

Stakeholder Reference Group – Summaries of their views on the models

The following paragraphs have been prepared by the Stakeholder Reference Group members to advise the Jury about their views/ the views of their respective organisations on the 4 models.

democracyCo asked SRG members to provide 200 words summarising their views and indicated that they could provide additional documentation if they wished. The provision of the summaries and or the additional documentation was optional.

Two members **opted to not** contribute to this process. They are;

- Lisa Holmes, Director Financial Framework Management and Insurance, ACT Government
- Richard Glenn, Deputy Director General, Justice, ACT Government

Four members opted to provide documents in addition to their 200 summaries. They are

- Jamie Roland, ACT Bar Association
- Mark Blumer, Law Society of the ACT
- Jake Krausmann, Suncorp
- Madeleine Hibberd, IAG/ NRMA

These documents are attached.

We ask that you assess each of these summaries (and the models) on their merit. In doing so, please reflect on any unconscious bias that you may have and draw on your critical thinking questions (developed when the Jury first met) in analysing the information.

The summaries are provided in no particular order.

Fiona Tito Wheatland Community representative from ACT Health Care Consumers Association on the Stakeholder Reference Group

As Community member on the SRG, I sought to ensure that timely assistance was available to Canberrans injured in road accidents, within the Jury's objectives.

My goal was to maximise the number of people whose needs for income, health and other care would be met after a road accident, for as long as these needs existed.

The legal concept of fault currently excludes many people from most assistance, and often requires family members and friends to blame their parent, relative or friend who was driving, even where the person's legal fault was simply being a human being who made a momentary error in a complex situation. As the Jury heard, this can be devastating. And then these people get almost no assistance to help their recovery.

The evidence also shows that fault-based systems, where damages are determined as a single once-and-for-all lump sum, by lawyers (only 2-3% of cases by a court) in adversarial environments, have a negative effect upon rehabilitation, which can itself cause further long-term harm to people's lives.

My preference remains for the model which places least reliance on fault to provide compensation for people who are harmed in car accidents. Option D does this best.

Jake Krausmann, Suncorp representative

Suncorp supports models D and C, with a preference for D because it provides the most equitable benefits to all injured people, regardless of 'fault'. Common law remains available to those seriously injured and not at-fault.

Model D is the most efficient with 58% of premium going to injured people. It has the lowest premium for motorists and will result in the greatest cuts to legal fees and insurer profit.

Models D and C provide the option of a 'first party' scheme, where motorists choose which insurer will look after all injured people in their vehicle, maximising early access to treatment and support.

Models A and B provide inadequate benefits for all injured people, with the seriously injured the most disadvantaged (people such as Shelley, who shared her tragic story, would not be properly looked after).

A and B have no threshold for common law claims, which fails to meet the jury's stated objectives. Lump sums for minor injuries would continue, as would exaggeration, fraud and high legal fees.

Model D is the most robust, minimising the opportunity for torting and maximising the focus on recovery rather than lump-sum compensation. It will provide the ACT with a generous, enduring and efficient CTP insurance scheme.

Mark Blumer, Solicitor, Law Society of the ACT and Jamie Roland, Barrister, ACT Bar Association

The design of all four models is to take money from those people that have been injured through the negligence of another to provide benefits for people who have caused their own injuries. It is important that any compulsory scheme retains fairness, because scheme law excludes other common law remedies which would otherwise be available.

There is a social good for everyone injured in a motor vehicle accident to get early treatment and care and therefore a better chance of a quick recovery. The question is “How should this be paid for?”.

In Model A, the extension of cover to at-fault drivers is funded by reducing the amount to compensate those injured by someone else’s negligence for pain and suffering and loss of enjoyment of life. That saving provides 6 months of medical treatment, income replacement and care to all injured people. In Model B, general damages are reduced more, providing 12 months of treatment, income and care. Models C and D go way beyond the idea of early treatment and support; they fund their extended no-fault benefits by severely limiting the rights of people injured by someone else’s negligence. Almost 90% of injured people will be excluded by the WPI threshold of 10%, proposed in models C and D.

Model A presents the fairest outcome of the four models proposed.

A further document with our detailed commentary called Comments on Model Designs is provided separately

Prof Ian Cameron, Professor of Rehabilitation Medicine, John Walsh Centre for Rehabilitation Research, University of Sydney

Model D best meets the criteria set by the Jury. It has addressed the three top priority recommendations of early access to medical treatment, economic support and rehabilitation services, equitable cover for all people injured in a motor vehicle accident, and a value for money and efficient system.

Model D provides the most equitable and fair distribution of benefits to assist injured people to return to health and productivity. It specifically encourages early treatment, irrespective of “fault”, and provides assistance preferentially to people with more severe injuries. It does these things at the lowest costs of the four models.

Some attention to background factors in the models is also needed. There is a recommendation that an insurance claim should be made within three months of the accident. This is important to see that early treatment and economic support is provided.

A support system to navigate the claims process, promotion of safer driving practices and strengthening scheme integrity and reducing fraudulent behavior, needs to be carefully included in a preferred model to address the remainder of the Jury's higher priorities.

Model D is not the model that could provide greatest equity and value for money. A more completely "no fault" system as in Victoria would do that better. However, Model D is a reasonable compromise for the ACT.

Madeleine Hibberd, Manager, Regulatory Policy, IAG (NRMA Insurance)

Support for Model D

NRMA Insurance supports both models C and D. However, on balance, we consider that model D best meets the objectives defined by the Citizens' Jury.

All models offer early access to treatment, rehabilitation and income support to all people injured in a motor vehicle accident. However, model D represents the most equitable and generous cover, providing the following benefits to all injured people, regardless of fault:

- treatment, rehabilitation and income support for up to 5 years
- dependant support up to \$350,000 in the event of death
- quality of life benefits up to \$350,000

Importantly, model D also represents a focus on recovery from injury rather than compensation.

Under model D, access to common law benefits would be subject to an injury threshold, which ensures that those who are the most seriously injured and not at fault will receive the largest proportion of the compensation dollar.

These thresholds also strengthen the integrity of the scheme as they act as disincentives for the exaggeration of injuries and losses, reducing fraudulent behaviour.

Model D also offers the best value of the four proposed models. The estimated costing report provided by EY indicates that model D represents the largest dollar saving to ACT motorists, reducing CTP premiums by up to an estimated \$171, while still providing generous cover for all injured road users.

(Information about why NRMA don't support Models A and B can be found in the attachment)