

# Briefing Paper: Jury Evidence Approach

---

## Purpose

To discuss and agree on the approach for the Jury's evidence program for the upcoming Citizens' Jury on Compulsory Third Party Insurance.

## Context

Citizens' Juries rely heavily on the concept that the Jury consider evidence which they trust which generally means evidence from sources that they choose. In many of the Juries we have run, we have allowed the Jury to undertake a process which results in them identifying the information needs and gaps that they have, and identifying the people (or sources) best placed to fill those gaps.

At the last meeting we indicated that if there were only approximately 20 witnesses that could reasonably provide advice to the Jury then it would be appropriate for the SRG to choose (by virtue of the fact that there would be no one to 'choose' from)..

Since this time, we have received 58 names from SRG members. This is significantly more witnesses /speakers than can be accommodated. Therefore, the Jury will be given the names of all witnesses chosen by SRG members and they will be asked to choose who they wish to hear from based on their needs for information.

This paper explores the mechanisms by which we propose doing this to ensure that a balanced discussion occurs.

In addition, feedback provided by SRG members at the last meeting and since this time through various emails has led us to review the witness program, to better reflect the recommendations / needs of members. This paper outlines how and why we have revised the approach accordingly.

## Background briefing – Day 1

Day	Process as articulated last meeting	New approach	Invited presenters / witnesses – and proposed content	Why changed?
1	<p><u>Government briefing</u>- To help the Jury understand why the Jury has been convened on this topic by government, the history and the background to the project. Government’s parameters for the Jury’s work / the remit and authority.</p>	<p>Unchanged</p>	<p>To be advised by government</p>	<p>N/A</p>
2	<p><u>CTP Briefing</u> -To give the Jury a good and objective foundational understanding of Compulsory Third Party Insurance – what it is, how it works and what makes up a scheme. This is to be an objective and factual account of CTP. It will;</p> <ul style="list-style-type: none"> <li>• Explain the ACT’s current CTP scheme</li> <li>• Outline the core elements of CTP Scheme (in general terms)</li> <li>• An overview of the different types of CTP schemes nationally</li> <li>• Explain language – definitions.</li> <li>• Explain the main groups involved in delivering the CTP system and their roles / responsibilities.</li> </ul>	<p>Overall approach will be the same.</p> <p>We are proposing to add more information into the brief, as follows;</p>	<p><b>1. Geoff Atkins, Finity (approx. 25 mins);</b> Setting the scene and definitions. Explain the ACT’s current CTP scheme in general terms; Outline the core elements of CTP Scheme (in general terms); An overview of the different types of CTP schemes nationally; Explain language – definitions; Explain the main groups involved in the CTP system and their roles / responsibilities; national trends, fraud and automated vehicles</p> <p><b>2. TBC – legal academic (approx. 10 mins)</b> It is proposed this presenter will cover:</p> <ul style="list-style-type: none"> <li>•Negligence;</li> <li>•How liability is established/investigated;</li> <li>•Negotiated settlements;</li> <li>•Court awarded damages;</li> </ul> <p><b>3. Brief intro from the CTP regulator (approx 10mins)</b> – functions of the regulator; premiums; the ACT scheme in more specific terms including data (no more than what’s out there now)</p>	

Day	Process as articulated last meeting	New approach	Invited presenters / witnesses – and proposed content	Why changed?
3	<p><u>Speed Dialogue</u> To help the Jury develop a deep understanding of the different perspectives on the issue and to start the Jury thinking about the issue of trade-offs.</p> <p>Participants: SRG reps plus a number of SRG suggestions including claimants, health experts and experts in new innovations.</p> <p>It represents different groups understanding / experience of what is important in a CTP scheme, what the trade offs are and how they should be prioritised.</p>	<p>Approach unchanged.</p> <p>Length of time for each speaker increased to 15min (maybe more) because number of participants reduced to 5 organisations.</p> <p>Health professionals, innovation, claimants and some SRG members either removed at their request or have been moved to the witness program.</p>	<ol style="list-style-type: none"> <li>1. Mr Mark Blumer, ACT Law Society</li> <li>2. Mr Jamie Ronald, ACT Bar Association</li> <li>3. Ms Madeline Hibberd, IAG</li> <li>4. Mr Surayez Rahman or Ms Susie Walford, Suncorp</li> <li>5. Ms Fiona Tito Wheatland, Health Care Consumers Association</li> </ol>	<ul style="list-style-type: none"> <li>- Allows participants more time (as requested by SRG)</li> <li>- Clarity of intent – focused clearly on stakeholder perspectives (ie participants in this process provide a lens through which different groups view an issue)</li> <li>- A number of SRG members felt it wasn't appropriate for them to be on Speed dialogue.</li> </ul>

Day	Process as articulated last meeting	New approach	Invited presenters / witnesses – and proposed content	Why changed?
4	<p><u>Witness workshops</u> an opportunity for critical witnesses to work with the Jury as they begin to consider trade-offs and deliberate on the scheme elements.</p> <p>Subject matter experts – people with deep knowledge about schemes and implications of various models – up to 10 people.</p> <p>Witnesses will assist the Jury to unpick the tensions and tradeoffs in CTP schemes and talk them through the implications of prioritising different elements as openly, objectively and factually as possible. The witnesses will need to be able to provide advice on the cost drivers of the system. The witnesses may need to explore models in other jurisdictions and how they compare to the ACT's current system, the strengths and weaknesses of these other schemes.</p> <p>SRG had developed the following themes;</p> <ul style="list-style-type: none"> <li>- Coverage and how it affects different users</li> <li>- Experience/impacts on all road users including severity of injury</li> <li>- What happens in other jurisdictions – what do schemes try to do / objectives; what</li> </ul>	<p>Overall approach has not changed; however, we are proposing slightly more detailed language and a reduction in the number of themes;</p> <p><u>REFER TO APPENDIX A FROM GEOFF REGARDING PROPOSED THEMES. There are 4 themes proposed;</u></p> <ul style="list-style-type: none"> <li>• <u>Theme 1 – What drives scheme costs and benefits (? – feedback from Jamie) (including a discussion on fraud)</u></li> <li>• <u>Theme 2 – Coverage and how it affects different users (including who should be eligible for CTP benefits; what is the impact on people who are ineligible for CTP benefits; impact of premium costs on all road users; should amount of coverage depend on role in accident)</u></li> <li>• <u>Theme 3 – Experience / impacts on all road users including severity of injury (including what kinds of benefits should be available; What impact do different benefits have on those injured; Should there be different benefits depending on severity of injury).</u></li> </ul>	<p>Given number of witnesses proposed by the SRG – <b>the Jury will choose their witnesses.</b></p> <p><b>The SRG are required to refine the potential witness list.</b> (See section / notes below)</p> <p>Names of all health professionals to be included against relevant themes (2, 3 or 4) i.e.</p> <ul style="list-style-type: none"> <li>• occupational / rehabilitation physician;</li> <li>• a physiotherapist; and</li> <li>• a general practitioner;</li> <li>• soft tissue expert;</li> <li>• all other relevant allied health professionals.</li> </ul> <p>Those who participate in speed dialogue can also nominate themselves for witness workshops.</p>	<ul style="list-style-type: none"> <li>- SRG members have raised concerns about the ability of some claimants to talk easily about issues that have had (and continue to have) a significant emotional impact on them – duty of care.</li> <li>- DemocracyCo do not want to unnecessarily expose people giving information / evidence to unnecessary stress.</li> <li>- Reducing the number of themes will increase the knowledge of participants on the key issues that are central to the jury's deliberations.</li> <li>- We have been briefed that Fraud would be better as part of costs rather than as a separate theme.</li> <li>- What happens in other jurisdictions will be relevant to all themes, and form part of the brief provided to witnesses chosen by the Jury.</li> </ul>

should the goal of the scheme be?

- Efficiencies and fairness
- Fraud and impact on schemes.

- Theme 4 – Fairness and how should benefits be determined and provided? (including timing of benefits and how dispute resolution processes might help)

Under advice from multiple SRG members, what happens in other jurisdictions is appropriate to cover in some or all of the 4 themes, and will form part of the witness briefing.

democracyCo suggest that the entire Jury hear the content from Theme 1 (What drives scheme costs) and then the Jury will split into 3 groups to hear evidence from two out of the other 3 themes. Depending on flexibility as we develop running sheets this may mean that some jury members will undertake claimant interviews instead of attending both of their group’s witness workshops (i.e. they will attend one workshop and one interview).

#### NEW

#### Claimant ‘Interviews’ Options

Claimants – both those who had a claim and those who did not to be supported through the process by providing their ‘story’ in a way that does no harm.

To be discussed and agreed with relevant members of the SRG – use the existing list as provided as a starting point, noting that Suncorp are still to put forward claimants (dependent on the process chosen for them to present).

- SRG members have raised concerns about the ability of some claimants to talk easily about issues that have had (and continue to have) a significant emotional impact on them.
- DemocracyCo do not want to unnecessarily expose people giving information / evidence to

For details see below.

- unnecessary stress. These processes should cause no harm.
- Nevertheless there is a strong view from all SRG members that the Jury need to hear firsthand accounts from those who have experienced the system.
- Claimants are neither 'experts' or 'stakeholders', so don't really fit in either the speed dialogue or witness workshops.

## Witness Workshops

As outlined above, given that 58 names have been put forward as potential witnesses by SRG members the Jury will now need to choose the witnesses that best meet their information needs. To help make this process as successful as possible it is proposed that the names provided by SRG members be reviewed and reduced by the members that provided them to achieve the following outcomes;

- Ensure that the people listed are listed in the theme that they can best speak to. (NOTE; it is recognised that many witnesses will be able to speak to multiple themes, but they should be listed against the theme most relevant to them).
- Reduce the number of witnesses **listed by each SRG member to a maximum of 3 in each theme; with local witnesses preferred (where possible)**. This means that each SRG member should not be providing the names of more than 12 individuals for the Witness Workshops. In reducing the number of witnesses, SRG members may like to consider not only the relevant expertise of the individual, but also their presentational skills. (NOTE; as claimants are not proposed to be part of the Witness Workshops anymore).

Refer to the attached spreadsheet organized by theme and colour coded by the SRG member who proposed the speaker to enable effective review.

### **ACTION**

~~SRG members to provide revised list — to democracyCo by COB 6 October.~~ REFER TO AGENDA FOR DECISION POINTS

## Claimant Interviews

We propose the following process to ensure a duty of care is afforded to claimants.

1. Interview 'kitchen table conversations' – a small number of jurors (2-3) meet in a small group relaxed format with a claimant/s to hear their story first. We recommend having support facilitators in the room to ensure people are cared for throughout the conversation but SRG members would not observe the interviews.
2. These conversations will be recorded via video and then played back to the Jury – so the whole Jury can hear their experiences. This method will allow the confidentially to the witness to be ensured (if this is an issue) as the interview could be done without seeing the person. It would also allow all jury members to hear stories from the claimants directly. We recommend the play back be conducted in a closed room. SRG members would be able to observe the play back with the jury. The interviews would not be published on Your Say.

**DECISION**

REFER TO AGENDA FOR PROPOSED DECISION POINTS ~~SRG to approve the approach.~~

APPENDIX 1

## File Note

**From** Geoff

**Date** 15 October 2017

**Subject** Fleshing out themes

---

As I understand it there are five themes planned for day 3 with witnesses. Current shorthand labels are:

1. What drives scheme cost
2. Coverage
3. Impacts/benefits
4. Fairness
5. Claimant stories

The purpose of this note is to suggest refinements and content for the first four themes. The plan is to have the whole jury for the first theme and the others would be each about 10 people.

### 1. What are the key trade-offs?

**<words; this theme should help the jury understand and begin to explore the key trade-offs and priority decisions for the scheme design, balancing premium cost with coverage and benefit levels. It also introduces the other themes that will explore in more detail.>**

- a. Premium for each motorist vs coverage and benefits of scheme
- b. Arguments about higher vs lower premiums
- c. EY evidence<sup>1</sup> will give overview of metrics and costs for the current scheme
- d. Who is covered
- e. What are injured people covered for – treatment, earnings, pain and suffering
- f. Does compensation vary by role in the accident and/or severity of injury
- g. Extent of expert involvement in claim determination – legal, medical, other experts; checks and balances on insurer decisions

---

<sup>1</sup> Suggest EY give the first session with the 'facts' on scheme metrics

- h. Main alternatives, pros and cons
- 2. Who is covered? <This theme explores community expectations around who is covered by CTP for their injuries in the event of an accident>**
- a. Currently if you can demonstrate that someone else was at fault
  - b. Possibility of including people who were at fault in causing their own injury
  - c. There are accidents that are nobody's fault (e.g. hitting a kangaroo)
  - d. What about people drunk, unlicensed, criminal activities etc
  - e. <No need to delve into details like bicycles, off road etc>
  - f. What would the implications of expanding the definition of people covered?
  - g. Noting the premium constraint, what are the opportunities reduce costs elsewhere?
- 3. What benefits are people covered for? <This theme gives the jury information and views about the range of benefit entitlements and the choices relevant to cost trade-offs>**
- a. Common law concept is 'to put you back in the situation you were in before the accident, as best as money can achieve that'
  - b. No fault concept is to define in the insurance policy (in this case legislation) what you are entitled to and in what circumstances
  - c. There are 'hybrids'
  - d. Treatment, rehabilitation and care
    - i. Reasonable and necessary treatment
    - ii. Rehabilitation – vocational, physical, social
    - iii. Other?
  - e. Lost earnings:
    - i. Past
    - ii. Future
    - iii. Actual earnings or earning capacity
  - f. Pain and suffering:
    - i. Not representing a monetary loss to you
    - ii. Compensation for having to go through what you have been through
  - g. Do all injured people get the same benefit entitlements?
- 4. Fairness in claim determination <This theme helps the jury understand how the workings of the system are relevant to injured people and where there may be scope for improvement and/or efficiency gains>**
- a. Trade-off between fairness and efficiency
  - b. Need for support, advice and advocacy
  - c. Making a claim with the insurer
  - d. Getting treatment organised and paid for
  - e. Medical exams and medico-legal reports
  - f. Evidence needed to support your claim
  - g. Negotiation process
  - h. Going to court
  - i. Helping an injured person best recover from the accident
  - j. Speed and timing of receiving benefits
  - k. Lump sum (once and for all) or alternatives

- l. Are there ways to improve efficiency without reducing benefits
- m. Recognition of pain and suffering on an individual basis
- n. Stress of processes
- o. What else?

**5. Injured persons stories (NB name change)**