
From: Travis Schultz <travis.schultz@schultzlaw.com.au>
Sent: Monday, 20 March 2023 9:12 AM
To: Consultation MAIC
Subject: [EXTERNAL] 2023 Scheme Review Submission

Mr Neil Singleton,
Motor Accident Insurance Commissioner,

Dear Mr Singleton,

I would like to take the opportunity to provide a submission in relation to the recently announced scheme review.

My Background

I am providing this submission on the 2023 Scheme Review, in my capacity as a legal practitioner who practices solely in compensation law – including claims by injured motorists.

I first commenced working in CTP related matters when I started my career at a law firm in December 1988 (where I commenced my articles of clerkship and studied law externally). Since being admitted in 1994 I have continued to practice in the field of personal injuries law. I became an accredited specialist in personal injury law in 1999 and I am the managing partner of the firm, Travis Schultz & Partners – a firm which has offices from Gold Coast to Cairns and now employs more than 60 staff.

Scenario One

Price competition is not important to our organisation however I remain of the view that it is important to enable consumers to make informed choices – including their choice of CTP insurer. For reasons set out below, I would not advocate for any significant changes on the scheme itself, but I would support a premium equalisation mechanism which finds a balance between fairness and cost to the scheme. I would support the introduction of a mechanism which achieves fairness and gives insurers the opportunity to participate in the CTP scheme on a “level playing field”. It is better for the scheme to have as many insurers as possible so as to increase consumer choice and encourage healthy competition.

Scenario Two

I would support retention of a privately underwritten CTP model as I believe it will assist in driving efficiencies which benefit the insurers and the scheme as a whole. I am also in favour of the scheme adopting a mechanism which enables premium equalisation across insurers – provided that it is fair and can be delivered without an overly burdensome cost to the scheme.

I am not qualified to comment on the actuarial processes which would need to be adopted to ensure that this occurred. I do however make observations below as to ways in which competition between private insurers could be enhanced.

I do not support the introduction of multiple licenses for CTP insurers unless it could be demonstrated to genuinely enhance competition.

I would support the introduction of measures to enhance active decision-making by motorists as it would help to increase competitions. I suggest some steps that could be taken below.

Scenario Three

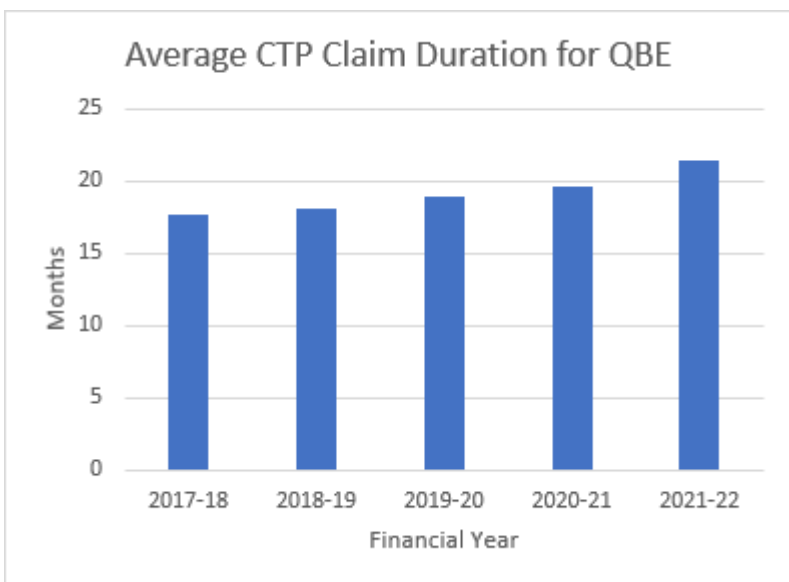
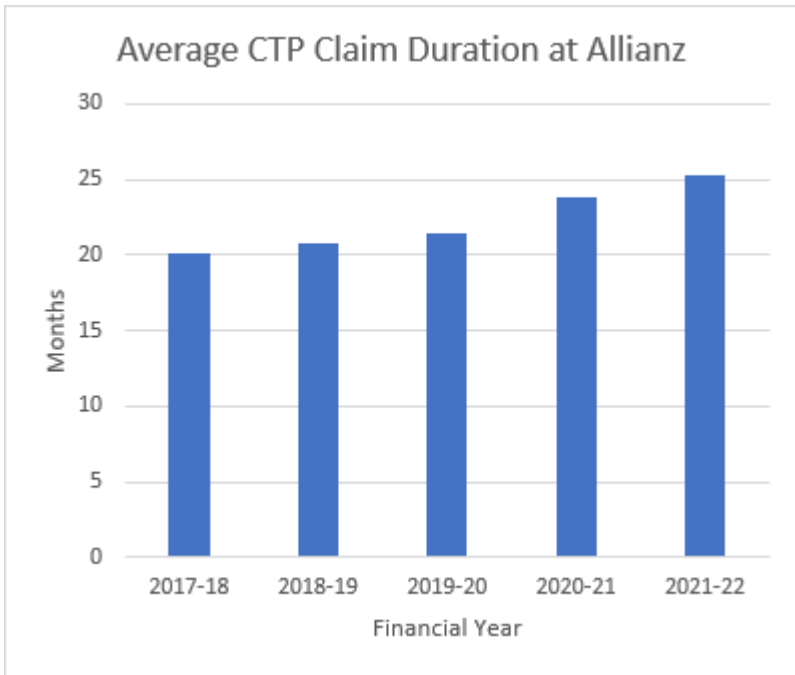
I do not support a transition to public underwriting for the scheme. The CTP scheme is highly efficient, functions well and is clearly the best in Australia. There would be a risk of ‘throwing the baby out with the bath water’ if such a wholesale change were to be considered.

Having said that, I believe that incremental improvements to the scheme can and should be made – and that all stakeholders involved in the CTP scheme need to collaborate in order to find levers to constantly improve scheme performance.

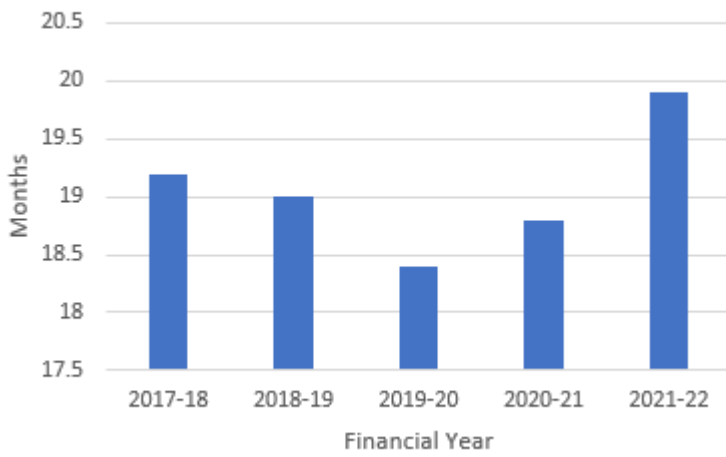
Incremental Improvements

Durations

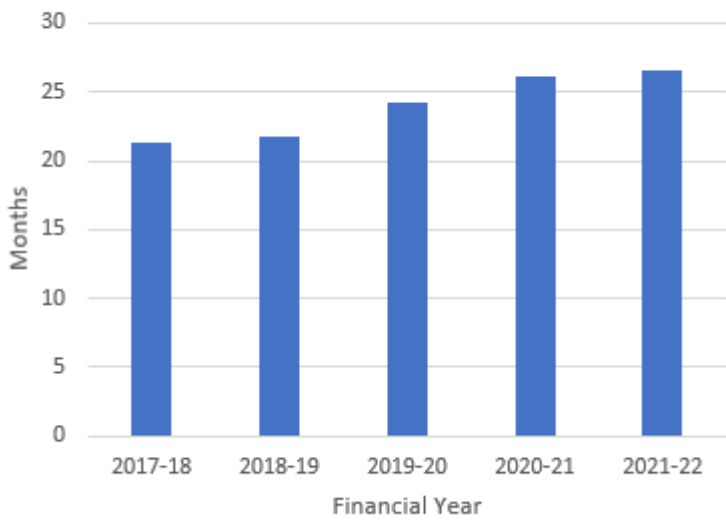
A growing trend in the performance of the current CTP insurers is a lengthening in the time being taken to finalise claims. MAIC’s data demonstrates that in recent years, there has been an increase in ‘claims durations’ across the board. The following is a graph which uses data from MAIC’s *Insights*.



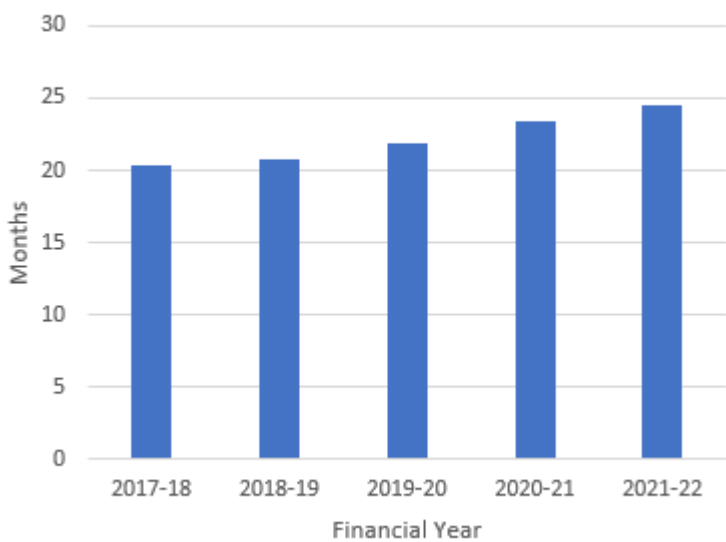
Average CTP Claim Duration for RACQI



Average CTP Claim Duration for Suncorp



Average CTP Claim Duration for Industry



At a working level, I see firsthand the frustration of those injured on our roads at the time that is taken to finalise their claim. The reason for the increase in the length of time being taken to finalise claims is no doubt, multi-factorial.

To some extent, the availability of the medico-legal experts needed to provide reports in the course of dealing with claims is a factor. So too, the practices and processes of law firms who have varying levels of sophistication in ensuring that claims proceed in an expeditious way. But what concerns me is that many claimants see delay being used by insurers as a negotiation 'sword' – a brutal tactic to 'starve' claimants into accepting less than they are fairly entitled to. In my experience one insurer in particular is notorious for making offers at compulsory conferences which would colloquially be described as 'low ball.' The consistency with which this approach is taken would lead a reasonable person to assume that it is part of a broader strategy intended to reduce claim costs by achieving discounted resolutions. The practice is blunt, inconsistent with the objectives of the scheme and leads to more litigation and higher legal costs.

It has been said before that 'justice delayed is justice denied' and motorists injured on Queensland roads deserve to have CTP insurers who are collecting premiums filed at the ceiling, act in a way that shows a *bona fide* commitment to treating injured motorists in the way the scheme intended.

I would suggest that the issue of claim duration and insurer behaviour could be addressed by: -

1. The introduction of a claims protocol agreed to by all insurers and key stakeholders to be the 'gold' standard as to how CTP claims should be progressed. Further, a protocol which improves duration and creates efficiencies is also something that ought to see better insurer profitability;
2. Legislate time frames by which steps must be taken unless the parties otherwise agree or obtain the order of a court – for example, legislating that the compulsory conference must be convened by a date no later than 15 months following the date of notification, would create a sense of urgency to progress matters and might force both claimant lawyers and insurers to recalibrate their systems to ensure that claims progress quickly. Having a mechanism to allow a court to order otherwise or the parties to agree to a later date, provides a mechanism by which unusual or exceptional cases can be accommodated;
3. A sanction mechanism needs to be introduced for parties who fail to act reasonably at a compulsory conference. The current sanction is the ability to claims costs at a different scale or on a different basis – but that mechanism only applies in the event of a matter progressing to trial – but insurers, claimants and their lawyers know that trials rarely happen, and it leads to an opportunity for the system to be 'gamed.' If the mechanism of a costs penalty isn't working, then it may need to be a regulatory response.

Competition

It is well understood that at present, there is little competition between insurers based on pricing. Consumers have no reason to 'shop around' based on cost savings.

It is important that consumers be able to make fully informed choices – and that remains so in the context of CTP insurers.

Apart from the rare CTP insurance holder with industry knowledge, consumers have little insight into the performance of the four insurers and at a practical level, few customers ever take the time to understand the differences between insurers based on MAIC data.

In my view, the publication of a simple 'report card' on key metrics would assist – particularly if it were made publicly available on the MAIC website and promoted. This would enable consumers to select the insurer that is 'doing the right thing' – a comparison page, for example. The same could be said for law firms that represent injured claimants – having a mechanism that gave consumers insight into the metrics that drive "value" – fee structure, expertise, service offering etc – would similarly benefit consumers.

Cost Savings

The CTP scheme is intended to deliver benefits to those injured on our roads. The scheme needs to look to continually improve by finding ways to increase the net benefit that the injured person receives. Incremental improvements can be found through having an efficient industry protocol which creates efficiencies and reduces delay, as well as through investigating ways to reduce the outlays associated with claims. That will require stakeholder discussion.

Summary

The Queensland CTP scheme is undoubtedly the most efficient of any CTP schemes in Australia and is something which the industry should rightly be proud of. But incremental improvements in a range of areas are desirable and achievable. And ongoing stakeholder consultation and discussion will undoubtedly deliver opportunities to make our scheme even better.

Regards,

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