

Dr Kylie Burns
Senior Lecturer
Griffith Law School/RECOVER Injury Research Centre
Griffith University
Nathan QLD 4111
K.Burns@griffith.edu.au

Griffith Law School

Nathan campus, Griffith University
170 Kessels Road, Nathan
Brisbane, Queensland 4111
Australia

Gold Coast campus, Griffith University
Gold Coast Campus, Queensland 4222
Australia

Telephone +61 (0)7 3735 5339
Facsimile +61 (0)7 3735 5599

www.griffith.edu.au

Submission to Motor Accident Insurance Commission Discussion Paper: A Review of Queensland's Compulsory Third Party Insurance Scheme

I thank the Review Committee for the opportunity to make this submission in relation to the current review of Queensland's CTP scheme. I am an academic with the Griffith Law School and am associated with the RECOVER Injury Research Centre. I have expertise in tort and accident compensation law. I make the following submissions:

Guiding Principles: Questions 1/2

I note the guiding principles currently proposed for the evaluation of the effectiveness of the current CTP scheme are affordability, efficiency, fairness and flexibility. I believe it is also critical that any accident compensation scheme, including the QLD CTP scheme, must be assessed in relation to its impact on the improvement of the health outcomes of injured people. Motor vehicle related injury, despite improvements in injury and death rates, is a major systemic health policy issue across Australia. The extent to which any scheme improves the health outcomes of injured people, or causes further injury (in particular psychiatric harm) as a result of the compensation process must be a major factor in determining the appropriateness and effectiveness of scheme design. There is significant evidence that scheme design (for example fault based v no-fault schemes) and scheme processes (eg adversarial approaches) may impact recovery rates, health outcomes, healthcare costs, return to work periods, claimant perceptions of justice and claimant satisfaction with scheme.¹

Choice of CTP Insurer: Question 5

One of the reasons that insured motorists do not generally switch CTP insurers may be the effect of the status quo bias. There is significant work in the field of behavioural economics that suggests consumer behaviour does not always follow a rational model of decision-making. Consumers may not actively weigh up competing options and make a conscious reasoned choice. Rather, it has been documented that in the field of insurance choice (including motor policies) there may be a strong impact of the status quo bias- ie consumers will simply stay with an existing choice rather than make a conscious decision to change, the existing choice being cognitively easier and time efficient.² The provision of additional information or additional options may not always be effective to dislodge the status quo bias and may in fact increase the

¹ For example see http://www.maa.nsw.gov.au/data/assets/pdf_file/0004/62950/Alex-Collie.pdf.

² For example see Johnson E.J., Hershey J., Meszaros J., Kunreuther H, 'Framing, probability distortions, and insurance decisions' *J. Risk Uncertainty*. 1993;7:35-51.

likelihood it will occur. It is however possible that providing cost estimates for each insurer on the CTP renewal form could 'frame' the choice and push consumers to lower cost insurers. Sunstein and Thaler have suggested that changing the 'choice' environment or 'architecture' of decision-making may impact or 'nudge' human decision-making.³ If it is intended to induce consumers to choose lower cost CTP insurers to encourage competition in the market, the scheme could designate the default insurer choice upon registration renewal to be the lowest cost provider at the time of the renewal rather than the existing CTP insurer. Consumers who do not wish for the default 'lowest cost' choice, could still have the option to make an alternative 'active' choice at renewal or another time for another insurer (for example their existing insurer, or an insurer with a product with additional benefits.) The economic benefits of this approach in encouraging premium competition would need to be considered as against the additional administrative costs to facilitate 'default' changes of insurer.

Scheme Coverage: Question 12

I believe there would be significant benefit, at apparently low cost, to introduce the additional inevitable accident and no fault child coverage. I would support these changes and believe that they have particular social benefit. However, the Review Committee should be aware that it is possible that any attempt to reduce discrepancies with the NSW CTP scheme may be short-lived given the current review of the NSW scheme. This has indicated an intention for widespread changes to that scheme in particular a move to a hybrid scheme which restricts common law rights and introduces defined no fault coverage.⁴

Transparency of Claimant and Insurer Legal Costs: Question 14

Research which I have carried out with collaborators from Griffith, Monash and UNSW suggests that legal costs and other disbursements are significant factors which impact upon premature dissipation of lump sum compensation by claimants. We have previously presented our research to the QLD NIIS enquiries in relation to dissipation of lump sums.⁵ It is a major problem that some 40-50% of compensation paid to CTP claimants⁶ intended to last their lifetime never reaches their pocket. This represents a disproportionate cost of the operation of the QLD CTP compensation system. I would support both the systematic gathering of further data in relation to the proportion of compensation funds that are charged as legal costs and disbursements to QLD CTP compensation claimants, and a serious consideration of what is considered as an acceptable 'cost' to the compensation system of the operation of a fault based system.

³ Richard Thaler and Cass Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Yale University Press, 2008)

⁴ http://greenslipreforms.nsw.gov.au/wp-content/uploads/2016/06/CTP_reform_position_paper.pdf

⁵ <https://www.parliament.qld.gov.au/documents/committees/ETISBC/2016/NIISQBill2016/submissions/006.pdf>;

<https://www.parliament.qld.gov.au/documents/committees/ETISBC/2016/WorkersComp/submissions/001.pdf>

.See also Genevieve Grant, Kylie Burns, Rosamund Harrington, Prue Vines, Elizabeth Kendall and Annick Maujean, 'When Lump Sums Run Out: Disputes at the Borderlines of Tort Law, Injury Compensation and Social Security' in Kit Barker, Karen Fairweather and Ross Grantham, *Private Law in the 21st Century*, Hart, 2016 (forthcoming/in publication) (Copy available upon request)

⁶ As noted in the MAIC CTP Review Discussion Paper.


Other suggestions: Question 18

I wish to make several other comments in relation to matters that may be considered during the enquiry process:

- The discussion paper notes at several points the possible ramifications for the QLD CTP scheme of the introduction of autonomous vehicles. It is my view, together with collaborators at Griffith University and Flinders University, that the QLD CTP legislation and aspects of the fault based liability principles will need review and likely amendment prior to the introduction of autonomous vehicles in QLD to ensure continuation of coverage for injured people. Our detailed review of this in response to the current National Transport Commission 'Regulatory Options of Automated Vehicles Discussion Paper' is available at <https://www.ntc.gov.au/media/1426/ntc-discussion-paper-regulatory-options-for-automated-vehicles-may-2016-kieran-tranter-griffith-law-school-jul-2016.pdf>.
- As I have noted above, research I have conducted with collaborators from Griffith University, UNSW and Monash University suggests that some compensation claimants may prematurely dissipate compensation payments with significant negative consequences for their health and other outcomes. Our detailed submissions in relation to this problem, its systemic causes and its implications may be located at <https://www.parliament.qld.gov.au/documents/committees/ETISBC/2016/NIISQBil2016/submissions/006.pdf>; <https://www.parliament.qld.gov.au/documents/committees/ETISBC/2016/WorkersComp/submissions/001.pdf>.⁷ It is apparent that across Australia, including in Queensland, there is not good existing empirical evidence about what proportion of compensation recipients prematurely dissipate compensation. Available existing data concerns perceptions of adequacy at the time of or close to settlement. The lack of this long term adequacy data presents difficulties to schemes and governments when they review the effectiveness and adequacy of compensation schemes including the QLD CTP scheme. This was particularly commented upon by the recent QLD Parliamentary Committees during the relevant NIIS enquiries. I suggest that the Review Committee consider as a recommendation that data be gathered on the long term outcomes of compensation recipients in relation to compensation adequacy. This will allow data driven review of the CTP scheme in future.

I am happy to provide any further comment or information to the committee if it would assist their deliberations. Thank you for the opportunity to make this submission.

Yours sincerely



Dr Kylie Burns
K.Burns@griffith.edu.au

⁷ See also Genevieve Grant, Kylie Burns, Rosamund Harrington, Prue Vines, Elizabeth Kendall and Annick Maujean, 'When Lump Sums Run Out: Disputes at the Borderlines of Tort Law, Injury Compensation and Social Security' in Kit Barker, Karen Fairweather and Ross Grantham, *Private Law in the 21st Century*, Hart, 2016 (forthcoming/in publication) (Copy available upon request)