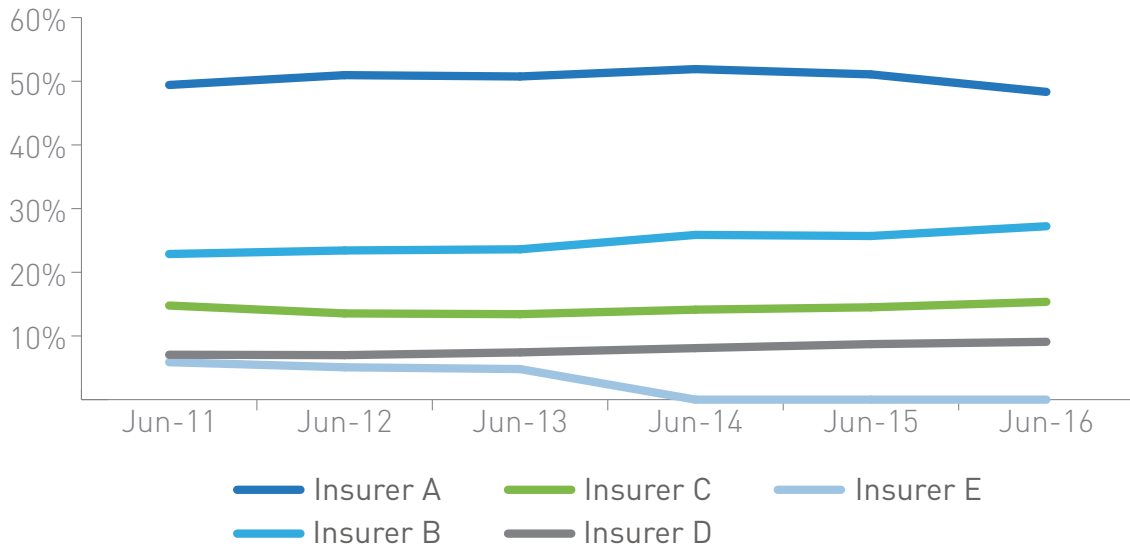
Queensland's CTP Scheme is underwritten by four private insurers who must be licensed to write CTP business under the MAI Act. In aggregate, the licensed insurers collect more than \$1.4 billion in premiums per year to cover more than four million registered vehicles in Queensland. The following chart (Chart 2) depicts changes in insurer market share by premium over the last five years. Currently, AAI Ltd (trading as Suncorp) holds just under 50 per cent of market share, Allianz has 27 per cent, RACQ has 16 per cent and QBE has 8 per cent.

CTP insurance premiums are currently collected by the Department of Transport and Main Roads (DTMR) through vehicle registration renewal notices and distributed to the Scheme's licensed insurers.

Since 1 October 2000, the Scheme has operated a competitive Vehicle Class Filing Model, based on a community rating⁵ philosophy. This allows the Scheme's licensed insurers to determine and file their premiums for each of the 24 vehicle classes every three months within floor and ceiling premiums set by MAIC. A key objective of this approach has been to facilitate and encourage price competition between insurers.

⁵ Community rating refers to where all owners of a particular class of vehicle pay the same within the premium range, based on the collective claims experience of the class and regardless of driving history, vehicle usage and the like.

Chart 2 - Market share by premium June 2011 to June 2016



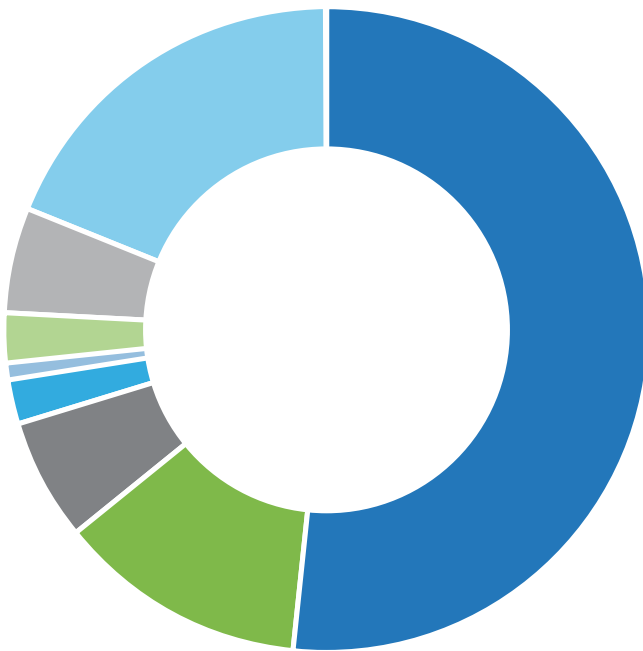
The setting of a floor and ceiling range by MAIC, informed by actuarial analysis and other factors, is intended to ensure premiums are reasonable, neither excessive nor insufficient having regard to the cost of the Scheme.

The primary underlying factors driving the assessment of the level of premium to be paid by motor vehicle owners are forecast claims frequency, claim size and key economic assumptions (including wage inflation and the discount rate). Therefore, if the frequency and cost of claims increases, so too will premiums. In addition to the base premium, allowances are made for the costs incurred by insurers to administer and acquire CTP business, manage claims and reinsure their risks. A profit margin is also included.

Scheme levies⁶ (Hospital and Emergency Services levy, Statutory Insurance Scheme levy, the Nominal Defendant levy, and the National Injury Insurance Scheme Queensland levy which commences 1 October 2016) and an administration fee for DTMR’s collection and distribution of the premium to insurers via the registration process, also form part of the overall cost of CTP insurance. The various insurance premium components are shown in the following chart (Chart 3).

⁶For more information regarding these levies, refer: www.maic.qld.gov.au/ctp-insurance-premiums/

Chart 3 - Insurance premium components - Class 1 ceiling for 1 October 2016 quarter



- Insurer's premium net of ITC and DAM**
- Allowances* and margin
- GST
- Queensland Transport Admin fee
- Statutory Insurance Scheme Levy
- Nominal Defendant Levy
- Hospital & Emergency Services Levy
- National Injury Insurance Scheme Queensland Levy

* Claims Handling, Acquisition, Reinsurance and Profit allowances.
** ITC - Input Tax Credit; DAM - Decreasing Adjustment.

4.3 / Claims experience

The overall picture of claims experience has for several years been recognised as 'stable and benign'. MAIC annual reports have, for some time, noted that claims cost outcomes are closely in line with expectations. There is nothing to suggest that compensation awards are either excessive or inadequate.

On average, the Scheme receives 6,500 claims each year with around 80 per cent of those claims resolved within two years. For the more complex claims, including those involving serious injuries, it can take much longer. Reflecting the 'long-tail'⁷ nature of the Scheme, there are around 12,000 open CTP claims with associated outstanding claims liabilities estimated to be around \$3 billion.

Claimant satisfaction with the overall claim process is mostly positive. A survey, commissioned by MAIC in 2013-14⁸, of 300 legally represented CTP claimants indicated general levels of satisfaction while also giving stakeholders an evidence base to encourage and inform further process improvement.

Important concepts of early intervention for medical treatment and rehabilitation, introduced in the 1994 CTP Scheme reforms, are now well established within the CTP claim process. Furthermore, less than one per cent of claims each year progress to trial and these predominantly turn on questions of fact rather than factors that might adversely impact overall scheme stability.

In 2003, the *Civil Liability Act 2003 (CLA)* introduced a new approach to the determination of compensation based on a calculation of Injury Severity. The CLA has application to all personal injury proceedings in Queensland, not just CTP claims. At the time of its introduction, the CLA was viewed as a necessary mechanism to keep claims cost pressures under control. It would appear to be meeting those objectives.

⁷ Long-tail means that there can be a long period of time between the lodgement of a claim and final settlement.
⁸ Survey results reported in MAIC Annual Report 2013-14

A key indicator of the performance of the current Scheme is to look at any pressure on the overall cost of claims. Generally, in periods of Scheme stability, cost pressures can be contained within normal parameters. However, excess cost pressures can arise from a number of factors which are broadly labelled as 'superimposed inflation'. Superimposed inflation has not been evident in the Scheme over recent years and when measured over the past decade is well within tolerance levels. Additionally, the duration of claims, in terms of the time taken between claim lodgement and settlement, has also fallen.

With respect to the management of claims, MAIC also provides a service for CTP claimants to refer any complaints or disputes if they believe insurers' practices or performance warrant such complaint. Very few complaints are received and this has been the case over many years. Insurers have indicated to MAIC that they take a series of positive steps to ensure compliance and customer satisfaction with their service delivery.

It is also worth noting that while the Scheme receives over 6,500 claims each year, less than ten cases a year are referred by CTP insurers to MAIC as being potentially fraudulent. It is in insurers' interests to be vigilant to such activity; hence the low referral numbers could be interpreted as an indicator that fraud is not a significant problem in the Queensland CTP Scheme.

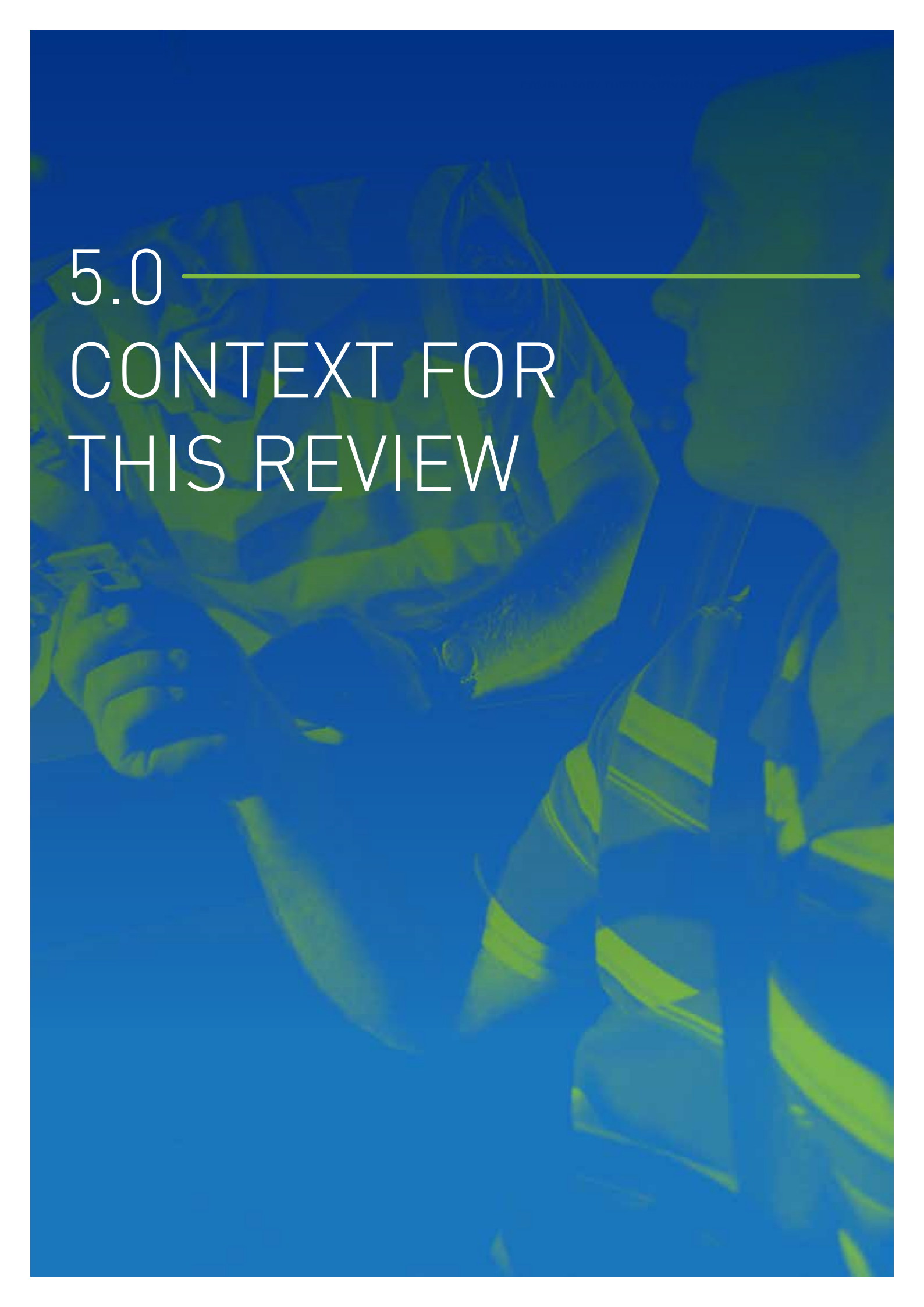
Overall these indicators point to a positive claims experience but also serve as a reminder of the need for ongoing vigilance in monitoring scheme experience.

4.4 / Previous reviews

Queensland's CTP Scheme has been the subject of several reviews during its 80 years of operation. In 1994, the Scheme underwent significant reform with the objective of earlier resolution of claims and a strong focus on the provision of early rehabilitation services for claimants.

In 1999, a major review of the Scheme culminated in significant legislative amendments in 2000. The key reforms were the introduction of an Affordability Index, a competitive premium model also known as the Vehicle Class Filing Model, streamlining of claims processes and minor changes to claimant benefits.

The last review of the Scheme was conducted by MAIC in 2010, the outcome of which focussed on reducing delivery and acquisition costs, and promoting greater price competition between insurers by prohibiting the payment of commissions and other inducements to intermediaries such as motor dealers. This change was complemented by other initiatives aimed at encouraging consumer choice.



5.0

CONTEXT FOR THIS REVIEW

The current Scheme has served the community well since it was first introduced and has much to commend it for. It is widely recognised as being stable, fair and affordable. Yet as CTP is compulsory and a condition of vehicle registration, it is incumbent that the Scheme is subject to an ongoing process of review to ensure it continues to meet the needs of all Queenslanders. This is particularly important given advances in technology and innovation which are likely to influence how people use their vehicles in the future.

With the introduction of the NIISQ and the emerging changes, it is considered timely that a review of key aspects of the scheme be undertaken as to whether improvements can be made to the current model or whether alternative Scheme delivery options might provide lower premiums for motor vehicle owners, while still delivering improved health outcomes for injured people.

Motorist market research⁹ recently commissioned by MAIC highlighted that motorists value premium affordability but also appreciate the benefits of being able to choose their insurer and receive additional benefits from their insurer, such as multi-product discounts. The majority of motorists (around 73 per cent) that participated in this research preferred being able to pay their CTP premium along with their motor vehicle registration.

Scheme profitability for licensed insurers has, over recent years, been higher than the eight per cent profit allowance assumed in premiums. This could be attributable to a number of factors including the overall stability of the Scheme. Insurers maintain that profitability in prior years is not an indicator of future Scheme performance and their current pricing decisions have to take into account the risk of future adverse events or experience.

Insurer competition is often cited as a key benefit of privately underwritten CTP schemes. While the Queensland CTP Scheme has been designed to encourage competition, MAIC cannot compel insurers to compete on headline price and, as will be explored

in this discussion paper, only limited price competition has emerged. It is recognised that competition does in fact occur in a number of other ways, such as insurers offering multi-product discounts, payments to charities or cash incentives to new customers to switch insurer. These offers may be targeted to some customers only, rather than being available to all motorists. When assessing affordability of premiums, a question arises as to whether this should consider only the headline premium or cost of CTP insurance or whether it should include some recognition of the value of the various benefits and incentives offered by insurers from time to time.

While the results of the recent market research clearly demonstrate that motorists regard affordability of premiums as the most important factor, there are complaints, from time to time, that motorists seeking to shop around and compare prices across the four licensed insurers find there is no price difference or price competition. It is possible that modifications to the Scheme may encourage motorists to more actively exercise their ability to choose insurer, which could stimulate price competition.

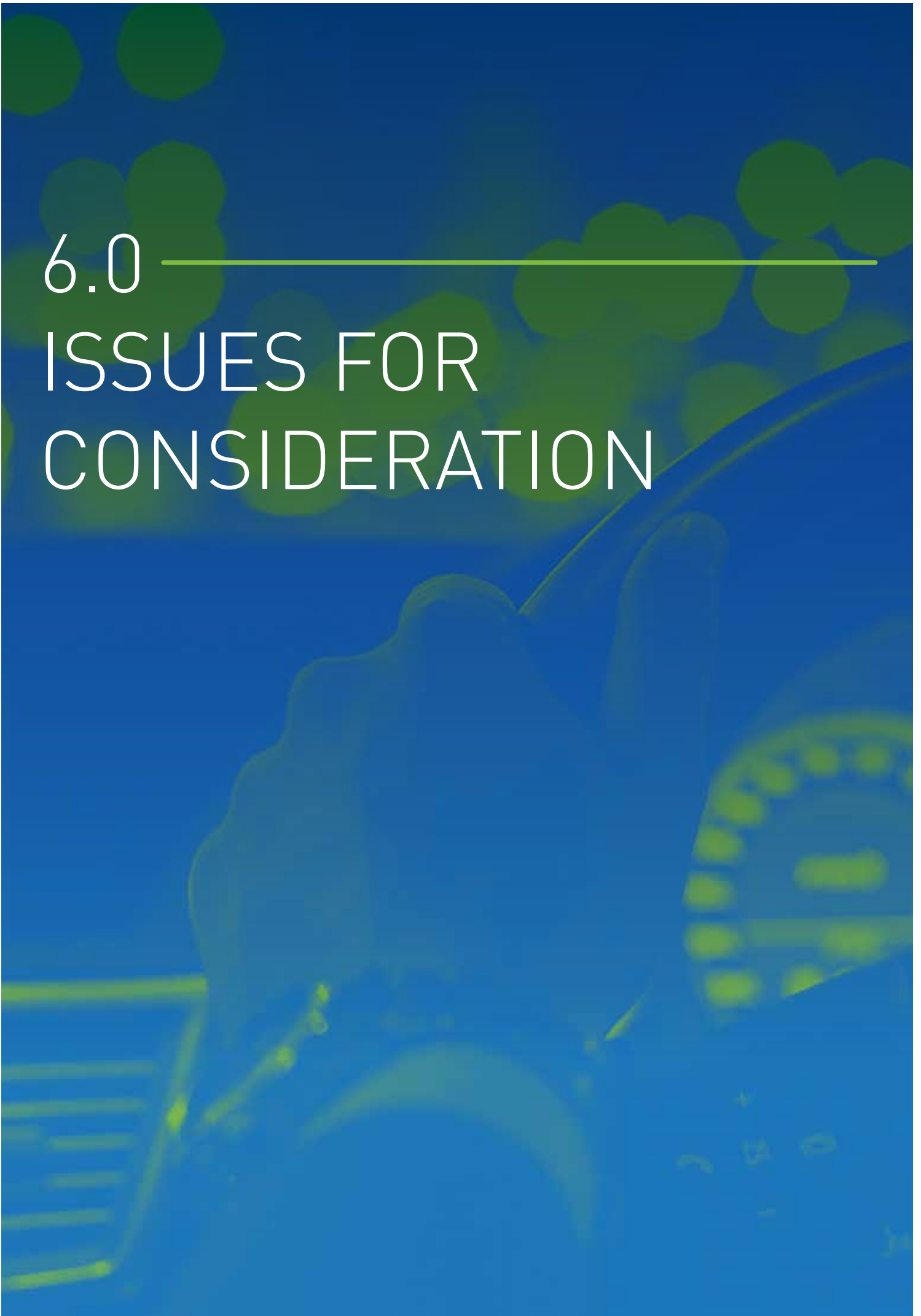
Technological change and innovation is evident and emerging in many areas of the Queensland CTP Scheme operating environment. Not only are we seeing the rise of autonomous vehicles and greater use of telematics in measuring how vehicles are used, but technology is also influencing the traditional model of vehicle ownership. The potential implications of these developments need to be anticipated now, to ensure that the Scheme does not prevent or impede the deployment of beneficial innovations and is able to adapt to the consequent changes in the way vehicles are used in the future.

Overall, it is good governance to review the current Scheme to ensure it remains efficient, stable, fair and affordable, both now and in the future. Some of the specific issues for consideration are examined in the next section.

⁹ The total sample size was 500, comprising 300 general motorists and 200 new car buyers. Full details of the market research undertaken is available at www.maic.qld.gov.au

6.0

ISSUES FOR CONSIDERATION



Any reform to the Scheme needs to target clearly identified problems or areas where there is scope for improvement. It is also important to consider the extent to which any proposed changes could give rise to unintended consequences. There also needs to be confidence that the potential benefits of the proposed changes will be sustainable and outweigh the costs (and risks).

A number of topics have been identified for consideration below having regard to the Review Committee's terms of reference (Appendix A). This list is not intended to be exhaustive. In addition to providing any feedback on these issues, you may identify other issues that need to be considered.

6.1 / Private underwriting versus public underwriting models

Queensland is one of four Australian jurisdictions that employ a private underwriting model (Queensland, NSW, SA and ACT). The other states have schemes underwritten by government.

6.1.1 / Potential advantages and disadvantages of each option

Private underwriting is predicated on the base premise that having products and services delivered by the competitive market, rather than government, will result in greater competition and benefits for consumers (and taxpayers).

The compulsory nature of the Scheme and the risks associated with the provision of insurance means that some level of government intervention is essential in the CTP market. In addition to licensing and prudential requirements, there is a regulatory function in setting premium bands within which insurers file premiums to ensure that this compulsory product remains affordable for the motoring public. Government also provides an 'insurer of last resort' function via the Nominal Defendant.

Apart from the benefits that can be delivered through competition, a key rationale for a private underwriting model is that the assessment, management and (to some extent) pricing of risk is left in the hands

of private organisations that have specialist skills, resources and expertise in structuring and delivering insurance products, as well as managing any consequent risks on their balance sheet. The private market is well placed to innovate and respond to changes in technology and consumer preferences. If profits increase, new entrants should be attracted to the market thereby bringing greater competition to the benefit of consumers.

The disadvantages (or risks of private underwriting) arise if price competition is limited due to regulatory or systemic barriers that limit competition amongst existing insurers and/or discourage other insurers from entering the market. There is also a risk that the market is not willing to provide all of the services required to meet demand.

Government underwriting can remove some delivery costs, reduce marketing spends and lower reinsurance costs. Profit margins may also be lower or removed altogether. Financial surpluses generated by the Scheme can be applied to reduce future premium costs and/or be invested back into road safety or health service delivery programs.

The main disadvantages of government underwriting are that it forgoes the potential benefits of competition, including innovation, and transfers financial risk to the government's balance sheet (noting that the State to some extent already bears this risk via its Nominal Defendant obligation).

Some government underwriting models seek to inject the benefits of private sector competition by outsourcing claims management, although there are various practical difficulties in doing this. In particular, it is difficult to incentivise the same investment and innovation in claims management. In a long-tailed common law scheme, claims management is a key component of controlling scheme costs.

A decision to move to government underwriting would need a high degree of confidence that the benefits would outweigh the costs. A range of transition costs would arise and need to be identified and quantified. Accordingly, all of these assumptions would need to be fully explored before such a significant change was undertaken.

6.1.2 / Risk pool

An alternative between these two options that was previously considered in the 2010 review (and has been considered by NSW) is the concept of a 'risk pool'. Under this model the government would assume the role of underwriter and all CTP premiums would be collected, pooled and reinsured in the private sector. Insurers and reinsurers wishing to participate in the pool would submit for a percentage of the pool on a policy year basis and receive profits and losses commensurate with their percentage share.

A risk pool could be established for a specific group of motor vehicles based on pre-determined criteria or for the entire market.

The potential benefit of this approach is that it should reduce administration and scheme delivery costs, while still allowing private insurers to participate in the scheme and receive profits/bear losses based on their proportionate share. It would also give them flexibility in relation to their participation in the scheme.

The potential problems with such an approach are that motor vehicle owners whose vehicles are placed into the risk pool lose the right to choose their insurer and lose the potential benefits of competition, including for example, multi-policy discounts on other insurance products. If insurer interest in the risk pool diminishes it may require the government to step in as an active insurer creating a complex market structure. It is unlikely that a risk pool model would encourage the same level of innovation as a competitive private market.

Moving to government underwriting would be a significant change. However, as a fundamental design feature of the Scheme it is necessary and appropriate to test the pros and cons of various underwriting models as part of this review.

QUESTION

3. On balance, which underwriting model do you believe best meets the guiding principles and why?

The Vehicle Class Filing Model

6.1.3 Current operation

The Queensland CTP Scheme utilises a Vehicle Class Filing Model that is based on a community rating philosophy. Under this model, motor vehicles are classified into 24 separate vehicle classes defined by their type and purpose of use, with vehicle owners in each class all paying within the same premium range based on the collective claims experience of the class. This ensures that risks are spread across a vehicle class, providing a similar level of premium affordability within that class. The majority of vehicles are grouped in Class 1 (cars and station wagons).

Each quarter, insurers file their premiums for each vehicle class within an upper and lower limit determined by MAIC, as the Scheme's regulator. In setting these limits, MAIC considers independent actuarial advice, stakeholder submissions and the input of an Advisory Committee. The ceiling set by MAIC is intended as an upper limit, not the norm.

Prior to 2000, MAIC determined the premiums to be charged by all insurers for each class of vehicle. There was no capacity for insurers to vary this price. The 2000 reforms offered insurers the opportunity to charge competitive premiums within an upper and lower limit. It was expected this would provide premium pricing flexibility and generate opportunities for the licensed insurers to engage in competitive behaviours that would have flow on pricing benefits for the motoring public. It was envisaged that greater price competition would occur as insurers took the opportunity to grow or defend their market share. It also offered insurers wishing to enter the market an opportunity to competitively price the product to build market share. Actual experience has been that insurers tend to price at or close to the allowable upper limit, rather than the mid-point price which more closely reflects the set price MAIC would have adopted under the previous pricing regime.

6.1.4 Experience

Price competition

The ongoing lack of price competition, coupled with strong insurer profitability, is one of the key issues that has been identified for this review.

An assessment of the Class 1 premium since October 2000 is provided below – Charts 4 and 5.

Chart 4 - MAIC floor and ceiling and insurer's filed premium

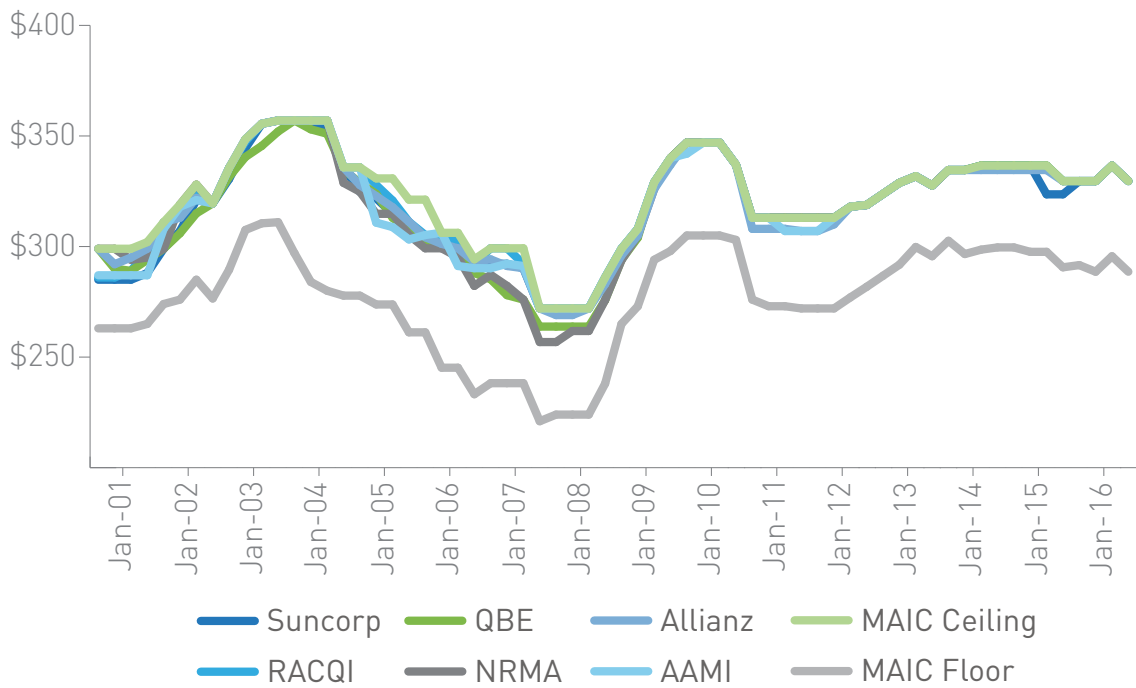
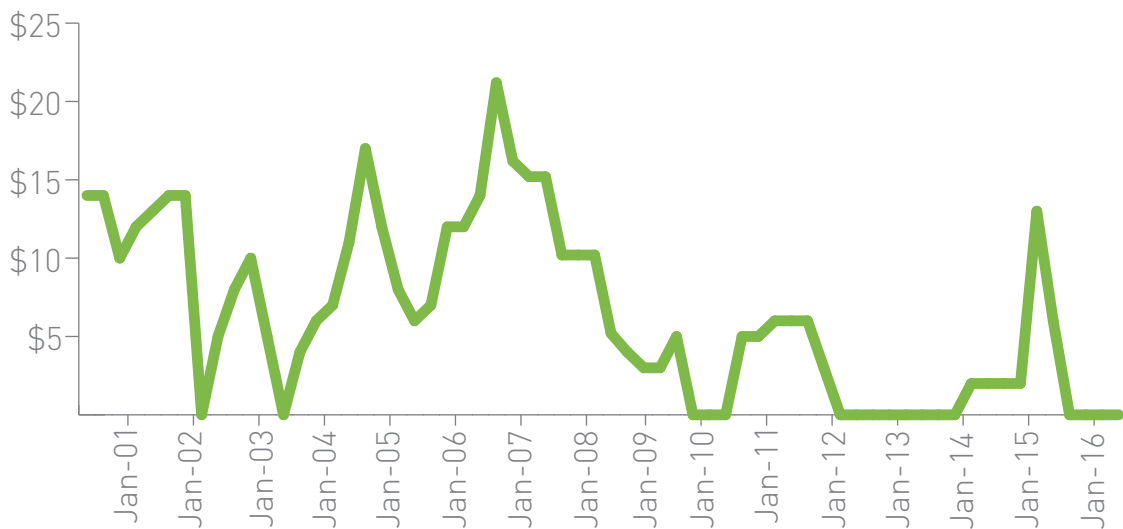


Chart 5 - Highest minus lowest filed premium



These charts show that following the introduction of the Vehicle Class Filing model in 2000, in the first seven years of the model's introduction some competition emerged and premiums differed by up to \$23.20. In the most recent seven years (28 quarters), the largest amount below the ceiling was \$13 filed by one insurer for only one quarter. For 15 quarters out of the most recent 28 quarters, all insurers have filed premiums at the ceiling for Class 1 vehicles.

Following the Scheme changes made in 2010, there was an immediate reduction of \$24 in the Class 1 premium ceiling for the October 2010 quarter, reflecting both the savings as a result of the banning of inducements to intermediaries (\$20) and a removal of the remaining HIH surcharge (\$4). However, while some competition and price differentiation was visible in Class 1, there was little competition in the remaining classes.

Other than for Class 1 and Class 6, no insurers have ever filed below the ceiling for any other vehicle class in the last 28 quarters.

Switching insurer

It is also relevant to examine the extent to which motorists have switched insurers. Over the past 10 years, the probability that a Class 1 customer will switch insurer at registration renewal ('switch rate') fell from five per cent to three per cent. This decrease in switch rate has corresponded with less price competition. It is very low when compared to other personal insurance generally and much lower than the equivalent rate for NSW's CTP insurance.

It is unclear if the lower switching rates are a function of consumer satisfaction with their choice of insurer, lack of incentive to switch, or structural barriers that deter some customers from switching insurer.

There is evidence to suggest that a lot of switching happens when vehicles change hands with many individuals choosing to switch insurers at the first opportunity to do so. A customer has a 14 per cent switch rate at the first registration renewal, but a two per cent average switch rate on subsequent renewals. The switch rate continues to fall as the individual remains with the insurer. From five years

of policy tenure with that vehicle, the switch rate is one per cent. Different insurers have significantly different switch rates, even after taking account of their different portfolios so brand appears to be an important driver of switching behaviour.

6.1.5 / Issues

Lack of price competition

The limited variation in premium pricing among the licensed CTP insurers and the low switch rate between insurers support the view that there is limited price competition. Based on price alone for Class 1 vehicles, there is little to encourage motorists to change insurance providers. At the same time, analysis by MAIC's independent consulting actuary has shown that average profitability for insurers in recent years has been higher than the assumed allowance of eight per cent of premiums.

This leads to the question of whether the original objectives of improving the competitiveness, affordability and efficiency of the Scheme have in fact been achieved. It could be argued that the Vehicle Class Filing Model has failed to generate the level of price competition between insurers that was expected to benefit motor vehicle owners in the form of lower premiums.

Rating philosophy

This then gives rise to the question as to whether allowing insurers more flexibility to price differentiate CTP policies within vehicle classes could enable more efficient and competitive pricing. The Scheme is currently based on a community rating system aimed at spreading the cost of CTP insurance across motor vehicle owners, for example, all owners of a particular class of vehicle pay the same premium regardless of driving history, vehicle usage and the like. Individual risk rating factors such as driver age, garaging postcode or traffic history are presently not included in Queensland's method of premium calculation.

A change in rating philosophy for the Scheme would allow insurers to adjust premiums in accordance with individual risk. However, it would also result in significant variations in premiums across the motor vehicle owner population. Those perceived by insurers

as the 'better' risks are more likely to see a reduction in premium while there would be a relative increase in premiums for higher risk classes, including young drivers who are already faced with high premiums for comprehensive car insurance. Depending on the degree of flexibility introduced, the degree of underlying risk and the financial circumstances of the driver, this could mean that owning a car for some drivers becomes cost-prohibitive. This in turn could significantly impede mobility (including for education and employment purposes) or cause an increase in the number of unregistered and uninsured vehicles on Queensland roads. The costs of implementing and administering such a system could also be significant and must be taken into account.

In the most recent market research conducted by MAIC, 84 per cent of registered motor vehicle owners reported that a CTP scheme that has a focus on affordable premiums for the majority of the community is more important to them than a scheme where the focus is on promoting greater price competition between insurers.

QUESTIONS

4. Do you believe there is fair price competition in the current Scheme? If not, why not? What changes do you think need to be made to achieve fair price competition if this is seen as a desirable objective?
5. In your view, what are the main reasons why motorists do not actively switch CTP insurers? Are there any perceived costs and barriers to switching? Would more active switching lead to increased price competition between insurers?
6. Are there any other features of the current Vehicle Class Filing model that need to be changed to improve the Scheme outcomes?

6.2 / Motorist choice of CTP insurer

6.2.1 / Coupling of CTP insurance with motor vehicle registration

Currently CTP insurance is integrated with motor vehicle registration. This method of collection is designed to minimise administration costs within the Scheme, be convenient and efficient for motorists and reduce the incidence of uninsured vehicles.

A question arises as to whether the continued bundling of CTP insurance and vehicle registration is limiting the extent to which motor vehicle owners are actively exercising the choice they have of CTP insurer.

Having a bundled approach creates a simple 'one-step' process for motor vehicle owners to renew their vehicle's registration and CTP insurance, but separating these into discrete transactions may enable insurers to develop a more direct relationship with their customers. While such a move may provide greater opportunities for motor vehicle owners to change their CTP insurer, and so potentially encourage greater price competition between insurers, it is also likely to increase the Scheme's delivery costs, reduce the simplicity and convenience of the current arrangement for motorists and require significant Information Technology system changes for insurers and DTMR. Care would also need to be taken to ensure that motorists completed both transactions to avoid having an uninsured or unregistered motor vehicle.

To the extent that further improvements could be made, one way of addressing this issue is to retain the current arrangements but include additional information with the renewal notice regarding the different CTP providers and their current premiums, and to make the switching process much easier. It is difficult to predict the extent to which this would actually result in more motor vehicle owners actively exercising their choice of CTP insurer and whether this would result in price competition and reduced premiums sufficient to outweigh the increased administration and system costs.

6.2.2 / The role of motor dealers

Changes were made to the Scheme following the 2010 review to improve transparency and reduce scheme delivery costs. The amendments included a prohibition on the payment of commissions and inducements by CTP insurers to motor dealers and other intermediaries for directing CTP insurance business to an insurer¹⁰ (such as staff salaries, entertainment or discounted business insurance premiums). In essence the amendments attempted to break the nexus between CTP insurers and motor vehicle dealers, and allow for consumer choice at point of sale. The amendments do not prohibit the insurer from paying an inducement directly to a policy holder if they do not treat the cost of the inducement as an expense against their CTP business.

Changes were also made to the MAIC website as well as DTMR's vehicle registration forms (and the authority used by motor vehicle dealers to register new vehicles on behalf of their customers) to alert motorists of their ability to choose their CTP insurer. The availability of the MAIC premium calculator to assist in comparing premiums was also promoted.

The market research recently undertaken by MAIC provides some insights into the first-hand experience of new car buyers following the 2010 changes. This revealed that, amongst new car buyers:

- the majority (73 per cent) were aware of their ability to select their CTP insurer, with 51 per cent reporting that they considered this in the lead up to buying their new car
- forty-four per cent report their dealer alerted them to the need to select a CTP insurer
- nearly half reported that the cost of CTP insurance was wrapped up in the 'drive-away' price, although this proportion was much higher (63 per cent) in previous research conducted by MAIC in 2013
- fifty per cent receiving free on-road costs were asked by their motor dealer to nominate their preferred CTP insurer. Of those paying a drive-away price, 44 per cent indicated that they were asked to nominate their CTP insurer (both of these reflected increases from 2013)

- twenty-four per cent of respondents felt that the motor dealer tried to persuade them to choose a particular insurer (while this was an increase from 2013, an increased proportion of new car buyers reported that their dealer did not try and persuade them, with the balance unsure)
- overall, 66 per cent of new car buyers felt satisfied they were able to (or would have been able to if they wanted to) select their preferred CTP insurer. Twenty-three per cent were not sure if they would have been able to select their preferred CTP insurer, while 11 per cent felt there was some resistance from the dealer or a preference to go with a certain insurer.

While there have clearly been improvements to the extent to which intermediaries have influenced the decisions of new car buyers in relation to the choice of CTP insurer, the above evidence suggests that there is still scope for further improvement.

One option is to untie CTP insurance from the vehicle registration process and enable CTP insurers to be more innovative and competitive in how they compete to attract and retain customers. While separating the CTP and registration renewal processes may create inefficiency for motor vehicle owners, this presents an opportunity for CTP insurers to develop more innovative customer service delivery options.

Another option is to remove this decision point from the buyer's interaction with the motor dealer, with this function completed away from the dealership as part of the process of finalising/transferring ownership. However, this could reduce convenience and increase time and costs for the buyer. There is also a risk that the buyer fails to nominate their insurer. To minimise this risk, the insurer could be randomly selected by DTMR, either initially (before the buyer advises of their preferred insurer) or in the event that the buyer fails to nominate an insurer within a certain timeframe.

¹⁰ Directing CTP insurance business includes obtaining CTP insurance business for a CTP insurer and giving any form of advice, encouragement or suggestion intended to direct CTP business to an insurer.

QUESTIONS

7. Have the changes made to the Scheme in 2010 achieved their intent in ensuring that motorists are aware of the choice they have of CTP insurer and exercise that choice in the market? Are further changes required, and if so, what?

8. Should CTP insurance be unbundled from vehicle registration? If not, why not? If yes, what would be the perceived benefits?

6.3 / Economic parameters in premium setting

There are a number of key economic parameters that are important inputs to the assessment process used to determine the required CTP premium. These include the risk free interest rate, wage inflation, average weekly earnings as well as the existence and rate of superimposed inflation.

The **risk free rate** is used to discount future outstanding claims liabilities to reflect the time value of money.¹¹ The proxy for the risk free rate that has always been used is the Commonwealth Government bond yield. This is the most commonly used benchmark in the insurance industry and is also widely used to measure the risk free rate in a range of applications. It is independent, objective and readily observable.

Forecasts also need to be made of the **CPI** and **average weekly earnings (AWE)**, which impact the expected cost of claims. There are inherent challenges in forecasting these parameters into the future. The intention is to obtain an unbiased estimate of future rates. In practice, however, the assumed rates have tended to be conservative in hindsight.

The other important issue in pricing CTP insurance is **superimposed inflation**, which occurs where the actual benefits paid to claimants grow at a faster rate than the rate of inflation. This risk is borne by insurers and can have adverse impacts on insurer profitability. Appropriate recognition of superimposed inflation is therefore important to maintaining a sustainable and competitive industry. If future superimposed inflation is expected over the relevant pricing horizon, an allowance for this is currently made in the premium (which will therefore increase the size of the premium).

An estimate of past and current superimposed inflation is therefore considered as part of the actuarial assessment in the premium setting process. MAIC uses this assessment to set an allowance for possible future superimposed inflation. Particularly given the long-tail nature of CTP insurance claims, it is difficult to forecast in practice. While reference can be made to claims experience in recent claim periods, past experience isn't necessarily a predictor of the future. A considerable degree of judgement must therefore be applied in assessing whether superimposed inflation is likely to occur in the relevant pricing period and if so, what allowance should be made.

QUESTION

9. Do you have any comments on the approach used to estimate the economic parameters? Are there alternatives that should be considered?

¹¹ There is an inverse relationship between the discount rate and the present value of the cashflows that are being discounted. That is, the lower the discount rate, the higher the present value and vice versa.

6.4 / Insurer profitability

In a privately-underwritten scheme, it is accepted that insurers are entitled to expect a fair and reasonable profit for the financial risks they are bearing in order to maintain a sustainable and competitive market that meets the Scheme's objectives.

The long-tail nature of CTP insurance means it can take many years for claims to be received and finalised in order that the insurer's actual profitability can be assessed. Insurers will experience 'good' and 'bad' years depending on the extent to which the key assumptions underpinning premiums – including the frequency and cost of claims – differ from expectations. This in turn will flow through to insurer profits or require additional capital to stem losses.

As noted above, a separate allowance is provided for superimposed inflation. It could be questioned whether a discrete allowance should be provided or whether insurers receive a return for bearing that risk in the profit margin.

Recent experience for insurers has been favourable and scheme profitability has been rising. The measurement of profit is complicated because it depends on insurers' expenses (which are not known with certainty) and the cost of claims which are yet to be settled. The independent actuary's estimate of insurer profit over the last five years is in the range of 25 per cent to 31 per cent. A normal market based response would see higher profits ultimately competed away as existing insurers and/or new entrants pursue growth in a profitable market. It is not completely clear why this has not happened in the current Scheme, but contributing factors are likely to include:

- low customer sensitivity to price
- the requirement that all vehicles in the same class are charged the same price, irrespective of whether they are existing, new or switching business for the insurer or have other vehicle or policyholder characteristics
- there has been no insurer entering the Queensland CTP market since 1999.

Over the period since the current Scheme commenced operation, financial markets have undergone considerable change, particularly following the Global Financial Crisis. Risk free rates are at historical lows and investors generally have had to adjust their return expectations however insurer profitability targets or expectations have not changed throughout this period. It remains uncertain as to whether current global financial market conditions are more likely to represent 'the new normal' and whether this should flow through into assumptions about insurer profitability.

QUESTIONS

10. Does the current CTP Scheme create barriers to entry that are preventing or deterring new insurers from entering the market? If so, what do you perceive these to be and how should they be addressed?

11. Should the approach used to determine the allowance for insurer profitability be amended, and if so, in what way?

6.5 / Scheme coverage

6.5.1 / Inevitable accident

The current Queensland CTP Scheme covers liability for personal injury arising out of negligence. As it is fault-based, an injured party must prove the driver/owner of the vehicle involved in the collision was at fault to receive compensation.

'Inevitable accident' is a defence at common law and arises when the defendant (the CTP insurer of the alleged at-fault vehicle) establishes that the consequences of the action were not intended and could not have been avoided by taking reasonable care in the circumstances. An example of this would be in a motor vehicle accident caused by a defendant who loses control of their vehicle because they suffer a heart attack with no previous history of heart conditions.¹²

In such circumstances the courts critically examine the conduct of a driver before making a finding of 'no negligence' and it is an accepted view that it is only in the clearest cases that this defence will be successful.

The NSW experience

The 2005 decision by a NSW magistrate that the driver of a motor vehicle that crashed into a Sydney childcare centre severely injuring two young children in 2003 was not guilty of negligent driving reignited the debate over the use of inevitable accident as a defence by insurers to deny compensation claims to victims of motor vehicle accidents. While medical and rehabilitation expenses were made on behalf of the injured children by the CTP insurer, the NSW Government announced it would modify the application of the common law to remove inevitable accident as a defence.

NSW subsequently amended their CTP scheme in 2007 such that persons injured in a blameless or inevitable accident (other than the driver whose actions caused

the accident) are entitled to claim damages regardless of fault. Specifically, pursuant to Part 1.2, Division 1 of NSW's *Motor Accidents Compensation Act 1999*, claimants are entitled to recover damages in relation to blameless or inevitable accidents occurring in NSW, even though there is no fault on the part of any driver. In such circumstances the driver may be deemed to have caused the accident.

Potential changes

A similar provision could be made to the MAI Act. The effect of introducing such a legislative change would be to extend access to Queensland CTP compensation entitlements to blameless victims of a motor vehicle accident in which it is claimed that the injuries or death were due to an inevitable accident. It is not intended that the Scheme extend an entitlement of the driver to bring a CTP claim to recover damages if the accident was caused by an act or omission of that driver.

The arguments for introducing 'deemed fault' include:

- Historically, the frequency of such claims/defences is low.
- It would ensure a consistent approach to these types of claims as historically, courts have not readily accepted the defence of inevitable accident to justify denying an injured claimant the right to compensation at common law.
- There is a level of community expectation that a person injured through no fault of their own ought not be disadvantaged by the inevitable accident defence.
- The cost of removing this defence would be negligible in terms of CTP premiums, but removes a source of cost and delay where this legal defence is asserted during the course of a CTP claim.

On the other hand, expanding CTP coverage inevitably leads to an increase in claim costs and therefore an increase to premiums, although research and actuarial advice suggest the cost is low.

¹²Although it does not arise frequently, the defence of 'inevitable accident' usually arises in one of the following categories of cases: (1) sudden medical incapacity of a driver such as epilepsy, heart attack, blackout and the like. (2) sudden mechanical defect such as brake failure or tyre blowout (3) other outside acts interfering with the safe driving of the vehicle such as wildlife jumping in front of a car and causing a collision. Issues will arise as to whether the driver ought to have anticipated a hazard occurring, the extent of any evasive action taken, or whether he or she was aware of any pre-existing medical condition likely to impede their driving.

6.5.2 / No-fault claims for children

The NSW Government has amended its legislation regarding inevitable accidents. It has also introduced legislation providing deemed fault (no-fault) CTP coverage for injuries to children aged 16 years or under for the provision of rehabilitation, treatment and care costs. The changes made were in recognition that children are inherently unpredictable and often lack the ability to safely navigate a motorised environment.¹³ Other interstate schemes provide various levels of coverage for children considered to be at-fault.

In a recent court case¹⁴ the Queensland CTP insurance policy was held to provide cover where the driver of a Queensland registered vehicle injured a child on a NSW road regardless of whether there was fault on the part of the driver. As such the Queensland CTP policy provides deemed fault cover to children injured in NSW, but does not provide the same coverage for children injured on Queensland roads. This is because under the Queensland CTP Scheme, a child injured on a Queensland road needs to identify an at-fault driver in order to progress a CTP claim. This process is undoubtedly stressful for the child and his or her legal guardians but also for the driver of the vehicle involved in the accident.

At present the cost of trauma associated with children considered at-fault is borne by the taxpayer and the injured child's family and community. While some preliminary data indicates that few claims lodged by children in the current Scheme have liability denied completely, what is not known is the number of children who do not lodge claims at all because of their at-fault status.

In light of the above, and to remove the inequity which can potentially arise regarding children injured interstate by a Queensland registered vehicle, consideration could be given to amending Queensland's MAI Act to provide deemed fault (no-fault) CTP coverage for children. Deemed fault coverage would not assign blame to either party but would instead focus on the child's health recovery and the timely provision of reasonable and necessary medical treatment, rehabilitation and care services.

QUESTIONS

12. Should the MAI Act be amended to:
 - a) introduce a provision to remove the legal defence of inevitable accident?
 - b) allow children aged 16 years and under the ability to access compensation entitlements under the CTP Scheme even if he or she was at-fault?
13. Do you have any other comments in relation to Scheme coverage?

¹³ In the case of NSW, extending the provision of rehabilitation, treatment and care costs to children aged 16 years and under, on a no-fault basis, reportedly added \$2.00 to the average CTP premium.

¹⁴ Suncorp Metway Insurance Ltd v Wickham Freight Lines PtyLtd & Ors [2012] QSC 237

6.6 / Transparency of claimant and insurer legal costs

While some legal costs expended in making a CTP claim are recoverable, a component of legal fees (solicitor and own client fees) are not claimable from the responsible party/insurer. This type of legal cost is normally subject to a cost agreement entered into by the claimant when first engaging the services of a lawyer. The cost is payable by the claimant and is usually deducted from the net settlement amount recovered after relevant statutory refunds have been made, for example Medicare.

Legal costs incurred by claimants represent a significant percentage of the total agreed settlement amount. Market research conducted by MAIC in 2014, revealed that claimants only ultimately retained on average 52 per cent of the total settlement amount. The remaining 48 per cent predominately represented the amount paid in legal costs to their lawyers along with statutory reimbursements. Those claimants suffering serious or severe injuries retained approximately 61 per cent.

In Queensland, lawyers are allowed to charge a client up to 50 per cent of the total settlement amount after deduction of refunds and disbursements (Regulatory Guide 3, Legal Services Commission).

On 1 April 2015, the NSW Government introduced regulatory changes that require lawyers to disclose details to the NSW CTP Scheme Regulator State Insurance Regulatory Authority (SIRA) about their fees and the final settlement received by the claimant after all expenses have been paid.¹⁵ This requirement assists in determining the efficiency and effectiveness of the NSW scheme. On finalisation of a claim the lawyer receives a prompt from SIRA to complete an online form providing a breakdown of legal costs. The lawyer has 20 days to complete and submit the form. Compliance with the timeframe is monitored.

In Queensland, the lack of transparency of claimant and insurer legal costs makes it difficult to monitor the overall efficiency and effectiveness of the Scheme. The question for this review is whether some form of disclosure should be required.

QUESTIONS

14. Should Queensland legislate to require lawyers to disclose details of their fees and the final settlement received by the claimant after all expenses and statutory refunds have been paid? What are the potential implications?
15. What other options would improve the transparency of claimant and insurer legal costs under the Scheme?

¹⁵Section 23, Motor Accidents Compensation Regulation 2015

6.7 / Role of MAIC as Scheme regulator

The operations of MAIC are governed by the MAI Act. Under this legislation, MAIC is a statutory body responsible for regulating Queensland's CTP Scheme and administering the Nominal Defendant Fund and the Motor Accident Insurance Fund. The Insurance Commissioner constitutes the Commission and the Nominal Defendant. The Insurance Commissioner reports to the parliament through the Treasurer and provides regular status reports on operations, as well as an annual report required by the *Financial Administration and Audit Act 1977* and under section 19 of the MAI Act.

In discharging its responsibilities in accordance with section 10 of the MAI Act, MAIC's primary activities include:

- keeping the statutory insurance Scheme generally under review and making recommendations for its amendment
- ensuring premium affordability for Queensland motorists by reporting to Government on the cost trends of the Scheme and developing changes to the Scheme if and when the affordability index is likely to be exceeded
- setting the CTP premium range for each vehicle class and recommending Scheme levies to the Government
- ensuring people injured in road accidents receive fair compensation
- establishing and developing target rates of efficiency of the Scheme, which measure the cost of delivery of benefits to injured persons and the proportion of the premium dollar that reaches injured persons
- licensing of insurers and monitoring insurer claims management compliance
- providing an information service to policyholders and potential claimants on the operation of the Scheme
- investing in research, education, rehabilitation and other initiatives to reduce the incidence and effect of road trauma
- developing and maintaining a claims register and statistical database for the purpose of providing Scheme management information

- administering the Nominal Defendant Scheme by meeting the claim costs of an insolvent insurer and compensating people who are injured as a result of the negligent driving of an unidentified or uninsured motor vehicle.

The Commission is assisted in key strategic functions by reference to an Advisory Committee established under Section 11 of the MAI Act.

While MAIC is empowered with certain supervisory functions under the MAI Act, it is the Australian Prudential Regulation Authority (APRA) which is responsible for the prudential supervision of the general insurance industry in Australia.

Only general insurers licensed by APRA may apply to MAIC for a CTP licence in order to underwrite CTP insurance in Queensland. Licensed insurers must comply with a range of legislative requirements including those set out in the Industry Deed. Failure on the part of an insurer to comply with its legislative obligations may lead to imposition of a penalty, and ultimately, withdrawal or suspension of the insurer's licence.

While the primary responsibility for the prudential supervision of insurers rests with the Commonwealth Government, the State Government has a vested interest in the solvency of licensed CTP insurers. The State Government, through the Nominal Defendant, bears the financial risk in the event that a participating underwriting insurer becomes insolvent.

In order to fulfil its role, MAIC requires effective information exchange with APRA and it has therefore put in place processes that complement those of APRA. A memorandum of understanding exists between MAIC and APRA that formalises arrangements for the information exchange relating to Queensland CTP insurers.

QUESTION

16. Should the role, structure and functions of MAIC be amended in any way, and if so, how and why?

6.8 / The Nominal Defendant

Since CTP is compulsory, the MAI Act makes provision for the Nominal Defendant to be the deemed insurer in circumstances where the vehicle which caused the accident is uninsured or cannot be identified, thus ensuring accident victims are still able to lodge a CTP compensation claim for any injuries sustained. The Nominal Defendant also provides gratuitous insurance in certain circumstances, for example with respect to motorised wheelchairs and trailers and is the insurer of last resort for claims unpaid by an insolvent licensed insurer.

In Queensland, the Nominal Defendant has operated under government control since its introduction in 1961. Claims are managed in-house and funded by a levy within the CTP insurance premium. The levy is set based on an actuarial assessment of claim trends.

Nominal Defendant schemes are in operation in all other states and territories but the funding and management of claims varies as follows:

NSW – claims distributed to licensed insurers and costs shared according to market share. All insurers contribute to the Nominal Defendant Fund.

ACT – claims managed within the ACT Insurance Authority, funded by a levy imposed on the licensed insurers that is apportioned on a premium income basis.

VIC – claims managed by the Transport Accident Commission.

TAS – claims managed by the Motor Accidents Insurance Board.

SA – claims distributed to licensed insurers and costs shared according to market share. Insurers incur all costs, which are incorporated into their premium charge.

WA – claims managed by the Insurance Commission of Western Australia.

Government underwriting of the Nominal Defendant Scheme provides MAIC and the Insurance Commissioner with a valuable insight into the broader claims management operating environment. It also provides a means of facilitating insurance for potential future exposures such as the possibility of driverless cars being used on public roads (either in proof of concept road trials, or as an emerging alternative form of transport). However, as the purpose of this review is to consider options for improving the affordability and efficiency of the current Scheme, it is appropriate to consider whether any changes to the Nominal Defendant Scheme are required in order to meet these objectives.

QUESTION

17. Should Queensland's Nominal Defendant (or 'insurer of last resort') Scheme be amended in any way and if so, how?

6.9 / Other potential reform

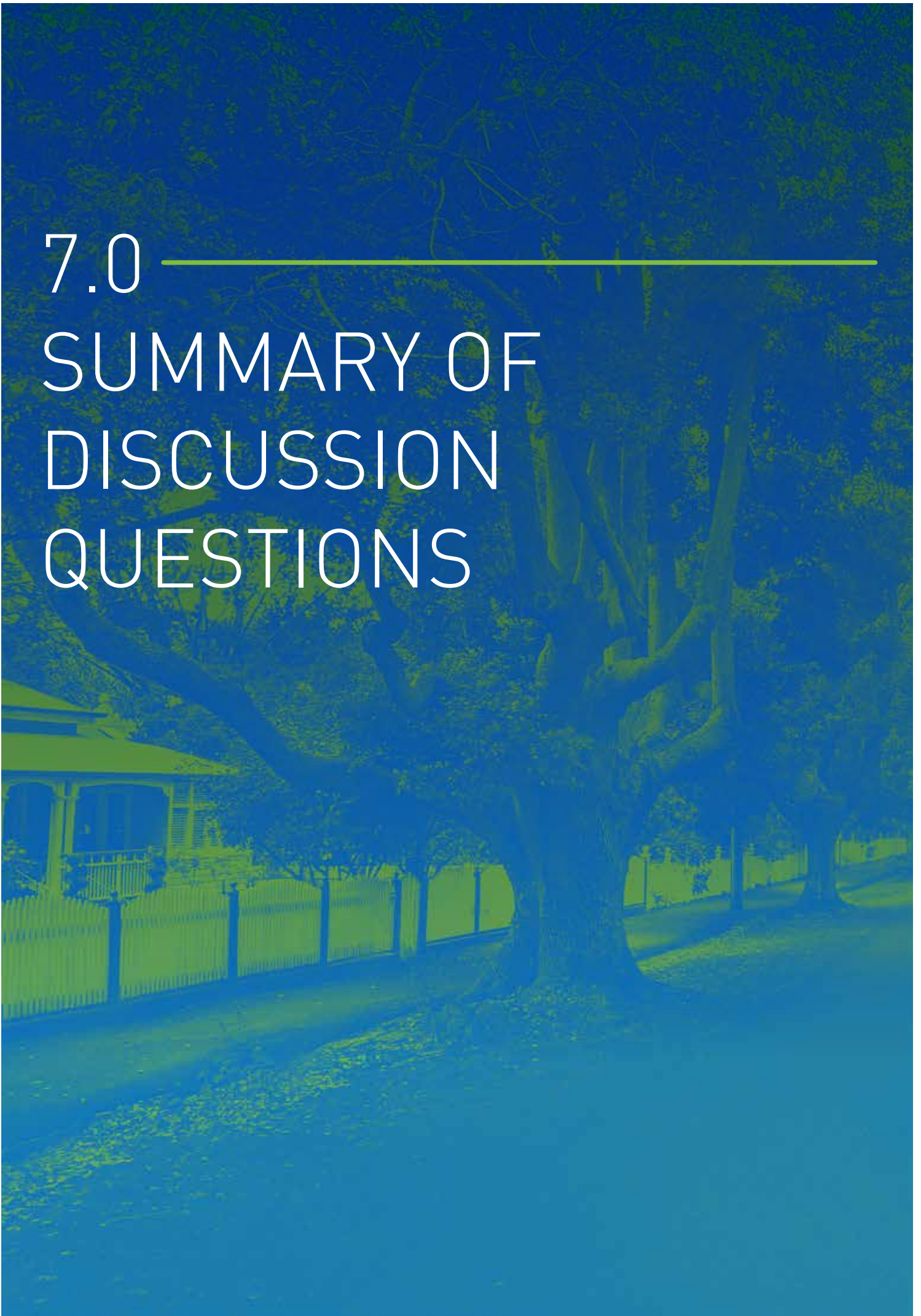
As outlined at the start of this discussion paper, it is essential that any potential reforms to the Scheme effectively target any clearly identified problems, or areas where there is scope for improvement. It is also important to consider the potential benefits, risks and cost implications of any proposed changes. While a number of issues have been specifically identified in this paper, other suggestions on how the objectives of this scheme review could be achieved are welcomed.

QUESTION

18. Based on your experience with the Queensland CTP Scheme, do you have any other suggestions as to how the objectives of this scheme review could be achieved?

7.0

SUMMARY OF DISCUSSION QUESTIONS



- 1.** Do the guiding principles as outlined represent an appropriate framework to underpin the Scheme? Do you have any comments on how they should be assessed?
- 2.** Is the current Affordability Index still an appropriate benchmark for deciding when a scheme review needs to be undertaken? Do you have any suggestions of alternative approaches for assessing affordability?
- 3.** On balance, which underwriting model do you believe best meets the guiding principles and why?
- 4.** Do you believe there is fair price competition in the current Scheme? If not, why not? What changes do you think need to be made to achieve fair price competition if this is seen as a desirable objective?
- 5.** In your view, what are the main reasons why motorists do not actively switch CTP insurers? Are there any perceived costs and barriers to switching? Would more active switching lead to increased price competition between insurers?
- 6.** Are there any other features of the current Vehicle Class Filing Model that need to be changed to improve the Scheme outcomes?
- 7.** Have the changes made to the Scheme in 2010 achieved their intent in ensuring that motorists are aware of their ability to choose their CTP insurer and exercise that choice in the market? Are further changes required, and if so, what?
- 8.** Should CTP insurance be unbundled from vehicle registration? If not, why not? If yes, what would be the perceived benefits?
- 9.** Do you have any comments on the approach used to estimate the economic parameters? Are there alternatives that should be considered?
- 10.** Does the current CTP Scheme create barriers to entry that are preventing or deterring new insurers from entering the market? If so, what do you perceive these to be and how should they be addressed?
- 11.** Should the approach used to determine the allowance for insurer profitability be amended and if so, in what way?
- 12.** Should the MAI Act be amended to:
 - a)** introduce a provision to remove the legal defence of inevitable accident?
 - b)** allow children aged 16 years and under the ability to access compensation entitlements under the CTP Scheme even if he or she was at-fault?
- 13.** Do you have any other comments in relation to Scheme coverage?
- 14.** Should Queensland legislate to require lawyers to disclose details of their fees and the final settlement received by the claimant after all expenses and statutory refunds have been paid? What are the potential implications?
- 15.** What other options would improve the transparency of claimant and insurer legal costs under the Scheme?
- 16.** Should the role, structure and functions of MAIC be amended in any way, and if so, how and why?
- 17.** Should Queensland's Nominal Defendant (or 'insurer of last resort') Scheme be amended in any way and if so, how?
- 18.** Based on your experience with the Queensland CTP Scheme, do you have any other suggestions as to how the objectives of this scheme review could be achieved?

8.0

APPENDICES



8.1 / Appendix A: Terms of reference

A Committee inquire into and report on:

A. Options to improve the efficiency and affordability of the Queensland CTP Scheme for Queensland motorists (as premium paying funders of the scheme) and ensuring the Scheme continues to deliver fair and timely compensation for injured people.

B. Without limiting the scope of the above, the Review Committee is requested to:

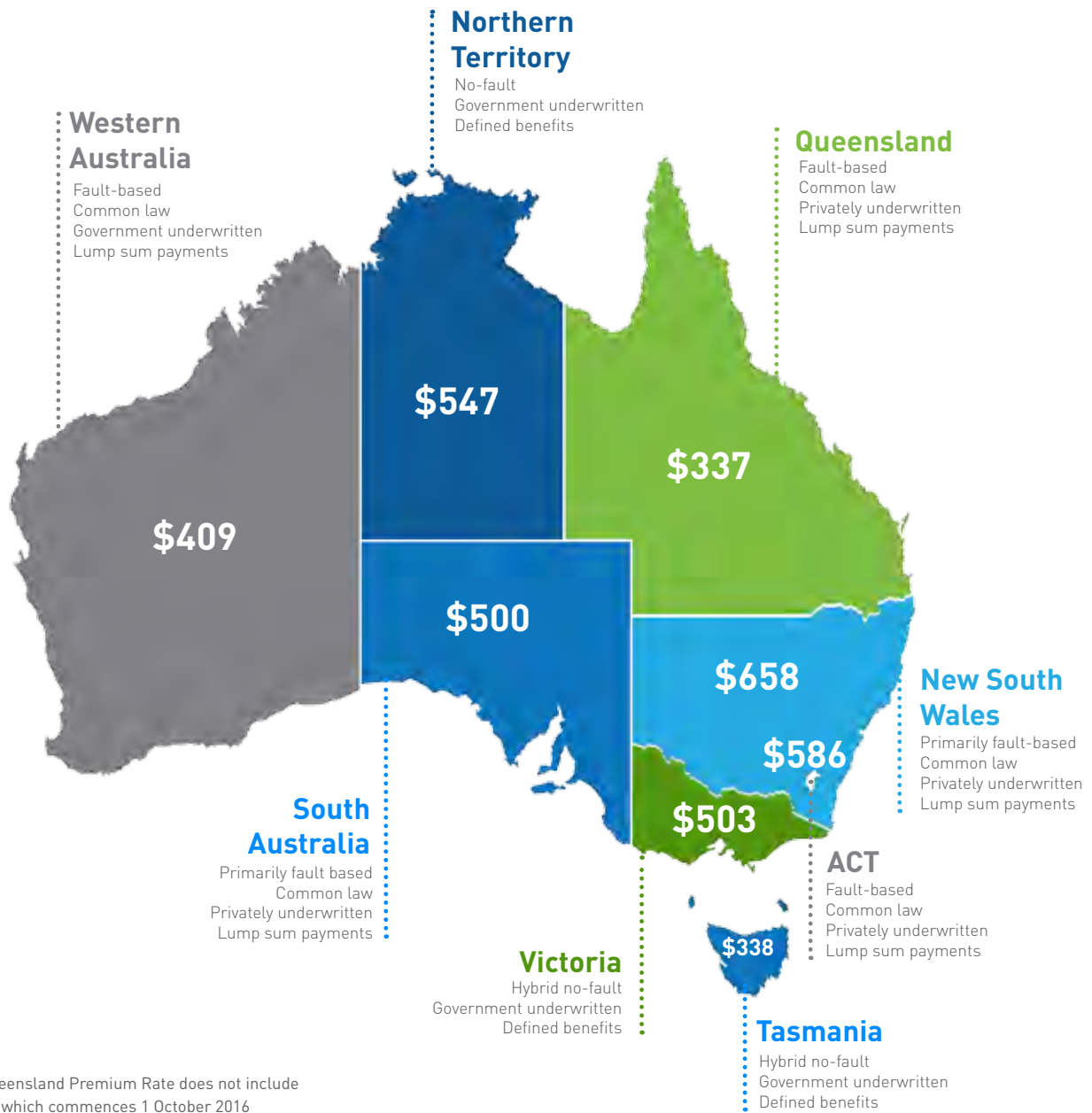
1. Explore the relative merits of private or government (public) underwriting of the CTP scheme
 - a. for private underwriting identify and recommend any improvements that could be made in relation to Insurer licensing or allowances for delivery costs, operating costs and profit margin and mechanisms to encourage and promote competition to the benefit of the average motorist
 - b. for government underwriting identify the respective costs, benefits and implications of adopting this model .
2. Examine whether existing CTP Scheme arrangements can be improved including:
 - a. Vehicle Class Filing system
 - b. quarterly premium determination process
 - c. sales and distribution of CTP insurance via motor dealers and other entities
 - d. setting the existing Affordability Index at 45 per cent of Average Weekly Earnings
 - e. Insurer licensing and Prudential supervision requirements having regard to the current APRA prudential supervision regime for general insurers
 - f. MAIC functions
3. Examine whether improvements in scheme coverage are warranted having regard to ensuring the Scheme remains contemporary, fair and affordable in providing benefits to people injured in road crashes
4. Explore mechanisms to provide transparency of claimant and insurer legal costs, including solicitor and barrister costs, disbursements and administration charges, to enable better monitoring of scheme efficiency

The review process is to include a call for submissions from the public. The Review Committee is to provide recommendations to the Government by 9 December 2016.

The intention of this Review would be to ensure further CTP Scheme savings can be reflected in the 2017-18 premium setting process.

8.2 / Appendix B: Interstate comparison

Comparison of CTP Schemes around Australia



Note: Queensland Premium Rate does not include NIIS levy which commences 1 October 2016