

Additional information addressing jury questions

The questions have been grouped into broad areas, and as you read you will find some overlap. We have not sought written feedback specifically from others, but put in the information available to the Office of the CTP Regulator, Chief Minister, Treasury and Economic Development Directorate (CMTEDD) and Geoff Atkins. Two questions have been answered by Peter McCarthy from EY. Many of Geoff's responses are his judgements without being backed by data or verified by others.

Claims

1. We need to know in detail what the process is when claiming from first claiming to receiving payments.

Refer to the separate document, "Procedural steps for a CTP claim", prepared by the office of the CTP Regulator.

2. A claims process timeline.

Refer to the separate document, "Procedural steps for a CTP claim", prepared by the office of the CTP Regulator.

3. Time taken to determine who is at fault? Average deviation from mean is it a bell curve?

Refer to the separate document, "Procedural steps for a CTP claim", prepared by the office of the CTP Regulator.

We have no data on this question. Most are determined quickly (within a few weeks) and some stretch on if they are complex or disputed.

Response by: Geoff Atkins

4. What is the biggest hold up in claiming process?

Waiting for the injury to stabilise and then collecting and assessing all the evidence regarding losses of various types. Negotiation and the (if needed) litigation is slow.

Response by: Geoff Atkins

5. Why can't medical experts be paid within 30 days?

A medical expert engaged by the claimant or their solicitor is only entitled to be paid by the insurer if the claim is successful. Sometimes, therefore, they must wait until completion of the claim.

Response by: Geoff Atkins

6. Why is it hard to make a claim?

There are a lot of details required by insurers to assess the eligibility to make a claim (was there an accident, were you in it, were you injured, who was at fault) and then a lot of information to assess the amount of a claim. For these reasons the claim form itself is long and requires a lot of information, and there are sometimes extra documents needed as well.

Response by: Geoff Atkins

7. How long do you have to claim and what exceptions are there? Could I have a print out of the legislation and or policies or procedures?

Refer to the separate document "Procedural steps for a CTP claim". The legislation is available here: <http://www.legislation.act.gov.au/a/2008-1/default.asp>. Printed copies of the legislation are available on the resource table.

Response by: CMTEDD

8. What period can a claim be made in after the fact?

Refer to the separate document, "Procedural steps for a CTP claim", prepared by the office of the CTP Regulator.

9. Can you go back to make a claim if a symptom of injury shows up further down the track? Can you go back later?

In a common law scheme like the ACT CTP scheme, you cannot make any further claims after settlement.

Response by: Office of the CTP Regulator

10. What if any schemes there are between legal medico rehab providers that affect payouts to victims in CTP. What proportion of cost do these cross-referral fees represent? If this exists what alternatives exist?

I don't know of any such networks. Refer to question 55 for some information on claim farming and fraud in other states. Legal representatives may be able to provide further input based on their knowledge.

Response by: Geoff Atkins

11. Qualitative research on claimant's experience of navigating the different systems (not just time to settlement) including did that feel that they got back to where they thought they were pre-accident.

Information not readily available. May be addressed by witnesses.

12. In a no-fault CTP scheme would a cyclist be covered if struck by a kangaroo on a public road?

The CTP scheme covers motor vehicle accidents. The definition of motor vehicles does not include bicycles. Therefore, an accident of this kind would not be covered by the CTP scheme. As part of the limits on the remit of the jury, you cannot recommend any changes to the types of vehicles covered by the CTP scheme.

Response by: CMTEDD

Comparison with other schemes

13. Is there a spreadsheet that has a direct comparison of the other jurisdictions schemes (8 states?)

Refer to the separate document, "Scheme Comparison Summary", prepared by Geoff Atkins.

14. Summary and evidence of improvements that have been made to the NSW CTP scheme. What were their pain points and how did they address it in the reform?

The table here summarises the pain points and how they were addressed. There is no evidence of improvements yet because the new scheme has not started.

Pain point	How addressed
High and rising premiums	The whole package of changes outlined below
Rapid increase in the number of minor injury claims	Fraud taskforce No common law for minor injuries Tough legal cost regulations
Some criticism about coverage of at fault drivers	Six months of statutory benefits (earnings, treatment and care) for at fault drivers
Delays in resolving claims	Statutory benefits start up front for not-at-fault people and continue for varying periods to allow common law claims to be made and resolved
Low scheme efficiency	Introduction of statutory benefits (hence reduced legal costs) Regulation of insurer expenses and profits Tough legal cost regulations Moving more disputes to administrative tribunal rather than court
Significant 'buffers' for future treatment and care for less serious injuries	Common law now only for earnings loss and pain & suffering Treatment and care paid as needed for life, subject to time limits for minor injuries
Minor injury definition	An important and difficult definition: <ul style="list-style-type: none"> - Soft tissue (that includes virtually all whiplash injuries to neck and back) along with abrasions and bruising - Minor psychological injury (chronic stress)

Response by: Geoff Atkins

15. We need to be able to see what aspects of CTP in Tasmania have been most effective in reducing the premium compared to ACT – have any rights been abolished?

Tasmania has always had a low premium relative to other states, since the current scheme commenced in 1973. The scheme has had a long history with hardly any changes and premiums reducing in real terms.

The no fault benefits have tight rules and limits. While the common law has no restrictions, it is not a litigious society, and the courts make conservative decisions. One observer said 'we have just not had the influx of East Coast solicitors that others have'.

Response by: Geoff Atkins

16. Do you believe that the ACT CTP is twice as better as Tasmania? Can you please provide an example?

This is a judgement for the jury to make. Information is provided elsewhere about what drives the differences in cost. Many aspects of the environment are different as well as the scheme designs.

Response by: Geoff Atkins

17. Please provide a set of reasons why some states have higher premiums why Tas and others are down the bottom?

There are many influences on the cost of the scheme, including:

- (a) Road safety – the number and severity of injuries and deaths
- (b) Who is entitled to claim (fault vs no fault)
- (c) The rules about the benefit amounts, periods, etc (which may be statutory or common law)
- (d) The way the scheme is managed, claims are assessed and disputes are resolved
- (e) The culture of the scheme (the attitudes and normal behaviours of various stakeholders and participants in the scheme).

The rates of death and injury across the country are covered in question 19.

A few comments on some of the other states: these are just examples and are far from complete.

Queensland – high injury rate, common law with some limitations, high amount of legal activity

NSW – in the old scheme common law with some limitations, high amount of legal activity and growing amount of claims farming and fraud

Victoria – modest statutory benefits except for catastrophic injuries, low dispute rates, low regulated medical fees, restricted common law access

Tasmania –modest statutory benefits with tight rules, low amount of legal activity despite common law access

South Australia – (since changes) significant limits on common law benefits using an Injury Severity Scale, conservative court culture

Western Australia – a threshold for common law for pain and suffering, low amount of legal activity and conservative court culture

Northern Territory – very high accident rate, including rural and remote.

Response by: Geoff Atkins

18. Can you tell us what happens in other countries?

In most countries the CTP insurance is part of your private car insurance policy and premiums are set by the insurance company based on the risk level of the owner/driver/vehicle.

Australia is therefore different from most because our CTP cover is separate from the car insurance and has community-rated premiums.

New Zealand is an interesting example where the approach is completely different. Since 1973 you are not allowed by law to sue someone for personal injury in New Zealand. Instead they have a government scheme (called ACC) that covers people for all accidents (work, motor, home, sport ...) regardless of the cause. The benefits are 80% of earnings while you can't work plus reasonable treatment. For doctors' visits there is a small co-payment. There are virtually no lump sums.

In the **United Kingdom** there was (until recently) no restriction on common law, and that is the only avenue for claiming. In the last decade they have had problems with a proliferation of small claims and organised 'claim farming', to the point where premiums were rocketing upwards and pretty much unaffordable for many. The premium for a young driver could be thousands of pounds. Despite a number of government changes to laws it has not really been brought back to a stable situation.

Canada is a little more like Australia with each province (state) having its own laws. Most are the traditional insurance structure (combined with car insurance) but all have limits of some sort on common law claims and many have some no-fault benefits attached. A couple are separate provincial insurance schemes, e.g. British Columbia.

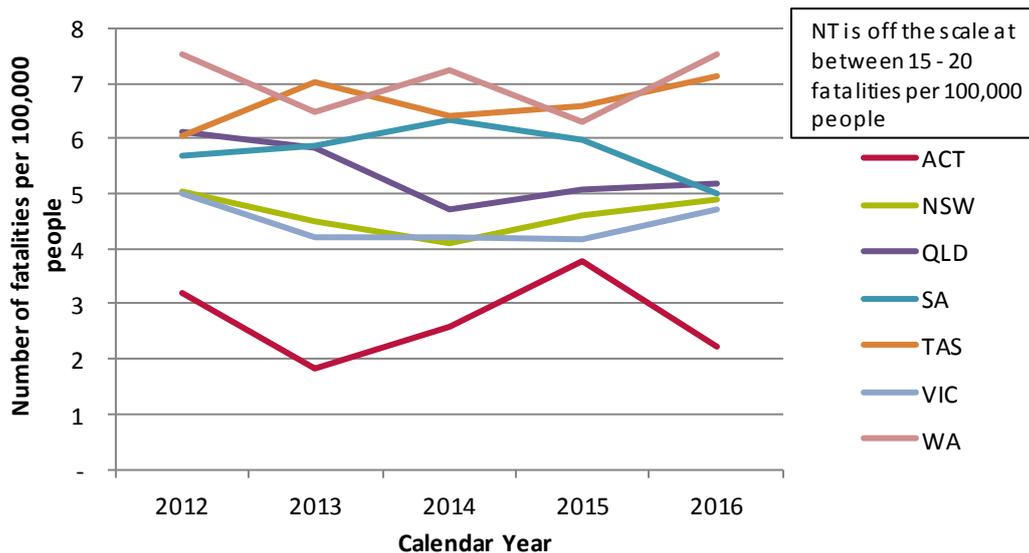
In the **United States** there is a lot of variation by state. Nearly all have common law, with restrictions varying from none to a lot. Products and premiums are heavily regulated at a state level and the insurance is done by private insurers as part of their overall motor insurance.

Response by: Geoff Atkins

19. Number of accidents (motor vehicles) by state over the last 3- 5 years?

Some injury reports from other states will be uploaded on basecamp.

This chart shows fatalities per 100,000 people.



Response by: Geoff Atkins

20. What is the ratio of payouts to premiums paid? How does this compare to other states and territories? How does this compare to other forms of insurance?

Unfortunately we don't have data for other states and territories. Some typical payout ratios for other types of insurance would be:

- Workers compensation – 75% (but this includes legal costs)
- Private car insurance – 70%
- Home and contents insurance – 50%

Response by: Geoff Atkins

21. In each state and territory what % of premiums go to legal costs and how do these break down between: Medico/legal, claimant legal fees and insurer legal fees?

Data requested is not readily available. This may be a question that witnesses can answer based on their experience.

22. Does ACT CTP pay higher net benefits to victims than anywhere else in the nation? If not what should be the less action / recommended model?

The benefits paid out by the ACT CTP scheme are negotiated or awarded on a case by case basis. Some other states also have common law schemes but they are different from the ACT scheme because they define or have limits on the benefits that are payable for different types of injury.

Response by: Office of the CTP Regulator

Cost

23. An explanation of the current pricing structure of CTP premiums in the ACT? For example, why are our premiums so high and what can be done to reduce them?

Premium price is largely a factor of the estimated number of claims by the estimated cost of claims. Scheme design influences average costs. A 2016 review of the ACT CTP scheme said that, "*a large part of the relatively high premium rates can be attributed to the scheme design of the ACT scheme. Unlike comparable schemes in other jurisdictions, the ACT has no threshold for eligibility for Non-Economic Loss, nor caps on benefits. This generous scheme design, relative to other Common Law schemes, limits the potential for further future premium reductions. Reform of the scheme design will be required in order to deliver further significant premium reductions in the future.*"

CTP insurance schemes exist in every state and territory but they are different in design and offer different levels of coverage, benefits and premiums. The ACT has an at-fault common law scheme, which means that an injured person can sue another person for negligence and seek compensation. While some other states also have common law schemes, they are different from the ACT scheme because they define or have limits or thresholds on the benefits that are payable for different types of injury. Some other states operate their schemes on a no-fault basis, in some cases with limited common law access. A no-fault scheme provides some benefits regardless of who was at fault for the accident, without the need to sue and go to court. Higher CTP premiums in the ACT are largely due to the factors outlined above. Higher average weekly earnings in the ACT is only one factor.

Response by: Office of the CTP Regulator

24. What do you believe is why the ACT CTP is going to be the most expensive of all states and territories after NSW reduce their premium by \$100?

Refer to Question 23 above. In their own ways and in their own time each state and territory has reformed its scheme with the objective (or at least one of several reform objectives) of reducing premiums. ACT has not had any reforms of this nature.

Response by: Geoff Atkins

25. What makes ACT CTP the most expensive in the nation now NSW has lowered the premium?

Refer to Question 23 above.

Data

Much of this data is not readily available as it is not collected/reported. There may be some questions that witnesses can answer based on their experience. Questions below have been answered where possible.

- 26. A breakdown of at fault partially at fault and blameless accidents in the past 10 years in the ACT and if the accidents resulted in minor, moderate or serious injuries?**
- 27. What percentage of the injuries by severity are suffered by... A) people in an accident where no one was at fault? B) drivers at fault in an accident C) others ie the people currently covered by CTP**
- 28. Is there data on extent of “blameless” accidents in the ACT?**
- 29. We need more certainty / reassurance about the accuracy and reliability of the stats and graphs about the cost of the present scheme**

Refer to the separate document, “Additional Information on the ACT CTP Scheme Data” prepared by the office of the CTP Regulator.

- 30. In how many incidents is it difficult and or impossible to determine who is at fault (actual numbers)? Is there a way of categorising these in some way without moving to a no fault system?**
- 31. In 2016/17 what is the explanation of claim payouts being lower but legal fees and provider costs going up?**

Refer to the separate document, “Additional Information on the ACT CTP Scheme Data” prepared by the office of the CTP Regulator.

32. Definition of a minor injury from an insurance company – injury tables

This is answered in Question 33.

33. What system is used for the classification of injury?

The ACT CTP data collection uses the Abbreviated Injury Scale to record classifications of injury. More information can be found here: https://www.aci.health.nsw.gov.au/get-involved/institute-of-trauma-and-injury-management/Data/injury-scoring/abbreviated_injury_scale

Specific injuries are coded using a seven digit number. The last number in the code is the AIS number:

- 1 – Minor
- 2 – Moderate
- 3 – Serious
- 4 – Severe
- 5 – Critical
- 6 – Maximum

Examples of common injury codes are below:

- 6402781 Cervical Spine - Strain, Acute, With No Fracture Or Dislocation
- 6406781 Lumbar Spine - Strain, Acute With No Fracture Or Dislocation
- 6404781 Thoracic Spine - Strain, Acute With No Fracture Or Dislocation
- 8104021 Lower Extremity - Skin/Subcutaneous/Muscle Contusion, Hematoma

4104021 Thorax - Skin/Subcutaneous/Muscle Contusion, Hematoma
4502033 Rib Cage Fracture/S W/Out Flail, Any Location Unilateral/Bilateral - >=3 Ribs
9104001 External (Skin) & Thermal Injuries - Soft Tissue Injury Contusion, Hematoma
4508042 Thorax - Sternum Fracture

Response by: Office of the CTP Regulator

Also refer to the separate document, "Injury Coding and minor injuries– briefing note", prepared by NRMA Insurance.

Legal Fees

34. If general damages for less than 10% impairment were removed how many claimants would be unable to find legal representation because there wouldn't be enough money for legal fees? Eg most lawyers won't take cases that are likely to result in less than \$10,000 in damages.

A whole person impairment threshold (like NSW) of greater than 10% would mean that, very approximately, 90% of claimants would not exceed this threshold. Whether they could obtain legal representation depends on what other common law entitlements there are (such as earnings loss and treatment and care), and on what rules and scales exist for legal fees. In NSW most of the 90% who are below the threshold obtain legal representation.

Response by: Geoff Atkins

35. What are all the solicitor client fees that the CTP regulator doesn't collect?

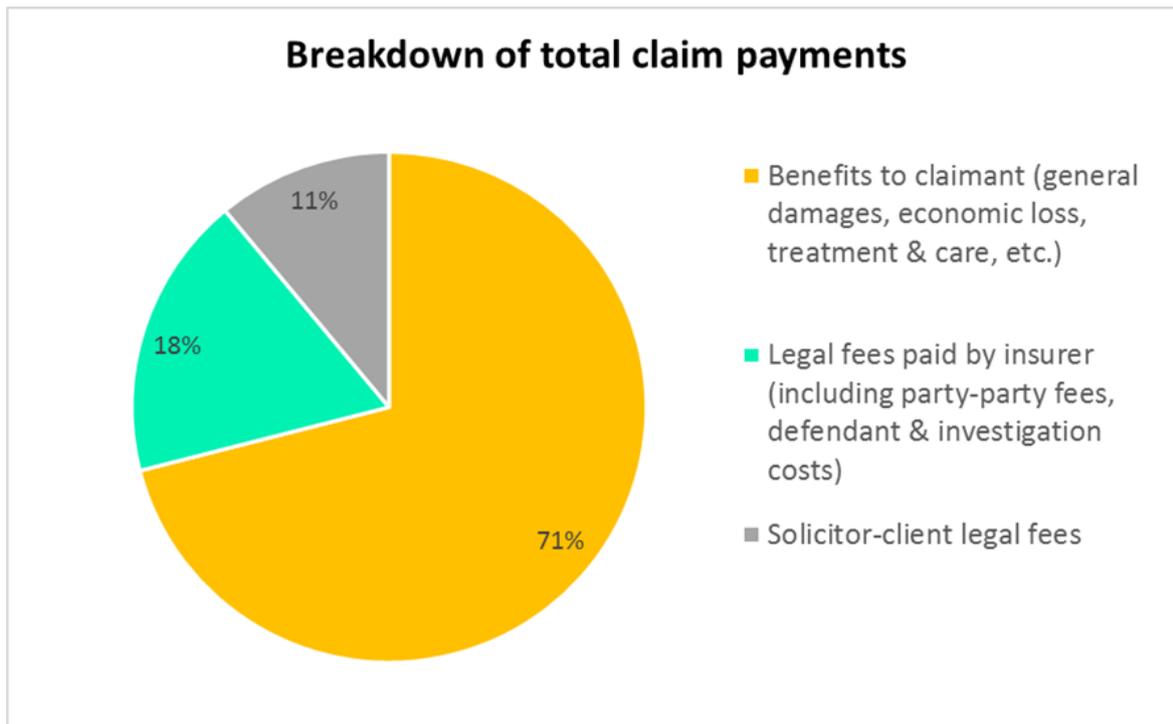
There is no data available for the ACT and solicitors are not obliged to disclose this information. The NSW regulator introduced a compulsory regime for solicitors to disclose these fees following finalisation of the claim, with individual data on claims or solicitors being strictly confidential.

Response by: Geoff Atkins

In NSW, solicitor-client costs average about 11% of the total claims payments. The actual proportion varies quite a lot depending on the size and type of claim - for example, for serious injury claims it averages about 8% of total claim payments whereas for minor injury claims it is about 14% on average.

The amount of legal fees in NSW that are solicitor-client fees versus party-party legal fees paid by an insurer is affected by the NSW CTP scheme regulation of party-party legal costs. Of the total amount paid on a claim, the claimant would typically retain about 71% of the agreed amount while the remainder is paid in legal and investigation fees – either by the insurer (party-party, defendant & investigation fees) or the claimant (solicitor-client fees). As the ACT's party-party costs are not regulated in the same way as NSW, the proportion of legal fees that are solicitor-client versus party-party is likely to be different.

The graph below relates to NSW.



Response by: *Peter McCarthy, EY*

36. What are all the categories of legal fees that injured parties can be affected by in CTP claim processes?

If one takes a broad definition of this question and looks at all costs of claim determination other than insurer medical expenses, then the list would include:

- Payment for police reports
- Crash investigators
- Medical exams and reports at the request of both the insurer and the claimant's solicitor
- Other experts such as accountants, engineers, vocational assessors
- Barrister's fees (insurer and claimant)
- Solicitor's fees (insurer and claimant)
- Court costs
- Witness expenses.

Costs incurred by the insurer are usually paid as they are incurred by the insurer. On the claimant side, however, these costs are usually not paid until completion of the claim with the solicitor paying all the various experts and barristers when the settlement is received.

Most of these categories of cost are relatively small and arise in a minority of cases. Complex and hard-fought claims are likely to incur many costs. Question 37 deals with the amount of these costs.

Response by: *Geoff Atkins*

37. What all of these categories of legal fees are added up what is their proportion of claim pay out?

Refer to Lisa Holmes' day one presentation available here:

[https://yoursay.act.gov.au/application/files/2515/0812/1013/Lisa_Holmes_representating_the_CTP_Regulator - CTP in the ACT.pdf](https://yoursay.act.gov.au/application/files/2515/0812/1013/Lisa_Holmes_representating_the_CTP_Regulator_-_CTP_in_the_ACT.pdf)

Refer to the separate document, "Additional Information on the ACT CTP Scheme Data" prepared by the office of the CTP Regulator.

Response by: Office of the CTP Regulator

Design

38. What percentage of potential savings from lower premiums would then become costs on the taxpayer? Eg welfare, healthcare costs, reduced income, taxes etc

If at fault drivers are covered, then to the extent of their benefits the cost to government of welfare and healthcare would be reduced.

For those not-at-fault and entitled to common law, the lump sum benefits they receive are worked out of net of tax and no tax is payable on them. If the lump sum has been spent, the person becomes entitled to welfare and healthcare after an 'exclusion period' that depends on the size of the lump sum.

If earnings benefits are paid on a statutory basis, then income tax is deducted and paid to the ATO along the way.

It is likely that the alternative designs that have been floated would reduce cost to the taxpayer although that is not certain in every case.

Response by: Geoff Atkins

39. How does behavioural economics / insights tell us would be useful design elements in an efficient system / insurance design that will deliver good user experiences?

This is a very important question but not possible to answer. There has been a limited trial using behavioural insights in workers compensation in NSW (education department). Apart from that I am not aware of any use being made in design or operation of a state scheme. There could be activity that I do not know about.

It is my view that this field of knowledge and expertise has a great deal of potential in getting better value (both value for money and user experiences). It would require a lot of change in regulation and operation of the scheme.

Response by: Geoff Atkins

40. Would creating incentives for insurers to promote and fund technology to reduce injuries and death (preventative strategy) achieve community goals and reduce premiums?

Providing incentives to insurers is not within the scope of the jury remit. However, you may be interested to know that there is an ACT Road Safety Fund (the Fund) that was established in July 2015 to provide a continued source of funding for road safety projects and initiatives following the cessation of the NRMA-ACT Road Safety Trust. An ACT Road Safety Fund Advisory Board (the Board) was appointed to provide advice to the Road Safety Minister on the application of the Fund, including the delivery of an annual community grants program.

Response by: CMTEDD

It is broadly accepted that there are three main directions in reducing road trauma (prevention):

- Road design, infrastructure, maintenance, etc
- Vehicle safety (primary – accident avoidance, and secondary – protecting from injury)
- Road user behaviour – risk-taking, defensive driving, awareness and care.

The ACT government can directly influence road design. It cannot influence vehicle design. It can influence road user behaviour to some extent, although this is difficult and takes a substantial investment over a long time.

Response by: Geoff Atkins

41. Would imposing more frequent mandatory road worthy checks ie – green slip in NSW help reduce risk and in turn premiums?

Very marginal if anything. Driver error is the predominant cause of accidents with vehicle roadworthiness a very minor contributor.

Response by: Geoff Atkins

42. If an insurer provided a client centred rehabilitation and claim process and advisory service (as it's to mutual benefit to have best restorative outcome for both) would it 1) cut out or reduce the adversarial legal eagle approach? 2) to what extent would it reduce A) premiums b) promote cooperation vs conflict c) reduce funds going to cross refers eg lawyers, medical legal, investigators etc D) how much is spent on tv advertising by lawyers and related parties

A multi-barrel question! This is at the core of the jury's remit in terms of objectives for any scheme changes. The outcomes will depend on many intertwined aspects of legislation, regulation, dispute resolution and scheme culture. I suggest this be taken on by the jury in deciding the objectives, with more detailed response during the scheme design phase.

Regarding D) on advertising spend, I have no information. Other SRG members may be able to assist.

Response by: Geoff Atkins

43. A better understanding as to what is working well in the existing system? This speaks to existing efficiencies that have been gained and how successful has this been?

The most significant event over the last three years in the ACT CTP insurance scheme has been the introduction of competition, in practice from 15 July 2013.

The ACT Government established competition to, amongst other things, introduce innovative CTP insurance products and place downwards pressure on premiums.

More information is available in the review of the scheme available here:

https://apps.treasury.act.gov.au/_data/assets/pdf_file/0007/850255/ACT-CTP-scheme-review-16-Mar-2016.pdf

Response by: Office of the CTP Regulator

The current CTP law

44. Why was the current system of common law adopted in the ACT – origins of the current system?

Please refer to the presentations from day 1:

- https://www.yoursay.act.gov.au/application/files/4915/0811/5746/Geoff_Atkins_finity_-_Introduction_to_CTP.pdf
- https://www.yoursay.act.gov.au/application/files/3615/0811/5858/Michael_Eburn_ANU_College_of_Law_-_CTP_and_the_Common_Law.pdf

Until the 1970s every state and territory in Australia had a pure common law system.

My understanding is that prior to self-government, the Australian government applied the NSW CTP law to the ACT by ordinance. After self-government the laws were made by the ACT government but were essentially unchanged. As a few other jurisdictions have moved away from pure common law, the ACT system has not been changed significantly. In this way, one can put it down simply to legislative history.

Response by: Geoff Atkins

45. Why were the previous reforms not successful (what happened in Parliament)?

The Government proposed amendments to the CTP Act by introducing the *Road Transport (Third-Party Insurance) Amendment Bill 2011* (CTP Bill) in February 2011 (explanatory statement: http://www.legislation.act.gov.au/es/db_40812/20110217-57207/pdf/db_40812.pdf). The 2011 reforms proposed changes to very specific aspects of the CTP scheme, a key element of which was introducing a threshold for access to non-economic loss damages. Introducing a threshold for non-economic loss aimed to turn the incentives around and channel injured people below the threshold into early treatment and rehabilitation options. The purpose of introducing a statutory minimum impairment threshold specific to non-economic loss was to promote certainty and predictability in this category

of damages which is often considered to be subjective. In addition, the proposed changes would have had the impact of improving affordability of premiums.

The Bill was referred to the Standing Committee on Public Accounts on 31 March 2011. The Committee conducted an inquiry, inviting submissions and holding public hearings in October and November 2011. On 10 May 2012, the Committee tabled its report in the Assembly (https://www.parliament.act.gov.au/_data/assets/pdf_file/0020/371513/PAC22_Road_Transp_Bill.pdf). The Government response to the Committee report was tabled in the Assembly in August 2012 (https://www.parliament.act.gov.au/_data/assets/pdf_file/0011/374393/7th_PAC22_TPI.pdf). On 24 August 2012, the principal elements of the Government's Bill aimed at achieving these outcomes did not obtain the support of the Assembly.

In comparison, the citizens' jury is being asked to consider objectives for an improved CTP scheme within a remit that allows consideration of a broader range of trade-offs.

Response by: CMTEDD

46. Why common law based? Why not legislation like ADJR?

This is answered by Question 44

47. What is the problem we are trying to solve? Is there one problem or is it noise from a few influential people to a few influential people?

This is for the jury to consider, supported by the information and witnesses available. Jury members may choose to ask various witnesses this question. What the government has said in establishing the jury process is as follows:

CTP in the ACT doesn't cover everyone injured in a motor vehicle accident and it can take two years or more to get your full payout, but we still pay some of the highest premiums in the country. The Government believes our CTP scheme could be improved to better protect Canberrans. The government has chosen to pilot a citizens' jury so we can consider with the community and other key stakeholders how to improve the scheme so it reflects the priorities of Canberrans. There is no one right answer to what a CTP scheme should look like. The Government wants to understand what the community's priorities are for the scheme.

Response by: CMTEDD

48. ACT gov to provide rationale as to why there are areas that are not on the table for discussion. Privately underwritten only? Community priced not on individuals? This does limit what the jury can suggest and does limit the available options

The government is committed to seeking the community's views on CTP insurance and has committed to pursuing the model preferred by the jury, but there are some parts of scheme that government will not change. These are outlined in the Frequently Asked Questions. For example:

- The cost of living is important to government so therefore the overall scheme design cannot raise the cost of premiums.

- The CTP scheme in the ACT must remain community-rated – this is important for equity and means motorists pay the same CTP insurance premium, for the same class of vehicle. This ensures groups of motorists aren't treated differently – for example young drivers who might not otherwise be able to afford CTP.
- The scheme must continue to be privately underwritten, meaning private insurers will continue to underwrite the scheme and set premiums within a competitive market.
- The types of vehicles currently covered under the scheme are to remain the same.
- The preferred scheme of the jury must be workable and fit within other legal and regulatory frameworks.
- We have a Lifetime Care and Support Scheme which provides for the treatment and care of people who are catastrophically injured in a motor vehicle accident. This is a separate national scheme and changes to that scheme are out of scope for this jury.

These boundaries also assist in focusing the Jury's discussions.

Response by: CMTEDD

49. Why is the ACT law society spending over \$100,000 saying that the system doesn't need changing?

Jury members may choose to put this question to legal representatives during witness hearings.

Response by: Geoff Atkins

Miscellaneous

50. In regard to the possible introduction of regulated payouts for pain and suffering damaging costs do Victims of crime get pain and suffering damaging payouts – if yes how are they determined? Is there a moral difference between being injured in a motor accident and being injured as part of a crime?

Financial assistance for victims of crime does not include pain and suffering payouts. Financial assistance is structured into an immediate need payment, an economic loss payment and a recognition payment for an act of violence committed against a person. The amounts are determined by the Victims of Crime Commissioner, with the maximum total financial assistance capped at \$50,000 for a primary victim.

Response by: CMTEDD

One might regard the 'recognition payment' as having some parallel objective to the pain and suffering payouts, although legally and in practice they are different.

Response by: Geoff Atkins

51. I would like to know more about what happens to people after they enter the public health system. How much of CTP is paid to ACT gov for this care? Is this issue within the scope of the jury? Where does the private health system come into play? Can people be transferred into the private health system if they have private insurance?

While we do not have good data on this question, a general response follows. Relatively little cost is paid by the ACT government prior to claims settlement – essentially ambulance and public hospital. There is a greater cost carried by the Federal government arising from Medicare-funded services and social security benefits. When a claim is settled these Medicare and social security amounts must be repaid out of the claim amount.

People can utilise the private health care system either if the insurer has agreed to pay medical costs along the way or if they have private health insurance (in which case the health insurer will recover from the CTP insurer at the end of the claim.

Response by: Geoff Atkins

52. What implications are there to change the CTP regarding comprehensive insurance?

Comprehensive insurance covers property damage only. CTP is for injuries only. The two insurances are separate. More information can be found here:

https://www.yoursay.act.gov.au/application/files/1415/0335/5537/Summary_of_Motor_Vehicle_Accident_Insurance.pdf

There would be no implications for comprehensive insurance if CTP was changed.

Response by: Office of the CTP Regulator

53. Has any research been done around the cost/benefit of moving CTP Insurance cost to the licence instead of registration of a vehicle?

This is outside the scope of the jury's remit. The types of vehicles for which CTP must be purchased and the way premiums are calculated between vehicle types cannot change as part of this process.

Response by: CMTEDD

Even if it were in scope, work in other states has demonstrated that unless the whole of Australia moved to this basis the system would be unworkable.

Response by: Geoff Atkins

54. How expensive is current non-compulsory insurance for drivers to cover their own injuries in an accident where they are at fault / no one is at fault?

The full cover is not available in the private market. Disability insurance can be purchased which covers for more than just motor accidents. Some disability insurance is included in superannuation funds.

Response by: Peter McCarthy, EY

55. What information is there about fraud?

Note: this question was not on the question board but was raised in many conversations. The following information may assist. It is a brief article published on Actuaries Digital (actuaries.asn.au) on 5 July 2017. There has always been, and always will be, a degree of fraud in any insurance or welfare system. The discussion below is about something different and recent.

I have no knowledge of whether this claim farming activity occurs in the ACT or how prevalent it might be.

[Geoff Atkins explores the escalating costs in CTP and motor insurance driven by the intervention of third parties.](#)

In 2012, I wrote about the many problems in UK motor markets from what has broadly been termed “claim farming” (that article can be found here). I finished with the question: could it happen in Australia?

Well, it’s now clear that it’s happening here in a big way. We fear that unless concerted action can be taken to cut out farming, it will spread and become so embedded that we’ll never stop it. The visible part of claim farming is the cold call to an individual asking about a recent accident. The hidden part includes the exaggerated CTP claim, the inflated car repair bill, the excessive fees for a rental car – all paid for by the unknowing policyholder.

[Our silos make us vulnerable](#)

Unlike the UK, our insurance products for motor vehicle property damage and bodily injury are totally separate. And the CTP schemes are all state based. The claim farmers don’t care about these distinctions. We are more vulnerable, and much less able to respond, because of our silos. Participants are spread across public and private sectors, have no regular communication channels and (in the past) no clear common interest in tackling a systemic problem.

[Did you know?](#)

- The ACCC reported over 2,700 complaints about unsolicited calls in the seven months to November 2016 from just three states (1,700 in NSW, 600 in Qld, 400 in SA). With 2,700 complaints, how many have received a call?
- By 2014, two thirds of all British motorists had been contacted by a claims management company, and one in three had received more than ten calls.
- The frequency of CTP claims for minor injury in NSW is now 2.5 times the 2011 level, and Qld is seeing an increase in minor claims, while the accident rate is stable – coincidence?
- The average cost of a third party property damage claim in motor has been rising quickly, with a significant proportion coming from car hire costs – coincidence? In this context, the main victim of

the claim farming exercise is the insurer of the vehicle at-fault. The third party claim presented to them is largely out of their control.

- Phone calls seem to come from overseas call centres. Callers frequently misrepresent themselves as being from the regulator, an insurer or law firm, and they appear to have confidential accident details.
- It remains unclear whether this activity is illegal or not.

What can be done?

It is hard. In the UK, the insurance industry and government have been actively fighting claim farming since the mid-2000s, with only limited success. The UK government is now consulting on still more law changes.

And who really cares in Australia? For an insurer faced with a dubious claim, it is often cheaper and easier to grit the teeth and settle it. There is no perceived value in pursuing the individual motorist for fraud. An insurer, whether government or private, can live with the pain, put up its premiums, and still be fine. The average motorist paying around \$100 a year more because of claim farming is none the wiser and just grumbles about the insurers.

So do we care enough? Are the many elements of the insurance system willing to leave their silos, put aside competitive interests and work together? How can we mobilise the scarce resources of regulatory and crime fighting authorities to tackle the dark side of the motor insurance business? Some government and private institutions are acutely aware of this emerging issue. Various investigations are underway and actions are being developed and implemented, but actions are not likely to succeed unless they can influence many parts of the claim farming networks and ultimately get to the core of the problem.

Response by: Geoff Atkins

CMTEDD Annual Report 2015-16, page 230, information on claim farming

One of the objectives of the CTP Act is to establish and keep a register of motor accident claims to assist with the administration of the statutory insurance scheme and the detection of fraud.

The State Insurance Regulatory Authority (SIRA) which is responsible for the NSW CTP insurance scheme has noted that cold calling and the use of claims farming practices is growing and that there is evidence that the issue is emerging in other CTP schemes around Australia, however, NSW appears to be the 'epicentre'.

Response by: Office of the CTP Regulator