

CTP Scheme Review Team
GPO Box 2203
Brisbane QLD 4001

Submitted by email: maic@maic.qld.gov.au

30 September 2016

Dear Sir/Madam

A Review of Queensland's Compulsory Third Party Insurance Scheme

The Insurance Council of Australia (ICA) is the representative body of the general insurance industry in Australia. ICA members represent more than 90 per cent of total premium income written by general insurers.¹ Insurance Council members, both insurers and reinsurers, are a significant part of the Australian financial services system.

The Queensland Compulsory Third Party Insurance Scheme (CTP Scheme) is currently underwritten by four insurers, namely Allianz, QBE, RACQ and Suncorp. The ICA and Queensland's CTP insurers are committed to working with the Motor Accident Insurance Commission (MAIC), the Queensland Government and other stakeholders to deliver a scheme that meets the principles of affordability, efficiency, fairness, sustainability and flexibility.

We agree with the opening statements made in the Discussion Paper. Queensland's CTP Scheme is one of the most stable and affordable personal injury schemes in the country. The average Class 1 insurance premium is around 23 per cent of Average Weekly Earnings (AWE) and the scheme's affordability has been steadily improving over the past 13 years.²

For this reason the ICA is not proposing a fundamental reform of the scheme. We recognise the strengths of Queensland's CTP scheme, yet acknowledge that there is room for improvement. As we will detail in this submission, proactive measures are needed during this period of stability, to ensure the adverse trends that are currently undermining the NSW CTP scheme are not repeated in Queensland.³

Our submission does not attempt to respond to each of the discussion questions posed. Instead, we have focused on the areas of Queensland's CTP scheme that warrant review, and have provided proposals that should improve the overall affordability and efficiency of the scheme.

¹ "General insurers" refers to those organisations authorized to conduct general insurance business in accordance with the *Insurance Act 1973* (Cth) and the prudential framework overseen by the Australian Prudential Regulation Authority (APRA).

² *Discussion Paper: A Review of Queensland's Compulsory Third Party Insurance Scheme*, August 2016, p5 and p10.

³ See NSW Government, *On the road to a better CTP scheme: Options for reforming Green Slip insurance in NSW*, March 2016.

We look forward to working with MAIC and other stakeholders on this process. We are keen to ensure the scheme adequately meets the needs of Queensland's motorists and injured road users.

Mitigation of fraud and claims exaggeration in the scheme

Fraud and claims exaggeration are having a significant impact on the affordability of the current NSW CTP scheme. The reforms that the NSW Government are seeking to implement are, in part, a response to the recent and significant increase in claims exaggeration and potential fraud. Between 2008 and 2015 the number of legally represented claims for minor severity injuries increased in NSW by 111%. This has exerted substantial cost pressures on the scheme and now \$213 of every CTP premium in NSW is going towards such claims.⁴

We note that the Queensland CTP claims experience has been described as stable and benign. Nonetheless, there is emerging evidence of an increased frequency in low severity legally represented claims. The experience in NSW demonstrates that the number of these types of claims can quickly and sharply increase. It is fundamental that MAIC, as regulator of the scheme, takes proactive measures to ensure the same trends do not become an entrenched feature of the Queensland scheme.

The ICA strongly recommends drawing from lessons learnt in NSW and other jurisdictions that have been subject to major instances of fraud.⁵ It is possible that proposed reforms in NSW may create a need for certain service providers to move their business focus to Queensland. The adoption of an early and holistic fraud strategy may be able to limit their impact.

The ICA would welcome the establishment of a Taskforce, similar to the NSW CTP Fraud Taskforce, which consists of representatives from the State Insurance Regulatory Authority (SIRA), NSW Police, legal and medical associations, the ICA and insurers. A similar cross sectoral approach in Queensland would facilitate collaborative fraud mitigation strategies.

As in NSW, the strategy should be supported by the effective use of data analytics to clearly decipher trends and patterns so that targeted solutions can be developed. Other measures such as a communications campaign should also be considered, to increase public awareness of the characteristics and consequences of CTP fraud and exaggeration.

The ICA recognises that there is an obligation on insurers to both investigate unmeritorious claims, yet ensure timely payments are made to genuine claimants. We would welcome MAIC working with insurers to develop appropriate strategies that, as far as practical, allow both obligations to be met and facilitate the sharing of concerning claim trends and 'red flags' with the regulator.

As previously noted, small unmeritorious claims are currently the predominate source of CTP claims exaggeration. For this reason, we strongly recommend implementing proposals to reduce the financial incentive of such claims. Proposals such as restricting the ability of

⁴ NSW Government, *On the road to a better CTP Scheme: Options for reforming Green Slip insurance in NSW*, March 2016, pp 10 – 11.

⁵ SIRA, *Deterring fraudulent and exaggerated claims in the NSW CTP insurance scheme*.

claimants to contract out of regulated legal costs (detailed below) should also form part of a fraud mitigation strategy.

Simplifying the process for making small direct claims and revising the thresholds for contracted out legal costs

The Discussion Paper notes the results of market research on claim settlement amounts. The research found that on average, claimants only retained 52 per cent of the total settlement amount. 48 per cent predominately went towards legal costs and statutory reimbursements.⁶

The ICA proposes that amendments should be made to the *Legal Service Commission Regulatory Guide 3 – Charging Fees in Speculative Personal Injury Matters*. The Guide currently permits lawyers to charge up to 50 per cent of the total settlement amount after statutory reimbursements. MAIC should work with the Queensland Law Society to restrict the amounts that can be recovered from claims. Stricter limits should be placed on the maximum dollar amount or percentage that can be recovered from the final settlement. Uplift fees should also be prohibited.

We also propose that the legal cost thresholds be amended to restrict the ability to contract out of regulated legal costs. For example, a revised Upper Cost threshold limit could be established or contracting out costs could be restricted to claims above \$50,000 or \$100,000. An early adoption of these proposals could be enough to stem the increasing frequency of minor severity legally represented claims in Queensland.

The ICA would also welcome measures to simplify the process for making a small claim. We propose that a mechanism, similar to the NSW Accident Notification Form (ANF), could be implemented in Queensland to provide a quick mechanism for resolving small claims. Such a mechanism would allow for early notification and payment of limited treatment and rehabilitation costs. We suggest that the benefit should be restricted to between \$500 and \$1000. It is generally acknowledged that in NSW an increase in the ANF benefit from \$500 to \$5000 coincided with the increase in minor severity legally represented claims.⁷ It is therefore important that the benefit remains limited but easily accessible.

Improving transparency in the scheme

The ICA strongly recommends introducing legal cost disclosure requirements. As is the current practice in NSW, it should be a requirement for legal practitioners who represent a claimant to provide MAIC with the cost break-down of the claim once the claim is finalised.

Legal cost disclosure requirements will provide a regular and more accurate analysis of costs in the scheme. Such a mechanism will promote transparency, fairness and facilitate better monitoring of scheme efficiency.

MAIC should also consider adopting the 1999 scheme review recommendation which suggested publishing long term rates of efficiency. The calculation of the efficiency ratio

⁶ Discussion Paper, p30.

⁷ SIRA, *Compulsory Third Party 2014 Scheme Performance Report*, November 2015, p29.

should factor in all scheme costs including all legal fees paid to a claimant's legal representative.

Scheme affordability

MAIC should consider establishing a panel of medico-legal experts who have been approved to provide services within Queensland's CTP scheme. Such a measure will help maintain the quality of service providers and should also reduce the number of medical reports currently required. This may contribute to a reduction in costs associated with service providers.

MAIC should also consider introducing a table of costs, similar to that provided by WorkCover Queensland, for medical and allied health services. WorkCover Queensland stipulates the reimbursement costs payable by insurers when certain health services are provided to claimants. A similar table developed for the Queensland CTP Scheme could help contain costs and provide predictability and consistency with regards to rehabilitation and treatment expenses.

With regards to monitoring scheme affordability, the ICA agrees that the Affordability Index, which measures the cost of CTP insurance relative to AWE, is a logical way to track scheme affordability and is consistent with measures used in other jurisdictions.

The Discussion Paper notes the inherent uncertainty in the scheme, caused by factors such as superimposed inflation, and the need for insurers to take this into account when setting premiums. The pricing by insurers for uncertainty has contributed to higher than anticipated profits being realised by insurers. We acknowledge that this is a source of stakeholder concern. The industry would be willing to discuss with MAIC concrete measures that could improve certainty in the scheme and therefore close the gap between intended and realised profits.

CTP insurers in Queensland have continued to work with MAIC to keep premiums affordable. In January 2006 the annual Class1 insurance premium for the majority of motorists was around 35% of AWE. As of January 2016 this has dropped to 23% of AWE. This is an excellent result for Queensland's motorists.

Competition in the scheme

MAIC may wish to consider allowing insurers to more accurately price on risk, by using factors collected by the Department of Transport and Main Roads such as vehicle age, owner age and licence demerits. This could encourage greater price differentiation.

The premium framework

Insurers have noted that there are inconsistencies and areas of overlap within the current Vehicle Class Filing model. For example, there are some large and quite diverse classes such as vehicle classes 1 and 7, and there are examples of vehicles inappropriately allocated to classes for example maxi cabs.

The ICA suggests that MAIC undertakes a full review of the current Vehicle Class Filing model to ensure that appropriate vehicles are in the correct classes. Once this has been

established, an actuarial analysis of the relativities applicable to each class should also be established.

Extended scheme coverage

We support the MAI Act being amended to remove the legal defence of inevitable accident. The legislation must be clearly drafted to avoid the ambiguities that have arisen in other jurisdictions. For example, broad 'blameless' accident provisions should not be introduced. Such broad provisions have resulted in difficulties in interpreting the legislation, substantial disputes and the ongoing use of courts in NSW to clarify the intent and scope of the provisions.

The ICA also supports the MAI Act being amended to provide medical, rehabilitation and treatment benefits for children aged 16 and under who have been injured in a motor vehicle accident regardless of fault.

Scheme design and underwriting

We agree that principles of affordability, efficiency, fairness and flexibility must underpin an effective CTP scheme. We also submit that the following objectives should form part of the scheme framework:

- Sustainability – Sustainable scheme design that achieves an acceptable balance between affordable premiums and fair compensation for injured people.
- Return to health – Personal injury management and benefit frameworks that are focused on achieving optimal health outcomes and, as far as possible, a return to previous life activities for injured road users⁸.

The ICA submits that competitive underwriting is best placed to meet the above guiding principles.

Consumers of statutory schemes, who can be considered policyholders, claimants, taxpayers and the broader community, receive the following benefits from competitively underwritten personal injury motor accident schemes:

- Competition among insurers encourages innovation in risk management and claims management.
- General insurers are subject to the prudential requirements and prudential oversight by APRA. This provides consistent protection for policyholders and third party claimants.
- Competitive underwriting between general insurers enables governments to de-risk balance sheets and to concentrate on the role for regulator of insurers licensed to operate in the scheme.
- Competitive underwriting between general insurers removes the pressure on governments to price premiums to meet political objectives.

⁸ Royal Australasian College of Physicians, *Australian and New Zealand Consensus Statement on the Health Benefits of Work*, March 2011.

- Insurers highly value their reputation and brand. Competing insurers will aim to provide the best service and innovative products (for example multi-product discounts). Motorists have choice in selecting an insurer based on pricing, products, performance and customer service.

In contrast, government monopoly schemes for statutory insurance are not subject to any consistent prudential regulatory oversight. This can result in significant variations in the solvency rates, financial positions and investment strategies of government monopoly statutory insurance schemes. It is further submitted that:

- The financial positions of government monopoly schemes can be volatile.
- Such volatility can be driven by under-pricing or overpricing of risk for political reasons, and investments in assets that can be subject to significant volatility.
- Where a scheme is in deficit, this can create inter-generational inequities between the policyholders of today, and future policyholders.
- Where a scheme is in surplus, some state schemes deliver a 'dividend' to the government, which is effectively a tax on motorists.

It is suggested in the Discussion Paper that a risk pool arrangement could be an alternative to government or competitive underwriting. Under such a model, the government would underwrite CTP premiums and insurers would apply for a percentage of the premium pool. This mechanism could be applied to the entire market or a specific group of motor vehicles.

In the absence of any evidence that a risk pool arrangement is needed for the Queensland scheme, the ICA does not support a move to such an underwriting model. With regards to a pool for the entire market, such an arrangement would come at considerable expense with questionable benefit. Further, it will stifle the advantages of competition, restricting motorists' ability to choose their insurer. We note that in NSW, in order to prevent unaffordable premiums for certain groups of motorists, a risk equalisation mechanism is being considered. As has been noted, Queensland is not experiencing the same premium pressures as the NSW CTP scheme, as such, a similar mechanism is not required.

Implementation timeframes

Subject to the recommendations from this Review, insurers may be required to implement operational and procedural changes. The ICA and CTP insurers would welcome timely consultation in this regard. Ensuring that there are reasonable implementation timeframes will be critical to the success of any changes required.

We thank you for the opportunity to contribute to this Review. If you have any questions in relation to this submission please contact Vicki Mullen, General Manager, Consumer Directorate on (02) 9253 5120 or vmullen@insurancecouncil.com.au

Yours sincerely



Robert Whelan
Executive Director and CEO