



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

Email: maic@maic.qld.gov.au

16 September 2016

Dear Sir/Madam,

Re: Review of Queensland's Compulsory Third Party Insurance Scheme

The Royal Automobile Club of Queensland (RACQ) welcomes the opportunity to provide a submission to the Motor Accident Insurance Commission (MAIC) on the review of the Queensland Compulsory Third Party (CTP) insurance scheme.

RACQ was formed in 1905 to advocate on behalf of the state's early motorists. For the past 111 years it has been the voice of members and their families, ensuring safer drivers in safer vehicles on safer roads. RACQ is a mutual company, owned by its members and operated for their benefit and the wellbeing of the Queensland community.

RACQ members can be found in more than 61 percent of Queensland households and offers a diverse range of products and services to its 1.6 million members across Queensland, including CTP insurance.

General

1. As a motoring club and insurer, RACQ's support of a stable, affordable and appropriately funded motor accident bodily injury compensation scheme for Queensland motorists has been long standing. This support has been built on the long term prudent design and management of the scheme, including the setting of fully funded premiums on the basis of sound actuarial advice and open consultation with insurers.
2. The principles outlined in the paragraph above have allowed private underwriters to effectively participate in the scheme to provide critical social support outcomes for Queensland motorists by utilising the skills and capabilities that specialised personal injury insurers provide. On this basis alone, RACQ does not support the consideration of a wholly Government underwritten CTP scheme in Queensland.
3. While RACQ applauded the recent passing of legislation to implement a no fault scheme for catastrophically injured claimants under the National Injury Insurance Scheme (NIIS), we continue to harbour deep concerns surrounding the funding gap that exists between the actual cost of providing the NIIS and what will be made transparent to motorists. In this context, RACQ is supportive of an open and transparent CTP scheme review process which examines all aspects of the Queensland CTP scheme.



4. The scheme itself involves many stakeholders including government, regulators, insurers, the legal and medical professions and most importantly the broader community, particularly injured motorists, their passengers or pedestrians.
5. Whilst recent dialogue around past profits being achieved through participation in the CTP scheme has focused solely on insurers, RACQ feels it is important to note that groups such as legal and medical/rehabilitation providers also benefit financially from the scheme and as such any reforms subsequent to the review process should embrace a holistic approach to enhancing the affordability and efficiency of the Queensland CTP scheme.

Affordability & Competition

6. RACQ believes that the current scheme Affordability Index remains an appropriate measure of comparing the cost of CTP insurance with the overall cost of living (using AWE as a benchmark).
7. Whilst the scheme presently sits arguably at the most affordable level in its history, anecdotal observations from some commentators suggest that there is presently a lack of competition in the scheme. These observations appear to be based solely on the basis of headline price as opposed to other 'value' mechanisms that can and are provided to Queensland motorists.
8. An example of this is the \$10 rebate that is provided to roadside assistance members of RACQ when they also hold CTP insurance with RACQ. RACQ provided \$2.8m of rebates to members in FY16. Other insurers in the Queensland market provide incentives or discounts for holding multiple insurance policies with that brand – all predicated on the basis that the consumer holds CTP cover with that insurer.
9. Other incentives (such as fuel or retail vouchers) are provided to entice consumers to switch CTP insurers at the point of acquisition and should remain a feature of the scheme given the value they provide to motorists.
10. Whilst pure price based competition can be an effective mechanism to entice consumers to consider switching, the consideration set will also extend to brand reputation and other less quantitative factors. Furthermore consumer awareness of the category is also a critical element in driving consideration of and ultimately switching between insurers.
11. As recently as 2015, Suncorp Insurance was for a period of time positioned at a price point for class 1 and 6 vehicles which was materially lower than the equivalent premiums available to motorists from other insurers participating in the scheme.
12. This price position was supported by an extensive marketing campaign. Despite the aggressive price position and marketing effort, it is RACQ's perception that a material shift in both short and long term switching behaviour to the Suncorp brand was not achieved. This outcome supports the findings of research commissioned by MAIC that shows that a significant proportion of motorists either cannot correctly recall who their CTP insurer is or confuse the class with personal lines property damage insurance.
13. This underlying consumer apathy and in some cases limited understanding of CTP insurance is considered to be the underlying cause of any lack of switching behaviour by motorists as opposed to any conscious actions by licenced insurers.



14. The present approach of tightly coupling the purchase of CTP insurance with the vehicle registration process (either initially or at renewal) provides Queensland consumers with a very seamless, efficient and low cost process. Importantly, the current model undoubtedly delivers an outcome whereby the 'delivery cost' of the CTP policy underwriting process is very low (and therefore drives lower premiums for the consumer) as opposed to the model in New South Wales where the CTP insurance purchase process is decoupled from the vehicle registration transaction which in turn creates an elevated level of overhead to the consumer both in time and cost.
15. Whilst RACQ is not opposed to the concept of decoupling the vehicle registration and CTP insurance purchase processes, the need to maintain a low cost and efficient method of delivery for these transactions is critical given the motorist will ultimately bear the cost of any subsequent increases to scheme delivery expenses.
16. RACQ believes that providing flexibility for consumers to pay premiums on a monthly basis via direct debit should be considered as a priority to provide motorists with the benefit of spreading payments across the course of a year.
17. To further support the approach outlined in paragraph 16, the statutory policy of insurance (s23 of the Motor Accident Insurance Act 1994) should be reviewed to remove the 30 day period of grace that leaves the existing or nominated insurer on risk. Any claims occurring during any period of non-registration should be served on the Nominal Defendant.
18. The technology platform and supporting processes within the relevant government agencies (eg. DTMR) should be enhanced to allow licenced insurers to effect changes to motorist's preferred CTP insurer in an automated and seamless manner.
19. Consumer awareness and knowledge of the CTP insurance switching process and individual insurer offerings (including premiums) need to be raised considerably. The current government and regulator administered transactional communication assets (eg. notices and websites) that support the CTP insurance renewal and overall nomination process appear deliberately benign in terms of providing consumers with compelling insights and information regarding each licenced insurers offering, including headline price.
20. RACQ would advocate that government and MAIC should review the current transactional communication assets that support the acquisition and renewal of CTP insurance with the objective of providing motorists with greater clarity and insight into insurer offerings. For example, the communication piece that presently accompanies the vehicle registration renewal notice could be enhanced to show not only each licenced insurer and their contact details, but also the relevant CTP premium for the vehicle by insurer.
21. Furthermore, consideration should be given to the establishment of a comparison website (administered by MAIC) for CTP insurance which would allow consumers to compare and select their CTP insurer at any time. This site should embrace a more commercial approach to its design and operations rather than just being an information portal for motorists and should clearly inform motorists of the benefits that each insurer provides (eg. eligibility for multi policy insurance discounts) in addition to just headline price.
22. In order for the 2010 legislative reforms relating to the choice of insurer when purchasing a vehicle from a motor dealer to be effective, RACQ believes that MAIC should be provided with the legislated ability to operate enforcement and compliance programs. Where



appropriate, MAIC should also be provided with the ability to prosecute offenders under the relevant provisions in the Act.

Underwriting Model & Premium Setting Framework

23. RACQ remains supportive of the present Queensland CTP insurance underwriting model whereby motorists have the ability to actively select their insurer and that insurers can set premiums within a specified range according to their own views on scheme profitability and risk appetite.
24. CTP is a highly capital intensive class of business in comparison to short tail insurance lines because of its relative level of risk. RACQ's dynamic financial analysis process consistently demonstrates that CTP is the largest driver of overall risk of RACQ's insurance business not meeting its capital targets.
25. The floor and ceiling premiums for each vehicle class set by MAIC should enable CTP insurers to file premiums for the inherent risks and to achieve an appropriate return on capital for insurers.
26. It is RACQ's view that whilst the current parameters that feed into the pricing process are appropriate, the MAIC ceiling premium consistently represents a price position that provides what would be considered the minimum return on capital based on prospective pricing basis. Furthermore, RACQ is of the view that the floor premium is not representative of a realistic pricing position for a class of business such as CTP insurance.
27. RACQ believes that it is the apparent disconnect between what the floor and ceiling premiums actually represent which influences an outcome where insurers are consistently filing premiums either at or near the ceiling as it is this premium that represents an appropriate return when balanced with the risk.
28. As previously stated, RACQ remains supportive of the floor and ceiling premium filing approach, however the Review Committee should give consideration to insurers to be able to actively move filed premium rates within the defined underwriting quarter as long as this price movement remains within the appropriate premium floor and ceiling for that quarter. Both the floor and ceiling premiums should be set at a realistic level by MAIC in order to encourage active movement of premiums within this band.
29. The suggested approach outlined in the paragraph above would potentially require a great level of sophistication and integration between DTMR and insurers transaction systems to ensure that any changes to premium rates by insurers flowed through to DTMR systems.
30. RACQ does not believe that the concept of risk pooling will provide a positive outcome for either motorists or insurers. As stated in the discussion paper, a risk pooling approach would effectively divorce the relationship between the consumer and the insurer, thereby constraining the ability of the insurer to provide any further value to motorists on the basis of their relationship.
31. Just as critically, insurers would become mere providers of underwriting capacity to the Queensland CTP insurance scheme. Insurers would have little or no ability to apply any overlay in terms of their own strategies around customer acquisition or retention in the context of the insurers' profitability objectives or risk appetite. Any risk pooling approach would be potentially untenable for RACQ.



32. RACQ believes that the current approach of community rating within various vehicle classes remains appropriate to ensure that premiums remain affordable for segments within the motoring community that would normally attract far higher premiums in a risk rated environment (eg. younger drivers).
33. RACQ would support the introduction of some level of differentiation of premiums based on garaging postcode or regional divisions in order to recognise the differing motor vehicle injury and fatality rates in regional Queensland when compared to the metropolitan areas of the state.
34. Government and MAIC should also give further consideration to longer term strategies around how driver tracking or telematics technology may be incorporated into CTP insurance risk assessment and premium rating in the future so that safe driving behaviour can be utilised as an incentive to reduce individual CTP insurance premiums.

Scheme Coverage

35. RACQ strongly supports the abolition of the defence of inevitable accident to ensure that the relevant innocent members of the community would have an avenue of redress, where currently none exists.
36. The drafting of the appropriate legislative amendment relating to the abolition of this defence would need to ensure that a new cause of action was not unintentionally created for at fault claimants based on the accident meeting the definition of 'inevitable accident'. The legislation would need to build into the definition that there will be no fault on the part of any party, including any relevant road authority. The New South Wales government has addressed this issue through section 7A and 7B Motor Accidents Compensation Act 1999 (NSW). These sections effectively create a no fault scheme for a 'blameless motor accident' which is defined to mean a 'motor accident not caused by the fault of the owner or driver of any motor vehicle involved in the accident and not caused by the fault of any other person'.
37. Equally, RACQ also strongly supports the ability for children aged under 16 years the ability to access compensation entitlements under the CTP scheme regardless of fault.

Claimant & Insurer Legal Costs

38. RACQ believes that there should be greater transparency around legal costs incurred by claimants. It is the view of RACQ that plaintiff lawyers should report to MAIC on professional fees, disbursements charged to the injured claimant, and also report on the net benefit received by injured claimants.
39. It is the observation of RACQ that costs associated with legal representation for minor cost claims appear disproportionate to the benefit received by the claimant. This may lead to prolonged negotiations, as the claimant seeks to fund their legal costs for which they are liable as per the paragraph above. Current claim frequency trends suggest these claims are increasing, putting disproportionate pressure on scheme claim costs and therefore premiums, at the lower end of claim severity.



40. Under the Motor Accident Insurance Act 1994 legal costs awarded against insurers are limited for smaller claims (55F of the Act and 27A of the Regulations). Small claim thresholds are currently \$43,020 and \$71,730. This was intended to provide a disincentive for plaintiff lawyers to litigate or draw-out settlement of less serious claims. The increasing claims from legally represented claimants for minor injury suggests this disincentive is becoming ineffective. We would encourage consideration of raising the lower offer limit cost threshold to \$150,000.
41. Additionally, RACQ would encourage MAIC to work with the Queensland Law Society (QLS) to amend the Legal Services Commission Regulatory Guide 3 - Charging Fees in Speculative Personal Injury Matters (as set out in the Legal Profession Act 2007 at section 347 – [50/50 rule]). The MAIC Discussion Paper highlights that (based on their market research) claimants only ultimately retain 52% of the total settlement amount with the remainder being paid predominately in legal costs and statutory disbursements. For less serious claims, claimants retain a smaller proportion. This is consistent with information collected by SIRA (the NSW scheme regulator) on NSW CTP claims and plaintiff legal costs. RACQ submits that there should be limits placed on the amount that plaintiff solicitors can recover from settlement amounts for smaller claims and that uplift fees should be disallowed. For example - for claims below the lower offer costs threshold the maximum amount might be the minimum of 20% of the settlement amount or \$10,000. For claims above the lower offer threshold but below the upper threshold, the maximum amount might be the minimum of 20% of the settlement amount or \$15,000.
42. In terms of providing all stakeholders with transparency around the efficiency of the scheme, RACQ would encourage MAIC to adopt the 1999 scheme review recommendation of establishing and publishing long-term target rates of efficiency, expressing as a proportion of the premium including all legal costs paid by the claimant to their solicitor.

Other Reforms

43. In 2007, Part 2 S5 of the Civil Liability Act was amended to redress the effect of the Queensland Court of Appeal decision in *Newberry v Suncorp Metway Insurance Limited* [2006] QCA 48 (*Newberry*), which was handed down on 3 March 2006. Since that time, the Workers' Compensation and Rehabilitation Act 2003 has been amended such that injured workers that can now take advantage of S5 are provided benefits over and above other classes of injured claimants. Compensable injuries, however caused, should receive similar benefits in the interests of fairness for all claimants, and to ensure injured people do not "shop around" between schemes.
44. RACQ believes that MAIC should seek to mirror the approach of the Queensland Workers Compensation scheme and be responsible for developing and maintaining table of costs for medical and allied health services. These tables would define the fees payable by CTP insurers for allied health services provided to CTP claimants in Queensland.
45. Further controls over medical costs could be achieved through the establishment of panels of recognised experts pursuant to S45A of the MAIA, or in the alternative, set up a medical assessment tribunal similar to the Workers' Compensation Scheme in Queensland.
46. Potential anti-fraud measures could include requiring a certified photographic identification and certified birth certificate.



47. RACQ believes that MAIC should consider the introduction of an accident notification form and payment of limited treatment costs and lost income incurred up to a short period post the accident, capped at a small limit (e.g. \$1,000) certified by a medical practitioner.
48. MAIC should consider amending and/or removing guideline 5 allowing Insurers freedom to contact claimants regarding rehabilitation matters irrespective of the intervention of their lawyer. Some high profile legal firms refuse insurer contact and this can be detrimental to positive rehabilitation outcomes. Additionally, allowing Insurers to copy in the represented claimant to all communication with solicitor in the interests of full transparency may assist to avoid misunderstandings of insurers' claims management.

Nominal Defendant

49. RACQ believes that the current arrangements around the Nominal Defendant are appropriate.

Role of MAIC as Scheme Regulator

50. In RACQ's experience, MAIC's current regulatory scope and role has proven to be positive over time. We do believe that there is scope for MAIC to take a far more public and active role in the advocacy and awareness of road safety issues along with promoting greater levels of consumer awareness around CTP insurance.

RACQ would welcome further engagement with the Review Committee to discuss our submission in further detail and we remain very willing to provide any other assistance as required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Gillespie'.

Ian Gillespie
Group CEO - RACQ