

27 September 2016

CTP Scheme Review Team  
Motor Accident Insurance Commission  
GPO Box 2203  
BRISBANE QLD 4001  
[maic@maic.qld.gov.au](mailto:maic@maic.qld.gov.au)

Our ref Accident Compensation / Tort Law Committee

Dear CTP Review Team

### **Review of Queensland CTP Insurance Scheme**

Thank you for providing the Queensland Law Society with a short extension in which to make this submission.

The Society does not propose to comment on all aspects of the Discussion Paper issued by the Motor Accident Insurance Commission, but will provide responses to the issues of:

- inevitable accident
- no-fault claims for children
- transparency of claimant and insurer legal costs
- role of MAIC as scheme regulator; and
- the Nominal Defendant.

#### *Inevitable Accident*

The Society is cautiously supportive of removing the defence of inevitable accident. Feedback received from our members is that the defence is not often made out and does not play a role of any significance in the great majority of claims.

However, the Society is always cognisant that changes to the balance of liability will have overt and more subtle effects on scheme performance. The Society is keen to engage with MAIC further to understand:

- the liability consequences of such a change; and
- the impact on current claim and premium levels.

#### *No-fault claims for children*

The Society is also cautiously supportive of considering no-fault claims for children under the age of 16 years old, provided this is by way of augmenting the current rights available to

injured children. The Society anticipates that such a change to the liability elements of the scheme will have the potential to affect the overall premium in a significant way.

Further, the Society would not support removing the rights of injured children to full common law compensation where the relevant circumstances exist.

The Society is keen to engage with MAIC further to understand:

- ways in which current common law rights could be protected;
- the liability consequences of such a change; and
- the impact on current claim and premium levels.

#### *Transparency of claimant and insurer legal costs*

The Society is open to exploring ways to enhance transparency of claimant and insurer legal costs under the Scheme.

Previously in the workers' compensation context, the Society expressed significant concern about a mandatory disclosure proposal in that scheme of the contractual nature of solicitor and client costs without compelling evidence that there was a culture of systemic over-charging. It was noted that that was contrary to the current professional standards experience.

Similarly, the Society is not aware of systemic issues in the charging of legal costs or in consumer complaints about costs in motor vehicle accident claims.

The Society understands that the desire on the part of MAIC for this information is so it can make an assessment of the scheme efficiency by determining the amount of each premium \$1 that ultimately reaches the hands of the Plaintiff. This rationale is perfectly understood and acceptable to the Society.

Having said that a real issue that arises is how MAIC or whoever will determine what the amount is in each claim that is deemed to reach the hand of the claimant. To be valid and fair the assessment process needs to be certain and clear in many respects, including the issue raised by the Society of properly accounting for refunds to Private health providers, irrevocable authorities to banks, other lenders, creditors etc. It is important that such accounting does not result in disclosure of very personal information to which no one should be entitled.

The Society broadly supports transparency on costs and we look forward to further exploring this and assisting MAIC in achieving its aim, as we understand it, of finding an efficiency measure for the Scheme.

#### *Role of MAIC as scheme regulator*

The Society supports the role of MAIC and its operation in the Queensland CTP scheme.

The manner in which MAIC has stewarded the CTP scheme is to be commended, however it is important that as regulator MAIC has sufficient powers to properly oversee the competitive aspects of the privately underwritten insurance market.

The Society also commends the spirit and actuality of consultation with key stakeholder groups, such as the Society, which is undertaken by MAIC.

*The Nominal Defendant*

The members of the Society report positive engagement with the Nominal Defendant and urge its continued operation in its current form. The office has an important role to play in the landscape of the scheme currently and may become increasingly more important as changes in technology change the balance of the traditional assessment of fault.

Thank you again for the opportunity to make this submission to the review. If you wish to discuss further any of these issues, please contact our Government Relations Principal Advisor, Mr Matt Dunn, on 3842 5862 or [m.dunn@qls.com.au](mailto:m.dunn@qls.com.au).

Yours faithfully

A handwritten signature in black ink, appearing to read 'B. Potts', with a stylized flourish at the end.

Bill Potts  
**President**