

Submission to “Discussion Paper: A Review of Queensland’s Compulsory Third Party Insurance Scheme by Andrew Doughman

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?
 - a. The guiding principles are satisfactory in that they cover each of the objectives a social and financially stable scheme should cover
 - b. I highlight however that these principles are not mutually exclusive (eg. Efficiency to some extent influences affordability, and fairness/flexibility can often be a trade-off against affordability/efficiency)
 - c. I further highlight with this context that affordability is the most important of the principles given that the coverage is standardised across all insurers and can only differ by levels of service.
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?
 - a. The Affordability index is appropriate given that it is measurable on a regular basis, easy to interpret and compare across periods and not easily manipulated nor materially biased.
3. On balance, which underwriting model do you believe best meets the guiding principles and why?
 - a. CTP schemes, as well as compulsory accident compensation schemes in general, are different from other non-statutory insurance lines in that they are compulsory and viewed as a form of social welfare. As such, it is often debated that these insurances should be run as not-for-profit and thus not run by private insurers. However, this argument should be viewed in the context of how reasonable it is to use tax payer money to fund insurance liabilities if there is a sufficiently capitalised private market out there for insurance liabilities. One may then argue that using tax payer money for insurance is a form of investment diversification, however if this were the aim then the Government could invest directly via private insurer shares
 - b. Private insurance capital however generally does not like non-commutable long-tail liabilities, which has historically been a material component of accident compensation schemes. However, in respect of CTP schemes in Australia, the transfer of catastrophic injury claims to NIIS schemes has now removed much of this concern for private insurance capital.
 - c. Hence, given the removal of catastrophic injury components and the sufficiency of available private capital in the market, a privately underwritten model is a better option. However, to realise the full benefits of private capital, there too needs to be a reasonable balance in the legislative framework between the freedom to operate and innovate and adequate monitoring of the insurers to ensure the guiding principles are satisfied.

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?
- a. There is little to no competition in the QLD CTP scheme due to the legislative controls on insurers playing in those markets (both real and perceived) as well as the current market share of those players
 - b. To expand on the legislative controls, QLD CTP insurers file rates to the regulator which need to be approved before they can charge these rates to motorists. The regulator sets certain assumptions within those rates and the insurer can only deviate from final prices for large groups of motorists by a relatively small range
 - c. This model is deliberately designed to impose a form of community rating so as to protect high risk groups from being charged their true cost as this would be unaffordable.
 - d. The lack of ability to select risks means that it is difficult for insurers to compete as risk selection is removed. Hence, insurers tend to file at (or around) the same level, which is the ceiling price set by MAIC.
 - e. Furthermore, competing on service offering is reasonably moot as the policy handling is wrapped up with the registration process and the only contact point the insurers have with their customers is when they make a claim.
 - f. Before discussing what can be done to increase competition it is worth considering whether increased competition is really needed as the key objective for the scheme is affordability, and thus increasing the number of insurers, thus reducing the scale per insurer and increasing switching may have an adverse impact on the cost of the scheme, at least in the short term, ahead of any long-term improvement from the increase in competition. It is worth noting that the QLD CTP scheme does not appear to have any material affordability issues currently, and hence introducing such drastic measures may have negative outcomes for the scheme in the short term.
 - g. However, if it is decided that greater competition is desired, then the way to do it is to reduce the duplication in insurer solvency monitoring objectives between APRA and MAIC by removing or reducing the rate filing process to an oversight role with powers by MAIC to intervene only if there are material issues discovered
 - h. It should remain compulsory that insurers have to offer a price to all CTP risks, with some maximums imposed on those that require cross-subsidisation (eg. Drivers under 25) based on analysis by the regulator to ensure rates remain affordable for these high risk groups
 - i. Further, to reduce the degree of cross-subsidisation, insurers should be involved in safety awareness campaigns targeted at these high risk groups
 - j. Licensed insurers should have mandatory minimum terms in schemes and not be able to jump in one year and out the next.
 - k. The state Government should give a guarantee of a minimum term of which the scheme will not change materially to give insurers (including those thinking of joining the scheme) some certainty of their investment in

participating in the scheme – this will ease the impact of having mandatory minimum terms for insurers considering entering the scheme

- I. These changes would give the insurers the ability to compete properly but still have regulatory oversight (together with APRA) for solvency, tenure and ensuring market capacity for all risks.
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?
 - a. The process to switch is not straightforward in that the motorist has to take it on their own to source a new insurance provider rather than just ticking another box on a renewal form
 - b. Whilst this has improved in recent times, there will still be a proportion of the motorists that do not know, or do not care to know, that they have the right to choose and what is different between insurers
 - c. If insurers are charging the same or similar pricing as well, that too will reduce the need to switch.
6. Are there any other features of the current Vehicle Class Filing Model that need to be changed to improve the Scheme outcomes?
 - a. See response to question 4.
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?
 - a. I have no comment for this question.
8. Should CTP insurance be unbundled from vehicle registration? If not, why not? If yes, what would be the perceived benefits?
 - a. No, as any benefits of doing so are unlikely to offset the efficiencies of keeping it as one process.
9. Do you have any comments on the approach used to estimate the economic parameters? Are there alternatives that should be considered?
 - a. No, they are reasonable given they are based on industry actuarial approaches which tend to be somewhat consistent across the industry.
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?
 - a. The following are real or perceived barriers to entry for the scheme:
 - i. Long-tail (capital intensive), common law scheme – this impacts a few items for insurers including risk appetite, claims management expertise (there are a number of motor insurers in the Australian market that do not write CTP even though it would be a complementary product for their customer base because of the different type of claims management required) etc.
 1. The transfer of catastrophic injury to NIIS will reduce the tail of the scheme and also remove some of the more difficult claims to manage.

- ii. Additional licensing and reporting requirements
 - 1. Whilst there will always be additional administration involved with a statutory line, some of these duties can be reduced with re-aligning of the objectives of MAIC and in particular removal of any duplication in regulatory duties associated with solvency monitoring on the part of MAIC.
- iii. Statutory line, and thus subject to Government intervention more so than non-statutory lines
 - 1. This can be reduced if the Government gives a guarantee for a minimum term of which the scheme will not materially change as discussed in question 4 above.
- iv. Incumbent market shares – the current scheme is an oligopoly with little competition on price which makes it difficult for a new entrant to scale up quickly and achieve a balanced portfolio of risks - this has negatively impacted insurers attempting to enter the scheme in the past
 - 1. If competition is stimulated as discussed in question 4 above, it will ease this barrier to entry over time.

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

- a. If the scheme becomes competitive as per my comments to question 4, the free market will keep insurer profitability to a reasonable level.

12. Should the MAI Act be amended to:

- a. Introduce a provision to remove the legal defence of inevitable accident?
 - i. The decision to include or exclude inevitable accident is really a question about whether the insurer is covering the at-fault party for something not in their control which is therefore not negligence
 - ii. Furthermore, this is an example of a gap in coverage which would be rectified by having a no-fault scheme. Hence, I believe the change to rectify this, and other gaps in coverage, requires a bigger change than just the introduction of a provision for a legal defence.
- 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?
 - i. Yes, as this would at least close one gap in coverage, but as mentioned above, the overall aim should be to close all gaps by moving to a no-fault scheme.

13. Do you have any other comments in relation to Scheme coverage?

- a. No.

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?

- a. Yes, there should be full transparency on the fees breakdown (rates, hours, other charges and final cost) to increase competition between lawyers and keep legal costs in check

- b. There should further be caps on rates per hour, as well as what you can charge for certain streamlined tasks and all remuneration should be on a fee-for-service basis with “No-win, No-fee” concepts eradicated.
- 15. What other options would improve the transparency of claimant and insurer legal costs under the Scheme?
 - a. Full transparency on fees (similar to response for question 14 above) for other service providers (medical, investigation etc).
- 16. Should the role, structure and functions of MAIC be amended in any way, and if so, how and why?
 - a. See response to question 4.
- 17. Should Queensland’s Nominal Defendant (or insurer of last resort) Scheme be amended in any way and if so, how?
 - a. Sharing mechanism with costs and claims management shared amongst the licensed private insurers in proportion to market share.
- 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?
 - a. Move to No-fault coverage, with legal representation only available at reasonable thresholds of Whole of Person Impairment.